

What a Deal?

The Collateral Consequences of Criminal Convictions

Speaker:

Patricia Warth, Esq.

Chief Hurrell-Harring Implementation Attorney

NYS Office of Indigent Legal Services

Saturday, September 17, 2016

9:00 a.m. – 12:00 p.m.

Mohawk Valley Community College

1101 Sherman Drive

Utica, NY

IT Building, Room 225

8:30 a.m. – 9:00 a.m.

REGISTRATION

9:00 a.m. – 10:30 a.m.

The 'Collateral' Consequences of a Criminal Conviction: Duty, Challenge, and Opportunity

10:30 a.m. – 10:45 a.m. BREAK

10:45 a.m. – 12:00 p.m.

***The Real Punishment of a Sex Offense Conviction
Certificates of Rehabilitation: What They Are and How to Apply***

SPEAKER

Patricia Warth

Patricia Warth, Esq. graduated from University of Notre Dame in 1987 and Cornell Law School in 1996. After graduating from law school, she clerked for a federal judge for a year before



joining the New York State Capital Defender Office where she worked as a Deputy Capital Defender until 2005, when the office closed. Ms. Warth then spent a semester as Practitioner-in-Residence at Syracuse Law School's Office of Clinical Legal Education, and then in 2006, she joined Prisoners' Legal Services of New York as Managing Attorney of the Buffalo Office. In 2008, Ms. Warth began working at the Center for Community Alternatives as Co-Director of Justice Strategies, CCA's criminal justice research and policy unit. In addition to her research and policy work, Ms. Warth also supervised CCA's school-based advocacy programs, Reentry Clinic, and Client Specific Planning Program.

The experiences of the people with whom she works has informed her research and advocacy. She has conducted research about and delivered presentations and CLE's on a variety of criminal justice topics, including sentencing, sentencing advocacy, drug law reform, and the life-long consequences of a criminal conviction. Ms. Warth is also a co-author of CCA's reports, "The Use of Criminal History Records in College Admissions Reconsidered," and "Boxed Out: Criminal History Screening and College Application Attrition," and the 2013 article, "Barred Forever: Seniors, Housing, and Sex Offense Registration," published in the Kansas Journal of Law and Public Policy.

TOPIC

Most criminal convictions occur by way of a guilty plea. Yet, often our clients plead guilty without knowing the life-long consequences that will stem from their guilty plea. This program will help criminal defense attorneys to better inform their clients of the life-long (often called "collateral") consequences of a conviction. There will be a special focus on the "collateral" consequences that attach to a sex offense conviction. Additionally, the program will help attorneys to develop strategies for ameliorating these consequences, either through plea negotiations that highlight collateral consequences as a significant part of the punishment attached to a conviction or, when that fails, applications for Certificates of Relief from Disabilities or Certificates of Good Conduct.

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The Criminal Track Series

The Criminal Track Series is presented each Spring and Fall by the Oneida County Bar Association in cooperation with the Criminal Division of the Oneida County Public Defender's Office, the Oneida County Supplemental Assigned Counsel Program, the New York State Office of Indigent Legal Services and the New York State Defenders Association, Inc. as a regional effort to provide low and reduced cost training programs for public defenders and assigned counsel. A major part of the Series is the annual Criminal Law Academy that is presented in the Fall. The Criminal Law Academy was designed to provide fundamental knowledge of the practice of criminal defense law to newly-admitted attorneys, those attorneys who occasionally practice criminal law and more experienced criminal defense attorneys. The faculty is comprised of some of the most preeminent and experienced criminal law practitioners from across New York State. The two full-day course provides continuing legal education credits in skills, professional practice and ethics.

Again this Spring, under a grant from the New York State Office of Indigent Legal Services, the Oneida County Supplemental Assigned Counsel Program sponsored the Oneida County Assigned Counsel School in conjunction with the Criminal and Civil Divisions of the Oneida County Public Defenders' offices. There were two, full day sessions – one on criminal trial practice and one on family law.

UPCOMING CRIMINAL TRACK PROGRAMS

Saturday, October 1st: “DWI” with John G. Leonard, Esq., *Leonard, Curley & Longoretta PLLC*; Stacey Scotti, Esq, *Assistant Oneida County District Attorney*; along with members of the Oneida County Probation and DMV.

Saturday, October 22nd: “General Immigration Issues” with Joanne Macri, Esq., *Director of Regional Initiatives, NYS Office of Indigent Legal Services* and Sharon Ames, Esq. and Robert Reittinger, Esq., *Directors of the Region 2, Regional Immigration Assistance Center (RIAC) in Rome.*

Saturday, October 29th: “Criminal Law Update” with Gerard Neri, Esq., *Special Counsel to 5th Judicial District Administrative Judge James Tormey.*

These supplemental programs are available free to Oneida County Bar Association members who have purchased a Sempass. A \$25 registration fee is charged to non-members who are public defenders, assigned counsel or government attorneys. This fee is available only for the Criminal Track Series. The Oneida County Public Defender, Criminal Division makes several of the materials from our Criminal Track Series and the Academy available at our website.

2016 Criminal Law Academy **Friday, October 7th & October 8th**

As usual, the Academy will provide two full days of lectures centered on criminal law and criminal procedure including two ethics credits at the Utica campus of Mohawk Valley Community College. As soon as the schedule is confirmed, it will be posted on our website: <http://www.ocgov.net/oneida/pdcriminal/training>. Registration cost for the program is \$65 for one day and \$100 for both days. Continental breakfast and lunch is included.

The New York State Defenders Association, Inc. is also a valuable resource for criminal law practitioners through their website <http://www.nysda.org/>.

Our special thanks to Mohawk Valley Community College who continue to offer their first class facilities for our use. Welcome to today's program. I hope you find the presentation informative and valuable to your practice. As always, we welcome your comments and suggestions for future programs.

Frank J. Nebush, Jr., Esq.
Oneida County Public Defender, Criminal Division

The “Collateral” Consequences of a Criminal Conviction: Duty, Challenge, and Opportunity

**Patricia J. Warth
NYS Office of Indigent Legal Services**

Materials

1. Powerpoint
2. Examples of professional standards
3. Resource list
4. Bronx Defender’s *Padilla* Compliance Guide
5. Sample advisory letter

The “Collateral” Consequences of a Criminal Conviction: *Duty, Challenge, and Opportunity*

Patricia J. Warth
Office of Indigent Legal Services

2016

“Collateral” consequences

*“New York has unwittingly constructed formidable barriers to those attempting to re-enter society following interaction with the criminal justice system. These barriers, consisting of a myriad of ‘collateral consequences,’ were erected by statutory, regulatory, and policy decisions without adequate consideration of their combined detrimental effect.... [T]hese collateral consequences hinder successful reintegration by restricting access to **the essential features of a law-abiding and dignified life** – family, shelter, work, civic participation, and financial stability.”*

NYSBA, *Re-Entry and Reintegration: The Road to Public Safety* (2006)

Is “collateral” the right word?

If a consequence to a criminal conviction really “restricts access” to the “essential features of a law-abiding and dignified life” is it merely “collateral”?



SCOTUS doesn't think so

We... have never applied a distinction between direct and collateral consequences to define the scope of constitutionally ‘reasonable professional assistance.’”

Padilla v. Kentucky, 599 U.S. 356 (2010)



The problem of using the term “collateral”

The real problem lies in the word ‘collateral.’ *A fait accompli*, it summarily excuses any attention to what follows. Almost by definition, the term invites ignorance and absolves judges, prosecutors, and defense attorneys of responsibility.... When advocates use the tem ‘collateral,’ they unwittingly depersonalize the very harm they seek to highlight in negotiations and cede their argument before it begins.”

- McGregor Smyth, “‘Collateral’ No More,” at 147.



More accurate terms

- Enmeshed penalties*
- Penalties intimately related to the criminal process*
- Lifelong consequences
- Life altering consequences
- Invisible punishment
- Real punishment

* *Padilla*, 599 U.S. 356, 366



DUTY



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Duty to Advise

“We have long recognized that “[p]revailing norms of practice as reflected in American Bar Association standards and the like ... are guides to determining what is reasonable...” in assessing if counsel’s representation “fell below an objective standard of reasonableness.”

- *Padilla v. Kentucky*, at 366

NEW YORK
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Legal Services

Professional Standards

NLADA Performance Guidelines for Criminal Defense Representation (2001), Guideline 6.3, The Decision to Enter a Plea of Guilty:

a) Counsel should inform the client of any tentative negotiated agreement reached with the prosecution, and explain to the client the full content of the agreement, and the advantages and disadvantages, and the potential consequences of the agreement.



Professional Standards

NLADA Performance Guidelines for Criminal Defense Representation (2001), Guideline 8.2, Sentencing Options, Consequences and Procedures:

- (a) Counsel should be familiar with the sentencing provisions and options applicable to the case...
- (b) Counsel should be familiar with direct and collateral consequences of the sentences and judgment...



Professional Standards

ABA Standards for Criminal Justice: Pleas of Guilty 14-3.2(f) (3rd ed. 1999)

To the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from the entry of the contemplated plea.



Beyond Duty

The best motivation is not Supreme Court decisions or professional standards:

“The most powerful legacy of the Padilla decision is not its legal analysis of the duties of defense counsel, or even its repudiation of the legal theory of ‘collateral’ consequences... The key to understanding the decision’s impact is much more basic – Jose Padilla is a man, not a case. Padilla reminds us of the advocate’s most effective strategy: humanizing the person he or she represents.”

- McGregor Smyth, “‘Collateral’ No More



Challenge



Challenge

“[C]riminal convictions can carry a wide variety of consequences other than conviction and sentence, including civil commitment, civil forfeiture, the loss of the right to vote, disqualification from public benefits, ineligibility to possess firearms, dishonorable discharge from the Armed Forces, and the loss of business or professional licenses.... A criminal conviction may also severely damage a reputation and thus impair the defendant’s ability to obtain future employment....”

- *Padilla*, 599 U.S. at 376

Web Resources

- Reentry.Net/NY
- ABA's National Inventory of the Collateral Consequences of a Conviction, at: <http://www.abacollateralconsequences.org/>



Print Resources

- *The Consequences of Criminal Proceedings in New York State*, Bronx Defenders
- *Collateral Consequences of Criminal Convictions: Law, Policy, and Practice*, Margaret Colgate Love, Jenny Roberts, and Cecilia Klingele
- *New York State Occupational Licensing Survey* (2006), Legal Action Center
- *Criminal History Screening in College Admissions* (2013), Center for Community Alternatives



Collaboration



People Resources:

- civil legal service providers
- criminal defense offices with reentry projects
- Bronx Defenders
- Center for Community Alternatives



Strategies

It is neither realistic, possible, or effective to advise your client as to every potential consequence of a criminal conviction.



Strategies

Better strategy: find out what is important to your client so you can provide specific advise.



Early Inquiry & Investigation

“The foundation for powerful advocacy begins with the first client meeting.”

- Smyth, *‘Collateral’ No More*, at 156

“For those clients who described a positive initial interaction with their attorney, 75% reported that during this meeting they felt the attorney listened to them and they had the opportunity to tell their story.”

- ‘A Little Communication Would Have Been Nice,’ [The Champion](#) (August 2016)

Focus

Employment & military service

-Loss of job or employment license

Housing

-Loss of public or section 8 housing

Education

- Loss of student loans and education opportunity

Immigration

- Deportation, inadmissability



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Ask Questions

- Where do you work? What are your employment goals?
- Where do you live? Who do you live with? Is this housing subsidized? Is this a housing project?
- Are you in college? Do you receive student loans?
- Where were you born?



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Red Flags

- Employment in **medical, long-term care, educational or appearance enhancement** fields
- Residence in **government subsidized housing**
- In college and receiving **federal student loans**

Give Specific Advice

John, I understand that you are currently in a CNA program and hope to work in a nursing home. To work in a nursing home, you would have to be cleared by the Department of Health after a criminal background check. According to DOH regulations, this drug conviction would impose a bar to working in a nursing home for 10 years, unless you obtain a Certificate of Relief from Disabilities...

Specific Advice, *cont.*

Sheri, I understand that you live with your mother in a Syracuse Housing Authority home. I have consulted with a legal service provider whose specialty is housing, and she confirmed that if you are convicted of this offense, your mother would lose her SHA home if you continue to live with her. Your mother would be able to remain in the home only if she signs – and abides by – an agreement that you no longer live with her.



Specific Advice, *cont.*

Terrence, I know that you are in college right now, and that you rely on federal student aid to help pay for it. The prosecutor offered a plea to a reduced charge of Unlawful Possession of Marijuana, which is a non-criminal offense. But I need to alert you – if you plead guilty you will lose your eligibility for federal student aid for a year. This may mean that you cannot go back to college this coming year.



Opportunity



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The Reason to Humanize

“[A]mple psychological research shows the greater moral difficulty we have inflicting harm on others whose faces we see, whose presence we can feel.... The observation is true the more we learn about [others] in ways that reflect their ordinary humanity. It is far harder to harm someone else when you think of them as a father, a son, a husband, or a church member than as a nameless individual.”

Andrew Taslitz, *Destroying the Village to Save It*, 518-19



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SCOTUS Endorsed Strategy

“[I]nformed consideration of possible deportation can only benefit both the State and noncitizen defendants during the plea bargaining process. By bringing deportation consequences into this process, the defense and the prosecution may well be able to reach agreements that better satisfy the interest of both parties. Counsel who possess the most rudimentary understanding of the deportation consequences of a particular criminal offense may be able to plea bargain creatively with the prosecutor in order to craft a conviction and sentence that reduce the likelihood of deportation.”

- *Padilla*, 599 U.S. at 373



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NY Law Endorsed Strategy

Penal Law § 1.05:

The general purpose of the provisions of this chapter are:

(6) To insure the public safety by preventing the commission of offenses through ... the promotion of [the convicted person's] **successful and productive reentry** and reintegration into society.



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Enmeshed Consequences as Leverage

McGregor Smyth



Example

Terrence



Terrence's story

- Just finished freshman year of college
- First in family to attend college; made Dean's list
- Paying for college through federal student assistance
- During summer break, arrested for PL § 221.35, public possession of marijuana, a B misdemeanor
- At arraignment, per standard practice, ADA offers plea to UPM
- ADA says fine will be the only penalty



Terrence's attorney

Melissa



Melissa's strategy

- Talked to Terrence; learned he was in college and paying through federal loans and work study
- Briefly conferenced with ADA, explaining Terrence's story, and identifying that the real penalty resulting from a UPM plea would be loss of ability to pay for college
- Proposed ACD as means to avoid disproportionate punishment



Elements of Melissa's strategy

- Humanized Terrence
- Identified **SPECIFIC** enmeshed consequence
- Explained how this consequence would result in **DISPROPORTIONATE PUNISHMENT** for Terrence
- Explained how this would impact **REENTRY**
- Offered an **ALTERNATIVE DISPOSITION** that would avoid the disproportionate punishment



Strategies

- Be specific
- Be persistent
- Pursue creative dispositions
- Demonstrate true equity, not special treatment
- Talk about reentry and public safety
- Learn of, and where appropriate participate in, ancillary proceedings



Strategies, cont.

- Fast is not always bad
- Use discretion
- Be aware of sealing statutes
 - CPL § 160.50, CPL § 160.55, CPL § 160.58, CPL § 720.35
- Apply for Certificates of Relief from Disabilities



Advisory letters

- Have been effective tool for immigration consequences; should use in other domains
- Lay out the nature of the collateral consequence
- If possible, lay out alternatives to avoid or ameliorate the collateral consequence



Ancillary proceedings

- School disciplinary hearings
- Housing
- Family Court
- Others?



“If a penalty or consequence is likely and related to our client’s criminal charges, we should know about it, tell our client about it, and work to avoid or mitigate it.”

- Smyth, ‘Collateral’ No More, at 167



The “Collateral” Consequences of a Criminal Conviction: Duty, Challenge, and Opportunity

Examples of Professional Standards Pertaining to “Collateral” Consequences

National Legal Aid and Defenders Association, *Performance Guidelines for Criminal Defense Representation* (2001)

Guideline 6.3 - The Decision to Enter a Plea of Guilty:

- (a) Counsel should inform the client of any tentative negotiated agreement reached with the prosecution, and explain to the client the full content of the agreement, and the advantages and disadvantages, and the potential consequences of the agreement

Guideline 8.2. Sentencing Options, Consequences and Procedures

- (a) Counsel should be familiar with the sentencing provisions and options applicable to the case...
- (b) Counsel should be familiar with direct and collateral consequences of the sentences and judgment ...

American Bar Association, *ABA Standards for Criminal Justice: Pleas of Guilty*, (1999)

Standard 14-3.2

(f) To the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from the entry of the contemplated plea.

New York State Bar Association, *2015 Revised Standards for Providing Mandated Representation*

Standard I-7: Criminal Matters

No attorney shall accept a criminal case unless that attorney can provide, and is confident that he or she can provide, zealous, effective, and high quality representation. Such representation at the trial stage means, at a minimum:

- a. Obtaining at the earliest possible time all available information concerning the client’s background and circumstances for the purpose of ... (v) avoiding, if at all possible, collateral consequences, including but not limited to deportation or eviction;

- e. Providing the client with full information concerning such matters as ... (v) immigration, motor vehicle licensing and other collateral consequences under all possible eventualities

New York State Defenders Association, *Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004)*

Standard VIII, A – Duties of Criminal Defense Counsel

Counsel should be fully aware of and make sure the client is fully aware of, all direct and potential collateral consequences of a conviction by plea. Counsel should develop a negotiation strategy based on knowledge of the facts and law of the particular case, the practices and policies of the particular jurisdiction, and the wishes of the client...

Professor Anthony Amsterdam, *The Trial Manual for the Defense of Criminal Cases*

§ 204: No intelligent plea decision can be made by either lawyer or client without full understanding of the possible consequences of a conviction. These consequences describe the defendant's potential exposure if s/he goes to trial and is convicted of the offense charged or if s/he pleads guilty to the offense charged with no plea bargain. They are the baseline for measuring the worth of a bargain that can be negotiated; and if the prosecutor will not negotiate they measure the worth of the defendant's chances of acquittal or of conviction only of a lesser included offense... at a trial. In some defendants' cases the consequences of conviction may be so devastating that even the faintest ray of hope offered by trial is magnified in significance.

The “Collateral” Consequences of a Criminal Conviction: Duty, Challenge, and Opportunity

Resources

Excellent Policy & Practice Oriented Article

McGregor Smyth, “‘Collateral’ No More: The Practical Imperative for *Holistic Defense in a Post-Padilla World... Or, How to Achieve Consistently Better Results for Clients,*” 31 ST. LOUIS UNIVERSITY SCHOOL OF LAW REVIEW, 139 (2011), available for free at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2132851.

Web Resources

Reentry.Net/NY - <https://www.reentry.net/ny/>.

ABA’s National Inventory of the Collateral Consequences of a Conviction, at: <http://www.abacollateralconsequences.org/>

Print Resources

The Bronx Defenders, *The Consequences of Criminal Proceedings in New York State*, available for free at: <http://www.bronxdefenders.org/the-bronx-defenders-releases-updated-consequences-of-criminal-proceedings-in-new-york-state/>. (updated periodically)

Margaret Colgate Love, Jenny Roberts, and Cecelia Klingele, *Collateral Consequences of Criminal Convictions: Law, Policy, and Practice* (2016 ed.), available for purchase at: <http://legalsolutions.thomsonreuters.com/law-products/Treatises/Collateral-Consequences-of-Criminal-Convictions-Law-Policy-and-Practice-2016-ed/p/102262823>.

Legal Action Center, *New York State Occupational Licensing Survey (2006)*, available for free at: <http://lac.org/wp-content/uploads/2014/12/Occupational-Licensing-Survey-2006.pdf>.

Center for Community Alternatives, *Criminal History Screening in College Admissions: A Guide for Attorneys Representing College Applicants and Students During and After Criminal Proceedings* (2013), available for free at: <http://www.communityalternatives.org/pdf/publications/Criminal-History-Screening-in-College-Admissions-AttorneyGuide-CCA-1-2013.pdf>.

DEFENDER TOOLKIT & PADILLA COMPLIANCE GUIDE: USING KNOWLEDGE OF “ENMESHED PENALTIES” (OR COLLATERAL CONSEQUENCES) TO GET BETTER RESULTS IN THE CRIMINAL CASE*

The U.S. Supreme Court Requires Due Consideration of All Actual Penalties

In March 2010, the U.S. Supreme Court in *Padilla v. Kentucky*, 599 U.S. ___, 130 S.Ct 1473 (2010), ruled that defense counsel **must give affirmative, competent advice** to clients of the risk of **all penalties “enmeshed” with criminal charges** or potential pleas.

- The Court held that the Sixth Amendment does not distinguish between the “direct” and “collateral” consequences of pleas when evaluating the effective assistance of counsel – the relevant inquiry is the extent to which the penalty is *enmeshed* with the criminal process or charges.
- The ruling concerned deportation specifically, but other serious penalties enmeshed with criminal charges include **public housing termination, loss of employment, sex offense registration, disenfranchisement, and student loan ineligibility**. These penalties share with deportation the same unique characteristics outlined by the Supreme Court. Legislatures across the country have “intimately related” these penalties and the availability of these programs or rights to criminal charges and convictions. The penalties are “succinct, clear, and explicit.” Legal changes over the last few decades have made ineligibility for these programs and termination of these rights nearly an automatic result for a broad class of people.
- The Court explicitly encouraged creative pleas to avoid these enmeshed penalties. 130 S.Ct. at 1486.

State Law Requires the Same

On June 7, 2006, Penal Law § 1.05(6) was amended to add a new goal, “**the promotion of [the convicted person’s] successful and productive reentry and reintegration into society,**” to the four traditional sentencing goals of deterrence, rehabilitation, retribution and incapacitation.

(2006 N.Y. Laws 98.)

**Use Padilla and P.L. § 1.05(6) to improve your advocacy skills,
from bail arguments to plea negotiations to sentencing.**

From the moment of arrest, people are in danger of losing hard-earned jobs, stable housing, basic public benefits, and even their right to live in this country. The steady increase in the scope and severity of the penalties that result from arrests has combined with the nearly universal availability of criminal history data to alter drastically the impact of criminal charges on clients – and the practice for lawyers.

* Adapted from McGregor Smyth, *Holistic Is Not a Bad Word: A Criminal Defense Attorney's Guide to Using Invisible Punishments As An Advocacy Strategy*, 36 U. TOL. L. REV. 479 (2005) (www.reentry.net/link.cfm?5373).

A clearinghouse of materials on reentry and the consequences of criminal proceedings.

www.reentry.net/ny

By McGregor Smyth

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As the Supreme Court recognized in *Padilla*, these sanctions, formerly called “collateral consequences,” have become an integral part – and are sometimes the most important part – of the penalty in a criminal case. For many clients, their children, and their families, these consequences are much more severe than any criminal sentence. Because these enmeshed penalties have dramatically raised the stakes of a criminal case, defenders, prosecutors, and judges must incorporate knowledge of them into their daily practice.

The Supreme Court has now endorsed, and in many ways required, a *client-centered, holistic defense practice*. Proper investment in this practice and its strategies will return measurable results.

✦ **The Bronx Defenders’ experience proves that defense counsel can use knowledge of these penalties, or collateral consequences, as a direct advocacy tool to win better dispositions in the criminal case and improved life outcomes for clients.**

I. IMPROVED CRIMINAL DISPOSITIONS

Experience has taught that defenders can obtain more favorable bail, plea, and sentencing results – and even outright dismissals – when they are able to educate prosecutors and judges on the draconian consequences for the clients and their families.

When raising these consequences with prosecutors and judges, keep in mind that they typically respond best to consequences that offend their basic sense of fairness – those that are absurd, disproportionate, or affect innocent family members.

- **Be specific.** Focus on the measured risk of *identifiable* penalties for *specific* clients and challenge prosecutors and judges to justify those consequences when they have the power to change them with alternative dispositions. If you know that bail will result in the loss of a stable job for a breadwinner, or that a particular plea or sentence will lead to the loss of permanent, affordable housing or the right to live in this country with your client’s citizen children, ask whether prosecutors and judges are really serving public safety – or achieving just outcomes – by insisting on that disposition. Ask them to consider the unquestioned research which has shown that access to stable housing and employment proves critical to reducing recidivism.
- **Pursue creative dispositions.** Remind prosecutors and judges that the U.S. Supreme Court has explicitly encouraged creative dispositions, endorsing “informed consideration” of these enmeshed penalties by the defense, prosecution, and courts during plea bargaining. *Padilla v. Kentucky*, 599 U.S. at ___, 130 S. Ct at 1486.
- **Demonstrate true equity, not special treatment.** Assure prosecutors and judges that proper consideration of these penalties for individual clients does not create any special treatment for certain classes of clients. Rather, it embraces the Supreme Court’s recognition that some people charged with the same crimes suffer far greater penalties than others in predictable (but often hidden) ways. A fair and just process entails a proper and complete consideration of all penalties that cannot be divorced from a particular conviction.

We have found these four categories of penalties most powerful in advocating for alternative dispositions:

- (1) **Immigration**
 - Deportability, inadmissibility, or ineligibility for a waiver as the result of a plea
- (2) **Housing**
 - Loss of public housing or Section 8 as the result of a plea
- (3) **Employment & Military Service**
 - Loss of a job or employment license, particularly for a breadwinner
- (4) **Student Loans**
 - Loss of a federal student loan eligibility and educational opportunity

Other serious penalties “intimately related” to criminal charges include sex offense registration and its attendant consequences, loss of voting rights, ineligibility for government benefits, and prohibition on firearms possession.

Improved Dispositions - Using Collateral Consequences in Practice

- Juan R. was charged with a drug crime, and the prosecutor refused any plea below a misdemeanor. Juan, however, was disabled and lived in public housing, and a misdemeanor would result in his eviction. The defense attorney used this knowledge to convince the prosecutor to offer a non-criminal disposition, and Juan kept his home.
 - Joanne F. had worked hard to get a steady job as a security guard. In a domestic incident with her boyfriend, she was charged with Assault and Harassment. The initial plea offer would have resulted in the loss of her security guard license and her job. The defense attorney used this knowledge to convince the DA to offer an adjournment in contemplation of dismissal. Joanne kept her job.
 - Max S. was 18 years old and charged with possession of a marijuana cigarette. The prosecutor would only offer a plea to a marijuana violation, defined by New York law as a non-criminal offense. Max, however, was enrolled in college and was receiving student loans. Under draconian federal law, even a non-criminal plea to a drug offense would render Max ineligible for student loans and thus unable to attend college. Using her knowledge of this sanction, the defense attorney persuaded the DA to offer an adjournment in contemplation of dismissal. Max remains in college pursuing his degree.
- Defense counsel, however, bears the burden for good reason. Sometimes the appropriate client-centered strategy involves *avoiding* a discussion of certain penalties with prosecutors and judges, when raising these issues would actually increase the risk of those enmeshed penalties. Give clear, specific, individualized advice to the client of these risks and make strategy decisions consistent with the client’s priorities.

II. RISK MANAGEMENT

- Knowledge of enmeshed penalties, or “collateral” consequences, is a key risk management tool for defenders. Clients facing criminal charges will often have to face ancillary civil or administrative proceedings in housing court, in family court, or with employment licensing agencies.
- Clients will often testify or give written statements as part of these ancillary proceedings (they are penalized for invoking their right to remain silent) about the underlying facts, with or without their defense attorney.
- Defense attorneys have to be familiar with the collateral consequences so that they can anticipate these proceedings and properly advise clients of the impact of those proceedings on their criminal case.

III. DISCOVERY

- Proper risk management has another significant benefit: as a result of being prepared for these ancillary proceedings, defense attorneys can use them for additional discovery not available in the criminal case.
- Eviction cases, employment licensing proceedings, DMV hearings, school suspension hearings, Family Court – these are all venues where important witness might testify and where an administrative or lower court judge (or even an attorney) is likely to have subpoena power allowing you to obtain documents otherwise unavailable to you.

IV. CLIENT BENEFITS

- Learning the penalties enmeshed with your client’s criminal case and advising your clients of those consequences helps you build better relationships with your clients.
- It also empowers clients to choose outcomes based their *own* priorities. The collateral damage of being arrested often falls most heavily on family members. When given the option, your clients will often choose the outcome that minimizes the impact on their families.
- Help your client think about these long-term hidden effects of a plea before he accepts it. Give clear, specific, individualized advice about these penalties. Under *Padilla*, silence (the failure to advise a client of these risks) is *per se* ineffective assistance of counsel.

Attorneys who ignore these enmeshed penalties are not only not doing their job, they are *actively doing harm*. These penalties can be disproportionate to the offense and counterproductive, forming substantial barriers to successful reentry. Proper advocacy within the criminal case can mitigate or avoid them entirely and win better case outcomes. By redefining “reentry” as a process that begins at arrest and continues through community reintegration, we highlight the substantial role that criminal defense attorneys can play. Quite simply, incorporating knowledge of the broad range of enmeshed penalties into your daily defense work will make you a better lawyer.

GENERAL PRACTICE TIPS

- **Always advise your clients to attend a relevant treatment program - immediately. Such “evidence of rehabilitation” will prove invaluable for obtaining or keeping a job, housing, or immigration status.**
- **Always apply for a Certificate of Relief from Disabilities at sentencing if your client has one or fewer felony convictions.**
- **Talk to your clients. There is a good chance that they are making statements on the record about relevant facts in ancillary civil proceedings.**
- **Broaden your strategy: Consider using these ancillary civil proceedings as a way of getting discovery for the criminal case.**

ADVOCATE RESOURCES

- ❖ **ABA Adult Collateral Consequences Survey** (every jurisdiction, forthcoming)
- ❖ **Reentry Net (www.reentry.net) & Reentry Net/NY (www.reentry.net/ny)** - comprehensive information clearinghouse on reentry and enmeshed penalties
- ❖ **Immigrant Defense Project (www.immigrantdefenseproject.org; 212-725-6422)** - written resources, individual consultations and technical assistance on the immigration consequences of criminal cases
- ❖ **Defending Immigrants Partnership (www.defendingimmigrants.org)** - practical resources for public defenders
- ❖ **Survey of Federal Enmeshed Penalties - *Internal Exile: Collateral Consequences of Conviction in Federal Laws and Regulations*** (The ABA Commission on Effective Criminal Sanctions and the Public Defender Service for the District of Columbia, January 2009) (www.reentry.net/search/item.232200)
- ❖ **The Center for Holistic Defense at The Bronx Defenders (www.holisticdefense.org)** - practical resources and technical assistance to support client-centered, interdisciplinary advocacy
- ❖ ***Relief From The Collateral Consequences Of A Criminal Conviction: A State-By-State Resource Guide*** (by Margaret Colgate Love, 2008) (www.reentry.net/library/attachment.114643)
- ❖ For an extensive New York practice guide, see *The Consequences of Criminal Proceedings in New York State: A Guide for Criminal Defense Attorneys and Other Advocates for Persons with Criminal Records* (The Bronx Defenders, February 2010) (www.reentry.net/ny/library/attachment.172234)

The “Collateral” Consequences of a Criminal Conviction: Duty, Challenge, and Opportunity

Sample Advisory Letter

Catherine Walsh
First Assistant Public Defender
Ontario County Public Defender Office
20 Ontario St.
Canandaigua, NY 14424

Re: Employment Consequences of a Criminal Conviction

Dear Ms. Walsh:

I am writing in response to your question about the barriers to employment your client may face if convicted of Endangering the Welfare of a Child pursuant to Penal Law § 260.10 and/or Assault in the Third Degree pursuant to Penal Law § 120.00. Your client is a Certified Nursing Assistant (CNA) who currently works in a nursing home. She is also enrolled in a pre-Registered Nurse program at the Finger Lakes Community College and hopes to eventually be licensed to work as a Registered Nurse. You have sought advice from the Center for Community Alternative (CCA) because for more than 10 years CCA has run a Reentry Clinic that assists people with convictions to overcome barriers to employment by, among other things, helping people with occupational licensing. Therefore, CCA has expertise on the legal and practical barriers that people like your client face when seeking or maintaining employment in the long-term care or healthcare professions.

If convicted of any criminal offense, but particularly either Endangering the Welfare of a Child or Assault in the Third Degree, it is virtually certain that your client will lose her job. Because she works in a nursing home as a CNA, your client’s employment is subject to approval by the New York State Department of Health (DOH). *See* Public Health Law § 2899-a. To hire her, the nursing home had to request that DOH receive a fingerprint-based criminal record from the Division of Criminal Justice Services (DCJS) to determine if she had any criminal convictions. As a result, her fingerprints and her current employment status remain on file with DCJS. If convicted of a criminal offense, DCJS will notify DOH, which then must determine her suitability for on-going employment in accordance with Executive Law § 845-b. Subsection 5(a) of this provision lists certain felony convictions that presumptively render a person unsuitable for employment, including any felony conviction “involving violence,” a felony conviction under Penal Law Article 120, and felony convictions under Penal Law Article 260. While a conviction for either Endangering the Welfare of a Child or Assault in the Third Degree is not presumptively disqualifying, Executive Law §845-b(5)(b) states that the DOH may determine that a person convicted of *any* criminal offense is unsuitable to work in a nursing home. It has been the Reentry Clinic’s experience that DOH will virtually always determine that a prospective

or current employee who is convicted of Endangering the Welfare of Child or Assault in the Third Degree is unsuitable to work in a nursing home.

Practically speaking, to avoid public scrutiny, nursing homes generally refrain from hiring people with criminal records, particularly people with any Penal Law Article 120 or 260 conviction. This is especially true if the conviction is recent. The DOH oversight renders it even more certain that such applicants with criminal convictions are not hired, and that current employees who are convicted of crimes are fired.

If your client should complete her education to work as a Registered Nurse, a criminal conviction would pose similar barriers, though these barriers would be erected by a different New York State agency. Specifically, to work as a Registered Nurse, a person must be licensed by the New York State Education Department (NYSED). To be licensed, she must be a person of “good moral character.” Education Law § 6905. The regulations that implement this statutory requirement are found in 8 NYCRR 28.1. These regulations require that NYSED obtain from DCJS the criminal record of all applicants seeking to be licensed as a Registered Nurse. Any applicant with a criminal conviction is automatically referred to NYSED’s Office of Professional Discipline, which determines if the person should be licensed.

It has been CCA’s experience that NYSED’s Office of Professional Discipline is quite stringent when it comes to professional licensing, and that a single misdemeanor conviction, even if remote in time, will create significant barriers to licensing and almost always prevents a person from receiving the requisite licensing needed to work in the nursing profession. This is especially true for applicants with any conviction under Penal Law Article 120 or Penal Law 260, even if the applicant is otherwise very well-qualified and if there are mitigating circumstances surrounding the offense.

If the charges against your client are dismissed or reduced to a violation-level offense, however, she will not face these foregoing barriers to employment. This is because the law prevents state agencies from considering arrests that did not result in a criminal conviction. *See* Executive Law § 296(16).

I hope this information is helpful. Please do not hesitate to call me at (315) 422-5638, ext. 220 if you have questions or need additional information.

Sincerely,

Kelly Gonzalez, Esq.
Director of Advocacy Services
Reentry Clinic

The Real Punishment of a Sex Offense Conviction

Patricia J. Warth
NYS Office of Indigent Legal Services

Materials

1. Powerpoint
2. SORA Registration Offenses
3. SORA Reporting and Verification Chart
4. SORA Community Notification Summary
5. SORA Law Enforcement Notification Chart
6. Article 10 Qualifying Offenses

The Real Punishment of a Sex Offense Conviction

Patricia Warth
Office of Indigent Legal Services
(feat. Jeff, a SORA registrant)

Margaret's Case

- Margaret's client pleaded to a misdemeanor sex offense; victim was a minor
- Margaret's pre-plea advice to client: *You will have to register, but I am pretty sure you will only be a risk level 1*
- Basis of Margaret's advice: *conviction is only misdemeanor*
- The reality: client scored a 3 on the SORA RAI

Need for Pre-Plea Advice: Professional Duty

- *Padilla v. Kentucky*, 599 US 356 (2010) – duty to advise of “enmeshed consequences”
- *NYSBA, NYS Revised Standards for Mandated Representation*, § 1-7: duty to provide client full information concerning collateral consequences
- *ABA Criminal Justice Standards*, Standard 14-3.2 – duty to advise client, in advance of plea, of possible collateral consequences
- *NYSBA, Client Centered Representation Standards*, Standard 16 (clients want a lawyer who advise them of all consequences of a conviction)

Need for Pre-Plea Advice: An Imperative in Sex Offense Cases

People convicted of sex offenses are the most vilified group in society. People hate and despise them and think they should be locked up for life...”



Plea or Trial? Different Balance in Sex Offense Cases



Punishment is lifelong and life-consuming

The Lifelong Punishment that Attaches to Sex Offense Convictions

- SORA
- Residency Restrictions
- Supervision restrictions
- Civil Commitment
- Housing
- Employment

SORA

- Sex Offender Registration Act (Megan's Law)
- Enacted 1996
- Three risk levels, which control:
 - **Verification requirements** (address, employment, higher education, and internet)
 - **Community notification** (website, active notification to vulnerable populations)
 - **Duration of registration** (20 years, life w/ possible discharge after 30 years, life w/o possible discharge)
- Failure to comply with verification requirements: felony conviction

SORA Risk Levels: Individualized

- Risk Assessment Instrument (RAI)
- 4 categories
 1. Current Offense
 2. Criminal History
 3. Post Offense Behavior
 4. Release Environment
- Scored with guidance of the *"SORA Risk Assessment Guidelines & Commentary"*

Pre-Plea SORA Assessment

- Assess SORA risk level *prior* to plea and plea negotiations
- Advise client of *likely* score
- Consider incorporating SORA assessment into plea negotiations
 - But be careful: Judge makes ultimate decision

Advise Client on Implications of SORA

- Explain to your client what SORA means
 - *What are his/her verification requirements?*
 - *What will community notification mean for the client?*
 - *How long on the registry?*
- Emphasize criminal liability for failure to comply with verification requirements
 - Correction Law 168-t: felony conviction
- Explain the downsides of travelling or re-locating to another state
 - *Can be subjected to higher risk level, enhanced verification requirements, and increased community notification (including placement on national registry)*

Verification Requirements

- Level 1
 - *Annual verification of address and internet identifiers (mail)*
 - *Tri-annual photo update (in-person)*
 - *W/in 10 days, notify DCJS of change of address; change of internet identifiers; enrollment in or employment at institute of higher ed.*
- Level 2
 - *Same as above & must also verify/update employment*
- Level 3
 - *Verification in-person, every 3 months (updates can be in writing)*
 - *Photo updated annually (in-person)*

Community Notification

- Level 1
 - *1-800 number*
 - *Active notification to vulnerable populations (w/ zip but not specific address)*
- Level 2
 - *On website*
 - *1-800 number*
 - *Email notification*
 - *Active notification to vulnerable populations w/ specific address*
- Level 3
 - *Same as Level 2*

Travel/Re-location to Different State

- Every state requires registration for people who travel/relocate from a different state
- Time frames vary from state-to-state (generally 2-10 days)
- Some states – everyone is on the website
- Why it matters:
 - Ed – level 1 in NYS; moved to Florida; placed on Florida and national registry (website); moved back to NYS, but still on Florida and national website
 - Frank – level 1 in NYS; travelled to Florida for short vacation; required to register w/in 2 days; now on Florida and national website

Residency Restrictions: Banishment

- Sexual Assault Reform Act (“SARA”)
- Enacted 2000; amended 2005
- Establishes as mandatory condition of parole, probation, or conditional release that the sentenced person “*shall refrain from knowingly entering into or upon any school grounds [as defined PL 220.00 (14)] or any other facility or institution primarily used for the care or treatment of persons under age of 18 while one or more of such persons under the age of 18 are present...*”
 - PL 65.10 (4-a)
 - Executive Law 259-c(14)

Residency Restrictions: Banishment, cont.

This has been implemented as a residency restriction:

- *“The practical effect is that any sex offender who is subject to the school grounds mandatory condition is unable to reside within 1000 feet of a school as defined in Penal Law 200.00 (14)(b).”*

- *People v. Diack, 24 N.Y.3d 674 (2015)*

Residency Restrictions: Banishment, cont.

What about municipal residency restrictions?

- Municipalities – race to the bottom
- Good news - preempted by state law
- NY statutes (including SORA, SARA, SOMTA) “represent a detained and comprehensive regulatory scheme” that preempts municipal residency restrictions.

- *People v. Diack, 24 N.Y.3d 674 (2015)*

Residency Restrictions: Banishment, cont.

Exception to the school grounds restriction:

- “provided however that when such [person] is a registered student or participant or an employee of such facility or institution or entity contracting therewith or has a family member enrolled in such facility or institution, such [person] may, with the written authorization of his/her [parole or probation officer] or the court or the superintendent or chief administrator of such facility, institution or grounds, enter such facility, institution, or upon such grounds for limited purposes...”

Other Conditions of Supervision

- Internet limitations – Registrants who are level 3 or whose offense involved a minor or use of the internet
 - No internet pornography
 - No accessing social networking sites
 - No using internet to promote child porn
 - No internet communication with minor (except for own child)

PL 65.10(4-a)(b), Executive Law 259-c(15)

Other Conditions of Supervision, cont.

- Internet limitations – all other SORA registrants
 - “the court may require that the defendant comply with a reasonable limitation in his or her use of the internet that the court determines to be necessary or appropriate to ameliorate the conduct which gave rise to the offense or to protect public safety, provided that the court shall not prohibit such sentenced offender from using the internet in connection with education, lawful employment or search for lawful employment.”

– PL 65.10(5-a)

Other Conditions of Supervision, cont.

- Regular reporting to PO
- Polygraph
- Group treatment – reporting on and demeaning others is encouraged
- No unsupervised contact with minors without parole/probation officer’s permission
- Some POs require that you maintain a journal of everywhere you go, and review it with PO when reporting

Other Conditions of Supervision

“You have to navigate so many conditions. The whole goal of your life is not getting violated. It’s full time – it consumes your life.”

- *Jeff*

SOMTA: Civil Management

- 2007 – Sex Offender Management and Treatment Act
- Those in the custody of the following agencies will be assessed for possible lifetime management (Article 10 of MHL):
 - Department of Corrections and Community Supervision
(Note: Includes those under supervision)
(Note: Those on probation may still be vulnerable; probation is a revocable sentence)
 - Office of Mental Health
 - Office of Persons with Developmental Disabilities

SOMTA: Who is Vulnerable?

SOMTA authorizes –

- 1) Strict and intensive supervision (SIST) for individuals convicted of a “qualifying offense” who have a “mental abnormality”
 - i. “qualifying offense” – see chart
 - ii. “mental abnormality” – one that predisposes person to sex offending
- 2) Civil confinement for individuals convicted of a “qualifying offense,” who have a “mental abnormality,” and who are “dangerous.”

The Review Process

- 1) Multidisciplinary Review (MDR) team – record review; determines if further review is needed
- 2) Case Review Team (CRT) – more in-depth evaluation that includes a psychiatric examination of the individual
- 3) Referral to the AG Office
- 4) Petition filed
- 5) Article 10 proceeding
 - i. SIST
 - ii. Civil commitment

The Numbers: Overview of SOMTA Since Enactment

As of March, 2015, OMH reviewed 11,194 people for civil management (about 90% in prison, 5% on parole/PRS):

- 708 referred by OMH to AG Office
- 701 resulted in AG filing petition
- 338 trials to verdict
- 269 trials resulted in finding of mental abnormality; 69 trials jurors found no mental abnormality (thus, no civil management)
- Of the 269 trials, 202 resulted in court determining that person was “dangerous” and civil confinement was necessary

The Numbers: Overview of SOMTA Since Enactment, cont.

As of March, 2015, significant number of petitions disposed of with settlement rather than trial:

- 213 persons admitted to “mental abnormality”
 - 109 consented to civil commitment
 - 96 consented to SIST

Strict & Intensive Supervision (SIST)

- Court-ordered conditions of supervision (per consultation with DOCCS, OMH & community treatment provider)
- “These conditions are extensive” (OMH 2013 Report)
- Conditions typically include: GPS, polygraph monitoring, specification of residence, limits on who associate with, curfews, no alcohol or drugs, no pornography, restricted internet usage, mandatory participation in treatment (usually multiple tx modalities), etc.
- Much more rigid in enforcing conditions

Violating Condition of SIST

- As of March, 2015 most (157, or 78%) of people on SIST had been charged with violating a condition
- Possible ramifications:
 - If simultaneously on Parole/PRS, parole revocation and re-incarceration
 - Arrest and referral for psychiatric evaluations
 - The psychiatric evaluation goes to AG, who can petition court to modify SIST conditions – OR – request civil commitment
- 63 of 157 people violated ended up in civil commitment
- 66 of 157 were re-incarcerated

There is Hope for Discharge

As of March, 2015

- 201 people on SIST (by trial or admission)
 - 34 people discharged (either to regular supervision or discharged without supervision)
- Significantly more likely to end up back in prison or subject to civil commitment than to be discharged from SIST

Civil Commitment

- As of October 2013, 311 people civilly committed via trial or consent
- An additional number of people were committed post-probable cause/pre-commitment determination
- Two commitment locations:
 - CNYPC (Marcy)
 - St. Lawrence Psychiatric Center

Civil Commitment: 2 Ways Out

- Complete four phase treatment program
 - “Progress through treatment in an incremental manner”
 - As of Oct. 2013, only 1 person has made it to Phase 4, and was successfully discharged to SIST
- Statutorily required annual review:
 - As of October 2013, 651 annual reviews completed
 - 15 (2.3%) resulted in recommendation for discharge to SIST

There is Hope for Release

- As of March, 2015, of 311 people civilly committed
- 65 released to SIST
 - Of these, 7 were eventually discharged from SIST

Two Practice Tips

- Be vigilant about PSI (critical document for both SORA and SOMTA)
 - Attend probation interview
- For young clients, fight hard for Youthful Offender adjudication

Housing

- *Federally subsidized housing*: blanket bar for lifetime SORA registrants
 - Many PHAs enact wider restrictions
- *Skilled nursing & assisted living homes* - often have policies barring people on the SORA registry
- *Private landlords* – many conduct criminal background checks and refuse to rent to SORA registrants
- *Homeowner Associations* – growing number are enacting HOA policies barring SORA registrants

See McNeal and Warth, “*Barred Forever*,” Kan.J.L. & Soc. Pol’y (2013)

Employment

- Only outright statutory bar to employment: ice cream trucks
- Many jobs that require occupational licensing presumptively bar people with a sex offense conviction
 - Certificate of Relief from Disabilities overcomes that bar
- Otherwise – Article 23A applies (“direct relationship” or “unreasonable risk of safety”)
- Still – because of SORA, employers think that *should* deny employment to people with a sex offense conviction
- Reality – it’s really hard for people with a sex offense conviction to get a job

Questions????



New York State Penal Law Sex Offenses

The following list contains the New York State Penal Law statutes for which registration as a sex offender is required. Individuals are required to register as a sex offender upon a **conviction** of a registerable offense or a **conviction for an attempt to commit** a registerable offense or a conviction of or a conviction for an attempt to commit a registerable offense as a hate crime or a crime of terrorism.

Penal Law Statute	Offense Class	Offense
120.70	E Felony ¹	luring a child
130.20	A Misdemeanor	sexual misconduct
130.25	E Felony	rape in the third degree
130.30	D Felony	rape in the second degree
130.35	B Felony	rape in the first degree
130.40	E Felony	criminal sexual act in the third degree
130.40	E Felony	sodomy in the third degree
130.45	D Felony	criminal sexual act in the second degree
130.45	D Felony	sodomy in the second degree
130.50	B Felony	criminal sexual act in the first degree
130.50	B Felony	sodomy in the first degree
130.52 ²	A Misdemeanor	forcible touching
130.53	E Felony	persistent sexual abuse
130.55 ²	B Misdemeanor	sexual abuse in the third degree
130.60	A Misdemeanor	sexual abuse in the second degree
130.65	D Felony	sexual abuse in the first degree
130.65-a	E Felony	aggravated sexual abuse in the fourth degree
130.66	D Felony	aggravated sexual abuse in the third degree
130.67	C Felony	aggravated sexual abuse in the second degree
130.70	B Felony	aggravated sexual abuse in the first degree
130.75	B Felony	course of sexual conduct against a child in the first degree
130.80	D Felony	course of sexual conduct against a child in the second degree
130.90	D Felony	facilitating a sex offense with a controlled

Penal Law Statute	Offense Class	Offense
		substance
130.95	A-II Felony	predatory sexual assault
130.96	A-II Felony	predatory sexual assault against a child
135.05 ³	A Misdemeanor	unlawful imprisonment in the second degree
135.10 ³	E Felony	unlawful imprisonment in the first degree
135.20 ³	B Felony	kidnapping in the second degree
135.25 ³	A-I Felony	kidnapping in the first degree
230.04 ⁴	A Misdemeanor	patronizing a prostitute in the third degree
230.05	E Felony	patronizing a prostitute in the second degree
230.06	D Felony	patronizing a prostitute in the first degree
230.30(2)	C Felony	promoting prostitution in the second degree
230.32	B Felony	promoting prostitution in the first degree
230.33	B Felony	compelling prostitution
230.34	B Felony	sex trafficking
235.22	D Felony	disseminating indecent material to minors in the first degree
250.45(2), (3) and (4) ⁵	E Felony	unlawful surveillance in the second degree
250.50	D Felony	unlawful surveillance in the first degree
255.25	E Felony	Incest (committed prior to 11/1/06)
255.25	E Felony	Incest in the third degree
255.26	D Felony	Incest in the second degree
255.27	B Felony	Incest in the first degree
263.05	C Felony	use of a child in a sexual performance
263.10	D Felony	promoting an obscene sexual performance by a child
263.11	E Felony	possessing an obscene sexual performance by a child
263.15	D Felony	promoting a sexual performance by a child
263.16	E Felony	possessing a sexual performance by a child
263.30	B Felony	facilitating a sexual performance by a child with a controlled substance or alcohol

- ¹ If the underlying offense is a class A or a class B felony, then the offense of luring a child shall be considered respectively, a class C felony or class D felony.
- ² A registerable offense only if the victim is less than eighteen years of age or where the defendant has a prior conviction for a sex offense, a sexually violent offense, forcible touching or sexual abuse in the third degree or an attempt thereof even if registration was not required for the prior conviction; regardless of when the prior conviction occurred.
- ³ A registerable offense only if the victim is less than seventeen years old and the offender is not the parent of the victim.
- ⁴ A registerable offense only if the person patronized is in fact less than seventeen years old.
- ⁵ A registerable offense unless the trial court finds that registration would be unduly harsh and inappropriate. The Attempt version of this offense is registerable for those offenders who committed the offense on or after Sept. 23, 2011, or who previously committed the offense but were still under sentence as of that date.

New York State SORA Reporting Requirements Chart

Correction Law § 168-f

Risk Level	Annual Residence Verification (via mail)	Annual Employment Verification (via mail)	Photo Update (in person)	Personal Reporting to Law Enforcement *
1	Yes	No	Yes - Every 3 Years	No **
2	Yes	Yes	Yes - Every 3 Years	No **
3	Yes	Yes	Yes - Every Year	Yes - Every 90 Days

* Personal reporting = Go to local law enforcement agency

** Individuals designated a level 1 or 2 who have also been designated a "sexual predator" must verify residence in person every 90 days (Correction Law § 168-f (3))

Note: Any registrant shall report to DCJS no later than 10 calendar days after any change of address, internet accounts with internet access provider belonging to such registrant, internet identifiers that such registrant uses, or his or her status of enrollment, attendance, employment or residence at any institution of higher learning. A \$10 fee is charged whenever a registrant reports a change of the required information.

NYS Sex Offense Registration Act (SORA) **Community Notification Summary**

SORA Website (passive notification)

(Correction Law § 168-q, 168-l(6))

- Risk Level 1 - not on the SORA website
- Risk Level 2 - on the SORA website
- Risk Level 3 - on the SORA website

The Division of Criminal Justice Services (DCJS) maintains New York's SORA registry and the SORA website. The website is a subdirectory of the entire NYS SORA registry; it includes information only about those registrants who are deemed risk level 2 or 3 (those deemed risk level 1 are not included on the website).

The following information is included on the SORA website: photo with registrant's name, physical description, age, and distinctive markings; registrant's exact address; address of registrant's place of employment; any institution of higher education at which the registrant is enrolled, resides, or is employed; the crime of conviction, modus operandi, and type of victim targeted; and any special conditions imposed on the registrant.

As of May, 2012, there were 34,076 individuals on the registry as a whole; 20,432 of these individual are included on the SORA website.¹ Searches on the SORA website have increased each year; in 2008 there were 4.3 million searches conducted, while in 2009 there were 6.4 million searches conducted, a 50% increase.²

1-800-Telephone Number (passive notification)

(Correction Law § 168-p)

DCJS maintains a 1-800 telephone number that members of the public can call to ask whether a specific individual is required the register. The caller must provide identifying information, such as the individual's exact address, driver's license number, social security number, or physical description. DCJS shall determine if the named individual reasonably appears to be one of the individuals listed on the registry, and of so, shall provide the caller with the same information law enforcement may provide. (See below). In addition, non-profit youth-serving organizations can pre-register with DCJS so such organizations can call and inquire about multiple named individuals as a tool for screening "prospective coaches, leaders, or volunteers."

In 2009, there were 623,003 name searches conducted via the 1-800 number; matches were found in only 1,214 cases.³

¹ See Division of Criminal Justice Services website, county-by-county count of SORA registrants, available at: http://criminaljustice.state.ny.us/nsor/stats_by_county.htm.

² See DCJS, 2009 Annual Performance Report for the New York State Division of Criminal Justice Services," at 45.

³ Id. at 46.

Email Notification (active notification)

(Correction Law § 168-q(1))

Any person may register with DCJS to receive an automated email message whenever there is new or updated information about a risk level 2 or 3 registrant in the geographic area specified by the person.

Law Enforcement Notification (active notification)

(Correction Law § 168-l(6))

DCJS informs local law enforcement agencies of SORA registrants in their jurisdiction. These law enforcement agencies may disseminate information to “any entity with vulnerable populations related to the nature of the offense committed by such offender.” Law enforcement agencies are required to maintain and update a list of “vulnerable organizational entities within its jurisdiction.” Such list shall include, but not be limited to the following: schools, public and private libraries, public and private school bus transportation companies, day care centers, nursery schools, preschools, neighborhood watch groups, community centers, civic associations, nursing homes, victims’ advocacy groups, and places of worship.

There are some minor differences in the information that can be disseminated based on risk level. See “NYS SORA Law Enforcement Community Notification” Chart.

Miscellaneous Notification Provisions

Correction Law § 168-b(9) (information disseminated to children’s camps): DCJS “shall, upon the request of any children’s camp operator, release to such person any information in the registry relating to a prospective employee.”

Correction Law § 168-b(10) (registrant internet identifiers disseminated to authorized internet entities): DCJS “shall upon the request of any authorized internet entity, release to such entity internet identifiers that would enable such entity to prescreen or remove sex offenders from its services, or, in conformity with state and federal law, advise law enforcement and/or other governmental entities of potential violations of law and/or threats to public safety.”

Correction Law § 168-b(10) (information disseminated to public housing authorities): DCJS “shall make registry information regarding level two and three sex offenders available to municipal housing authorities... to enable such authorities to identify persons ineligible to reside in public housing.”

Correction Law § 168-b(10), 168-l(6) (information about registrants disseminated to institutions of higher education): Once DCJS notifies a local law enforcement agency of updated information about a registrant’s enrollment, residence, or employment at an institution of higher education, the law enforcement agency shall notify the school and other “vulnerable organizational entities” within its jurisdiction.

SORA Law Enforcement Community Notification Chart

Correction Law § 168-L(6)

Law Enforcement agencies shall be notified and may disseminate certain information to any entity with vulnerable populations related to the nature of the offense committed by such registrant. Vulnerable organizational entities include but are not limited to: schools, parks, public and private libraries, public and private school bus transportation companies, day care centers, nursery schools, pre-schools, neighborhood watch groups, community centers, civic associations, nursing homes, victim's advocacy groups and places of worship. The registrant's designated level determines what information may be released.

Level 1	Level 2	Level 3
Name	Exact name & any aliases	Exact name & any aliases
Photograph & description	Photograph & description	Photograph & description
Approximate address based on the registrant's zip code	Exact address	Exact address
Crime of conviction	Crime of conviction	Crime of conviction
Modus of operation	Modus of operation	Modus of operation
Type of victim targeted	Type of victim targeted	Type of victim targeted
Name & address of any institution of higher education at which the registrant is enrolled, attends, is employed or resides	Name & address of any institution of higher education at which the registrant is enrolled, attends, is employed or resides	Name & address of any institution of higher education at which the registrant is enrolled, attends, is employed or resides
Description of special conditions imposed	Description of special conditions imposed	Description of special conditions imposed Address of place of employment

Appendix 1-A**Article 10 Qualifying Sexual Offenses**

Article 10
Sexual Offenses

(Includes Felony Attempt and Conspiracy to Commit)

PL SECTION	Crime	Class
130.25	RAPE 3RD DEGREE	E Felony
130.30	RATE-2 ND	D Felony
130.35	RAPE-1 ST	B Felony
130.40	CRIMINAL SEXUAL ACT-3RD (AKA Sodomy)	E Felony
130.45	CRIMINAL SEXUAL ACT-2ND (AKA Sodomy)	D Felony
130.50	CRIMINAL SEXUAL ACT-1ST (AKA Sodomy)	B Felony
130.53	PERSISTENT SEXUAL ABUSE	E Felony
130.65	SEXUAL ABUSE-1ST	D Felony
130.65-A	AGGRAVATED SEXUAL ABUSE 4TH	E Felony
130.66	AGGRAVATED SEXUAL ABUSE -3RD	D Felony
130.67	AGGRAVATED SEXUAL ABUSE 2ND	C Felony
130.70	AGGRAVATED SEXUAL ABUSE-1ST	B Felony
130.75	COURSE SEX CONDUCT-CHILD 1ST	B Felony
130.80	COURSE SEX CONDUCT-CHILD 2ND	D Felony
130.85	FEMALE GENITAL MUTILATION	E Felony
130.90	FACILIT SEX OFF/CONTROL SUBST	D Felony
130.95	PREDATORY SEXUAL ASSAULT	A-II Felony
130.96	PREDATORY SEXUAL ASSAULT AGAINST A CHILD	A-II Felony
230.06	PATRONIZE PROSTITUTE-1ST	D Felony
255.26	INCEST 2ND	D Felony
255.27	INCEST 1ST	B Felony

Article 10

Designated Felonies if Sexually Motivated*

(Includes Felony Attempt and Conspiracy to Commit)

PL SECTION	Crime	Class
120.05	ASSAULT -2ND	D Felony
120.06	GANG ASSAULT 2ND DEGREE	C Felony
120.07	GANG ASSAULT 1ST DEGREE	B Felony
120.10	ASSAULT 1ST DEGREE	B Felony
120.60	STALKING 1ST DEGREE	D Felony

121.13	STRANGULATION 1ST DEGREE	C Felony
121.12	STRANGULATION 2ND DEGREE	D Felony
125.15	MANSLAUGHTER-2ND	C Felony
125.20	MANSLAUGHTER -1ST	B Felony
125.25	MURDER-2ND DEG	A-1 Felony
125.26	AGGRAVATED MURDER	A-1 Felony
125.27	MURDER-1ST DEGREE	A-1 Felony
135.20	KIDNAPPING 2ND	B Felony
135.25	KIDNAPPING-1ST	A-1 Felony
140.20	BURGLARY-3RD	D Felony
140.25	BURGLARY-2ND	C Felony
140.30	BURGLARY-1ST	B Felony
150.15	ARSON-2ND:INTENT PERSON PRESENT	B Felony
150.20	ARSON-1ST:CAUSE INJ/FOR PROFIT	A-1 Felony
160.05	ROBBERY-3RD	D Felony
160.10	ROBBERY-2ND	C Felony
160.15	ROBBERY-1ST	B Felony
230.30	PROMOTING PROSTITUTION-2ND	C Felony
230.32	PROMOTE PROSTITUTION-1ST	B Felony
230.33	COMPELLING PROSTITUTION	B Felony
235.22	DISSEM INDECENT MAT MINOR 1ST	D Felony
263.05	USE CHILD <17- SEX PERFORMANCE	C Felony
263.10	PROM OBSCENE SEX PERF-CHILD<17	D Felony
263.15	PROM SEX PERFORMANCE-CHILD <17	D Felony

*MHL § 10.03(6)(s) defines sexually motivated as: "... means that the act or acts constituting a designated felony were committed in whole or substantial part for the purpose of direct sexual gratification of the actor."

***Certificates of Rehabilitation:
What They Are and How to Apply***

**Patricia J. Warth
NYS Office of Indigent Legal Services**

Materials

1. Powerpoint
2. CRD Application to Judge
3. CRD/CGC Application to DOCCS
4. Bill Memo L 2011 ch 488
5. Sample advocacy letter

CERTIFICATES OF REHABILITATION: What they are and how to apply

Presentation by:
Patricia Warth
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What is a Certificate of Rehabilitation?

- A legal presumption of rehabilitation
- A factor employers and state agencies must consider in an occupational licensing applicant's favor

Correction Law § 753(2)

Two Types

- Certificate of Relief from Disabilities
Correction Law §§ 701, 702, 703
- Certificate of Good Conduct
Correction Law §§ 703-a, 703-b

Certificate of Relief from Disabilities: *Eligibility*

- Any number of misdemeanor convictions, but no more than one felony conviction
- CRDs are conviction specific; a separate certificate must be issued for each conviction

Certificate of Relief from Disabilities: *Who Has Authority to Issue*

- *The sentencing court* if the individual was *not* sentenced to a state prison sentence

Correction Law § 702

- *DOCCS Certificate Review Unit* if the individual was sentenced to a state prison sentence

Correction Law § 703

Certificate of Relief from Disabilities: *Issued by the Sentencing Court*

- Can be issued at the time of sentencing or any time after; no waiting period
- For applications made after sentencing, the Court *may* refer the matter to Probation for an investigation
 - If so, the Court “*shall* provide a copy of such report, or direct that such report be provided to the applicant’s attorney, or the applicant himself if he or she has not attorney.”

Correction Law § 702(3)

Certificate of Relief from Disabilities: *Issued by the Sentencing Court, cont.*

To grant a CRD application, Court must determine that:

- the person is eligible
- the relief to be granted by the CRD is **consistent with the rehabilitation of the person** and **consistent with the public interest**

Correction Law § 702(2)

Certificate of Relief from Disabilities: *Issued by the sentencing court, cont.*

- A CRD is NOT a pardon
Correction § 706
- The person should NOT have to prove he/she is rehabilitated
U.S. v. DiNapoli, 557 F.2d 962 (1977)
2011 amendment to Correction Law § 702
- A CRD promotes the person's successful reintegration; it should not be treated as a reward for good behavior
- A person will still have to disclose the conviction if asked

Certificate of Relief from Disabilities: *Issued by the sentencing court, cont.*

The Application:

- One page form (DPCA-52) (in materials)
- Not adversarial; DA not a party to the matter
- Possible materials to supplement the form:
 - Cover letter addressing eligibility & how a CRD will assist in the person's rehabilitation and reintegration
 - Letters of support
 - Applicant's accomplishments?

Be strategic about increasing chances of CRD being granted but not setting the bar too high!

Certificate of Relief from Disabilities: *Issued by the sentencing court, cont.*

Issues when a person was sentenced to probation:

- If the person's probation was transferred to another county, the application must be made to the *receiving* county
CPL § 410.80
- If the person violates probation and is re-sentenced to a state prison sentence, the application must be made to DOCCS

Certificate of Relief from Disabilities: *Issued by DOCCS*

For applicants who served a state prison sentence:

- If the person is still on parole/PRS, only the person's parole officer can apply
- Otherwise, the person must complete a 4 page application that is submitted to DOCCS Certificate Review Unit

Form with instructions is in materials

Certificate of Good Conduct

- Available to those who have one or more felony conviction
- Waiting period:
 - 3 years for class C, D, and E felonies
 - 5 years for class A and B felonies
- Duration of waiting period is determined by most serious conviction
- The timing of the waiting period is triggered by most recent conviction, even misdemeanors
 - If felony, the trigger date is release from prison

CRD/CGC Applications to DOCCS: *Issues*

- The application process can take several months
- DOCCS will not process the application unless it includes 2 years of tax returns, evidence of PA, or a notarized statement indicating how a person was supporting him or herself
- Parole will conduct a home visit
- People with non-NYS convictions can apply for a CRD/CGC to DOCCS if they reside in NYS
- For federal convictions, federal probation does "investigation"

Questions?



STATE OF NEW YORK
APPLICATION BY AN ELIGIBLE OFFENDER FOR
CERTIFICATE OF RELIEF FROM DISABILITIES

FOR COURT OR BOARD OF PAROLE
Docket, File or other Identifier

1. Applicant's Last Name First Name Initial 3. NYSID (if known)

2. Address (Street and House Number, City, State, ZIP)

4. Sex 5. Race 6. Height 7. Date of Birth (Month/Day/Year)
 Male Female Ft In.

8. Offense for which convicted 9. Date of arrest 10. Date of sentence

11. Court of Disposition (Court, Part, Term, Venue) 12. Certificate issued by:
 Court indicated in box 11
 State Board of Parole
13. Certificate is intended to replace an existing certificate,
issued on:
 Not applicable

14. Application is hereby made for a grant of a *Certificate of Relief from Disabilities* which will
 a. relieve the holder of all forfeitures, and of all disabilities and bars to employment, excluding the right to retain or to be eligible for public office, by virtue of the fact that the certificate is issued at the time of sentence.
 b. relieve the holder of all disabilities and bars to employment, excluding the right to be eligible for public office.
 c. relieve the holder of the forfeitures, disabilities or bars to employment hereinafter enumerated

15. The applicant agrees to allow an investigation to be made to determine his or her fitness for a certificate of relief from disabilities, pursuant to Correction Law Article 23.

Applicant's Signature _____ Date _____
sign in the presence of a notary

16. State of New York)
County of _____) ss.:

_____, being duly sworn, deposes and says that __he is the applicant named in the within application; that __he has read the foregoing application and knows the contents thereof; that the same is true to h____ own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters __he believes it to be true.

Sworn to before me this ____ day of _____ 20__

Notary Public
affix stamp / seal



Corrections and Community Supervision

ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

Department of Corrections and Community Supervision Certificate of Relief from Disabilities - Certificate of Good Conduct Application and Instructions

This is your application for a Certificate of Relief from Disabilities or for a Certificate of Good Conduct. Please review this information carefully. Then, complete the application as best you can. If you leave out information, it could take longer for the Department of Corrections and Community Supervision (DOCCS) to make a decision about your application.

1) How do I know if I am eligible - Who can apply?

The information below can help you understand if you are eligible. For more information, you can read Article 23 (Sections 700-706) of the New York State Correction Law.

I. Eligibility

- A. **CERTIFICATE OF RELIEF FROM DISABILITIES:** You are eligible for this certificate if you have been convicted of any number of misdemeanors and no more than one felony (two or more felony convictions in the same court on the same day are counted as one felony for deciding which certificate you are eligible for). The term “disability” refers to laws that disqualify people from holding certain jobs or other rights because of their conviction.

- B. **CERTIFICATE OF GOOD CONDUCT:** You are eligible for this certificate if you have been convicted of two or more separate felonies or if you are seeking a job that is specifically considered a “public office”. You must show that you have completed/achieved a certain period of good conduct in the community. You must wait 5 years if the most serious felony on your criminal record is an A or B felony, 3 years if the most serious felony on your criminal record is a C, D or E felony, or 1 year if you only have misdemeanors on your criminal record. The waiting period starts when you were last released from incarceration (prison or jail) to community supervision, or were released from incarceration (prison or jail) by maximum expiration of your sentence, or at the time of your last criminal conviction (which ever of these events comes last). If you were convicted in another state or in federal court, the waiting period will be determined by what the level of the conviction would be considered in New York State.

DOCCS will only consider applications for Certificates of Good Conduct for public office if the application lists a specific public office and includes information about laws that prevent the individual from holding the office they want the Certificate for.

2) Where do I apply?

For Certificates of Relief From Disabilities, you should apply to the court that sentenced you unless:

1. you were sentenced to a New York State (DOCCS) correctional facility, or
2. you were convicted in a federal court or a court in another state and you are now a resident of New York State. Certificates in these cases are issued by the New York State Department of Corrections and Community Supervision (DOCCS).

For Certificates Of Good Conduct, you must apply to the Department of Corrections and Community Supervision.

Once you have decided which certificate you are eligible for, you should apply to the appropriate agency/location.

- If you are applying to the DOCCS, fill out and mail the attached application to DOCCS at the address on page 5.
- If you are applying to the sentencing court, you can get contact information from a telephone directory or at www.nycourts.gov. Do not submit this application form to the sentencing court. Courts use a different application form.

If you want information about restoring your firearms rights/privileges and were convicted of a felony in a Federal Court, you must seek/request relief from the United States Department of Justice, Office of the Pardon Attorney (www.justice.gov/pardon).

3) What do I need to provide to DOCCS to get my application considered?

- The Original Application Form – signed and notarized
- Copies of your Federal Income Tax Filings for the last two (2) years if you were required to file a tax return.
- Copies of your Statement and Wages (Tax Form W-2) for the last two (2) years if you earned wages.
- Copies of any miscellaneous income statements (Tax Form 1099) for the last two (2) years if you received one.

If you do not have copies of any of the documents listed above, you may contact the IRS at 1-800-829-1040. They will provide you with a copy of your records.

If you received public assistance, unemployment insurance, or Social Security benefits for any or all of this two year period, you must include a printout from the agency that provided you with these benefits/support, showing all the benefits that you received. If you had no reportable income for any or all of this two year period (including any other benefits not listed above), you must provide /submit a notarized document explaining how you supported yourself.

4) **What can I expect after my application has been submitted to DOCCS for review?**

Once we receive your application, DOCCS will assign a field Parole Officer for an investigation. The Officer will review:

1. Employment history and how you have supported yourself.
2. Proof that you have paid income taxes for the last two years.
3. Proof that you have paid any fines or restitution set by the courts.

After DOCCS has received all necessary documents and records from you, the field Parole Officer assigned to you will contact you to arrange an interview at your home/residence to answer any remaining questions and confirm your current circumstances and living situation. The New York State Department of Corrections and Community Supervision will then examine your application to decide whether to grant you a certificate. Under the law, DOCCS may choose to remove one, more than one, or all allowable disabilities (restrictions created by law because of your conviction history). Note that, under the law, individuals with certain conviction histories may be ineligible to have their firearm rights restored.

5) **How long will the process take?**

This will vary depending on the complexity of your case. The process will involve a complete review of the information you provide. Processing times depend on how complete the information you provide to DOCCS is. The assigned Parole Officer will review and check all of the information you provide. The process will be completed more quickly if you provide complete and accurate information to the best of your ability and are available to the Parole Officer when he or she contacts you.

The Parole Officer will want to see what you have been doing since your last conviction or release, including information about:

- Going to school – such as a transcript or a letter from a teacher or school administrator;
- Job Training – such as a letter from a program supervisor or administrator;
- Employment – such as letters from supervisors or other people who worked with you;
- Counseling or social service program – such as a letter from a counselor, therapist or doctor;
- Letters from Parole or Probation Officers;
- Letters from clergy;
- Letters from volunteer work

You do **NOT** need all of these items, only those that apply to you. For more examples, visit: http://lac.org/wp-content/uploads/2014/12/How_to_Gather_Evidence_of_Rehabilitation_2013.pdf

Please note that the process will be delayed if you move any time after you submit your application. It is therefore very important for you to let the Certificate Review Unit know if you move/relocate or change your phone number after you submit your application.

6) Who should I contact if I have questions or need help?

You can call DOCCS's Certificate Review Unit at (518) 485-8953.

You can also contact the following organizations who are familiar with the process and have experience assisting applicants

Anywhere in New York State (including New York City):

- Legal Action Center - (212) 243-1313

New York City:

- Community Service Society – (212) 614-5441
- Neighborhood Defenders of Harlem (northern Manhattan residents; 96th street and above) – 212-876-5500
- Youth Represent – (212) 553-6421 or by email at info@youthrepresent.org (if you are under the age of 24);
- Bronx Defenders – (718) 838-7878 or walk-in Monday to Friday from 9 AM to 5 PM at their Client Reception space at 360 East 161st Street; (if you live in the Bronx)

Upstate New York

- Legal Assistance of Western New York (LAWNY) – LAWNY has 6 offices serving 14 counties in western New York: Allegany, Cattaraugus, Chautauqua, Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne and Yates Counties.
 - Bath – (607) 776-4126,
 - Elmira – (607) 734-1647,
 - Geneva (315) 781-1465,
 - Ithaca – (607) 273-3667,
 - Jamestown - (716) 664-4535,
 - Rochester - (585) 325-2520.
- Legal Aid Bureau of Buffalo - (716) 855-1553 (if you live in Erie County)

7) Where should I send my completed application?

To apply to DOCCS, please complete the attached application form and return the original copy with all signatures notarized, to this address:

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
ATTN: CERTIFICATE REVIEW UNIT
The Harriman State Campus – Building 2
1220 Washington Avenue
Albany, NY 12226-2050
(518) 485-8953

To find out how to apply to the court that sentenced you, you can find the contact information for the court in a phone directory or by visiting the web at www.nycourts.gov.

If you want to restore your firearms rights/privileges and were convicted of a felony in a Federal Court, you must seek/request relief from the United States Department of Justice, Office of the Pardon Attorney (www.justice.gov/pardon).

IMPORTANT INFORMATION (Detach and retain for your records)

If you are granted a Certificate, the Certificate will remove disabilities (such as license disqualifications) caused by your conviction but **it will not remove, seal, erase or expunge the underlying conviction**. You will still have a conviction and will have to tell employers and licensing agencies about the conviction if they ask.

A Certificate also does not limit the right of a prospective employer or licensing agency from using their lawful discretion to refuse you employment, or to refuse to grant or renew any license, permit, or privilege.

A Certificate is not needed to restore your right to register for or vote in an election. Those rights are completely restored when you reach the maximum expiration date of your sentence or the termination of your sentence (Executive Law §259-j or Correction Law §205).

CERTIFICATE APPLICATION

PURPOSE FOR REQUESTING CERTIFICATE:

Please provide your reason(s) or purpose for requesting a certificate:

Only check the reason(s) of primary interest to you:

- Secure employment and/or improve employment opportunities
- School bus driver
- Notary Public
- Long guns
- Handguns
- Other (Please specify) _____

For Long guns and/or Handguns please specify reason(s) for request (i.e., Hunting, Target, Armed Security Work, etc): _____

APPLICANT IDENTIFYING INFORMATION:

Name: _____
(Last) (First) (Middle) (Suffix)

Date of Birth: _____

Gender: Male Female

Race:

- White
- Black/African American
- American Indian
- Asian
- Other

Ethnicity:

- Hispanic
- Non-Hispanic

Social Security Number: _____ - _____ - _____

Height: _____ Weight: _____ Eye Color: _____ Hair Color: _____

Have you ever been known by any other legal name or alias other than the name on this application?
If yes, indicate below and state reason(s) for change of name:

Name

Reason for Legal Name Change

EMPLOYMENT HISTORY:

To the best of your knowledge, list your occupations/jobs and employers for the past two (2) years. Start with your present employer and work back. For each period of unemployment, provide dates:

Dates (mo. & yr.)		Occupation Job/Position	Name & Address of employer	Full or P/T	Immediate Supervisor	Weekly Salary
From	To					
Present						

DOCCS will only contact an employer as part of the investigation process if after your interview there is information that requires additional verification and DOCCS will not discuss your conviction with any employer.

CITIZENSHIP:

Are you a citizen of the Unites States? (check one)

Yes, by birth Yes, by Naturalization, Certificate Number _____

If not a citizen, provide _____
Alien registration Number Country

MILITARY SERVICE HISTORY:

If you ever served in the Unites States military, please provide:

Branch of Service: _____ Date of entry into Active Duty: _____
 Date of Discharge: _____ Honorable Discharge: Yes No

LEGAL HISTORY:

If known: NYSID # _____ FBI # _____ Prison # _____

Record of out-of-state or federal convictions (DOCCS has access to your New York conviction information):

To the best of your knowledge, please list all out-of-state or federal convictions and adjudications.

Conviction Date	Court of Conviction (Include State, County and/or City)	Conviction Charge (Do not use codes)	Sentence
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If you have been on out-of-state or federal probation/parole, please check below:

Probation Parole

From To To the best of your knowledge Parole/Probation Officer's name and address where you reported

_____	_____	_____
_____	_____	_____

If you were committed to local jail or other adult facility in the past two (2) years, please provide the information below to the best of your knowledge:

Date of Conviction Conviction Charge Name of Facility/Institution and Location Date of Release

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If you previously applied for a Certificate of Relief from Disabilities, please provide:

Place: _____ Date: _____ Was it granted: _____

If you previously applied for a Certificate of Good Conduct, please provide:

Place: _____ Date: _____ Was it granted: _____

Have you ever had an Order Of Protection (OOP) issued against you?
If yes, please provide the information below to the best of your knowledge.

Date of OOP Issuance	Court of OOP Issuance	Person(s) Protected by OOP	Date of OOP Expiration
_____	_____	_____	_____
_____	_____	_____	_____

SOCIAL STATUS:

Marital Status: Single Married Separated Divorced Widow(er) Annulled

How many times have you been married? _____

For each marriage, please give the following information:

Name Used (If different from name used on this application)	Wife's Maiden Name or Husband's Full Name	Date Married/ Divorced
_____	_____	_____
_____	_____	_____
_____	_____	_____

If during the past two (2) years you lived with a roommate(s) or live-in partner(s) to whom you were not legally married, please provide name(s) and current address below.
Use reverse side of paper if additional space is required.

Name	Address
_____	_____
_____	_____
_____	_____

LICENSE INFORMATION:

Licenses you hold (Motor Vehicle, Trade, Professional or Pistol Permit):

Please use reverse side of paper if additional space is required.

Type of License	Licensing Agency	License Number	Date Issued	Expires
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

REFERENCES:

Please provide the complete names and mailing addresses of two (2) people who we can contact to provide character references on your behalf:

Name	Address	Phone
_____	_____	_____
_____	_____	_____

I agree to allow an investigation to be made to determine my fitness for a certificate pursuant to Article 23 of the NYS Correction Law. I hereby certify that I have fully and truthfully answered all of the above questions.

Applicant's Signature: _____ Date: _____

MUST BE SIGNED BY A NOTARY PUBLIC

State of New York
County of _____

_____ being duly sworn, deposed and says that he/she is the applicant named within the application: the he/she has read the foregoing application and knows the contents thereof; that the same is true to his/her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he/she believes it to be true.

Notary Public

Authorization for release of information

I, _____, have applied to the New York State Department of Corrections and Community Supervision for a Certificate of Relief from Disabilities/Good Conduct. To facilitate the investigation of my application, I hereby authorize any individual, private business concern, state or federal agency to release to any authorized representative of the Department of Corrections and Community Supervision any information such person, private business concern. State or federal agency may have in its possession concerning me or my activities.

Applicant's Signature: _____ Date: _____

Notary Public

- This bill is not active in this session.

A07597 Summary:

BILL NO A07597A
 SAME AS SAME AS
 SPONSOR Aubry
 COSPNSR Colton, Abinanti
 MLTSPNSR Boyland, Rivera P
 Amd S702, Cor L

Provides that where the court imposes a revocable sentence of imprisonment imposes a sentence other than one executed by commitment to an institution under jurisdiction of the state department of corrections and community supervision the court shall initially determine the fitness of an eligible offender for a certificate of relief from disability.

A07597 Actions:

BILL NO A07597A
 05/10/2011 referred to correction
 05/17/2011 reported
 05/19/2011 advanced to third reading cal.423
 06/13/2011 amended on third reading 7597a
 06/22/2011 substituted by s5757
 S05757 AMEND= SALAND
 06/14/2011 REFERRED TO RULES
 06/21/2011 ORDERED TO THIRD READING CAL.1442
 06/21/2011 PASSED SENATE
 06/21/2011 DELIVERED TO ASSEMBLY
 06/21/2011 referred to correction
 06/22/2011 substituted for a7597a
 06/22/2011 ordered to third reading cal.423
 06/22/2011 passed assembly
 06/22/2011 returned to senate
 08/05/2011 DELIVERED TO GOVERNOR
 08/17/2011 SIGNED CHAP.488

A07597 Votes:

There are no votes for this bill in this legislative session.

A07597 Memo:

BILL NUMBER:A7597A

TITLE OF BILL: An act to amend the correction law, in relation to the

issuance of certificates of relief from disabilities

SUMMARY OF PROVISIONS: Section 1 of the bill would amend subdivision 1 of section 702 of the Correction Law, requiring the court to make a determination, upon application, as to the fitness of an eligible offender for the issuance of a Certificate of Relief from Disabilities ("Certificate" or "Certificate of Relief"), This initial determination would occur prior to or at the time of sentencing, when the sentence imposed is either revocable or a sentence other than commitment to an institution under the jurisdiction of the State Department of Corrections and Community Supervision.

Section 2 of the bill provides that this amendment would take effect immediately.

REASONS FOR SUPPORT: Certificates of Relief from Disabilities are a powerful tool created by the Legislature to promote and encourage successful reintegration after a conviction, Issued at sentencing, a Certificate can prevent eviction, loss of a job and loss of an occupational license. It can lay the groundwork for re-entry into society, allowing individuals to obtain, for example, licenses essential to employment, which can empower them to make child support payments and break the cycle of poverty,

Despite their utility, Certificates are vastly underutilized: only a tiny fraction of the tens of thousands of people who are eligible actually hold them. Applications for Certificates are usually not even addressed at the time of sentencing. By facilitating access to Certificates where appropriate, but retaining the court's discretion to withhold issuance should it identify a public safety or other concern, these amendments could result in thousands of New Yorkers overcoming the collateral consequences of convictions and lead successful, law-abiding lives.

The law currently provides that a Certificate of Relief may be issued at sentencing, so that an individual may obtain a Certificate from the court expeditiously following conviction of a crime. When it was enacted in 1966, Governor Rockefeller recognized that offenders needed the assistance and protection of Certificates of Relief to aid in their rehabilitation. The Governor's Memorandum noted that "[t]his bill will reduce the automatic rejection and community isolation that often accompany conviction of crimes, and will thus contribute to the complete rehabilitation of first offenders and their successful return to responsible lives in the community."⁽¹⁾ Additionally, Thomas McCoy, State Administrator to the Judicial Conference of the State of New York, in supporting the 1966 bill, stated "The need for this legislation is clear. The disabilities which result from a criminal record are among the chief sources of recidivism. In turn, recidivism is a primary cause of the intolerably high crime rate....This bill is a step in the direction of rehabilitating first offenders."

As such, the Legislature intended for a Certificate of Relief to be

granted soon after a conviction in order to assist with the rehabilitation of first-time felons and misdemeanants. Recognizing

that Certificates may be granted prior to one's demonstration of proper conduct, the law permits revocation of these certificates if necessary, while an offender is under probation supervision.

In 2006, Penal Law §1.05(6) was amended to add "the promotion of [the convicted person's] successful and productive reentry and reintegration into society..." to the traditional sentencing goals of deterrence, incapacitation, retribution, and rehabilitation. By amending the sentencing model to include successful reintegration, policymakers acknowledged that promoting re-entry is not only crucial for individuals with conviction histories and their families, but for public safety as a whole. The proposed amendment improving access to Certificates would make the Correction Law more consistent with the above-referenced Penal Law provision. It would also be consistent with the public policy of New York State "to encourage the licensure and employment of persons previously convicted of one or more criminal offenses" (Correction Law § 753(1)(a)).

The suggested change would promote successful reentry, rehabilitation, and public safety throughout New York State, as originally intended by the Legislature. Under the proposed amendment, judges and probation officers would retain the same level of discretion they currently hold to deny or recommend against the issuance of Certificates. However, by requiring courts to make determinations regarding an applicant's fitness for a Certificate, New Yorkers with conviction histories would benefit from the chance to unlock the door to opportunity and self-sufficiency.

Accordingly, the Mayor urges the earliest possible favorable consideration of this proposal by the Legislature.

FOOTNOTE

{1} Governor's Memorandum of Approval of L. 1966, N.Y. Legis. Annual, 1966, Chapter 654

January 28, 2015

Honorable Mary Jane Judge
Smithtown City Court Judge
Criminal Courts Building
505 Main St.
Smithtown, N.Y.

Re: David Jones
Application for Certificate of Relief of Disabilities

Dear Judge Judge,

Enclosed please find an application for a Certificate of Relief from Disabilities (CRD) for David Jones. For the Court's convenience, I have also provided a completed, unsigned CRD in the event the requested relief is deemed appropriate. As set forth in more detail below, it is appropriate for the Court to grant Mr. Jones a CRD because he is an eligible offender and the relief to be granted by the CRD is consistent with both his rehabilitation and the public interest. *See* Correction Law § 700 and § 702.

I have obtained and reviewed Mr. Jones' criminal history record from the New York State Division of Criminal Justice Services (DCJS), which shows that he has only one misdemeanor conviction - a May 4, 2011 conviction for Petit Larceny. Mr. Jones also has three prior Youthful Offender adjudications for misdemeanor offenses. He is eligible for a CRD because he does not have multiple felony convictions. *See* Correction Law § 700(1)(a). This Court has the authority to issue a CRD to him for his sole misdemeanor conviction because he was not sentenced to a state prison sentence for that conviction. *See* Correction Law § 702(1).

Granting this CRD application is appropriate because doing so is consistent with Mr. Jones' rehabilitation and with public safety. *See* Correction Law § 702(2). In June 2014, while he was serving a jail sentence for his Petit Larceny conviction, Mr. Jones enrolled in the Center for Community Alternatives' (CCA's) Onondaga Self-Development (OSD) program. OSD is a jail and community based program that serves individuals aged 18 and over who are incarcerated at the Onondaga County Correctional Facility and are within three to four months of release. OSD assists participants in overcoming barriers to success through intensive case management during incarceration. After their release, the program provides legal supports, employment-readiness training, job development and vocational education. This is a voluntary program, and Mr. Jones' participation reflects his decision to use his time in jail as productively as possible.

Both while in jail and since his release, Mr. Jones has fully engaged in all aspects of the OSD program. He has successfully completed a job readiness workshop, and he meets with his case manager on a regular basis. His case manager reports that Mr. Jones has consistently demonstrated determination and dedication to improving himself, and as a result, has secured a part-time job at TOPS Grocery. (Enclosed with this application you will find a letter of support from Donald Bridge, Mr. Jones' case manager).

CCA's Reentry Clinic has been working with Mr. Jones since October 2014. During this time he has proven to be reliable and presents as determined to live a law-abiding life. In fact, it became

clear after the first few meetings with Mr. Jones that his criminal justice involvement was driven, at least in part, by his chaotic life history. From the age of four, Mr. Jones has been in and out of foster homes. It was not until a few years ago when he bonded with his most recent foster parent, who he now calls Dad, that he felt like he has someone in his life who cares about him. He told me that his foster father stood by him, even in the bad times. He knows that, because of his arrests, he has disappointed his foster father. He is determined to not disappoint him again. As a result of this relationship, Mr. Jones has reflected on his history of poor choices and where his life was going if he did not change.

His employment at TOPS Grocery has fueled Mr. Jones' confidence that he can make positive changes in his life. He has been working part time at TOPS for six months and will continue to work there while looking for full time, living-wage employment. He told me how proud he is that he is proving to be a reliable and responsible employee. He arrives at work early, and even goes to work when he is not on the schedule to see if they need him to cover a shift. Last week alone he worked a 40 hour week because TOPS lost an employee and needed to cover the various shifts. I believe, based on Mr. Jones' actions and his candid self-reflection that he genuinely wants to live a law abiding life and make his foster father proud.

Correction Law § 702 was recently amended to require sentencing courts to consider granting CRDs to eligible people at sentencing. *See* L. 2011, ch. 488. This amendment was designed to ensure that people have access to CRDs in the most critical period directly after a conviction, when they need assistance obtaining employment. Granting CRD applications at this critical time will “unlock the door to opportunity and self-sufficiency,” which will “promot[e] successful reentry, rehabilitation, and public safety throughout New York State.” *See* Bill Memorandum, L. 2011, ch. 488. For that reason, the legislative memorandum accompanying this amendment highlights the ability of courts to grant CRDs “*prior* to one’s demonstration of proper conduct.” *Id.*

Mr. Jones understands that if this application is granted, the CRD will not seal his conviction, and he still must disclose it if asked. But a CRD will improve his employment prospects by serving as a factor that employers must consider in his favor. For that reason, a CRD will help Mr. Jones feel more confident as he continues his transition from an impulsive young person to a reliable and responsible adult.

If you have any questions regarding any information contained above, please do not hesitate to contact me at 422-5638 x230.

Sincerely,

Melissa L. Castor
Reintegration Specialist
Reentry Clinic

Enc: Application for Certificate of Relief from Disabilities
Certificate of Relief from Disabilities (unsigned)
Letter of Support from Donald Bridge