

## **Employment Standards that Encourage the Employment of Qualified People Criminal Histories**

(October 2005)

### **Statement of the Issue**

About 630,000 individuals are released from state and federal prisons every year.<sup>1</sup> Furthermore, there are countless others returning from local jails each year. As of December 2001, it was estimated that over 64 million people in the United States had a state rap sheet, about 30% of the nation's adult population.<sup>2</sup> According to the U.S. Department of Justice Bureau of Justice Statistics, at the end of 2001 approximately 64,282,700 criminal history records were in the criminal history files of state repositories.<sup>3</sup> Evaluated against U.S. Census data from 2000 indicating that there are 209,128,094 people 18 years or older in the United States (see <http://factfinder.census.gov/>), a significant portion of the American workforce has a criminal record.

Despite the existence of federal guidelines discouraging employment discrimination against people with criminal records<sup>4</sup> and providing employment standards that employers could use to conduct an individualized assessment of applicants with conviction histories, it is still very difficult for individuals with criminal records to get and remain employed. For many of these individuals the stigma associated with having a criminal record is life-long and the lack of legal protections against discrimination make it very difficult to obtain or retain employment. Some state statutes explicitly encourage the employment of people with criminal records by ensuring that qualified people with criminal records are given fair and equitable opportunities to obtain gainful employment, while simultaneously promoting public safety. In the absence of employment, statistics show that an individual with a criminal record is much more likely to commit another crime.<sup>5</sup>

Currently, 14 states have statutes that apply standards for the consideration of people with criminal records for hiring and licensing. These statutes not only promote the safety of the general public and the welfare of the person leaving prison, but assist employers by providing guidance that allows for informed hiring or licensing decisions.

### **Background**

Various state laws place limitations on employment opportunities for people with criminal records. Often, these laws (or lack thereof) permit employers to make categorical exclusions of people with criminal records, without providing applicants an opportunity to present evidence showing that they have the pertinent qualifications and requisite skills to do the job. Moreover, there are laws that require mandatory exclusions for certain individuals with criminal histories and takes away an employers' discretion to make employment decisions. These limitations not only include employment decision but also with obtaining occupational licenses to engage in particular professions.

Even if people with criminal histories are not explicitly banned from a type of work by law, the lack of affirmative protection can lead to unfair exclusion. To address these issues and facilitate

employment, a number of states have enacted statutes and the federal government has issued guidance to prohibit employment discrimination against qualified people with criminal histories.

Title VII of the Civil Rights Act of 1964<sup>6</sup> prohibits employers from discriminating in employment decisions on the basis of race, color, gender, national origin or religion. The EEOC has determined that policies that exclude individuals from employment on the basis their arrest and conviction records may violate Title VII because such policies disproportionately exclude minorities, in light of statistics showing they are arrested and convicted at a rate significantly in excess of their representation in the population. The EEOC has noted in its policy directive regarding the consideration of conviction records in the hiring process that four relevant factors should be used when an employer assesses the job-relatedness of an applicant's conviction record:

1. the nature, number and circumstances of the offenses for which the individual was convicted;
2. the length of time intervening between the conviction for the offense(s) and the employment decision;
3. the individual's employment history; and
4. the individual's efforts at rehabilitation.<sup>7</sup>

State laws may additionally provide employers and licensing agencies guidelines to help them determine when a criminal record should not automatically disqualify an applicant. Currently, 14 states have statutes that prohibit discrimination against people with criminal records in employment and licensing and set out standards governing public employers' consideration of applicants' criminal records; 5 of those states have standards governing private employers as well.

The standards vary in the 14 states that bar employment and licensing discrimination. Most require employers to consider whether there is a rational, reasonable, direct or substantial relationship between the crime for which the applicant was convicted and the work he or she wishes to perform. Many of the statutes provide balancing tests while others prohibit a refusal to hire solely because of a criminal conviction.

These laws do not require employers to hire people with criminal histories. Rather, they instruct employers how to consider the relevance of the criminal history when the applicant is otherwise qualified for the position. Most statutes do this by requiring that employers only consider convictions that are somehow related to the work the applicant would conduct. For example, consider an employer who is trying to decide whether or not to hire a woman who was convicted of drug possession. If that employer seeks an office manager, he will likely conclude that the applicant's crime is unrelated to the position. If, however, the employer is seeking a new pharmacist, he may lawfully conclude that her conviction disqualifies her for the job. To give actual examples from Florida case law, a conviction for attempted armed robbery did not act as disqualification for employment as a firefighter,<sup>8</sup> but a conviction for marijuana use may bar employment as a police officer.<sup>9</sup>

Statutes may instruct employers to consider other factors including the applicant's age at the time of his or her crime, the time that has elapsed since his or her arrest or conviction, and

whether he or she has been rehabilitated. An applicant can demonstrate that he or she has been rehabilitated by showing that he or she has remained crime-free for an extended period of time, completed a sentence of incarceration or community supervision, completed a drug or alcohol rehabilitation program, etc.

It is very important to also understand that employers in most states can deny jobs to people who were arrested but never convicted of any crime – only 10 states prohibit all employers and occupational licensing agencies from considering arrests if the arrest did not lead to conviction.<sup>10</sup> That means occupational licensing agencies can deny licenses based on any criminal record, regardless of outcome, circumstance or relevancy to the job being sought.

## **STATES THAT REQUIRE INDIVIDUALIZED ASSESSMENTS BY PUBLIC EMPLOYERS**

### **1. Arizona**

In Arizona, public employers may deny employment on the basis of a conviction, and agencies may deny licenses to persons whose civil rights have been restored only if a *reasonable relationship* exists between the conviction and employment or license sought.<sup>11</sup> The law is inapplicable to law enforcement agencies.

### **2. Colorado**

Colorado law provides that conviction of a felony or other offense involving “moral turpitude” shall not act as an *automatic bar* to obtaining public employment or an occupational license.<sup>12</sup> The statute does not apply to certain positions, including law enforcement and positions dealing with vulnerable populations.

### **3. Connecticut**

In Connecticut, an applicant may not be denied state employment or licensure solely because of a prior conviction.<sup>13</sup> However, a state agency may determine a person is not suitable for the position or license after considering the relationship between the offense and the job, the applicant’s post-conviction rehabilitation, and the time elapsed since conviction and release.<sup>14</sup> When conducting these determinations, the state employer or licensing agency may not consider arrests that did not lead to conviction, nor records that have been expunged.<sup>15</sup> If a conviction is used as a basis for rejection, a written rejection stating the evidence presented and the reasons for the rejection must be completed, and sent via registered mail to the applicant.<sup>16</sup>

### **4. Florida**

State employment and licensure may not be denied *solely because of a conviction*.<sup>17</sup> However, this prohibition does not apply if the conviction was for a felony or a first-degree misdemeanor that is directly related to the position sought by the applicant.<sup>18</sup> In addition, the prohibition is inapplicable to law enforcement, fire fighting, and correctional agencies.<sup>19</sup> Complaints filed are adjudicated in accordance with Florida’s Administrative Procedures Act.<sup>20</sup> Attorney’s fees are available in certain circumstances.<sup>21</sup>

### **5. Kentucky**

Kentucky forbids discrimination by public employers and licensing agencies. Public employers and licensing agencies can consider applicants' convictions if they *directly relate* to the employment.<sup>22</sup> Lawyers and some law enforcement personnel are not protected.<sup>23</sup>

The statute does not protect many persons with criminal records, as it does not protect persons convicted of "felonies, high misdemeanors, and misdemeanors for which a jail sentence may be imposed," as well as crimes of "moral turpitude."<sup>24</sup>

## 6. Louisiana

Louisiana prohibits discrimination by public employers and licensing agencies. Agencies can consider applicants' felony convictions if they *directly relate* to the employment. When an applicant is denied employment or licensure because of his or her conviction record, that decision must be made in writing. Thirteen different agencies, ranging from all law enforcement agencies to the State Board of Embalmers and Funeral Directors, are exempted from the statute.<sup>25</sup>

## 7. Minnesota

Minnesota does not allow public employers and licensing agencies to refuse to hire or license persons *solely or in part because of their convictions*, unless those convictions *directly relate* to the employment.<sup>26</sup> Furthermore, if the applicant can show competent evidence of sufficient rehabilitation, he or she is not disqualified from licensure or employment.<sup>27</sup>

## 8. New Mexico

Public employers and occupational licensing authorities may not use, distribute, or disseminate records of misdemeanor convictions not involving moral turpitude. Convictions may be considered, but cannot operate as an absolute bar to employment or licensing.<sup>28</sup> Applicants may be disqualified based upon felony convictions or misdemeanor convictions involving moral turpitude if they are *directly related* to the position or license sought, or if the individual is deemed insufficiently rehabilitated. Completion of parole or probation or a three-year period following discharge or release from imprisonment without a subsequent conviction will create a presumption of rehabilitation. Furthermore, the statute does not cover law enforcement agencies.

## 9. Washington

Except for law enforcement agencies and jobs providing unsupervised access to children and vulnerable adults, most public employers and occupational licensing agencies may not disqualify an individual *solely because of* a prior felony conviction. Because the conviction may be considered, however, individuals may be denied employment or a license if the conviction *directly relates* to the position or license sought, and if fewer than ten years have elapsed since the conviction.

## STATES THAT REQUIRE INDIVIDUALIZED ASSESSMENTS BY PUBLIC AND PRIVATE EMPLOYERS

### 1. Hawaii

Hawaii Revised Statutes §§ 378-1 *et seq.* prohibits employment discrimination by all non-federal employers, even those with only one employee, based on applicants' criminal records. Employers may consider applicants' convictions insofar as they are *rationally related* to the employment.<sup>29</sup> Hawaii is unique in forbidding employers in most fields from inquiring about applicants' criminal records until they have extended a conditional offer of employment, and in only allowing employers to consider convictions that occurred within the past ten years.<sup>30</sup>

## 2. Kansas

Kansas' law provides that for an employer to refuse to hire an applicant, his or her criminal history must *reasonably bear* on his or her trustworthiness or the safety or well being of the employer's employees or customers.<sup>31</sup> The statute applies to both public and private employers and it limits liability for employers regarding the employment decision, as long as the applicable standard is followed.

## 3. New York

The New York State Human Rights Law states that an applicant may not be denied employment or licensure because of his or her conviction record unless there is a *direct relationship* between the offense and the job or license sought, or unless hiring or licensure would create an unreasonable risk to property or to public or individual safety.<sup>32</sup> This law applies to employers with ten or more employees.<sup>33</sup> A person with a criminal record who is denied employment is entitled to a written statement of the reasons for such denial within thirty days upon request. Factors to consider in analyzing whether employment may be denied are found in New York Corrections Law, Article 23-A.<sup>34</sup> In addition, an employer may not inquire about nor act upon an arrest, which was terminated in favor of the individual.<sup>35</sup>

The New York State Division of Human Rights oversees discrimination claims. Any complaint filed with the Division must be filed within one year after the alleged discriminatory practice.<sup>36</sup> When a complaint has not been filed with the Division, it may be brought directly in state court within three years of the alleged discriminatory practice.<sup>37</sup> The provisions of this law do not apply to the licensing activities of governing bodies in relation to the regulation of firearms, or an application for employment as a police officer or peace officer.

Several cases have discussed New York's anti-discrimination statute. The Second Circuit has declared that because claims under the New York Human Rights Law are judged under the same standards of proof as Title VII claims, claims brought by a plaintiff under both statutes will be analyzed in tandem.<sup>38</sup> Other cases discussing the law's applicability and analysis include: *Soto-Lopez v. New York City Civil Service Commn.*, 713 F.Supp. 677 (S.D.N.Y.1989); *Bonacorsa v. Van Lindt*, 71 N.Y.2d 605, 611-14 (1988); *Al Turi Landfill, Inc. v. NYS Dept. of Environmental Conservation*, 98 N.Y.2d 758 (2002); *Alston v. City of New York*, 270 A.D.2d 3 (N.Y. App. Div., 2000); *Okoro v. City of New York Human Resources Admin.*, 631 N.Y.S.2d 342 (N.Y. App. Div. 1995); and *Ford v. Gildin*, 613 N.Y.S.2d 139 (N.Y. App. Div.1994).

## 4. Pennsylvania

Since July 16, 1979, employers in Pennsylvania may only consider a job applicant's felony or misdemeanor convictions if they relate to the applicant's suitability for employment.<sup>39</sup> Occupational licensing agencies may consider any felony, but only job-related misdemeanor

convictions.<sup>40</sup> The applicant is entitled to a written explanation if he or she is denied employment based upon a criminal history, or licensure based upon a conviction.<sup>41</sup>

## 5. Wisconsin

Wisconsin prohibits discrimination based on arrest or conviction records in the same manner it prohibits discrimination against members of protected classes. The protective statutes apply to employers, labor organizations, employment agencies and licensing agencies. Several classes of employers are exempted from the statute.<sup>42</sup> Most importantly, in many cases, licensing agencies are not covered.<sup>43</sup>

Employers cannot ask applicants about an arrest record, unless a charge is pending. If an applicant's arrest is pending, employers can refuse to consider hiring him or her if the arrest *substantially relates* to the employment. Employers can only consider convictions insofar as they *substantially relate* to the employment or affect applicants' bondability.<sup>44</sup>

## RECOMMENDATIONS FOR A FAIR EMPLOYMENT BACKGROUND SCREENING STATUTE

1. Protect applicants for employment or licensing from discrimination by both private and public employers, including licensing agencies.<sup>45</sup> For ease of implementation, the statute should apply to employers of sufficient size to trigger other anti-discrimination laws in that state. For example, a federal law should only apply to employers with 15 or more employees to mirror coverage under Title VII,<sup>46</sup> whereas Hawaii's anti-discrimination statute includes provisions pertaining to people with criminal records, cover employers with only one employee.<sup>47</sup>
2. Protect applicants from discrimination based on arrest records not leading to conviction. Employers should not be able to inquire about or consider applicants' arrest records when those arrests did not lead to convictions.<sup>48</sup>
3. Make provision applicable at all stages of employment: hiring, retention, promotion, and dismissal. The statute should not be reduced to hiring decisions.
4. Permit employers to consider only convictions that bear some type of rational relationship to the employment being sought.<sup>49</sup>
5. Guide employers' discretion in determining whether the conviction is related to the employment.<sup>50</sup> Important factors for employers to consider are the nature of the crime for which the applicant was convicted,<sup>51</sup> whether the applicant has been rehabilitated,<sup>52</sup> the time elapsed since the applicant was arrested,<sup>53</sup> and the applicant's age when he or she was arrested.<sup>54</sup>
6. Require employers and agencies to document in writing their decisions not to hire applicants because of their criminal records, and provide notice to these applicants of the rejection and the reason for it. Notice should be completed within a reasonable amount of time.<sup>55</sup>
7. Provide for the award of attorneys' fees when people seek to enforce their rights through private lawsuits.<sup>56</sup> Providing attorneys' fees will allow facilitate private plaintiffs gaining access to private lawyers who can enforce their clients' rights. In the words of Justice Blackmun, laws that provide attorneys' fees grant private citizens "a meaningful opportunity to vindicate the important . . . policies which these laws contain."<sup>57</sup>

8. Insulate employers who comply with relevant standards against liability for negligent hiring.<sup>58</sup> Employers may be more open to hiring people with criminal records if their liability is limited.

Encouraging employers to hire qualified individuals with criminal records promotes the active and full participation of these individuals in their families, economically, socially, and civilly.<sup>59</sup>

<sup>1</sup> Attorney General Ashcroft Announces Nationwide Effort to Reintegrate Offenders Back into Communities, OFFICE OF JUSTICE PROGRAMS, OFFICE OF CONGRESSIONAL AND PUBLIC AFFAIRS, at <http://www.usnewswire.com/OJP/docs/OJP02214.html> (2002).

<sup>2</sup> See "Survey of State Criminal History Information Systems, 2001: A Criminal Justice Information Policy Report" August. 2003, <http://www.ojp.usdoj.gov/bjs/pub/pdf/sschis01.pdf>

<sup>3</sup> *Ibid.*

<sup>4</sup> Equal Employment Opportunity Commission, *Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, as amended*, 42 U.S.C. § 2000e et seq. (1982).

<sup>5</sup> S.B. Rossman and S. Sridharan, *Using Survey Data to Study Linkages Among Crime, Drug Use, and Life Circumstances: Findings From the Opportunity to Succeed Program*, Washington, DC: Urban Institute Report, November 1997.

<sup>6</sup> 42 U.S.C. § 2000e et seq.

<sup>7</sup> See Equal Employment Opportunity Commission, *Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, as amended*, 42 U.S.C. § 2000e et seq. (1982); EEOC Compliance Manual, Vol. II, Appendices 604-A *Conviction Records* and 604-B *Conviction Records- Statistics*; 26 Fair Empl. Prac. Cas. (BNA) 1799 (Aug. 8, 1980).

<sup>8</sup> *Jackson v. Stinchcomb*, 635 F.2d 462 (5<sup>th</sup> Cir. 1981).

<sup>9</sup> *Osterman v. Paulk*, 387 F.Supp. 669 (D. Fla. 1974).

<sup>10</sup> Legal Action Center, *After Prison: Roadblocks to Reentry, A Report on State Legal Barriers Facing People with Criminal Records* (Spring 2004).

<sup>11</sup> Ariz. Rev. Stat. § 13-904(E).

<sup>12</sup> Colo. Rev. Stat. § 24-5-101.

<sup>13</sup> Conn. Gen. Stat. § 46a-80.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*; see also Conn. Gen. Stat. § 31-51i.

<sup>16</sup> Conn. Gen. Stat. § 46a-80(c).

<sup>17</sup> Fla. Stat. § 112.011.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Fla. Stat. § 120.

<sup>21</sup> Fla. Stat. § 120.595 (awarding "reasonable costs and a reasonable attorney's fee to the prevailing party only where the non-prevailing adverse party has been determined by the administrative law judge to have participated in the proceeding for an improper purpose. . . . " Attorney's fees may not exceed \$15,000.).

<sup>22</sup> Ky. Rev. Stat. § 335B.020.

<sup>23</sup> Ky. Rev. Stat. § 335B.070.

<sup>24</sup> Ky. Rev. Stat. § 335B.010(4). "Moral turpitude" is defined by the Second Restatement of Torts as, "an inherent baseness or vileness of principle in the human heart. It means, in general, shameful wickedness, so extreme a departure from ordinary standards of honesty, good morals, justice or ethics as to be shocking to the moral sense of the community." RESTATEMENT (SECOND) OF TORTS § 571 cmt. g (1977).

<sup>25</sup> La. Rev. Stat. § 37:2950.

<sup>26</sup> Minn. Stat. § 364.03.

<sup>27</sup> *Id.*

<sup>28</sup> N.M. Stat. §§ 28-2-3, 28-2-4, 28-2-5, and 28-2-6.

<sup>29</sup> Haw. Rev. Stat. § 378-2.5(a).

<sup>30</sup> Haw. Rev. Stat. §§ 378-2.5(b)-(d).

<sup>31</sup> Kan. Stat. Ann. § 22-4710(f).

<sup>32</sup> N.Y. Exec. Law § 296(15); N.Y. Correct. Law §§ 750 to 754.

<sup>33</sup> *Id.*

<sup>34</sup> This Article states that the public agency or private employer shall consider the following factors: (a) the public policy of the State to encourage the licensure and employment of people with criminal convictions; (b) the specific duties and responsibilities necessarily related to the license or employment; (c) the bearing, if any, the criminal offense will have on the applicant's fitness to perform job duties or responsibilities; (d) the time elapsed since the criminal offense; (e) the age of the person at the time of the criminal offense; (f) the seriousness of the offense; (g) any information produced by the person, or produced on his or her behalf, in regard to rehabilitation and good conduct; and (h) the legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

<sup>35</sup> N.Y. Exec. Law § 296(16).

<sup>36</sup> N.Y. Exec. Law § 297.5

<sup>37</sup> *Pan American Airways v. NYS Human Rights Appeal Bd.*, 61 N.Y.2d 542 (1984).

<sup>38</sup> *Leopold v. Baccarat, Inc.*, 174 F.3d 261, 264 n. 1 (2<sup>nd</sup> Cir.1999).

<sup>39</sup> 18 Pa. Cons. Stat. § 9125.

<sup>40</sup> 18 Pa. Cons. Stat. § 9124(c).

<sup>41</sup> 18 Pa. Cons. Stat. §§ 9124(d), 9125(c).

<sup>42</sup> Wis. Stat. § 111.335.

<sup>43</sup> Wis. Stat. § 111.335 provides that, "is not employment discrimination because of conviction record to deny or refuse to renew a license or permit . . . to a person who has been convicted of a felony and has not been pardoned for that felony."

<sup>44</sup> Wis. Stat. § 111.335.

<sup>45</sup> This is the practice in Hawai'i, Kansas, New York, and Pennsylvania.

<sup>46</sup> 42 U.S.C. § 2000e(b).

<sup>47</sup> Haw. Rev. Stat. § 378-1.

<sup>48</sup> States that specifically prohibit consideration of arrest records include Connecticut, New Mexico, New York, and Wisconsin.

<sup>49</sup> Wisconsin uses the "substantially related" standard, as does Delaware in its licensing requirements.

<sup>50</sup> Virtually every state with an anti-discrimination statute (Arizona, Connecticut, Kansas, Kentucky, Minnesota, New Mexico, and Washington) provides some type of balancing test for employers.

<sup>51</sup> States requiring employers to consider this factor include Connecticut, Florida, Kentucky, Minnesota, New York, and Pennsylvania.

<sup>52</sup> States requiring employers to consider this factor include Connecticut, Minnesota, New Mexico, and New York.

<sup>53</sup> States requiring employers to consider this factor include Connecticut, Minnesota, New York, and Washington.

<sup>54</sup> States requiring employers to consider this factor include Minnesota and New York.

<sup>55</sup> States with a documentation requirement include Connecticut, Louisiana, Minnesota, New Mexico, New York, and Pennsylvania.

<sup>56</sup> Florida and Hawai'i provide for attorneys' fees, although Florida has some limitations on this, as described *supra*.

<sup>57</sup> *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 735 (1987) (Blackmun, J., dissenting).

<sup>58</sup> Kansas is the only state with an anti-discrimination statute insulating employers from negligent hiring claims. Unfortunately, as of December 2004, there were no reported cases interpreting this provision.

<sup>59</sup> See Eric Rasmusen, *Stigma and Self-Fulfilling Expectations of Criminality*, 39 JOURNAL OF LAW AND ECONOMICS 519, 520 (1996) (arguing that social and economic stigma may be a more important determinant than external incentives in controlling the crime rate). See also *In re Joseph M.*, 82 N.Y.2d 128, 131-32 (1993) (stating that the over-all scheme of the New York enactments prohibiting access to arrest records "demonstrates that the legislative objective was to remove any 'stigma' flowing from an accusation of criminal conduct terminated in favor of the accused, thereby affording protection (i.e., the presumption of innocence) to such accused in the pursuit of employment, education, professional licensing and insurance opportunities").

Courts and legislatures have recognized that the best interests of society are met by expanding employment opportunities for persons with criminal records. See, e.g., *Soto-Lopez v. N.Y. City Civil Serv. Comm'n*, 713 F. Supp. 677, 679 (S.D.N.Y. 1989) (holding that "the public policy in favor of employing ex-offenders" requires the court to uphold a challenge to the city's civil service regulations); *Haddock v. City of New York*, 553 N.E.2d 987, 992 (N.Y. 1990) (noting that "the opportunity for gainful employment may spell the difference between recidivism and rehabilitation"). Facilitating employment opportunities for convicted criminals may help to lower the recidivism rate. Research indicates that the availability of employment and involvement in crime are inversely related. Bruce E. May,



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*Real World Reflection: The Character Component of Occupational Licensing Laws: A Continuing Barrier to the Ex-Felon's Employment Opportunities*, 71 NORTH DAKOTA LAW REVIEW 187, 188. See also Harold L. Votey, *Employment, Age, Race & Crime: A Labor Theoretic Investigation*, 7 JOURNAL OF QUANTITATIVE CRIMINOLOGY 123, 124-25 (1991) (reviewing the literature discussing the relationship between employment and crime and determining through an empirical study that employment opportunities can reduce the tendency to participate in crime). See also Donald R. Stacy, *Limitations on Denying Licensure to Ex-Offenders*, 2 CAPITAL UNIVERSITY LAW REVIEW 1, 3 (1973) (noting that unemployment may be one of the primary factors in the high rate of recidivism).

## New York State Corrections Law

### ARTICLE 23-A: LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

#### Section:

750. Definitions.

751. Applicability.

752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited.

753. Factors to be considered concerning a previous criminal conviction; presumption.

754. Written statement upon denial of license or employment.

755. Enforcement.

S 750. Definitions. For the purposes of this article, the following terms shall have the following meanings:

(1) "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.

(2) "Private employer" means any person, company, corporation, labor organization or association which employs ten or more persons.

(3) "Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license or employment sought.

(4) "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any

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occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

(5) "Employment" means any occupation, vocation or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this article, include membership in any law enforcement agency.

S 751. Applicability. The provisions of this article shall apply to any application by any person who has previously been convicted of one or more criminal offenses, in this state or in any other jurisdiction, to any public agency or private employer for a license or employment, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct.

S 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited. No application for any license or employment, to which the provisions of this article are applicable, shall be denied by reason of the applicant's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless:

- (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or
- (2) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

S 753. Factors to be considered concerning a previous criminal conviction; presumption.

1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

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S 754. Written statement upon denial of license or employment. At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

S 755. Enforcement.

1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.
2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York city commission on human rights.

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(2) "Private employer" means any person, company, corporation, labor organization or association which employs ten or more persons.

(3) "Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license or employment sought.

(4) "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession.

Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

(5) "Employment" means any occupation, vocation or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this article, include membership in any law enforcement agency.

S 751. Applicability. The provisions of this article shall apply to any application by any person who has previously been convicted of one or more criminal offenses, in this state or in any other jurisdiction, to any public agency or private employer for a license or employment, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct.

S 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited. No application for any license or employment, to which the provisions of this article are applicable, shall be denied by reason of the applicant's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless:

- (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or

- (2) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

S 753. Factors to be considered concerning a previous criminal conviction; presumption.

1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

S 754. Written statement upon denial of license or employment. At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

S 755. Enforcement.

1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.

2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York city commission on human rights.