

## **Operation Second Chance – The Rosemary Program**

**Purpose:** Young people often commit non-violent crimes that can have a significant impact upon their lives. The convictions resulting from these crimes can adversely affect one's ability to seek employment, higher education and a more meaningful and productive life. There are times when an individual will prove to society that their contact with the criminal justice system at a younger age was an aberration of their true character. This may be said of a single such contact and, where appropriate, of a series of contacts occurring over a short and well-defined period of time in one's life. People who prove over a substantial period of time that their prior criminal conviction (or convictions if committed in a short span of time) is not indicative of their true character do not currently have an easy means to absolve their record. This program is intended to provide appropriate individuals with the means to apply for a review of their case and the possibility of vacating the record of such a conviction occurring in Oneida County. This program is meant to help only those that are truly worthy of such extraordinary relief.

**Legal Justification:** The spirit and penumbra of the law and justice as embodied in CPL §§440.10, 440.40 and 210.40 together with the concept of executive clemency suggest that such remedy should be available in extraordinary circumstances.

**Nature of Criminal Conviction:** The following types of offenses do not qualify for this program: Homicides, Violent Offenses, Illegal Possession of Handguns, Forcible sexual offenses and assault-related crimes against children or animals.

### **Prerequisites for Program:**

1. Person seeking relief committed only a single criminal act or a few criminal acts within a short period of time;
2. The individual paid their debt to society including all appropriate restitution and forfeitures and has otherwise complied fully with all conditions imposed upon him/her by the sentencing court;
3. The individual has maintained a crime-free life for not less than 15 years after the conviction;
4. The person seeking relief demonstrates to the Committee created by the Oneida County District Attorney that the criminal behavior that constituted the basis of the conviction(s) was an aberration of their overall character; and
5. The individual is currently employed.

**Factors to be considered:** Once the person seeking relief has satisfactorily demonstrated the prerequisites set forth above, the committee will further review and consider the case utilizing the factors set forth in CPL §210.40, together with other factors that the Committee deems

appropriate. Upon completion of such review, the Committee will vote to make a report to the District Attorney recommending that the People oppose, join in or take no stance on a motion to vacate the conviction.

**Committee Make-up:** the Committee will be comprised of nine individuals. Three of the individuals will be employees of the Oneida County District Attorney's office. The other six members will be selected by the District Attorney of which: at least one will be a member of the Oneida County probation department, at least one will be a member of the defense bar, at least one will be a private citizen and at least one will be a police officer.

**Committee Vote:** A super majority of 6 must agree for the Committee to forward their recommendation to the District Attorney.

**Waiver for background investigation:** All individuals seeking relief must submit to a full background investigation including a criminal background check. To that end, all such individuals must be willing to provide all appropriate waivers so that any pertinent records or information may be readily accessed by the Committee. This would include, where necessary, personal information that is ordinarily confidential and not subject to public scrutiny.

**Procedure for Consideration:** Any person who would like to be considered for such relief must submit a letter requesting that the committee review their case. The letter should also set forth the applicant's work, educational and social activities over the time period since the conviction. The application letter shall also set forth not less than three personal references. The applicant must thereafter execute a waiver for the background investigative process. The applicant should be prepared to appear before the Committee if so requested. If the Committee and the District Attorney agree to join in or not to oppose a motion to vacate the conviction, the applicant will then submit a motion to the appropriate court. The District Attorney will oppose all motions that are not filed in compliance with the parameters set forth above or would otherwise be in derogation of the spirit of the program.

**Limitation:** This program is intended to only benefit those who are truly worthy of this extraordinary relief. The District Attorney reserves the right to limit the number of times he or she joins in a motion to vacate convictions pursuant to this program. All members of the Committee serve at the pleasure of the District Attorney. Decisions made under this program concerning the People's position on a motion to vacate a judgment of conviction remains within the sole province of the discretion of the Oneida County District Attorney. The District Attorney may revoke this program at any time without cause. This program is only available for convictions in Oneida County.