

# CHAPTER 37

## RIGHTS UPON RELEASE\*

This Chapter discusses many of the legal issues you may face after your release from prison. Part A discusses housing rights and registration laws. Part B discusses your eligibility for public benefits. Part C addresses employment, and Part D discusses child custody issues. Part E addresses your eligibility for military service when you have a criminal conviction, and Part F describes the effects of criminal convictions on voting and other political rights. For the most part, these sections will discuss relevant federal and New York State law. The sections dealing with federal law will apply to you even if you do not live in New York State. However, if you do not live in New York, you should consult the appropriate state laws to learn your rights in the state in which you live.

### A. Housing Rights and Registration

#### 1. Private Housing

##### (a) Buying or Renting

If you are seeking to buy or rent housing from a private party, your criminal conviction will probably make things more difficult for you. If you are seeking public housing assistance, see Section 2(a) below. The federal Fair Housing Act<sup>1</sup> prevents public and private parties from discriminating against potential buyers or renters on the basis of race, color, religion, sex, handicap, familial status, or national origin. However, there is no law that prevents private parties from deciding not to sell or rent to you because of your criminal history. Although there is no law requiring you to report your criminal history when you fill out a rental application, the landlord may ask you to provide this information on the application. Further, your criminal record may show up if your landlord checks your credit history. In addition, a lender will also likely check your credit history before agreeing to give you a mortgage.

The Fair Housing Act also allows landlords to refuse to rent or sell “to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”<sup>2</sup> Under this provision, and under some state law, a landlord may decide that your criminal history poses a threat to others and their property, and refuse to sell or rent to you on that basis,<sup>3</sup> even if you would otherwise be protected under the Fair Housing Act. For example, if you have a disability but your criminal history indicates that you would pose a threat to others, the landlord may choose not to rent to you. Since the exclusion is based on the landlord’s belief that you pose a threat because of your criminal history, not because of your actual disability, the exclusion does not violate the Fair Housing Act. If the landlord wants to exclude you on the basis of your criminal history, in court he will have to show “objective evidence that is sufficiently recent as to be credible, and not from unsubstantiated inferences, that [you] will pose a direct threat to the health and safety of others.”<sup>4</sup>

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\* This Chapter was revised by Tomica Burke, based in part on previous versions by Leah Laben, Sara Manaugh, and Laura Kittross. Special thanks to J. McGregor Smyth from The Bronx Defenders, and Amanda Lockshin and Heidi Cain of the Legal Aid Society for their valuable comments.

1. 42 U.S.C. § 3604 *et. seq.* (2006).

2. 42 U.S.C. § 3604(f)(9) (2006).

3. *See Talley v. Lane*, 13 F.3d 1031, 1034 (7th Cir. 1994) (finding under the Fair Housing Act that the landlord has the “discretion to find that individuals with a history of convictions for property and assaultive crimes would be a direct threat to other tenants and to deny their application.”); *see also Collins v. AAA Homebuilders*, 175 W. Va. 427, 428, 333 S.E.2d 792, 793 (W. Va. 1985) (finding under West Virginia state law, “that a private landlord may consider all factors, including criminal convictions, which may affect the health, safety, or welfare of other tenants . . .”).

4. *United States v. Massachusetts Indus. Fin. Agency*, 910 F. Supp. 21, 27 (D. Mass. 1996) (finding that the “direct threat” exemption from the Fair Housing Act should be narrowly construed, so that mere inferences of a threat are not sufficient for the landlord to refuse to sell or rent to you if you are otherwise protected under the Fair Housing Act). *See also Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1343 (D.N.J. 1991) (finding that speculative conclusions about the tenant (such as a speculation that increased vandalism was caused by the tenant) are not enough to show that the tenant poses a direct threat).

### (b) Exception for Participants in Drug Rehabilitation Programs

There is a possible exception to the landlord's ability to reject your application based on your criminal history. If your conviction was for possession of drugs, and you no longer use drugs *and* you are in a drug rehabilitation program, then the landlord may not reject your application based on your criminal conviction. The Fair Housing Act outlaws discrimination against someone based on his handicap.<sup>5</sup> In the Fair Housing Act, the term "handicap" is defined as "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such impairment."<sup>6</sup> "Handicap" does not include "current, illegal use of or addiction to a controlled substance."<sup>7</sup> However, a person's past drug dependency, together with his or her participation in a drug rehabilitation program *is* considered a "handicap."<sup>8</sup> If you are "handicapped" by your former addiction and are in a rehabilitation program, the landlord may not reject your application based only on your drug possession conviction.

## 2. Subsidized Housing: Public Housing & Section 8

The federal government, through the Department of Housing and Urban Development (HUD), regulates and helps fund state and local agencies that provide housing assistance to those in need. This assistance comes in various forms, including (1) low-cost housing in public housing projects, (2) subsidized rents for certain private rental units, (3) Section 8 housing,<sup>9</sup> and (4) help with mortgages and down payments on homes.<sup>10</sup>

### (a) Low-Cost Housing Units

People with criminal convictions may be eligible to receive housing assistance. However, there are a number of public housing laws that will affect your eligibility. First, federal laws **require that some individuals be denied** housing assistance:

- (1) If you have been evicted from public, federally assisted, or Section 8 housing because of drug-related criminal activity, you are ineligible for public or federally assisted housing for three years.<sup>11</sup> However, the housing provider has the discretion to shorten the three-year period if you successfully complete a rehabilitation program approved by the local housing provider.<sup>12</sup> The three-year time period begins to run from the date of the eviction.<sup>13</sup>
- (2) If you are subject to a lifetime registration requirement under a sex offender registration program, you are permanently ineligible for public, Section 8, and other federally assisted housing. For more information on registration programs, see Section 3 below.

5. 42 U.S.C. § 3604(f)(2) (2006).

6. 42 U.S.C. § 3602(h) (2006).

7. 42 U.S.C. § 3602(h) (2006).

8. *See* Peabody Prop. v. Sherman, 638 N.E.2d 906, 908 (Mass. 1994) (holding that although defendant's drug dependency together with his subsequent participation in a drug rehabilitation program was considered a handicap, the term "handicap" did not include current, illegal use of drugs); *see also* United States v. S. Mgmt. Corp., 955 F.2d 914, 919 (4th Cir. 1992) (holding that recovering addicts came within the definition of "handicap" because they had an impairment that substantially limited a major life activity as a result of the attitudes of others toward such impairment). *But see* Mauerhan v. Wagner Corp., 649 F.3d 1180, 1186 (10th Cir. 2011) (finding 30 days of sobriety to be insufficient under the safe harbor provision); *Brown v. Lucky Stores, Inc.*, 246 F.3d 1182, 1186 (9th Cir. 2001) (finding that "the safe harbor provision applies only to employees who have refrained from using drugs for a significant period of time"); *Shafer v. Preston Mem'l Hosp. Corp.*, 107 F.3d 274, 277 n.4 (4th Cir. 1997) (limiting the Court's decision in *S. Mgmt. Corp.* to situations where the individual has been drug-free for a year or more).

9. Section 8 is the common name for the federal program that lets you find your own place to rent, and gives you vouchers to pay for all or part of the rent. You may also see the Section 8 program referred to as "Housing Choice Vouchers." There are certain income limits set for Section 8 Housing. *See* 24 C.F.R. § 982 *et seq* (2004); Rental Assistance – HUD, [http://portal.hud.gov:80/hudportal/HUD?src=/topics/rental\\_assistance](http://portal.hud.gov:80/hudportal/HUD?src=/topics/rental_assistance) (last visited Mar. 7, 2012).

10. *See* Homes and Communities, U.S. Dep't of Housing and Urban Development (HUD), <http://www.hud.gov> (last visited Mar. 7, 2012); *see also* Appendix A of this Chapter to find out how to contact HUD by mail or phone.

11. 42 U.S.C. § 13661(a) (2006). "Drug-related criminal activity" means "the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance." 42 U.S.C. § 1437a(b)(9) (2006).

12. 42 U.S.C. § 13661(a) (2006).

13. 42 U.S.C. § 13661(a) (2006).

- (3) If you have been convicted of methamphetamine production while living on public housing premises, you are permanently ineligible for public, Section 8, and other federally assisted housing.<sup>14</sup>
- (4) If you or a member of your household is currently abusing alcohol in a manner that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents, or if you or a member of your household is illegally using drugs, you are ineligible for public, Section 8 or other federally assisted housing. Current tenants of public, Section 8 and other federally assisted housing must be evicted on the same basis.<sup>15</sup> The housing provider may decide to admit you to housing or allow you to remain in your residence if you demonstrate that you are not currently abusing alcohol or illegally using drugs and have been rehabilitated in any one of three ways: (1) participation in a supervised alcohol or drug rehabilitation program; (2) completion of a supervised alcohol or drug rehabilitation program; or (3) successful rehabilitation in some other manner.<sup>16</sup>
- (5) Finally, public housing assistance will be denied or revoked if you are fleeing to avoid prosecution, custody, or confinement on a felony charge or conviction,<sup>17</sup> or if you are in violation of the conditions of your probation or parole under state or federal law.<sup>18</sup>

The federal public housing law permits housing assistance to be denied to you if you have certain other kinds of criminal records.<sup>19</sup> If you have engaged in (1) any drug-related criminal activity; (2) any violent criminal activity; or (3) any other criminal activity that would adversely affect the health, safety, or right to peaceful enjoyment of the premises, you may be denied public, Section 8, and other federally assisted housing.<sup>20</sup> The public housing agency or owner of the housing can only deny you for these crimes if the crime occurred “reasonably” recently.<sup>21</sup> However, even if the criminal activity was not reasonably recent, the housing agency or owner may require you to show evidence that you have not engaged in any other criminal activity recently.<sup>22</sup>

In determining whether to terminate a tenancy for the above reasons, HUD encourages housing authorities to take into account individual circumstances such as the seriousness of the offending action, the extent of the involvement of the leaseholder, and whether the leaseholder took all feasible steps to prevent the action from occurring, or has otherwise removed the offending person from the lease or banned him from the premises.

(i) Housing Restrictions Specific to New York

The New York City Housing Authority (NYCHA) is one of the local agencies that provides housing assistance in New York City. The following chart<sup>23</sup> shows how NYCHA applies the public housing laws to people with past convictions. The first column represents the conviction; the second column represents how long someone with that conviction remains ineligible for public housing assistance.

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14. 42 U.S.C. §1437n(f) (2006).

15. 42 U.S.C. § 13661(b)(1) (2006).

16. 42 U.S.C. § 13661(b)(2) (2006).

17. 42 U.S.C. § 1437f(d)(1)(B)(v)(I) (2006).

18. 42 U.S.C. §1437f(d)(1)(B)(v)(II) (2006).

19. The unfortunate reality is that most public housing agencies will exclude individuals on the basis of most criminal records.

20. 42 U.S.C. § 13661(c) (2006).

21. There is no firm time period which is defined as “reasonable” in this context. The individual owner of the housing, or the public housing authority, is allowed to make his own determination about what a reasonable amount of time is. 24 C.F.R. § 5.855 (2005). *See also* Screening and Eviction for Drug Abuse and Other Criminal Activity, 66 Fed. Reg. 28,776, 28,779 (May 24, 2001) (stating that HUD “believes it would be too rigid for it to define a reasonable time period in a manner that covers every circumstance nationally”).

22. 42 U.S.C. § 13661(c)(2) (2006).

23. The chart was prepared by The Bronx Defenders. For more information about NYCHA, *see* <http://www.nyc.gov/html/nycha> (last visited Oct. 7, 2012).

<b><i>NYCHA Public Housing</i></b>	
<b>Criminal Conviction</b>	Years After Serving Sentence (including completion of probation/parole and payment of fine)
Subject to a lifetime registration requirement under a state sex offender registration program	Until the convicted person is no longer subject to a lifetime registration requirement
<i>Felonies</i> Class A, B, and C Class D and E	6 years 5 years
<i>Misdemeanors</i> Class A	4 years (5 years if 3+ convictions for Class A m/d or felonies within last 10 years)
Class B or unclassified	3 years (4 years if 3+ convictions for m/d or felonies within last 10 years)
<i>Violations or Infractions</i> Violations or DWI	2 years (3 years if 3+ convictions for felonies, m/d, violations or DWI infractions within last 10 years)
<i>Multiple Convictions</i>	Ineligible for longest applicable period.

When you are applying for housing assistance, the housing assistance agency has the right to get your criminal record from the National Crime Information Center, police departments, and other law enforcement agencies.<sup>24</sup> If you are applying for Section 8 housing, the building owner can also get your record by going through the housing assistance agency.<sup>25</sup> If the agency or owner decides to deny your application based on your criminal record, they must give you a copy of the criminal record that they got from the police and give you an opportunity to dispute the accuracy or relevance of the record.<sup>26</sup> You also have a right to confidentiality—the housing agency or owner who gets your criminal record for the purpose of your housing application cannot disclose the information in your record to anyone else.<sup>27</sup>

Another agency that provides housing assistance is the New York City Department of Housing Preservation (“HPD”). The Department of Housing Preservation only offers Section 8 vouchers to a targeted group of New Yorkers in need. To qualify, you must fall under the category of a “homeless household”. HPD defines a homeless household as (1) one in which your primary nighttime residence is either at a publicly or privately operated short term living shelter or (2) a household in which the person temporarily lives with another person in HPD’s jurisdiction AND has been classified as homeless by HPD’s Emergency Housing Services Bureau.<sup>28</sup>

The New York State Division of Housing and Community Renewal (DHCR) also offers Section 8 vouchers on a statewide level (including New York City) through its Housing Choice Voucher (HCV) program.<sup>29</sup>

Both the New York City Department of Housing Preservation and the New York State Division of Housing and Community Renewal have restrictions for individuals with criminal convictions but they are not as specific and detailed as the NYCHA’s restrictions. Instead, these organizations use their discretion in deciding whether to give benefits. They follow the Federal regulations on housing mentioned in Section 2.

(ii) Applicant Appeals

24. 42 U.S.C. § 1437d(q)(1)(A) (2006).

25. 42 U.S.C. § 1437d(q)(1)(B) (2006).

26. 42 U.S.C. § 1437d(q)(2) (2006).

27. 42 U.S.C. § 1437d(q)(5) (2006). If the agency does breach your confidentiality with regard to your criminal record, you have the right to bring a civil action for damages and other relief. 42 U.S.C. § 1437d(q)(7) (2006).

28. See <http://www.nyc.gov/html/hpd/html/section8/section8-tenants.shtml#WhoReceivesHPDSection8> (last visited Mar. 7, 2012).

29. See <http://www.nyshcr.org/Programs/section8hcv/> (last visited Oct. 7, 2012).

If the housing authority considers you ineligible for public housing or Section 8 assistance, you may ask for an informal hearing before an administrative hearing officer to appeal the housing authority's decision.<sup>30</sup> At the informal hearing, the hearing officer will consider evidence of rehabilitation to determine if a person with a criminal conviction should otherwise be eligible for housing assistance. Evidence of rehabilitation includes evidence of participation in counseling programs, work records, job-training programs, and, for arrests involving drug or alcohol, drug and/or alcohol treatment. However, level 2 (tier II) or level 3 (tier III) sex offenders will not be admitted. The next section explains what the tier ratings mean for sex offenses. For NYCHA, if the hearing officer finds in favor of the applicant, the original application will be returned to the Department of Housing Applications for processing. The hearing officer's decision is final upon written notification to the applicant. Both HPD and DHCR also have informal reviews available to challenge ineligibility determinations.

There is often a long waiting list for public housing assistance, so you will probably want to begin the application process as soon as possible. Begin by contacting your state or local housing authority to find out how to apply. A partial list of agencies that you can contact is included in Appendix A of this Chapter.

### 3. Registration Laws for Sexually Violent Offenses<sup>31</sup>

If you have been convicted of a sex offense, you will have to comply with federal and local sex offender registry laws. The federal sex offender registry laws create three tiers of sex offenders: tier I, tier II, and tier III.<sup>32</sup> The degree to which the law will affect you depends on what category sex offender you are. You are a tier III sex offender if your offense is punishable by more than one year, and is considered a severe offense,<sup>33</sup> involves kidnapping a minor that is not your child, or occurs after you are already convicted of a tier II offense.<sup>34</sup> You are a tier II sex offender if your offense is punishable by more than one year, your offense is not a tier III offense, and is considered severe.<sup>35</sup> A tier I sex offender is a sex offender that is not a tier II or tier III sex offender.<sup>36</sup>

The federal sex offender registry laws require that each state must have its own state-wide sex offender registry.<sup>37</sup> If you are a sex offender, you are required to register in each state where you reside, are employed, or are a student.<sup>38</sup> After you are released, you must keep your information current and updated. For example, if you change your name, residence, employment, or student status, you must update your registration information within three business days.<sup>39</sup> Each state has its own criminal sanctions for sex offenders who fail to comply with registry requirements.<sup>40</sup> You should make sure to check your state's specific penalties and registry requirements.

Federal law requires that both you and the state in which you register provide certain information to the registry. For example, you, as the offender, must include information such as your name and any aliases you may have, your Social Security number, and the addresses of all your residences.<sup>41</sup> Depending on the state, you may also need to provide more information. The state must provide information including, but not limited to, a current photograph of you, your criminal history, and your fingerprints.<sup>42</sup>

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30. See <http://www.nyc.gov/html/hpd/html/section8/section8-tenants.shtml#WhoReceivesHPDSection8> (last visited Oct. 7, 2012)

31. If you were convicted of a sex offense, you may want to read *JLM* Chapter 36, "Special Considerations for Sex Offenders."

32. 42 U.S.C. § 16911(1)-(4) (2006).

33. Severe offenses include an act, attempt, or conspiracy to commit aggravated sexual abuse or abusive sexual contact against a minor under 13 years old. 42 U.S.C. § 16911(4) (2006).

34. See 42 U.S.C. § 16911(4) (2006) (stating all of the criteria to be considered a tier III sex offender).

35. See 42 U.S.C. § 16911(3) (2006) (stating all of the criteria to be considered a tier II sex offender).

36. 42 U.S.C. § 16911(2) (2006).

37. 42 U.S.C. § 16912(a) (2006).

38. 42 U.S.C. § 16913 (2006).

39. 42 U.S.C. § 16913(c) (2006).

40. 42 U.S.C. § 16913(e) (2006).

41. 42 U.S.C. § 16914(a)(1)-(7) (2006). Other information includes "[t]he name and address of any place where the sex offender is an employee or will be an employee," "[t]he name and address of any place where the sex offender is or will be a student," "[t]he license plate number and description of any vehicle owned or operated by the sex offender," and "[a]ny other information required by the Attorney General."

42. 42 U.S.C. § 16914(b)(1) (2006). Other information includes "[a] physical description of the sex offender", "[a] DNA sample of the sex offender", "[a] photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction", and "[a]ny other information required by the Attorney General."

## B. Registration and Public Access to Your Record

If you are a sex offender, you must register with the sex offender registry.<sup>43</sup> The length of time you are in the registry depends on your sex offender tier. The full registration for tier I, tier II, and tier III sex offenders are 15 years, 25 years, and the rest of your life, respectively.<sup>44</sup> You may have your registration period reduced if you have a clean record.<sup>45</sup> Different states have different criteria for what you must do to have a clean record. While you are in the registry, you must periodically meet with a state official, allow the state to take an updated photograph of you, and verify your registry information.<sup>46</sup> The frequency with which you must meet a state official depends on your sex offender tier. Tier I, tier II, and tier III offenders must meet with a state official every year, 6 months, and 3 months, respectively.<sup>47</sup>

Every state is required by federal law to make certain information about sex offenders available on the internet to the public.<sup>48</sup> As an offender, this includes, but is not limited to, information such as your name, address, and offense. However, the state cannot disclose the victim of your crime, your Social Security number, and information about arrests that did not result in convictions.<sup>49</sup> Each state's website will have information about how to correct errors on your public page.<sup>50</sup>

Finally, the federal sex offender laws have created a notification program, whereby certain individuals will be notified when a sex offender registers in the registry or updates his information.<sup>51</sup> Updates are disclosed to individuals and organizations including, but not limited to, certain law enforcement agencies, volunteer organizations that work with minors or other vulnerable individuals, and social service organizations that protect minors in the child welfare system.<sup>52</sup> Because each state's specific requirements are different, you should consult your state's sex offender registration laws.

## C. Eligibility for Public Benefits and Entitlements

Federal, state, and local governmental agencies provide a wide range of benefits to the people within their borders. Some benefits, such as having police officers or public parks, are available to everyone. Other benefits—including health care, educational assistance, housing, and cash assistance—are only available to those who meet certain requirements set by the government, such as lack of income, or age. Some public benefits may be unavailable to you because of your criminal history, but for the most part a criminal record is not enough to disqualify you from receiving benefits. One important exception is drug-related felonies. As the following section will explain, drug felonies may keep you from receiving benefits. The other main exception is that you may not be able to receive benefits if your criminal record involves public assistance fraud.<sup>53</sup> No matter what your conviction was for, if you were receiving certain types of public benefits before your conviction, you may have to reapply to start receiving them again. This is because the government probably stopped sending you benefits after your conviction. This section discusses the law governing the eligibility of people with criminal records for different categories of public benefits.

If you want or need public benefits, a very useful tool can be found online at <http://www.govbenefits.gov>. This is a free and confidential prescreening tool run by the government. It allows you to find out what government benefits are available to someone in your particular situation.

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43. 42 U.S.C. § 16915 (2006).

44. 42 U.S.C. § 16915(a)(1)-(3) (2006).

45. *See* 42 U.S.C. § 16915(b) (2006) (explaining how and for how long your registration period may be reduced).

46. 42 U.S.C. § 16916 (2006).

47. 42 U.S.C. § 16916(1)-(3) (2006).

48. 42 U.S.C. § 16918 (2006). New York's sex offender registry can be accessed at <http://www.criminaljustice.ny.gov/nsor/>. To find your state's sex offender registry, type in your state's name and "sex offender registry" into a search engine, such as <http://www.google.com>.

49. 42 U.S.C. § 16918(b) (2006).

50. 42 U.S.C. § 16918(c) (2006). For example, if you seek to correct an error on the New York sex offender registry, visit [http://criminaljustice.state.ny.us/SomsSUBDirectory/search\\_index.jsp](http://criminaljustice.state.ny.us/SomsSUBDirectory/search_index.jsp).

51. 42 U.S.C. § 16921 (2006).

52. *See* 42 U.S.C. § 16921 (listing more parties who may be notified when a sex offender registers in the state registry or updates his information).

53. For example, under New York state law, you will be barred from receiving public assistance or food stamps for ten years after being convicted in federal or state court for having made a false statement or representation with respect to your place of residence in order to receive public assistance, medical assistance, or food stamps simultaneously from two or more states, or supplemental security income in two or more states. N.Y. Soc. Serv. Law § 131(12) (McKinney 2003).

## 1. Federal and State Financial Assistance

### (a) Federal Programs

Various federal programs provide direct assistance (in the form of cash and food stamps) to the poor, the disabled, and the elderly. However, there are some restrictions on these programs that will affect you. These programs are introduced below.

#### (i) Welfare and Food Stamps

One important federal program, called Temporary Assistance for Needy Families (TANF), provides aid to families with children. This program may be helpful to you if you have children and you have not yet been able to find work, or your current job is paying you a very low income. TANF works by giving federal funds to the states and giving the states flexibility to develop their own welfare programs. Since each state's program is different, you should contact your local TANF office for information on eligibility and how to apply. You should be aware that different states call their TANF program by different names, so you may not be able to find "the TANF office." However, all states have some form of TANF program. You should consult Appendix B for a partial listing of contacts for state human services agencies, which will be able to give your local TANF information. You can also get more information from the website sponsored by the American Public Human Services Association at <http://www.aphsa.org/Links/links-state.asp>, and from the TANF website at <http://www.acf.hhs.gov/programs/ofa/programs/tanf>.

TANF is not an "entitlement." That is, you do not have the *right* to receive assistance. The federal government puts some restrictions and conditions on the money it gives to states. For example, states must often make sure that people who receive TANF benefits are working, looking for work, or being trained.<sup>54</sup> There is also a maximum time period, usually five years, you can receive assistance during your lifetime.<sup>55</sup> In addition, the law makes many non-citizens ineligible for benefits.<sup>56</sup> Some states, such as New York, have state funded programs that provide benefits beyond the time limits or to people who would not qualify under federal regulations.

There are two circumstances that may restrict you from receiving TANF funds: (1) if you are a fugitive from justice on a felony charge or conviction or if you have violated parole or probation conditions, and (2) if you have a drug-related felony conviction. States may not give assistance to anyone who is a fugitive from justice on a felony charge or conviction, or who has violated parole or probation conditions.<sup>57</sup> Federal law does not define what "violation of probation or parole" means, or when ineligibility begins and ends. Each state has created its own specific policies dealing with these issues. If you think there might be something on your record that would prevent you from getting assistance, such as a violation of probation, you should check with your local TANF office to find out whether you are eligible. New York's policies on this issue are discussed below in Section B(1)(b). A drug-related felony conviction may also prevent you from getting cash assistance or food stamps through federal programs.<sup>58</sup> Drug-related felonies are those involving the use, possession or distribution of illegal substances. The law—state or federal—under which you were convicted determines whether the offense was a felony.<sup>59</sup> The ban only applies from the date when the law was passed. That is, if you have a drug-related felony conviction from before August 22, 1996, you may still be eligible for assistance under this section.<sup>60</sup>

States are allowed to change this restriction against people with drug felony convictions by passing legislation making it clear that the state is choosing not to adopt the federal restriction. The state may also

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54. 42 U.S.C. § 602(a)(1)(A)(i)-(iii) (2000); 42 U.S.C. § 607(d) (2000).

55. 42 U.S.C. § 608 (a)(7) (2000).

56. 8 U.S.C. § 1611 (2000); 7 U.S.C. § 2015(f) (2000). *See* 8 U.S.C. § 1641 (2000) (providing a definition of non-citizens who are not prohibited from receiving public assistance).

57. 42 U.S.C. § 608(a)(9) (2000) (TANF); 7 U.S.C. § 2015 (2000) (food stamps).

58. 21 U.S.C. §§ 862a(a)-(b) (2000).

59. 21 U.S.C. § 862a(a) (2000).

60. 21 U.S.C. § 862a(d)(2) (2000). Some federal courts have held that judges must warn defendants that a guilty plea to a drug felony may permanently prevent them from receiving federal benefits as a result of this provision. *See, e.g., United States v. Littlejohn*, 224 F.3d 960, 967 (9th Cir. 2000) (finding that when a defendant is pleading guilty, he should be informed that he is becoming ineligible for certain food stamps and public assistance for the plea to be considered voluntary). However, even if the court fails to warn you of the consequences of a guilty plea in this situation, it is unlikely that your conviction could be overturned on this ground.

choose to modify the restriction.<sup>61</sup> As of November 2004, the states' policies on the drug felon restriction are as follows:<sup>62</sup>

<b>State Policies for Restricting Federal Benefits for Convicted Drug Felons</b>	
<b>State Policy</b>	<b>State</b>
Allows Benefits for Drug Felons	Idaho, Maine, New Hampshire, New Mexico, Michigan, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, Vermont, Washington, DC
Allows Benefits for Drug Felons Undergoing Treatment Only	Colorado, Connecticut**, Iowa, Kentucky*, Nevada*, South Carolina***, Tennessee.
Allows Food Stamps but not Cash Benefits for a Certain Amount of Time	Massachusetts, Illinois
Allows Benefits in Certain Limited Circumstances	Arkansas, Delaware, Florida, Louisiana, Maryland, Minnesota, New Jersey, North Carolina, Rhode Island, Washington, Wisconsin
Never Gives Public Assistance or Food Stamps to Drug Felons	Alabama, Alaska, Arizona, California, Georgia, Indiana, Kansas, Mississippi, Missouri, Montana, Nebraska, North Dakota, South Dakota, Texas Virginia, West Virginia, and Wyoming

\*Nevada and Kentucky also allow benefits to drug felons who are pregnant if their doctor certifies that the health of the unborn child is dependent on the benefits.

\*\* In Connecticut, a drug felon is also eligible if he has completed his sentence or is on probation.

\*\*\* In South Carolina, a drug felon must also submit to random drug tests to be eligible.

The drug felony restriction does not apply to Medicaid or to non-federal assistance that the state provides on its own, such as public assistance for single adults.<sup>63</sup> The restriction also does not prevent you from receiving emergency Social Security medical services, emergency disaster relief, certain public health assistance, prenatal care, job training programs, or drug treatment programs.<sup>64</sup>

#### (ii) Other Federal Programs

Supplemental Security Income ("SSI") is a means-tested program for people who are blind, disabled, or elderly (over 65). If you are on SSI when you are arrested, benefits should be suspended after you are incarcerated for a calendar month. This is because you are a "resident of a public institution," not because of the conviction. If the benefits stay suspended for 12 months, they end—which means you have to go through the application process again to get them back. Technically speaking, you are supposed to report your incarceration to Social Security Administration (SSA). For more information on Supplemental Security Insurance, go to <http://www.socialsecurity.gov/pgm/ssi.htm>.

Social Security Disability Insurance (SSDI) benefits are an insurance-based program for workers who become blind or disabled, or for their disabled adult children. Social Security Survivors' benefits are for family members of workers who die or become disabled. Social Security Retirement benefits are for people who are of retirement age—you can get benefits when you are 62, but your benefit will be lower than if you waited until reaching "full retirement age," which depends upon your year of birth. If you are on Social Security Disability Insurance benefits (or other "Title II" benefits—e.g. retirement benefits) when you are arrested, then your benefits should get suspended after you are both a) convicted of a criminal offense (or had your parole revoked) and b) confined to a penal institution for more than 30 continuous days. (This varies if you were incarcerated prior to April 1, 2000.) These benefits will remain suspended until you are

61. 21 U.S.C. § 862a(d)(1)(A) (2000).

62. Legal Action Center, *After Prison: Roadblocks to Reentry*, available at <http://www.lac.org/roadblocks-to-reentry/> (last visited Nov. 8, 2008).

63. For more information on health assistance, see "Medical and Mental Health Assistance," Part B(2) below.

64. 21 U.S.C. § 862a(f) (2000).

released, and so all you need to do to get them back is visit at an SSA office with copies of your release papers. If you have a wife or child who is getting benefits based on your work history, your family should have their benefits unchanged. There are relatively few prisoners who are of an age to receive retirement benefits when they are arrested, so most clients receive SSDI.

You should be able to apply for SSI prior to your expected date of release from a correctional facility. Some facilities have agreements with SSA under which staff are expected to provide help with these applications, and particularly with SSI. In New York, for example, there is an agreement under which prisoners should be able to get help from facility Parole staff and/or from Office of Mental Health pre-release coordinators, depending on the nature of the individual's application/disability. You should be able to apply on your own as well by writing to your local SSA office with a note that gives your expected release date. As a practical matter, you may need help in applying due to restrictions on phone use and mailing, as well as uneven knowledge on the part of local SSA offices.

Criminal convictions do not affect your eligibility for these benefits, although ordinarily you cannot receive them while you are incarcerated. Federal law states that even if your disability stems from conduct that led to your conviction or was caused during a period of incarceration, that fact cannot be used in deciding whether you are eligible to receive federal disability benefits.<sup>65</sup>

Your eligibility for assistance under this program is not affected by a criminal conviction, but, as with TANF and food stamps, you cannot receive benefits under this program if you are a fleeing felon or are in violation of probation or parole.<sup>66</sup>

If you want to apply for Social Security, you should go to the Social Security webpage online, at <http://www.socialsecurity.gov>, or contact Social Security at their toll-free phone number, (800) 772-1213. Use this number as well if you want to apply for SSI. The toll-free phone number is available from 7 A.M. to 7 P.M. Monday through Friday.

#### (b) New York State Programs

New York's two main forms of welfare are Family Assistance (FA) and Safety Net Assistance (SNA). FA is New York's version of the federal TANF program, and is subject to federal restrictions and conditions. SNA is a separate program administered solely by the state of New York and not subject to federal controls.

Families with children under eighteen (or under nineteen if the child is attending school regularly) and pregnant women are eligible for cash benefits under FA. Most of the federal restrictions on TANF apply to these benefits. You should note that New York is one of the states that has opted out of the federal restriction that denies welfare and food stamps to people with drug felony convictions. That is, **you are not ineligible for FA just because you have a drug felony on your record.**

However, other restrictions remain on New York's FA program. As required by federal law, New York does not give cash assistance and food stamps to people evading prosecution, custody, or confinement for a felony charge or conviction, or to probation or parole violators.<sup>67</sup> In New York, you are considered a probation or parole violator *only if* (1) you have a warrant issued for your arrest because of a violation of your probation or parole, (2) you have been found by judicial determination to have violated probation, or (3) you have been found by administrative adjudication by the division of parole to have violated parole.<sup>68</sup> If you are considered a probation or parole violator, New York denies you FA benefits only until (1) you are restored to probation or parole supervision or released from custody, or (2) the end of your maximum period of imprisonment or supervision, whichever occurs first.<sup>69</sup> Finally, probation or parole violations include violations of conditions imposed under federal law, as well as violations of conditional release.<sup>70</sup>

If you want to apply for FA, you should go to a welfare or job center.<sup>71</sup> The application may take thirty days to be processed, so you should apply as soon as possible.<sup>72</sup>

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65. 42 U.S.C. § 423(d)(6) (2000).

66. 42 U.S.C. § 1382(e)(4) (2000). Eligibility is not terminated, but only suspended, under this provision; benefits are only withheld for the month or months during which the flight or violation takes place.

67. N.Y. Soc. Serv. Law § 131(14)(a) (Consol. 2004).

68. N.Y. Soc. Serv. Law § 131(14)(b) (Consol. 2004).

69. N.Y. Soc. Serv. Law § 131(14)(b) (Consol. 2004).

70. N.Y. Soc. Serv. Law § 131(14) (a), (c)-(d) (Consol. 2004).

71. For a list of job centers in New York City, see [http://www.nyc.gov/html/dhs/downloads/pdf/crh\\_free-job.pdf](http://www.nyc.gov/html/dhs/downloads/pdf/crh_free-job.pdf) (last visited Mar. 8, 2012), or look in your phone book under the governmental listings, or "blue pages."

72. See <http://www.legal-aid.org/en/ineedhelp/ineedhelp/self-help/benefits/welfarebenefits.aspx>, (last visited Mar. 8, 2012).

Adults without children, children not living with an adult relative, and certain categories of immigrants can receive cash benefits under SNA. People who have reached the federal time-limit for FA may also receive SNA. The amount you can receive in this program depends on the size of your household, the social services district in which you live, the amount you pay for housing, and whether or not heat is included in your rent. For this program, you must have lived in New York for one year to be considered a state resident. If you came to New York from another state and are in need of public assistance you will only be able to receive half of the New York state benefit, or the benefit level of the state you came from, whichever is higher.

Non-cash benefits (in the form of vouchers for shelter and utilities) are available to families in which the head of the household has reached the end of the FA five-year limit, to individuals receiving drug or alcohol treatment and their families, and to families of those refusing drug screening, assessment, or treatment requirements. There is no time limit on non-cash benefits as long as you continue to qualify.

If you want to apply for SNA, you must file an application in person at your local Department of Social Services center.<sup>73</sup> In order to qualify, you will have to:

- (1) Complete and submit the application form,
- (2) Appear for the scheduled interview,
- (3) Provide proof of the statements made on the application/recertification form,
- (4) Comply with other eligibility requirements, which may include:
  - (a) Drug screening
  - (b) Finger-printing
  - (c) Cooperation with child support requirements
  - (d) Looking for work and accepting a job when offered, and
  - (e) Complying with other employment requirements.

It generally takes forty-five days to process your application, so you should apply as soon as possible. If you need assistance more quickly than that, you should ask about receiving emergency assistance.<sup>74</sup> You should be as specific as possible about your needs, particularly if they are related to health or safety. For example, if you need a winter coat, rain boots, toiletries, underwear or other items, be sure to list them or even write them out for the case-worker. For more information about the New York state assistance programs, you can visit <http://otda.ny.gov/programs/>.

## 2. Medical and Mental Health Assistance

The federal government provides money for medical assistance through Medicaid and Medicare. These programs are health insurance for people who have trouble getting other health insurance. Medicaid funds medical and mental health care for those who cannot afford to pay for it.<sup>75</sup> Medicaid, like TANF (discussed in Part B(1)(a)(i) above), is partly funded by the federal government, but is administered by state governments. Medicare is a program that covers medical and mental health care for people over the age of sixty-five, and some people with disabilities.<sup>76</sup> Medicare, like Social Security and SSI benefits (discussed in Part B(1)(a)(ii) above), is funded and administered by the federal government.

Medicaid eligibility in nearly every state is limited to children, pregnant women, families with dependent children, persons who are blind or disabled, and persons sixty-five or older. A few states cover single healthy adults within certain income guidelines.<sup>77</sup> Each state may have its own requirements for who can receive Medicaid, so you should check with your local Medicaid office to see if you are eligible.

You cannot receive Medicare and Medicaid benefits while you are in prison. However, you *can* receive them while on probation or parole. As a person with a criminal record, including if you have a drug felony conviction, you are not disqualified from receiving Medicare and Medicaid if you otherwise meet all of the

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73. You can find a list of New York state Departments of Social Services online at <http://www.ocfs.state.ny.us/main/localdss.asp> (last visited Mar. 8, 2012), or at <http://www.health.state.ny.us/nysdoh/medicaid/ldss.htm> (last visited Mar. 8, 2012).

74. See <http://www.nyc.gov/html/hra/html/programs/fia.shtml> (last visited Mar. 8, 2012).

75. 42 U.S.C. § 1396-1396v (2000).

76. 42 U.S.C. §§ 1395b-2 *et. seq.* (2000).

77. For example, in New York, a single person may be eligible for Medicaid if he makes less than \$659 a month, and has less than \$3,950 in resources. For every additional person in your family, the maximum income and resource level goes up. You can also own a home, a car, and other personal property and still qualify. These numbers may change, so check with your local Medicaid office to see if you qualify, or see [http://www.health.state.ny.us/health\\_care/medicaid/index.htm](http://www.health.state.ny.us/health_care/medicaid/index.htm).

other requirements for these benefits. You are also not disqualified for a violation of your probation or parole.

If you want to apply for Medicare or Medicaid, you can get and submit an application at your local Medicaid or Medicare office, or through most hospitals, medical providers, and drug and alcohol treatment providers. Some states also let you apply on the Internet, by telephone, or at locations in the community, such as community health centers. You can find your state's contact information (and more information about these benefit programs) online at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-State/By-State.html>. You can also look in your phone book in the governmental listings, sometimes known as "blue pages."

Some states provide additional help for people who enter prison with active Medicaid benefits, or for people with particular conditions such as mental illness. In New York, for example, people who are arrested after April 1, 2008, are held in state or local custody, and have active Medicaid when they are incarcerated will now have their Medicaid suspended so that it can be restarted immediately upon their release. In New York State there is also a Medication Grant Program for people with mental illnesses: this program provides a temporary benefit card that will pay for psychiatric medication and some medical appointments needed to prescribe medication. As part of the Medication Grant Program, prisoners will also submit an application for Medicaid prior to their release.

### 3. Higher Education Assistance

The federal government provides financial aid in the form of grants and loans to people that attend an approved institution of higher education that awards degrees, certificates, or credentials.<sup>78</sup> However, if you were convicted under state or federal law of the sale or possession of controlled substances while you were receiving student financial aid, you are not eligible for student financial aid for a certain period of time.<sup>79</sup> This is only if the conviction is *on your record*. A conviction that was reversed, set aside, or removed from your record does not count, nor does a juvenile proceeding.<sup>80</sup> If you have been convicted of selling or possessing drugs, how long you are ineligible for educational aid depends on how many previous convictions for those offenses you have.<sup>81</sup> The law provides for the following periods of ineligibility following the date of conviction:

#### Duration of Ineligibility for Financial Aid

	Conviction for possession of a controlled substance	Conviction for sale of a controlled substance
First offense	One year	Two years
Second offense	Two years	Indefinite
Third offense	Indefinite	Indefinite

These periods of ineligibility are not hard and fast. You may be able to restore your eligibility before the stated period passes if you complete an approved drug rehabilitation program and pass two surprise drug tests.<sup>82</sup> Approved rehabilitation programs are ones that are:

- (1) Funded (or are qualified to be funded) by federal, state, or local government programs;
- (2) Funded (or are qualified to be funded) by a federally or state-licensed insurance company;
- (3) Administered or recognized by a federal, state, or local government agency or court; or

78. The federal government outlines its specifications for approved institutions at 20 U.S.C. § 1094 (2006). Comprehensive rules for students' eligibility are contained in 20 U.S.C. § 1091 (2006).

79. 20 U.S.C. § 1091(r) (2006).

80. 34 C.F.R. § 668.40(a)(2) (2012).

81. Conviction of multiple counts of sale, or of multiple counts of possession, count as a single conviction. 64 Fed. Reg. 57356 (Oct. 22, 1999).

82. 20 U.S.C. § 1091(r)(2) (2006).

(4) Administered or recognized by a federally or state-licensed hospital, health clinic or medical doctor.<sup>83</sup>

If you wish to receive federal education assistance, you must first apply and be accepted to the institution of higher education that you wish to attend.<sup>84</sup> Once you have been accepted, you should contact the financial aid office of that institution for more information on how to apply for federal education assistance.

## D. Employment

One of the hardest parts of life after your release can be looking for a job with a conviction on your record. Obtaining a job after your release from prison is often difficult because some employers may distrust or fear individuals convicted of crimes; many employers believe that ex-convicts will not be reliable employees. There is no federal or state law that forbids employers from asking you in an interview or on a job application if you have ever been convicted of an offense. Also, some laws exist that forbid people with certain kinds of criminal convictions from working in particular jobs or professions.<sup>85</sup> Please visit <http://www.abacollateralconsequences.org/> to see whether your state follows a law that prevents you from obtaining the type of job you want.<sup>86</sup>

However, while a criminal record may make your job search more difficult, it will not prevent you from finding work in many areas of employment. Federal and state laws contain some protections against employment discrimination for people with criminal records, and many states provide ways for you to remove barriers to certain jobs. This is because states want you to join the workforce and become financially self-sufficient. The following sections describe the laws protecting you against discrimination and explain ways to defend yourself against discriminatory employment practices in New York State. You should strongly consider getting help from free civil legal aid providers, such as the Legal Aid Society. They can tell you whether certain crimes can be expunged from your records and which crimes you don't have to disclose when you apply for a job.

### 1. Federal Law

#### (a) Federal Laws Restricting Particular Jobs

There are many federal laws that restrict people with criminal records from holding particular jobs. Several federal laws bar people convicted of certain crimes from working for the federal government. However, a felony conviction does not necessarily disqualify a person from all federal jobs. It is likely that an employer may consider your previous criminal convictions in deciding whether you are fit to work for the federal government.<sup>87</sup>

If you are convicted of a criminal offense involving dishonesty, a breach of trust, or money laundering, you may be disqualified from working for banks or other financial institutions that are insured by the Federal Deposit Insurance Corporation.<sup>88</sup> Also, federal law forbids people with certain felony convictions from working in the insurance industry without first getting permission from an insurance regulator.<sup>89</sup> Some felony convictions may bar you from holding certain positions in unions or other organizations that manage employee benefit plans. You may be barred for up to thirteen years after your conviction or the end of your imprisonment if the sentence is longer than thirteen years. Some of these barred positions include union officers and the director of the union's governing board.<sup>90</sup> Federal law also forbids people convicted of

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83. 34 C.F.R. § 668.40(d)(2)(i)-(iv) (2012).

84. 20 U.S.C. § 1091(a)(1) (2006).

85. For example, Congress has required a criminal-history investigation of any airport employee with access to airplanes or secure areas. 49 U.S.C. § 44936(a)(1)(A)(i)-(ii) (2006). Occasionally, the courts have struck down such laws. For example, in *Nixon v. Commonwealth*, 789 A.2d 376, 382 (Pa. Commw. Ct. 2001), a Pennsylvania trial court struck down a state statute that disqualified people with criminal records from working in nursing homes. The court found that the law was "arbitrary and irrational," which meant that it was not "rationally related" to a legitimate government purpose and was therefore unconstitutional. However, courts very rarely find that laws fail the "rational basis" test, so it is uncommon that these types of laws are declared unconstitutional.

86. National Inventory of Collateral Consequences of Conviction, available at <http://www.abacollateralconsequences.org/> (last visited October 10, 2012).

87. U.S. Dep't of Justice, Office of the Pardon Attorney, *Federal Statutes Imposing Collateral Consequences Upon Conviction* 3 (2000), available at [http://www.usdoj.gov/pardon/collateral\\_consequences.pdf](http://www.usdoj.gov/pardon/collateral_consequences.pdf) (last visited October 10, 2012).

88. 12 U.S.C. § 1829 (2006).

89. 18 U.S.C. § 1033(e) (2006).

90. 29 U.S.C. §§ 504, 1111 (2006).

certain crimes from providing healthcare services for which they will receive payment from Medicare,<sup>91</sup> or from working for the drug industry.<sup>92</sup>

### (b) Title VII Employment Discrimination

Title VII of the Civil Rights Act of 1964 forbids private employers and state and local governments from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin.<sup>93</sup> The Supreme Court has interpreted Title VII to prohibit employment practices that have a “disparate impact.” An employment practice is said to have “disparate impact” when it appears to be neutral to all racial groups, but it affects one group more harshly than another and it cannot be justified by business necessity.<sup>94</sup>

Although people with criminal convictions are not a protected class under federal law, the Equal Employment Opportunity Commission (EEOC) has interpreted Title VII to forbid employment policies that bar people just because they have a conviction record. This is because denying people jobs based on conviction records has a disparate impact on racial minorities.<sup>95</sup> However, an employer has the right to deny you a job based on your criminal record if there is a “business necessity” for doing so. To show a “business necessity,” the employer must show that their decision to reject you because of your past conviction is job-related and serves a business necessity.<sup>96</sup> More specifically, an employer must consider the following factors to determine whether there is a business necessity in denying you the job:

- (1) Nature and gravity of the offense;
- (2) Time that has passed since the conviction or completion of the sentence; and
- (3) Nature of the job.<sup>97</sup>

The first two factors listed above mean if you have committed a recent, serious offense, it is more “reasonable” for an employer to deny you the job. The third requirement means that if your offense is somehow related to the job you are applying for, the employer has more reason not to hire you. For example, a conviction for driving while intoxicated would be relevant to a job that involves driving a car, but would probably not be relevant to a job that does not require driving. Convictions for property crimes, such as theft, and violent offenses, such as assault, will often prevent you from getting a job where you handle valuable property or where you are put in a position of trust. This is because an employer can argue that these convictions show that you are not trustworthy or that you pose a danger to fellow employees or customers.<sup>98</sup>

If the employer succeeds in demonstrating a business necessity for denying your application, you can still show that the employer could use a different practice (other than excluding all people with criminal

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91. 42 U.S.C. § 1320a-7 (2006).

92. 21 U.S.C. § 335a (2006).

93. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (2006).

94. 42 U.S.C. §§ 2000e-2(k)(1)(A) (2006); *see also* Raytheon Co. v. Hernandez, 540 U.S. 44, 52, 124 S. Ct. 513, 519, 157 L. Ed. 2d 357, 366 (2000) (explaining what a disparate impact claim is); *see also* Griggs v. Duke Power Company, 401 U.S. 424, 431, 91 S. Ct. 849, 853, 28 L. Ed. 2d 158, 164 (1971) (finding that Title VII prohibits “not only overt discrimination but also practices that are fair in form, but discriminatory in operation” when there is no business necessity for the practice).

95. EEOC Dec. No. 78-35, 26 Fair Empl. Prac. Cas. (BNA) 1755, 2 (Jun. 8, 1978). The EEOC found that racial minorities are convicted at a rate disproportionately greater than their representation in the population, in part because they are arrested more frequently. Thus, a policy that excludes potential employees who have conviction records would unfairly affect racial minorities to a greater degree than non-minorities.

96. Courts have defined “business necessity” in different ways. *See* Andrew C. Spiropoulos, *Defining The Business Necessity Defense To The Disparate Impact Cause Of Action: Finding The Golden Mean*, 74 N.C. L. Rev. 1479 (1996) (reviewing the change in the definition of “business necessity” by the courts). The Civil Rights Act of 1991 says that an employer must demonstrate that an employment practice is job-related for the position in question and consistent with business necessity. 42 U.S.C. § 2000e-2(k) (2000). Lower courts have interpreted this to require that the practice be “reasonably necessary” to achieve important business objectives. Therefore, while the practice does not have to be essential to business operations, the employer must show that it serves more than merely a legitimate business purpose. *See* Donnelly v. Rhode Island Bd. of Governors for Higher Ed., 929 F. Supp. 583, 593–94 (D.R.I. 1996) (finding that a University’s payment of different minimum salary to professors of different subjects, which had a disparate impact on women, was a business necessity because of the market differential in professors’ salaries in those subjects).

97. EEOC Policy Guidance No: N-915, Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §2000 *et seq.* (Feb. 4, 1987).

98. *See, e.g.,* Richardson v. Hotel Corp. of America, 332 F.Supp. 519, 521 (E.D. La. 1971) (upholding employer’s policy that required employees to be free from convictions of serious crimes, because the job would give them access to valuable property).

convictions) that is just as good at achieving its business and employment goals. However, if you try to show that the employer could use a different practice, you must account for the burdens on the employer, such as costs of the alternative practice.<sup>99</sup>

Additionally, even if you have a criminal conviction, federal law forbids employers from using a lie detector test as a basis for employment.<sup>100</sup> You should also be aware that the federal law allows employers to have a policy of not hiring anyone who uses or possesses drugs, as long as the employer did not adopt this policy because they wanted to discriminate against someone based on their race, color, religion, sex, or national origin.<sup>101</sup>

## 2. New York State Law<sup>102</sup>

Article 23-A of the New York Correction Law (§§ 750-755) says that you cannot be denied any public or private employment or be denied a job license just because of your past criminal offenses.<sup>103</sup> Under this law, you may only be denied a job or license due to your criminal history if the conviction:

- (1) Is directly job-related;<sup>104</sup> or
- (2) Indicates that the applicant poses an unreasonable threat to people or property.<sup>105</sup>

The law includes a set of factors that employers should consider in making this determination, including:

- (1) New York State's public policy of encouraging the hiring of ex-offenders;
- (2) The duties of the job you are applying for;
- (3) The relation of the crime(s) you were convicted of to those duties;
- (4) The length of time that has passed since the conviction;
- (5) Your age at the time of the conviction;
- (6) The seriousness of your offense(s);
- (7) The employer's legitimate interest in protecting property, employees, and the public; and
- (8) Any evidence of rehabilitation that you or someone else presents on your behalf.<sup>106</sup>

99. 42 U.S.C. § 2000e-2(k) (2006).

100. Employee Polygraph Protection Act of 1988 (EPPA), 29 U.S.C. §§ 2001-09 (2006). *See also* Veazey v. Comm'n & Cable of Chi., Inc., 194 F.3d 850, 859 (7th Cir. 1999) (holding that voice recordings could fall within the statutory definition of "lie detector" if used to determine truthfulness); Rubin v. Tourneau, Inc., 797 F.Supp. 247, 253 (S.D.N.Y. 1992) (holding that "employer" for purposes of the EPPA is any person or entity that exerts some degree of control over aspects of employment relating to compliance with the EPPA). Note that polygraph tests can, in rare circumstances, be given *once* you are already employed. Polygraphs can only be given if a specific incident has taken place, and if the employee receives written notice of the incident and the date, time, and location of the polygraph test at least 48 hours prior to being tested. 29 C.F.R. §§ 801.23, 801.4 (2012).

101. 42 U.S.C. § 2000e-2(k)(3) (2006).

102. If you live in New York City, you should read the city's pamphlets about the Equal Employment Opportunity Policy. These pamphlets will give you information on city-specific employment policies and tell you what to do and where to file a complaint if you feel you have been discriminated against based on your past conviction or other protected status. City of New York, About EEO: What You May Not Know (2003), *available at* <http://www.nyc.gov/html/dcas/downloads/pdf/misc/abouteeo.pdf> (last visited October 10, 2012); City of New York, Equal Employment Opportunity Policy (2005), *available at* <http://home2.nyc.gov/html/dcas/downloads/pdf/misc/eeo.pdf> (last visited October 10, 2012).

103. Art. 23-A is titled "Licensure and Employment of Persons Previously Convicted of One or More Criminal Offenses." N.Y. Correct. Law §§ 750-55 (Consol. 2003).

104. "Direct relationship" means that the criminal conduct for which you are convicted of has a direct effect on your "fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license, opportunity, or job in question." N.Y. Correct. Law § 750(3) (Consol. Supp. 2007).

105. N.Y. Correct. Law § 752(2) (Consol. 2003).

106. N.Y. Correct. Law § 753 (Consol. 2003). *See, e.g.,* La Cloche v. Daniels, 755 N.Y.S.2d 827, 830, 195 Misc. 2d 329, 333 (N.Y. Sup. Ct. 2003) (holding that the factors listed in the statute must be taken into account before an applicant can be denied a license for his criminal record, and finding that where an applicant had taken a barbering vocational program while incarcerated, it would be against the public policy of the state to then deny him a barbering license based solely on his criminal record.) When an administrative agency makes a decision to deny a job license based on these factors, the courts will not overrule that decision unless it is arbitrary and capricious. *See* Klein v. Levin, 305 A.D.2d 316, 317-20, 760 N.Y.S.2d 462, 465-67 (N.Y. App. Div. 2003) (holding that when an administrative agency makes a decision to deny a job license based on an applicant's criminal history, but it is shown that the same agency made a prior decision to *grant* a license to an applicant with almost the same history, it is an arbitrary and capricious decision that should be annulled).

The law also instructs employers to take into account whether you have a certificate of relief from disabilities or certificates of good conduct, which are discussed in section (a) below.

Employers are allowed to ask you in an interview or on a job application if you have ever been convicted of an offense. Therefore, employers may legally take your conviction(s) into account when they make hiring decisions, so long as they follow the rules stated above. If you try to hide your conviction or misrepresent it, and the employer discovers your deceptions, the employer may fire you or decide not to hire you. In such a case, since the employer's decision would be based directly on your deceptive behavior and not on your criminal record, that decision would probably not be considered unlawful discrimination.<sup>107</sup>

While employers are allowed to ask you about your criminal convictions, in New York, it is illegal for most public and private employers, job licensing agencies, employment agencies, and labor organizations to ask about arrests that did not result in a conviction.<sup>108</sup> If an employer does ask about arrests, the law of New York allows you to not tell them about your arrests that did not result in conviction.<sup>109</sup> Law enforcement agency employers are granted an exception to this rule. If you are applying for a police or peace officer job, the law enforcement agency employers can ask you about all arrests, and you must report all arrests if they ask about them.<sup>110</sup>

There are some state and local laws and rules that *prohibit* employers from hiring people with criminal records. For a list of New York State laws that bar or restrict the employment of people with criminal records in certain occupations or professions, see Appendix C at the end of this Chapter. Some employers are forbidden from hiring people with criminal convictions for certain jobs and are required to perform background checks before hiring a job applicant to make sure that they do not have a criminal conviction.<sup>111</sup> There are also laws that deny eligibility for certain licenses to people who have been convicted of certain crimes. These include licenses to sell liquor wholesale or retail,<sup>112</sup> licenses for real estate brokers and salespeople,<sup>113</sup> and positions as security guards<sup>114</sup> or private investigators.<sup>115</sup>

These restrictions are a few exceptions made to the protections in Article 23-A of the Correction Law (discussed above). In some cases, the restrictions on licenses or employment can be removed if you can provide evidence that you have been rehabilitated. You can often supply this proof by obtaining a Certificate of Relief from Disabilities or a Certificate of Good Conduct, described in the next section.

#### (a) Certificates of Relief from Disabilities and Certificates of Good Conduct<sup>116</sup>

Certificates of Relief from Disabilities and Certificates of Good Conduct, commonly known as “certificates of rehabilitation,” are documents issued by the New York State Parole Board after your release from custody. These certificates can be evidence that you have been rehabilitated. These certificates do not prove that you have been “reformed” and do not guarantee that you will be free of all difficulties related to your criminal record. However, the certificates may restore some of your rights, such as the right to serve on a jury (see Part F of this Chapter). Additionally, the certificates can be helpful tools in your employment search because they can make you eligible for employment in professions and industries from which you would otherwise be barred. The purpose of these certificates “is to permit an individual who has made mistakes but has been rehabilitated to begin anew and become a productive member of society.”<sup>117</sup>

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107. See, e.g., *Kravit v. Delta Air Lines, Inc.*, No. CV-92-0038, 1992 U.S. Dist. LEXIS 19087 at \*8 (E.D.N.Y. Dec. 4, 1992) (*unpublished*) (“It is well settled that a misstatement of a material fact on an employment application is a sufficient non-discriminatory ground for an employer's refusal to hire.”) (citations omitted).

108. N.Y. Exec. Law § 296(16) (Consol. 2010).

109. N.Y. Crim. Proc. Law § 160.60 (Consol. 2004).

110. N.Y. Exec. Law § 296(16) (Consol. 2010).

111. See, e.g., N.Y. Comp. Codes R. & Regs. tit. 9, § 6654.17(j) (2010) (regulating in-home elder care); N.Y. Comp. Codes R. & Regs. tit. 10, § 405.3(e)(iii) (2010) (regulating the reporting of information by health care providers about the criminal histories of their employees).

112. N.Y. Alco. Bev. Cont. Law §§ 102(2), 126 (Consol. 2011).

113. N.Y. Real Prop. Law § 440-a (Consol. 2002).

114. N.Y. Gen. Bus. Law §§ 89-g(3)(a), 89-h(5) (Consol. 2004).

115. N.Y. Gen. Bus. Law § 74(2) (Consol. 2004).

116. N.Y. Correct. Law §§ 700–06 (Consol. 2003).

117. *Rodgers v. New York City Hum. Res.*, 154 A.D.2d 233, 235, 546 N.Y.S. 2d 581, 582 (N.Y. App. Div. 1989) (holding that summary judgment was improper for an employer that had fired an employee because of an alleged good-faith failure to list his two misdemeanor convictions for which he had a certificate of relief from disability on his job application, because the certificates amounted to “badge[s] of rehabilitation.”).

You should apply for either a Certificate of Relief from Disabilities or a Certificate of Good Conduct, **but not both**. Which one you apply for depends primarily on your criminal record. Certificates of Relief from Disabilities are only available to those with a single felony conviction at most. You may have any number of misdemeanors and still be eligible.<sup>118</sup> Note that for the purposes of the Certificate of Relief from Disabilities, a plea to a felony that results in probation, a suspended sentence, conditional release, or unconditional release counts as a conviction.<sup>119</sup>

(i) Certificate of Relief from Disabilities: Ex-Offenders with a Single Conviction

If you are eligible for a Certificate of Relief from Disabilities, you will need to apply for a separate Certificate for every offense that may bar you from employment or licensing. While some professions or licenses may only bar individuals with felony convictions, others bar misdemeanants as well. Because the certificate provides more evidence that you have made efforts to be rehabilitated, applying for certificates for any misdemeanors on your record may be helpful even if the job you are trying to get doesn't bar people with misdemeanors.

Either the court in which you were convicted or the New York Division of Parole can issue a Certificate of Relief from Disabilities, depending on where you were sentenced and what kind of sentence you received. If you were given a sentence of probation or conditional discharge, or if you were given a sentence that didn't include incarceration in any New York State court, you can apply to the court in which you were convicted for your certificate.<sup>120</sup> The court may issue the certificate at the time the sentence is pronounced or at any time thereafter.<sup>121</sup> If you receive a Certificate of Relief from Disabilities while on probation or conditional discharge, the certificate is considered temporary until the date on which your probation or conditional discharge expires, after which the certificate becomes permanent.<sup>122</sup> You should contact the court clerk for information on how to apply and on the court's procedures for processing applications.

If you (1) served state time for a felony or (2) were convicted in a federal or out-of-state court, you may apply to the New York Division of Parole any time after your release.<sup>123</sup> The Division of Parole will usually consider issuing you a Certificate of Relief from Disabilities automatically when it considers you for early release. The certificate may be issued to you upon release from prison or after you have been out for several months, whether or not you served your maximum sentence. The certificate remains temporary while you are still under parole supervision, probation, or conditional release. Unless you receive another felony conviction or violate the conditions of your release, the certificate will become permanent upon your discharge from supervision.<sup>124</sup> To request an application from the Division of Parole, you should send a letter to the address at the end of this Section.

There is an important exception to the rule that a Certificate of Relief from Disabilities is appropriate for one-time felons and misdemeanants. In New York, jobs and licensures designated as "public offices" (not only political officials, but also police officers, notaries public, and firefighters) have statutory bars against all people with felony records who have not been issued a Certificate of Good Conduct, and some even bar misdemeanants.<sup>125</sup> Even if you have only one felony conviction on your record, or even if you have only misdemeanors, you may need to apply for a Certificate of Good Conduct if the job or license you are interested in is considered a public office. If in doubt, you should ask the employer or licensing authority whether the job or license is a public office, and what bars exist for certain kinds of convictions.

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118. N.Y. Correct. Law § 700(1)(a) (Consol. 2003). Technically, two or more felonies resulting from the same indictment count as one felony. Also, two or more convictions stemming from two or more separate indictments filed against you in the same court before you are convicted under any of them count as one felony. N.Y. Correct. Law § 700(2) (2003).

119. N.Y. Correct. Law § 700(2)(c) (Consol. 2003).

120. N.Y. Correct. Law §§ 700(1)(c), 702(1) (Consol. 2003).

121. N.Y. Correct. Law § 702(1) (Consol. 2003).

122. N.Y. Correct. Law § 702(4) (Consol. 2003).

123. N.Y. Correct. Law § 703(1) (Consol. 2003).

124. N.Y. Correct. Law § 703(4) (Consol. 2003).

125. See N.Y. Correct. Law § 701(1) (Consol. 2005) (specifying that Certificates of Relief from Disabilities do not remove bars to eligibility for public office).

(ii) Certificate of Good Conduct: Ex-Offenders with More than One Conviction

A Certificate of Good Conduct serves the same basic function as a Certificate of Relief from Disabilities. The Certificate of Good Conduct may be limited to one or more specific bars, or it may remove all the bars created by all of the offenses on your record.<sup>126</sup> You are eligible to apply for a Certificate of Good Conduct if you have been convicted of more than one felony or any number of misdemeanors; however, you will have to wait for a period of time (the “period of good conduct”) after your release before applying.<sup>127</sup> When the most serious crime on your record is a misdemeanor, you must wait one year. When the most serious crime on your record is a class C, D or E felony, you must wait three years. When the most serious crime on your records is a class B or A felony, you must wait five years.<sup>128</sup>

To request an application for a Certificate of Relief from Disabilities or a Certificate of Good Conduct, send a letter to:

New York State Division of Parole  
97 Central Avenue  
Albany, New York 12206  
(518) 485-8953  
Email: nyparole@nysnet.net

### 3. Rap Sheets<sup>129</sup>

While getting a certificate of rehabilitation can be an important and valuable step toward restoring your rights and improving your employment prospects, these certificates do not seal or erase any part of your criminal record. Anyone who has ever been arrested and fingerprinted in New York State—even if no finding of guilt ever resulted from any arrest—has a permanent arrest record, or “rap sheet,” on file with the Division of Criminal Justice Services (DCJS). Many states have similar record-keeping systems. The rap sheet contains detailed information about arrests, outstanding warrants, criminal charges filed, the disposition of those charges (whether you were convicted, pleaded guilty, were acquitted, or had the charges dismissed), the sentence you received, any supervised release time, and whether you were issued a certificate of rehabilitation. Information about juvenile delinquency and youthful offender adjudications will not appear on any rap sheet that an employer will see; however, juvenile offender adjudications (meaning prosecutions and dispositions of serious crimes committed by minors) will appear on your sheet. Only information about your New York criminal history is included on your DCJS rap sheet; the FBI has its own record-keeping system that contains information about arrests in all states.

As explained in the previous Subsection, laws that regulate certain areas of employment and professional activities may require that employers and agencies research your criminal history before giving you a job or a license. As a result, the information contained on your rap sheet is available, subject to important exceptions to be discussed below, to many employers and licensing agencies. In New York, private employers including child care agencies,<sup>130</sup> hospitals,<sup>131</sup> museums, some private transportation companies, financial institutions, and home health care agencies all have the right to get copies of your rap sheet.<sup>132</sup> Public employers—including police and fire departments, the United States Postal Service, the New York City Transit Authority, the New York State Department of Correctional Services, school districts, and the Department of Sanitation<sup>133</sup>—can also obtain your record. Furthermore, state and local agencies that issue

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126. N.Y. Correct. Law § 703-a(1) (Consol. 2005).

127. N.Y. Correct. Law § 703-b(1)(a) (Consol. 2005).

128. N.Y. Correct. Law § 703-b(3) (Consol. 2005).

129. See Legal Action Center of the City of New York, Inc., How to Get and Clean Up Your New York State Rap Sheet (2007), available [http://lac.org/doc\\_library/lac/publications/NYS\\_Rap\\_Sheet\\_Final.pdf](http://lac.org/doc_library/lac/publications/NYS_Rap_Sheet_Final.pdf). The Legal Action Center also has free publications available online on how to get and clean up your rap sheet for other states. Information for the following states is available: California, available at [http://lac.org/doc\\_library/lac/publications/050542\\_ca\\_rap1.pdf](http://lac.org/doc_library/lac/publications/050542_ca_rap1.pdf); Illinois, available at [http://lac.org/doc\\_library/lac/publications/050542\\_il\\_rap1.pdf](http://lac.org/doc_library/lac/publications/050542_il_rap1.pdf); Pennsylvania, available at [http://lac.org/doc\\_library/lac/publications/050542\\_pa\\_rap1.pdf](http://lac.org/doc_library/lac/publications/050542_pa_rap1.pdf); Virginia, available at [http://lac.org/doc\\_library/lac/publications/050542\\_va\\_rap1.pdf](http://lac.org/doc_library/lac/publications/050542_va_rap1.pdf).

130. N.Y. Exec. Law § 837-n(2)(a) (Consol. 2008).

131. N.Y. Pub. Health Law § 230 (10)(a)(vi) (Consol. 2008).

132. See Legal Action Center of the City of New York, Inc., How to Get and Clean Up Your New York State Rap Sheet (2007), available at [http://lac.org/doc\\_library/lac/publications/NYS\\_Rap\\_Sheet\\_Final.pdf](http://lac.org/doc_library/lac/publications/NYS_Rap_Sheet_Final.pdf).

133. N.Y. Educ. Law § 305 (30)(b), 3004-b (Consol. 2005). See also Legal Action Center of the City of New York, Inc., How to Get and Clean Up Your New York State Rap Sheet (2007), available at

occupational licenses—for anything ranging from driving a taxi to cutting hair to selling real estate to practicing medicine—may also get access to your criminal record, as can bonding agencies.<sup>134</sup> Foster care and adoption agencies are also required to inquire into the criminal history of anyone who is or wants to be a foster or adoptive parent, as well as anyone who lives with a present or prospective foster or adoptive parent (see Section 2 of Part D below).

Before applying for a license or a job, it is a good idea to get your own copy of your rap sheet so that you know what it says. Doing so will help you prepare for questions an employer may ask you about your rap sheet. You may want to contact a free civil legal aid provider to review your rap sheet and determine if any offenses can be erased.

You may also find it useful to review a copy of your rap sheet so that you can answer any questions on an application thoroughly, accurately, and honestly. Your rap sheet will be a valuable source of information if you have a lengthy criminal history, have forgotten the resolution of one or more of the crimes with which you were charged, or do not remember whether an offense you were convicted of was a felony or a misdemeanor. This is important since employers and agencies may reject your application if it contains any statements they discover to be false.

A final reason for getting a copy of your rap sheet—and a good reason to take steps to get it well before you begin seeking employment—is that mistakes and incomplete entries are common, and can make your criminal record look worse than it actually is. Getting a copy of your rap sheet can help you correct these mistakes. You can begin the process of correcting your rap sheet even before you are released. For example, a missing entry under the disposition of a particular charge may not correctly show the fact that that charge was dismissed, that you were acquitted, or that you were convicted of a less serious offense. A clerk's error could make it appear that you were convicted of a more serious offense than you actually were. Multiple entries for the same charge could falsely suggest—especially to untrained readers of rap sheets—that you were convicted more than once of the same crime. Finally, parts of your record that should legally be sealed may not have been.

The following Subsections briefly describe how to obtain your rap sheet, how to correct mistakes or fill in gaps in your record, and how to seal certain kinds of information. The following information applies only to New York State criminal records. Other states may follow different procedures for recording and making available your criminal record. You can also obtain and clean up your FBI rap sheet, which is a good idea if you have ever been arrested in another state; that process is explained in Section (d) of Part C of this Chapter.

#### (a) Obtaining Your Rap Sheet

##### (i) Obtaining Your Own Physical Copy of Your Rap Sheet

The process for getting your New York rap sheet depends on whether or not you are still incarcerated. If you are no longer incarcerated and you are *not* living in New York City or Erie County, there are two steps. These two steps are also the ones you should follow if you are incarcerated for fewer than forty-five days. First, you have to either call or write a letter to the Division of Criminal Justice Services and ask for a form called a “Request for Record Review.” If you choose to call the Record Review Unit, their phone number is (518) 485-7675. If you choose to e-mail, direct it to [RecordReview@dcjs.ny.gov](mailto:RecordReview@dcjs.ny.gov). If you choose to write, the letter should include your name and the address where you want the form sent. Send this letter to:

New York State Division of Criminal Justice Services  
Record Review Unit  
4 Tower Place  
Albany, NY 12203-3764

Once you receive the form, fill it out and return it to the same address, along with a copy of your fingerprints (available from most law enforcement agencies, often for a fee) and a money order (from the U.S. Postal Service, American Express, or Traveler's Express only) in the amount of \$25. The DCJS will

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[http://lac.org/doc\\_library/lac/publications/NYS\\_Rap\\_Sheet\\_Final.pdf](http://lac.org/doc_library/lac/publications/NYS_Rap_Sheet_Final.pdf).

134. See Legal Action Center of the City of New York, Inc., How to Get and Clean Up Your New York State Rap Sheet (2007), available at [http://lac.org/doc\\_library/lac/publications/NYS\\_Rap\\_Sheet\\_Final.pdf](http://lac.org/doc_library/lac/publications/NYS_Rap_Sheet_Final.pdf).

waive the fee if you can prove that you cannot afford to pay it. A photocopy of your public assistance or Medicaid card will be considered proof that you cannot pay the fees.

#### (ii) Viewing Your Rap Sheet Only

If you are no longer incarcerated and you live in New York City, you can choose instead to view your rap sheet at One Police Plaza in Manhattan. After you submit your request and get fingerprinted, there is roughly a two-week waiting period before you can view your rap sheet. When you return to review your record you can take notes, but you cannot make photocopies of your record. If you prefer to have the printed record and can afford the extra time it may take, you can choose to send away for your rap sheet by following the steps described above in Section (i).

#### (iii) Living In Erie County

If you currently live in Erie County, the process is similar: you can call (716) 858-6760 to arrange an appointment at the Erie County Central Police Services, where you will fill out forms and wait for a follow-up appointment to view (but not receive a copy of) your sheet.

#### (iv) Currently Incarcerated

If you are incarcerated in a state or local facility in New York and will be there for at least forty-five days, you can obtain your rap sheet by sending a request letter directly to DCJS (at the address stated above). There is no fee to request your rap sheet if you are currently incarcerated. The letter you write should include any and all personal information that will help the DCJS track down your record, including your name, any aliases you may have used, date of birth, race, sex, and Social Security number. If you have a Department Identification Number (DIN) from the Department of Corrections, or a New York State Identification number (NYSID), you should include them as well. The letter should also state how long you will be incarcerated and the name and address of the facility in which you are incarcerated.

#### (b) Correcting Mistakes on Your Rap Sheet

Once you have your rap sheet you can review it for errors. If you discover that your rap sheet contains errors or incomplete entries, you can correct them. The process of having your rap sheet corrected may take a long time. Thus, you may be better able to correct your rap sheet earlier in your job search if you begin the correction process earlier.

For every mistake you find on your record, you need to obtain a “disposition slip,” or Certificate of Disposition, from the clerk of the court in which that case was heard. The disposition slip is far more likely to be accurate than the rap sheet (if the disposition slip is also inaccurate, you will need an attorney to help you sort this problem out). To obtain one or more disposition slips, write to the clerk or visit in person and provide the following information: your name, any aliases, the date of your arrest(s), and the docket or index number of the case(s) (which will ordinarily be included on the rap sheet). If you request a slip in writing, be prepared to wait several months for the clerk to process your request. While the court ordinarily charges a small fee for each disposition slip requested, the fee may be waived at your request if you are incarcerated, are on public assistance, or were represented by a Legal Aid Society lawyer or public defender.

Once you have received all the disposition slips relating to the mistakes you found on your rap sheet, you can send them to the DCJS (at the address stated above) along with a letter that explains that you want to correct your rap sheet and clearly explains how the information on the rap sheet differs from that on each disposition slip you submit. *It is essential that you send the original, certified disposition slip*, including the clerk’s or judge’s signature or seal, since the DCJS will not honor a photocopy. In your letter, you should also explain where you saw a copy of your criminal record and provide your New York State Identification Number (NYSID) if you know it. Instead of a letter, you may be able to fill out a form called a “Statement of Challenge” that the DCJS usually encloses when it sends you a copy of your rap sheet. It does not matter which you send as long as you provide all the necessary information and original disposition slips.

When your record has been corrected—usually within a few weeks—DCJS will notify you in writing. However, if you want to view your rap sheet again to make sure that all the corrections have been made, you must go through the same procedures described above to request another copy from DCJS.

#### (c) Sealing Cases

When you get a copy of your rap sheet, there may be information on it that not everyone who requests a copy of your rap sheet is entitled to see. Information about arrests that did not lead to conviction, and

arrests leading to convictions for most non-criminal offenses, is sealable, meaning that most employers do not have access to it even though it has not been and cannot be permanently removed from your record. Only certain parties can view your entire record, including sealed cases. These include:

- (1) Agencies that issue weapon licenses or permits; any employer or potential employer for a job that requires you to carry a gun;
- (2) Your parole or probation officer, if you are arrested while still under supervision;
- (3) A prosecutor or other law enforcement official, if he can show that "justice requires" it;
- (4) Any prospective employer of a police officer or peace officer; and
- (5) Yourself.<sup>135</sup>

When you see your own rap sheet, the portions of it that are sealed from most employers are marked "sealed." If you see something on your rap sheet that you believe should be sealed but is not marked "sealed," it probably has not been sealed. You can have those cases sealed, though the process is complicated. The process will also be different depending on when the case was decided, the court in which it was decided, and the reason why it should be sealed.

There are two New York State laws that govern which types of cases may be sealed. Section 160.50 of the New York Criminal Procedure Law provides that most dispositions other than a guilty plea or a conviction at trial are sealable.<sup>136</sup> In addition, a conviction for possession of a small amount of marijuana can be sealed. Section 160.55 of the New York Criminal Procedure Law provides that several violations (noncriminal offenses) and traffic infractions may also be sealed.<sup>137</sup>

If your record contains any dispositions or convictions of the kinds described here, and they appear not to have been sealed, you can apply to the court to have them sealed. If the case was decided after November 1991, it should have been sealed automatically. If it was not, you simply need to go to the court where the case was decided, get an official, original disposition slip from the court clerk, and send it to the DCJS Sealed Records Unit at the above address with a letter that explains that you want the case sealed based on either Section 160.50 or Section 160.55 of the Criminal Procedure Law.

If your case was decided before November 1991, the process is more complicated. In most cases, the clerk of the court where your case was heard needs to send a sealing order on your behalf to DCJS. Before the clerk can do this, you have to either write a letter or file sealing motion papers with the court. To find out what to do, call the court and ask the clerk how to go about getting a case sealed. If the clerk says you only need to write a letter, make sure you find out the office and address to which you should send the letter, the information you need to provide in it,<sup>138</sup> and whether you need to send a copy of the letter to the district attorney (D.A.).

If the clerk tells you to file a sealing motion, you will need to prepare and file a Notice of Motion and an Affidavit.<sup>139</sup> After you prepare these papers, you should make two photocopies of each. Send or bring both the original and one copy of each to the D.A.'s office. The D.A. will keep the copy and mark the original

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135. N.Y. Crim. Proc. Law 160.50(1)(d), 160.55(1)(d) (Consol. 2008).

136. The dispositions that may be sealed under § 160.50 include the following: dismissal, acquittal, dismissal by grand jury, declined prosecution (also called "*nolle prosequi*"), and adjournment in contemplation of dismissal ("ACD"). N.Y. Crim. Proc. Law § 160.50(3) (McKinney 1992 & Supp. 2003). Note that the above list does not include conditional or unconditional discharges. These dispositions do not make a case sealable under § 160.50, even if you never received a punishment. However, if the conviction was for certain violations, the case may be sealed under § 160.55.

137. The convictions that may be sealed under § 160.55 include the following: criminal solicitation in the fifth degree (N.Y. Penal Law § 100.00 (Consol. 2008)); trespass (N.Y. Penal Law § 140.05 (Consol. 2008)); unlawfully posting advertisements (N.Y. Penal Law § 145.30 (Consol. 2008)); failing to respond to an appearance ticket (N.Y. Penal Law § 215.58 (Consol. 2008)); unlawful possession of marijuana (N.Y. Penal Law § 221.05 (Consol. 2008)); disorderly conduct (N.Y. Penal Law § 240.20 (Consol. 2008)); harassment in the second degree (N.Y. Penal Law § 240.26 (Consol. 2008)); appearance in public under influence of narcotics or a drug other than alcohol (N.Y. Penal Law § 240.40 (Consol. 2008)); exposure of a person (N.Y. Penal Law § 245.01 (Consol. 2008)); promoting the exposure of a person (N.Y. Penal Law § 245.02 (Consol. 2008)); and offensive exhibition (N.Y. Penal Law § 245.05 (Consol. 2008)). N.Y. Crim. Proc. Law § 160.55 (1) (Consol. 2008).

138. This information will include the docket number of the case. Sometimes a court will assign more than one docket number to a single arrest. Make sure that you include all of the docket numbers associated with the arrest that you want to seal. If you do not do so, you might not succeed in sealing that part of your record.

139. For examples of these papers, see Legal Action Center of the City of New York, Inc., *How to Get and Clean Up Your New York State Rap Sheet* (2003), Appendices 14-15, available at [http://lac.org/doc\\_library/lac/publications/NYS\\_Rap\\_Sheet\\_Final.pdf](http://lac.org/doc_library/lac/publications/NYS_Rap_Sheet_Final.pdf).

“received” so that the clerk will know that you gave the D.A. a copy. If you are still incarcerated, you should send copies of the papers via certified mail and request a return receipt.

To file a sealing motion, you will have to submit the sealing papers to the court. The law imposes a five-day waiting period that must elapse after you give the papers to the D.A. before you submit the papers to the court. After the period has passed, you can present your papers to the court. This process is often something of a formality, but you may have to appear before a judge. You can ask the court clerk if this is the procedure. If it is, the clerk will tell you what the procedure is for getting assigned a date to appear in court. If you are still incarcerated and cannot appear in person, you should send your motion papers to the clerk via certified mail, return receipt requested. You should include an explanation to the clerk of why you cannot appear and also state that you have sent copies to the D.A.

If your case was heard in Manhattan Criminal Court, the process is easier: go to court, present identification and the docket number(s) to the clerk, and the clerk will file the necessary paperwork for you.

If the disposition of your case was “decline prosecution” or “*nolle prosequi*”—meaning that the prosecutor refused to bring charges after the arrest and before you saw a judge—you will have to go through the D.A.’s office to seal the record. Ask the D.A. to provide a letter or form (a “343 dismissal form”) that states that the prosecutor did not pursue the case, and send it to the DCJS Sealed Records Unit at the above address along with a letter asking for the case to be sealed. Include in this letter your name, address, NYSID, and Social Security number.

Sealing your records may take DCJS several months. As with correcting mistakes on your rap sheet, the best way to determine whether the sealing was accomplished is to request another copy of your rap sheet.

#### (d) Getting Your FBI Rap Sheet

The process of getting your FBI rap sheet is quite similar to the process of getting your rap sheet in New York. It may be a good idea to do so if you have any criminal history outside the state of New York. To request your rap sheet from the FBI, write to:

U.S. Department of Justice  
Federal Bureau of Investigation  
Criminal Justice Information Services Division-Record Request  
1000 Custer Hollow Road  
Clarksburg, WV 26306

In your letter, state that you are requesting your criminal history under the Freedom of Information Act (FOIA).<sup>140</sup> Include in your letter your name, address, birth date, and fingerprints. The FBI charges a processing fee, which is payable to the “U.S. Treasurer” by money order or certified check. If you cannot afford to pay the fee, and write a notarized letter explaining why you can’t pay the fee, the fee will be waived.

You cannot apply directly to the FBI to seal any records included on your rap sheet. You need to go through the DCJS or through the equivalent agency in any other state in which you have sealable cases, and the FBI will seal the record when the state agency tells it to do so.

### E. Child Custody

Chapter 33 of the *JLM*, “Rights of Incarcerated Parents,” contains detailed information regarding the federal and New York State law governing your legal relationship with your child before and during your incarceration. Chapter 19 also explains the procedures that New York State follows with custodial parents who are incarcerated,<sup>141</sup> and describes the procedures that you are required to follow in making arrangements for the care of your child,<sup>142</sup> the rights and continued obligations that you have as an incarcerated parent,<sup>143</sup> and the things you can do while incarcerated to defend yourself against the State’s

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140. 5 U.S.C. § 552 (2000), (as amended by Pub. L. No. 107-306, 116 Stat. 2383 (Nov. 27, 2002)). See *JLM* Chapter 7, “Freedom of Information,” for more information.

141. See *JLM* Chapter 33, “Rights of Incarcerated Parents,” Parts C and D.

142. See *JLM* Chapter 33, “Rights of Incarcerated Parents,” Parts B and C.

143. See *JLM* Chapter 33, “Rights of Incarcerated Parents.”

involuntary termination of your parental rights.<sup>144</sup> If you are hoping to have your parental rights restored upon your release, it is extremely important that you understand the information in that chapter.

This Part explains what your parental rights and obligations are upon your release under New York State law, assuming that the state did not terminate your rights during your incarceration and that you did not surrender those rights by giving your child or children up for adoption. This Part also explains the law governing the right of people with criminal convictions to serve as foster or adoptive parents. If your child is not living in New York State upon your release, a different body of law will govern, and may differ significantly from what is described below, so you should be sure to check the laws of the state where your child is living.

### 1. Re-establishing Custody

If your parental rights were not terminated by the State, and you did not surrender them, you should be able to reassert those rights upon your release even if your children were voluntarily or involuntarily placed in foster care upon your incarceration,<sup>145</sup> or even if you granted temporary custody to a friend or relative.<sup>146</sup>

Re-establishing custody is usually easier if you have voluntarily placed your children in foster care or with a friend or relative. For voluntary foster care placements, the Voluntary Placement Agreement that you made with the social services will usually name a date when the department will return your children. The Voluntary Placement Agreement may also specify an event, such as your release, or your completion of certain post-release conditions, that will cause the social services department to return your children.<sup>147</sup> On that date or when that event happens, the foster care agency must return your children to you.

There is an exception to the foster care agency's duty to return your children. If the agency (or another party) has gotten a court order that prevents your children from being returned to you,<sup>148</sup> then your children will not be returned. Usually this type of court order is issued only if the state, the foster parents, or the legal guardians of the children have initiated proceedings to terminate your parental rights prior to your release.<sup>149</sup> Ordinarily, you will have had notice of these proceedings and an opportunity to attend and participate in hearings before any such order is entered.<sup>150</sup>

If you wish to have your children returned to you before the date or event specified in your Voluntary Placement Agreement, you can submit a written request to the foster care agency that your children be returned to you. Once you have submitted this request, the foster care agency must return your children or else must notify you within ten days that your request is denied.<sup>151</sup> If the agency denies your request or fails to respond to it, you may file a petition in family court for the return of your children and an order to show cause for the agency's failure to comply with your request. Alternatively, you can file a writ of habeas corpus in the family court or New York Supreme Court.<sup>152</sup>

If there is no return date specified in the Voluntary Placement Agreement, you can make a request to the foster care agency. The agency must then return your children to you within twenty days.<sup>153</sup> However, the agency may refuse to return your children if a court order has already been issued in a case brought by the foster care agency or another party for the termination of your parental rights.<sup>154</sup>

If your children have been living with a friend or relative during your incarceration, and you have not involved the state in making these arrangements, you have not relinquished any of your parental rights permanently.<sup>155</sup> If the agreement you entered into with the friend or relative said that your children are to be returned to you after your release, you should be able to be reunited with them. However, there is once again the possibility that if a court order has terminated your parental rights, the children may not be

144. See *JLM* Chapter 33, "Rights of Incarcerated Parents," Part D(1)(c).

145. See *JLM* Chapter 33, "Rights of Incarcerated Parents," Part C.

146. See *JLM* Chapter 33, "Rights of Incarcerated Parents," Part B.

147. N.Y. Soc. Serv. Law § 384-a(2)(a) (Consol. 2008).

148. N.Y. Soc. Serv. Law § 384-a(2)(a) (Consol. 2008). See also N.Y. Soc. Serv. Law § 384-b (Consol. 2008).

149. *JLM* Chapter 33, "Rights of Incarcerated Parents," provides detailed information on what you can do if someone initiates proceedings to have your parental rights terminated. This information is particularly useful while you are still incarcerated. However, this type of proceeding may be brought after you are released from custody as well.

150. See *JLM* Chapter 33, "Rights of Incarcerated Parents," Part D.

151. N.Y. Soc. Serv. Law § 384-a(2)(a) (Consol. 2008).

152. N.Y. Soc. Serv. Law § 384-a(2)(a) (Consol. 2008).

153. N.Y. Soc. Serv. Law § 384-a(2)(a) (Consol. 2008).

154. N.Y. Soc. Serv. Law § 384-a(2)(a) (Consol. 2008).

155. See *JLM* Chapter 32, "Rights of Incarcerated Parents," Part B.

returned to you.<sup>156</sup> If the friend or relative does not return your children to you upon your request, you can file a petition in family court for an order that they be returned to you.

#### (a) Preventative Services

When you are reunited with your children, you may be able to receive supportive and rehabilitative help from the Department of Social Services. Such help, called “preventive services,” is provided to help return your children from foster care more quickly, or to prevent your children from having to return to foster care.<sup>157</sup> Depending on your situation, preventive services may include case management, case planning, casework contacts (e.g., regular meetings with your case worker), daycare, homemaker services, housekeeper/chore services, family planning, home management services, clinical services, parent aide services, day services to children, parent training, transportation services, emergency cash or goods, emergency shelter, housing services, intensive home-based family preservation services, outreach activities, and respite care and services.<sup>158</sup>

A social services official will decide whether you need these services, and that decision is reviewed first after you and your children have received services for six months, and then every six months after that.<sup>159</sup> If your children have been given back to you from foster care and you are receiving preventive services, New York State regulations require that the Department of Social Services, or the foster care agency, make twelve contacts with you in each six month period that you are receiving preventive services.<sup>160</sup> Of these twelve contacts, four must be individual face-to-face meetings with you and/or your children, and two must take place in your children’s home.<sup>161</sup>

The Department of Social Services must provide you with preventive services when the Department believes that you would not be capable of caring for your children adequately without help.<sup>162</sup> Such services are not likely to be provided to you and your family long-term because, if you need these services long-term, the Department may think that you are not able to provide a stable home for your children. If the social services official believes that you are not able to provide a stable home, the official may recommend placing your children in foster care again. For this reason, you should consider these services to be a temporary means of getting your family back on its feet. You should also try to stop needing these services as soon as you are able.

## 2. Becoming a Foster or Adoptive Parent

New York State, in compliance with the Adoption and Safe Families Act of 1997 (ASFA),<sup>163</sup> has a law that restricts the ability of people with criminal histories to be adoptive or foster parents, or even to live in households with foster or adopted children.<sup>164</sup> This section only applies to you if you are looking to become a foster parent, you are applying to adopt a child, or if you are planning to live in a household with foster or adopted children. If you were an adoptive parent before conviction, you have the same rights as a biological parent. New York Social Services Law Section 378-a provides that all current and potential foster and adoptive parents, as well as all adults over the age of eighteen living in the homes of foster or adoptive children, must both be fingerprinted and undergo a criminal history check.<sup>165</sup>

Certain felony convictions in your criminal history will (1) result in the denial of your application to be a foster or adoptive parent;<sup>166</sup> (2) result in the denial of your application for renewal if you are a current foster

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156. N.Y. Soc. Serv. Law § 384-b (Consol. 2008); N.Y. Soc. Serv. Law § 392 [repealed](Consol. 2004).

157. N.Y. Soc. Serv. Law § 409 (Consol. 2011).

158. N.Y. Comp. Codes R. & Regs. tit. 18, § 423.2(b)(1)–(19) (2004).

159. N.Y. Soc. Serv. Law § 409-a(1)(b) (Consol. 2011); N.Y. Comp. Codes R. & Regs. tit. 18, § 423.4(b)(1) (2004).

160. N.Y. Comp. Codes R. & Regs. tit. 18, § 423.4(c)(ii)(d) (2004).

161. N.Y. Comp. Codes R. & Regs. tit. 18, § 423.4(c)(ii)(d)(2)(i) (2004).

162. N.Y. Comp. Codes R. & Regs. tit. 18, § 430.9(c) (2004).

163. Adoption and Safe Families Act of 1997, Pub. L. 105–89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.).

164. N.Y. Soc. Serv. Law § 378-a (Consol. 2011).

165. N.Y. Soc. Serv. Law § 378-a(2)(a)–(b) (Consol. 2011).

166. N.Y. Soc. Serv. Law § 378-a(2)(e)(1)(A)–(B) (Consol. 2011). *But see* In re Adoption of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (N.Y. Fam. Ct. Bronx County 2011) (finding that § 378-a(2)(e)(1) was unconstitutional as applied because it violated the petitioner’s due process right to an individualized determination of whether he should be able to adopt a child).

parent;<sup>167</sup> (3) result in the revocation of your certification if you are a current foster parent;<sup>168</sup> and (4) result in the revocation of your approval to be an adoptive parent if you have not completed the adoption process.<sup>169</sup> These felony convictions are:

- (1) Child abuse or neglect;<sup>170</sup>
- (2) Spousal abuse;<sup>171</sup>
- (3) A crime against a child, including child pornography;<sup>172</sup> or
- (4) A crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery.<sup>173</sup>

Furthermore, a felony conviction in the last five years for physical assault, battery, or drug-related offenses will have one of the four same results.<sup>174</sup>

If any of the above-listed felony convictions appear on your record, you can try to show two things to prevent your application from being denied and/or your approval of certification from being revoked: (1) that denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child, and (2) that approval of the application will not place the child's safety in jeopardy and will be in the best interests of the child.<sup>175</sup> You will only be successful if you can prove to the court that, because of these two things, § 378-a(2)(e)(1) is unconstitutional as applied to you.

The Office of Children and Family Services may also decide to deny your application for certification or approval to be an adoptive or foster parent if (1) you have any criminal charges or convictions at all on your record,<sup>176</sup> or (2) if you live with someone over the age of eighteen who has been charged with, or convicted of, any crime.<sup>177</sup> In addition, if you have any pending criminal charges, your application will be suspended until the matter is resolved.<sup>178</sup>

If the record of any foster or adoptive parent, or anyone above the age of eighteen who lives in the same household, contains any criminal charges or convictions, the foster care agency or adoption agency is

167. N.Y. Soc. Serv. Law § 378-a(2)(e)(4) (Consol. 2011).

168. N.Y. Soc. Serv. Law § 378-a(2)(e)(5) (Consol. 2011).

169. N.Y. Soc. Serv. Law § 378-a(2)(e)(5) (Consol. 2011).

170. N.Y. Soc. Serv. Law § 378-a(2)(e)(1)(A)(i) (Consol. 2011). *But see* In re Adoption of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (N.Y. Fam. Ct. Bronx County 2011) (finding that § 378-a(2)(e)(1) was unconstitutional as applied because it violated the petitioner's due process right to an individualized determination of whether he should be able to adopt a child).

171. N.Y. Soc. Serv. Law § 378-a(2)(e)(1)(A)(ii) (Consol. 2011). *But see* In re Adoption of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (N.Y. Fam. Ct. Bronx County 2011) (finding that § 378-a(2)(e)(1) was unconstitutional as applied because it violated the petitioner's due process right to an individualized determination of whether he should be able to adopt a child). Furthermore, "spousal abuse" may not be a disqualification if the Department of Social Services finds that the offense called "spousal abuse" was committed by a victim of physical, sexual, or psychological abuse, and that the victimization was a factor in causing the potential foster or adoptive parent to commit the offense. N.Y. Soc. Serv. Law § 378-a(2)(j) (Consol. 2004).

172. N.Y. Soc. Serv. Law § 378-a(2)(e)(1)(A)(iii) (Consol. 2011). *But see* In re Adoption of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (N.Y. Fam. Ct. Bronx County 2011) (finding that § 378-a(2)(e)(1) was unconstitutional as applied because it violated the petitioner's due process right to an individualized determination of whether he should be able to adopt a child).

173. N.Y. Soc. Serv. Law § 378-a(2)(e)(1)(A)(iv) (Consol. 2011). *But see* In re Adoption of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (N.Y. Fam. Ct. Bronx County 2011) (finding that § 378-a(2)(e)(1) was unconstitutional as applied because it violated the petitioner's due process right to an individualized determination of whether he should be able to adopt a child).

174. N.Y. Soc. Serv. Law § 378-a(2)(e)(1)(B) (Consol. 2011). *But see* In re Adoption of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (N.Y. Fam. Ct. Bronx County 2011) (finding that § 378-a(2)(e)(1) was unconstitutional as applied because it violated the petitioner's due process right to an individualized determination of whether he should be able to adopt a child).

175. In re Adoption of Abel found that § 378-a(2)(e)(1) was unconstitutional as applied because it violated the petitioner's due process right to an individualized determination of whether he should be able to adopt a child. The court allowed petitioner and his wife to adopt the child because denial would have created an unreasonable risk of harm to the child and granting adoption would have been in the child's best interest and not have placed his safety in jeopardy. In re Adoption of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (N.Y. Fam. Ct. Bronx County 2011).

176. N.Y. Soc. Serv. Law § 378-a(2)(e)(3)(A) (Consol. 2011).

177. N.Y. Soc. Serv. Law § 378-a(2)(e)(3)(B) (Consol. 2011).

178. N.Y. Soc. Serv. Law § 378-a(2)(e)(2)(A)–(B) (Consol. 2011).

required by law to perform a safety assessment of the home. In performing this assessment, the agency must determine the following:

- (1) Whether the person with this record resides in the household;
- (2) How much contact the person with this record may have with foster children or other children residing in the household; and
- (3) The status, date and nature of the criminal charge or conviction.<sup>179</sup>

After this assessment, the agency may remove the child from your home if the child is currently living there. For example, if the assessment reveals that the health and safety of the child is at risk, the agency may decide to remove the child. On the other hand, if your approval or certification is revoked, or your application denied, for one of the reasons already discussed in this section, the agency must remove the child from your home if the child is currently living there.<sup>180</sup>

If your application to be a foster or adoptive parent is denied, the Office of Children and Family Service must tell you the reasons why.<sup>181</sup> The Office must also tell you about its review and remedial procedures.<sup>182</sup> The same is true if your current approval or certification is revoked. You can also request a hearing in family court in order to present evidence that the child's best interests would be served by having the certification granted or continued.<sup>183</sup> Despite all of the above, if you officially completed the adoption process prior to your conviction, you have full parental rights that can only be terminated through formal legal proceedings.

If you want to become an adoptive or foster parent, you should make sure your criminal record is as clean and accurate as possible. Additionally, you should make sure that the criminal record of anyone who lives with you is also as clean and accurate as possible. For more information on how to clean up your record, or rap sheet, please consult Part C(3) above.

## F. Military Service

### 1. The Draft

Virtually all men living in the United States are required by federal law to register for the Selective Service (commonly known as “the draft”) within thirty days of their eighteenth birthday.<sup>184</sup> If you fail to register for the draft, you may be turned down for benefits like federal student loans and grants, job training, government jobs, and citizenship (if you are not yet a citizen). In addition, many states and municipalities have laws that tie registration with the Selective Service to education, training, employment opportunities and, even, driver's licenses. Indeed, failure to register is a felony punishable by up to five years in prison and a fine of \$250,000.<sup>185</sup>

The Selective Service Act (that is, the federal law that requires you to register for the draft) states that “[n]o person shall be relieved from training and service under this title . . . by reason of conviction of a criminal offense, except where the offense of which he has been convicted may be punished by death, or by imprisonment for a term exceeding one year.”<sup>186</sup> In other words, the government may choose to exempt you from the draft because of a felony conviction. Note that you are not automatically exempt because of a felony conviction, and that you may never be exempt because of a misdemeanor conviction.<sup>187</sup> Note, too, that, if the draft is ever reinstated, a felony conviction will not automatically exempt you from military service.

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179. N.Y. Soc. Serv. Law § 378-a(2)(h) (Consol. 2011).

180. N.Y. Soc. Serv. Law § 378-a(2)(h) (Consol. 2011).

181. N.Y. Soc. Serv. Law § 378-a(2)(g) (Consol. 2011). *See also* N.Y. Comp. Codes R. & Regs. tit. 18, § 421.27(e) (2004) (explaining the procedures if your application is denied).

182. N.Y. Soc. Serv. Law § 378-a(2)(g) (Consol. 2011). *See also* N.Y. Comp. Codes R. & Regs. tit. 18, § 421.27(e) (2004) (explaining the procedures if your application is denied).

183. *See In re Adoption of Abel*, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (N.Y. Fam. Ct. Bronx County 2011) (finding that § 378-a(2)(e)(1) was unconstitutional as applied because it violated the petitioner's due process right to an individualized determination of whether he should be able to adopt a child).

184. Selective Service System, *Selective Service & You: Time to Register*, 2 (2002), available at <http://www.sss.gov/PDFs/TimeToRegister.pdf> (last visited October 12, 2012).

185. Selective Service System, *Selective Service & You: Time to Register* (2002), available at <http://www.sss.gov/PDFs/TimeToRegister.pdf> (last visited October 12, 2012).

186. 50 U.S.C. app. § 456(m) (2006).

187. *Korte v. United States*, 260 F.2d 633, 637 (9th Cir. 1958).

## 2. Voluntary Service

If you are considering a career in the military, you should know that it is a very different sort of employment than the types discussed above in Part C. First of all, Title VII of the Civil Rights Act of 1964, which guarantees that all individuals are treated equally with respect to civilian employment (see Part C(1)(b) above), does not apply to uniformed members of the military.<sup>188</sup> Further, once you are in the military, you will give up some of your rights because the courts generally respect and uphold military rules and regulations. The Supreme Court has said that “the military is, by necessity, a specialized society separate from civilian society” and that, “the essence of military service is the subordination of the desires and interests of the individual to the needs of the service.”<sup>189</sup>

If you decide to try to enlist, it is a good idea to get a copy of your rap sheet and make sure it is accurate. For more information on rap sheets, see Part C(3) above. You will be asked about your criminal record by the recruiter, and the recruiter is very likely to run a background check on you. You should be careful not to make false statements on your application. It is a violation of federal law to make false statements on your application.<sup>190</sup>

No branch of the U.S. armed forces will automatically deny admission to anyone with misdemeanor convictions, but some branches may. A drug offense is particularly likely to get you barred from any service. A felony conviction, on the other hand, typically makes someone ineligible for any military service, although, the Secretary of each branch can make exceptions in “meritorious cases.”<sup>191</sup> Indeed, each branch of the military has its own recruiting standards, and decides differently whether or not to accept someone with a criminal conviction. Even within a single branch, recruiting officers will often make case-by-case decisions based on the number and nature of your convictions, how much time has passed since your last conviction, and other factors.

The Army, for example, has publicly stated how it decides whether to enlist people with criminal histories: it requires them to request waivers.<sup>192</sup> In general, the Military Services have a policy against allowing people with criminal records to enlist because it feels they might cause disciplinary problems or present security risks.<sup>193</sup> However, the Army may issue waivers to allow people to join when it decides that their criminal history does not make them a disciplinary risk.<sup>194</sup> These waivers are required for people who have been convicted of felonies.<sup>195</sup>

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188. See *Overton v. New York State Div. of Military & Naval Affairs*, 373 F.3d 83, 88-89 (2d Cir. 2004) (holding that lawsuits against military employers are barred “if the injuries for which a plaintiff seeks to recover arise out of or are in the course of activity incident to the plaintiff’s military service.”) (internal citations omitted); see also *Baldwin v. United States Army*, 223 F.3d 100, 101 (2d Cir. 2000) (holding that uniformed members of the armed service cannot bring claims under Title VII). If you are not a “uniformed” member of the armed service, but a civilian who works for the armed services, you can bring Title VII claims against your military employer. 42 USC § 2000e-16(A) (2006). See *Roper v. Dep’t of Army*, 832 F.2d 247, 248 (2d Cir. 1987) (holding that Title VII applies only to civilian employees and not to uniformed members of the armed services).

189. *Goldman v. Weinberger*, 475 U.S. 503, 506, 106 S. Ct. 1310, 1312–1313, 89 L. Ed. 2d 478, 483 (1986) (internal citations omitted), *superseded in part by statute*, 10 U.S.C. § 774(a)–(b).

190. 10 U.S.C. § 883 (2006).

191. 10 U.S.C. § 504(a) (2006); see also 32 C.F.R. § 96.4 (2009) (stating that it is the policy of the Department of Defense and Military Services to investigate the background of each applicant to identify those whose backgrounds raise questions as to their fitness for service or those who cannot enlist without a waiver).

192. 32 C.F.R. § 571.3 lists the basic criteria and processes for obtaining waivers, which are generally necessary for people with criminal records. See also U.S. Dep’t of Army, Reg. 601-210, Active and Reserve Components Enlistment Program (8 Feb. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012) (prescribing documents necessary for waiver requests and defining waivable and nonwaivable disqualifications).

193. U.S. Dep’t of Defense, Instruction 1304.26, Qualification Standards for Enlistment, Appointment, and Induction, para. E2.2.7 (9 Sept. 2011), *available at* <http://www.dtic.mil/whs/directives/corres/pdf/130426p.pdf> (last visited October 13, 2012) (discussing necessity of enlisting those with good moral character in the Armed Forces).

194. U.S. Dep’t of Defense Instruction 1304.26, Qualification Standards for Enlistment, Appointment, and Induction, para. E2.2.7.2 (9 Sept. 2011) (last visited October 13, 2012) (listing a “significant criminal record” as a possible disqualification for service, but also providing for a waiver in that circumstance).

195. U.S. Dep’t of Army, Reg. 601-210, Active and Reserve Components Enlistment Program, para. 4-7(a) (9 Sept. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012) (“A waiver is required for any applicant who has received a conviction or other adverse disposition for a major misconduct offense or any offense considered a felony under local law.”); U.S. Dep’t of Defense Instruction 1304.26, Qualification Standards for Enlistment, Appointment, and Induction, para. E2.2.7.2.1 (9 Sept. 2011) (last visited October 13, 2012) (“Persons

If you apply for a waiver, you have the burden to prove both that you can overcome the reason for your disqualification (the felony), and that it would be in Army's best interest to accept you.<sup>196</sup> You will have to undergo a "suitability review" if you committed one or more serious offenses.<sup>197</sup> Depending on the seriousness of the offense, different levels of review will be appropriate.<sup>198</sup> You may also be required to apply for a waiver if you have certain non-criminal offenses on your record, such as traffic violations,<sup>199</sup> or other offenses for which you received penalties such as fines or community service.<sup>200</sup>

In order to apply for a waiver, you will need, among other documents, police checks, court documents, documents from probation or parole officers, and documents from your correctional facility.<sup>201</sup> Make sure to obtain all of these if you plan to apply for a waiver. You may also be asked to provide letters of recommendation from community leaders such as school officials, ministers, or police officers.<sup>202</sup> Additionally, keep in mind that there may be a waiting period following your release before you can submit your waiver.<sup>203</sup>

While the Air Force, the Navy, and the Marine Corps do not have published regulations, they may use a similar approach to potential enlistees with criminal histories. However, the military has a lot of discretion in deciding whether to allow someone with a criminal history to enlist. This makes it difficult to accurately predict whether you will be allowed to enlist. If you are interested in joining one of the branches of the armed forces, you should call or visit the recruiter in your area and ask what standards are applied in evaluating applicants with a criminal background.

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convicted of felonies may request a waiver to permit their enlistment. The waiver procedure is not automatic and approval is based on each individual case, including consideration of the individual's adjustment to civilian life.".)

196. U.S. Dep't of Army, Reg. 601-210, Active and Reserve Components Enlistment Program, para. 4-2(c) (8 Feb. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012)

197. U.S. Dep't of Army, Reg. 601-210, Active and Reserve Components Enlistment Program, para. 4-2(e)(1)(a)(3) (8 Feb. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012). Serious offenses include, but are not limited to, such crimes as aggravated assault, burglary, domestic violence, forgery, kidnapping, larceny, murder, narcotics, rape, and robbery. U.S. Dep't of Army, Reg. 601-210, Active and Reserve Components Enlistment Program, para. 4-11 (8 Feb. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012). For some offenses, however, you will not be able to get a waiver. U.S. Dep't of Army, Reg. 601-210, Active and Reserve Components Enlistment Program, para. 4-23 (8 Feb. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012). (describing disqualifications that cannot be waived). For instance, if you have been convicted of a misdemeanor crime of domestic violence, you cannot enlist and a waiver will not be approved. U.S. Dep't of Army, Reg. 601-210, Active and Reserve Components Enlistment Program, para. 4-7(d) (8 Feb. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012).

198. U.S. Dep't of Army, Reg. 601-210, Active and Reserve Components Enlistment Program, para. 4-2(e)(1)(a) (8 Feb. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012) (describing types of charges that require a suitability review and the level of command that conducts that review).

199. U.S. Dep't of Army, Reg. 601-210, Active and Reserve Components Enlistment Program, para. 4-6(a)(3) (8 Feb. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012).

200. U.S. Dep't of Army, Reg. 601-210, Active and Reserve Components Enlistment Program, para. 4-6 (8 Feb. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012) (requiring waivers for applicants who have had a certain number of civil court convictions or dispositions that are not serious criminal misconduct).

201. U.S. Dep't of Army, Reg. 601-210, Active and Reserve Components Enlistment Program, para. 4-28(e) (8 Feb. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012) (laying out waiver approval procedures).

202. U.S. Department of Defense Instruction 1304.26, Qualification Standards for Enlistment, Appointment, and Induction, para. E.2.2.7.2.2 (9 Sept. 2011) (last visited October 13, 2012).

203. U.S. Dep't of Army, Reg. 601-210, Active and Reserve Components Enlistment Program, para. 4-32(b)(3) (8 Feb. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012) ("If an applicant had confinement as a juvenile or adult for 15 days or more, a 6-month waiting period is required before they can process or submit a waiver."); *see also* U.S. Dep't of Army, Reg. 601-210, Active and Reserve Components Enlistment Program, para. 4-7 (8 Feb. 2011), *available at* [http://www.army.mil/usapa/epubs/pdf/r601\\_210.pdf](http://www.army.mil/usapa/epubs/pdf/r601_210.pdf) (last visited October 13, 2012) (noting that for serious criminal misconduct, applicants have a 12-month wait from the date of conviction prior to waiver processing).

## G. Voting Rights

The Supreme Court has held that it is constitutional if states pass laws that “disenfranchise” (deprive of the right to vote) individuals who have been convicted of a felony.<sup>204</sup> However, this does not mean that you will necessarily be denied the right to vote, because different states have different laws about the voting rights of people with criminal convictions. For both federal and state elections, your right to vote is controlled by the law of the state where you live, not the state where you were convicted. If you move to another state after your release from prison, your rights may be affected differently than in your previous home state. The impact of a criminal conviction on the right to vote varies widely from state to state and many states rewrite their voting laws frequently. Most states have placed some restrictions on the right to vote for people who have been convicted of a crime. It is unlikely that you will be disqualified from voting solely because of a misdemeanor conviction. In some states, your criminal conviction does not affect your voting rights at all.<sup>205</sup> Before registering, you must determine whether you are eligible to vote lawfully. If you vote when you are ineligible or if you make false statements on a voter registration form, criminal penalties can result.<sup>206</sup>

If you are incarcerated and are entitled to vote through an absentee ballot, it may still be difficult to obtain an absentee ballot, as prisons are unlikely to have them on hand. The town clerk, the registrar of voters, or the board of elections in the municipality where you are registered will generally send an absentee ballot to any registered voter who writes to request one. You may also be able to request a ballot by telephone. In order to fulfill your request, the clerk or registrar will likely need to know both the address where you are registered and your date of birth. However, even if the law of the state in which you are registered does not restrict the right of incarcerated persons to vote, you will still probably face obstacles in getting election officials to send you an absentee ballot. If an official does not understand the law regulating to your right to vote, he or she might refuse to send you a ballot even if you are entitled to one. For this reason, you may want to find out if your state election law allows third parties, such as family members, to obtain a ballot and send it to you.

### 1. Restoring Your Right to Vote<sup>207</sup>

If you live in a state where you will be able to exercise some of your voting rights, you will want to find out how to get your rights restored. Some states automatically restore your right to vote after you are released from jail or prison;<sup>208</sup> others do so only after you have completed your entire sentence, including any

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204. *Richardson v. Ramirez*, 418 U.S. 24, 56, 94 S. Ct. 2655, 2670, 41 L. Ed. 2d 551, 570 (1974) (holding that the exclusion of convicted felons from the vote is not a violation of any provision of the Constitution).

205. Vt. Stat. Ann. tit. 17, § 2121-2122 (2012); Me. Rev. Stat. Ann. tit. 21-A, §§ 111, 112(14) (2012).

206. For example, under New York law, “[a]ny person who . . . knowingly votes or offers or attempts to vote at any election, when not qualified . . . is guilty of a felony.” N.Y. Elec. Law § 17-132(1) (Consol. 2012). California law provides that “[e]very person who willfully causes, procures, or allows himself or herself or any other person to be registered as a voter, knowing that he or she or that other person is not entitled to registration, is punishable by imprisonment . . . for 16 months or two or three years, or in a county jail for not more than one year.” Cal. Elec. Code § 18100(a) (West 2011). In Florida, “[w]hoever, knowing he or she is not a qualified elector, willfully votes at any election is guilty of a felony of the third degree.” Fla. Stat. Ann. § 104.15 (2012). Connecticut law provides that “[a]ny person who procures such person or another to be registered after having been disfranchised by reason of conviction of crime . . . and any person who votes at any election after having forfeited such privileges by reason of conviction of crime and confinement, shall be fined not more than five hundred dollars and imprisoned not more than one year.” Conn. Gen. Stat. Ann. § 9-45(b) (2012). While some states seem to criminalize only registration by people who know they are unqualified, others, like Connecticut, make it a crime for unqualified voters to register even if they do not know they are unqualified. Since different states have different rules, and these rules frequently change, you should make sure that the state in which you live makes you eligible to vote before you register.

207. The Department of Justice publishes pamphlets for each state regarding the restoration of your right to vote after a felony conviction. The Department of Justice website is <http://www.usdoj.gov>. You can reach them by phone at (202) 307-2767, or toll-free phone at (800) 253-3931. You can contact them at:

Chief, Voting Section  
Civil Rights Division, Room 7254-NWB  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

208. Some states allow ex-prisoners to vote once they are released, even if they are still on probation or parole. For more information, consult the Department of Justice website, <http://www.usdoj.gov> (last visited Oct. 14, 2012), or by

parole or other supervision.<sup>209</sup> In some states you must petition the sentencing court or the governor's office in order to have your civil rights restored, including your right to vote.<sup>210</sup> (Courts have generally held that civil rights include not only your right to vote, but also your right to serve on a jury and your right to hold public office).<sup>211</sup> Several other states require you to ask for and be granted a pardon by the governor of your state (or in some cases, from a separate state board that deals with pardons) before your voting rights and other civil rights can be restored.<sup>212</sup> In some states these pardons are issued as long as you have remained crime-free for a certain period of time after fulfilling the conditions of your sentence. In others, however, the need to obtain a pardon is almost like a lifetime ban on voting, because pardons are granted only in highly unusual circumstances. Furthermore, in some states, including New York, you may be issued a restricted pardon that does not restore all of your political rights.<sup>213</sup> Finally, some states may revoke your voting rights permanently, at least for certain crimes.<sup>214</sup>

However, voting law is not always clear, and it changes frequently. Therefore, upon your release, you should (1) consult the election law in your state, and (2) contact your local or state board of elections to determine your eligibility to vote and the procedures necessary for regaining your eligibility. Currently the American Civil Liberties Union hosts a website that list state-by-state voting rights.<sup>215</sup> Similarly, the Department of Justice provides information regarding voter restoration online.<sup>216</sup> Remember that if you move to a different state, the laws governing the right to vote for convicted felons in your new state will determine whether you may vote, and they may differ from your previous home state.

In most states, the rules governing the right to vote are the same whether you have been convicted of a federal crime or a state crime, and regardless of the state in which you were convicted. However, if the state where you live requires a pardon in order to regain your voting rights, you may have to contact the governor's office in the state where your conviction occurred. If you were convicted of a federal crime you may have to contact the federal government.<sup>217</sup>

If you believe you are eligible to vote and have difficulty registering, contact the appropriate state agency, usually the state's Board of Elections. You may also contact your state agency to obtain information about the latest changes to election law in your state. The federal website [www.usa.gov](http://www.usa.gov) provides contact

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writing Chief, Voting Section; Civil Rights Division, Room 7254-NWB; Department of Justice; 950 Pennsylvania Ave., NW; Washington, DC 20530.

209. For more information, consult the Department of Justice website, <http://www.usdoj.gov> (last visited Oct. 14, 2012), or by writing Chief, Voting Section; Civil Rights Division, Room 7254-NWB; Department of Justice; 950 Pennsylvania Ave., NW; Washington, DC 20530.

210. For more information, consult the Department of Justice website, <http://www.usdoj.gov> (last visited Oct. 14, 2012), or by writing Chief, Voting Section; Civil Rights Division, Room 7254-NWB; Department of Justice; 950 Pennsylvania Ave., NW; Washington, DC 20530.

211. Your civil rights sometimes also include your right to hold certain licenses, such as occupational licenses or handgun licenses. The laws governing how, if at all, political rights can be restored to people with criminal convictions may differ a great deal from state to state. In New York, for example, while the law defines in detail the ways convicted felons are to be excluded from the voting rolls, and how they can be restored, there is no statute that either specifically disqualifies a felon from holding office or describes how the right to hold office can be restored. N.Y. Elec. Law § 5-106 (Consol. 2012). Further, while a felony conviction is a bar to serving on a jury, you can often remove this bar by applying for and receiving a Certificate of Good Conduct or a Certificate of Relief from Disabilities (described in detail in Part C(2) of this Chapter). By contrast, Connecticut has statutes stating that voting rights and the right to hold or run for office can be restored once you have been released and have finished any parole, but you cannot serve on a jury until seven years have passed following your conviction of a felony. Conn. Gen. Stat. Ann. §§ 9-46, 9-46a, 51-217 (2008).

212. For more information, please consult the Department of Justice website, <http://www.usdoj.gov> (last visited Oct. 14, 2012), or by writing Chief, Voting Section, Civil Rights Division, Room 7254-NWB, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530.

213. An advisory opinion issued by New York's Attorney General's office states that the pardon of a felony is not sufficient to restore all the rights of citizenship. 1930 N.Y. Op. Att'y Gen. 279, 284 (1930).

214. In Delaware, if you are convicted of murder, manslaughter, any felony that is a sexual offense, or improper influence or abuse of office you cannot have your voting rights restored. Del. Const. art. V § 2 (2012). Missouri permanently disqualifies from voting those convicted of certain crimes related to voting. Mo. Rev. Stat. 561.026 (2012). In Florida, felons may never regain the right to vote. Fla. Const. art. VI § 4 (2012).

215. American Civil Liberties Union website, <http://www.aclu.org/know-your-voting-rights-state-state-voter-information> (last visited Oct. 14, 2012).

216. Department of Justice website, [http://www.justice.gov/crt/about/vot/restore\\_vote.php](http://www.justice.gov/crt/about/vot/restore_vote.php) (last visited Oct. 14, 2012).

217. For information about federal pardons you can contact: Office of Pardon Attorney, United States Department of Justice, 1425 New York Avenue, NW, Suite 11000, Washington D.C. 20530 Phone: (202) 616-6070.

information for each state election agency.<sup>218</sup> If this agency is unable to help you, or to report a problem, you may contact:

Chief, Voting Section  
Civil Rights Division, Room 7254 -NWB  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530  
Phone: (202) 307-2767; (800) 253-3931 (toll-free)  
Email address: [voting.section@usdoj.gov](mailto:voting.section@usdoj.gov)  
<http://www.usdoj.gov/crt>

## F. Conclusion

There are many legal issues you may face after your release from prison. For instance, it may be difficult to obtain housing. Some laws may permit or require that you to be denied public housing assistance based on your criminal conviction. There are also restrictions on public benefits that may affect you because of your conviction. In addition, getting a job after you are released can be difficult. Federal or state laws may restrict you from holding certain jobs, but in general you should be able to find work in most areas.

Other issues that may be affected by your criminal conviction include child custody, your ability to serve in the military, and your ability to vote. Almost all of these areas are governed by both federal and state laws, so you should be sure to familiarize yourself with the state law applicable to you. This will help you to navigate the different issues that will arise upon your release.

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218. USA. Gov website, [http://answers.usa.gov/system/selfservice.controller?CONFIGURATION=1000&PARTITION\\_ID=1&CMD=VIEW\\_ARTICLE&ARTICLE\\_ID=11606&USERTYPE=1&LANGUAGE=en&COUNTRY=US](http://answers.usa.gov/system/selfservice.controller?CONFIGURATION=1000&PARTITION_ID=1&CMD=VIEW_ARTICLE&ARTICLE_ID=11606&USERTYPE=1&LANGUAGE=en&COUNTRY=US) (last visited Oct. 14, 2012).

## APPENDIX A

### CONTACT INFORMATION FOR HOUSING ASSISTANCE AGENCIES

**For information regarding federal public housing assistance:**

U.S. Department of Housing and Urban Development (HUD)  
451 7th Street, SW  
Washington, DC 20410  
Phone: (202) 708-1112  
TTY: (202) 708-1455  
<http://www.hud.gov>

**For a directory of state and local housing authorities, agencies, and organizations nationwide:**

The Public Housing Authorities Directors Association  
[http://www.phada.org/ha\\_list.php](http://www.phada.org/ha_list.php)

**New York State Housing and Urban Development Offices**

**New York City**

Jacob K. Javits Federal Building  
(Broadway between Duane & Worth Streets)  
26 Federal Plaza, Suite 3541  
New York, NY 10278-0068  
Phone: (212) 264-8000  
Fax: (212) 264-0246  
Email: [NY\\_Webmanager@hud.gov](mailto:NY_Webmanager@hud.gov)

**Albany**

52 Corporate Circle  
Albany, NY 12203-5121  
Phone: (518) 464-4200  
Fax: (518) 464-4300  
Email: [NY\\_Webmanager@hud.gov](mailto:NY_Webmanager@hud.gov)

**Buffalo**

Lafayette Court  
465 Main Street, 2<sup>nd</sup> Floor  
Buffalo, NY 14203-1780  
Phone: (716) 551-5755  
Fax: (716) 551-5752  
Email: [NY\\_Webmanager@hud.gov](mailto:NY_Webmanager@hud.gov)

**Syracuse**

James M. Hanley Federal Building  
100 South Clinton Street  
Syracuse, NY 13261-7025  
Phone: (315) 477-0616  
Fax: (315) 477-0196  
Email: [NY\\_Webmanager@hud.gov](mailto:NY_Webmanager@hud.gov)

**For information about public housing assistance in New York City:**

(NYCHA)  
250 Broadway  
New York, NY 10007  
Phone: (212) 306-3000  
<http://www.nyc.gov/html/nycha/html/home/home.shtml>

**For information about and applications for Section 8 housing in New York City, contact a NYCHA application office:**

**Bronx**

1 Fordham Plaza - 5th floor  
Bronx, NY 10458  
Phone: (718) 329-7859  
TTY: (718) 329-7735

**Manhattan/Staten Island**

55 West 125th Street - 7th Floor  
New York, NY 10027  
Phone: (212) 828-7100  
TTY: (212) 828-7118

**Brooklyn/Queens**

350 Livingston St. - 2nd Floor  
Brooklyn, NY 11217  
Phone: (718) 250-5900  
TTY: (718) 222-4113

**For emergency shelter:**

There are nine drop-in centers run by the New York City Department of Homeless Services. The drop-in centers are located throughout the City. They provide hot meals, showers, laundry facilities, clothing, medical care, recreational space, employment referrals, and other social services. Staff can also help you find a safe and secure place to sleep. All drop-ins operate twenty-four hours a day. **Dial 311** to contact any drop-in center, receive directions, or obtain other information.

**Manhattan**

John Heuss House  
42 Beaver Street  
New York, NY 10004

Olivieri Center for Women  
257 West 30th Street  
New York, NY 10001

The Open Door  
402 West 41st Street  
New York, NY 10036

Peter's Place  
123 West 23rd Street  
New York, NY 10011

**Mainchance**

120 E. 32<sup>nd</sup> Street  
New York, NY 10017

**Bronx**

The Living Room  
890 Garrison Avenue  
Bronx, NY 10011

**Brooklyn**

The Gathering Place  
2402 Atlantic Avenue  
Brooklyn, NY 11233

**Staten Island**

Project Hospitality Drop-In Center  
25 Central Avenue  
Staten Island, NY 10036

## APPENDIX B

### STATE HUMAN SERVICE DEPARTMENTS/ ASSISTANCE DIVISIONS

**Alabama**

Alabama Department of Human Resources  
Family Assistance Division  
50 North Ripley Street  
Montgomery, AL 36130  
Phone: (334) 242-1773  
[http://dhr.alabama.gov/services/Family\\_Assistance/Family\\_Assistance\\_Program.aspx](http://dhr.alabama.gov/services/Family_Assistance/Family_Assistance_Program.aspx)

**Alaska**

Alaska Temporary Assistance Program  
P.O. Box 110640  
Juneau, AK 99811-0640  
Phone: (907) 465-3347  
FAX: (907) 465-5254  
<http://dhss.alaska.gov/dpa/Pages/atap/default.aspx>

**Arizona**

Arizona Department of Economic Security  
Phone: (602) 542-9935  
<http://www.azdes.gov/faa>

**Arkansas**

Arkansas Department of Human Services  
Donaghey Plaza  
P.O. Box 1437  
Little Rock, AR 72203-1437  
Phone: (501) 682-1001  
<http://humanservices.arkansas.gov/Pages/default.aspx>

**California**

California Department of Social Services  
744 P Street  
Sacramento, CA 95814  
Phone: (916) 445-6951  
<http://www.dss.cahwnet.gov/cdssweb/>

**Colorado**

Colorado Works  
1575 Sherman St.  
Denver, CO 80203-1714  
Phone: (303) 866-5700  
Fax: (303) 866-4047  
<http://www.cdhs.state.co.us/>

**Connecticut**

State of Connecticut  
Department of Social Services  
25 Sigourney Street  
Hartford, CT 06106-5033  
Phone: (800) 842-1508 (toll-free)

<http://www.ct.gov/dss/site/default.asp>

**Delaware**

The Division of Social Services  
1901 N. Du Pont Hwy., Lewis Building  
New Castle, DE 19720  
Phone: (302) 255-9668  
FAX: (302) 255-4433  
<http://dhss.delaware.gov/dhss/>

**District of Columbia**

Department of Human Services  
Income Maintenance Administration  
64 New York Avenue, NE, 6th Floor  
Washington, DC 20002  
Phone: (202) 671-4200  
FAX: (202) 671-4325  
<http://dhs.dc.gov/>

**Florida**

Work Force Florida  
1580 Waldo Palmer Lane, Ste. 1  
Tallahassee, FL 32308  
Phone: (850) 921-1119  
FAX: (850) 921-1101  
<http://www.workforceflorida.com>

**Georgia**

Georgia Department of Human Resources  
Constituent Services  
2 Peachtree Street, N.W. Suite 18-486  
Atlanta, Georgia 30303  
Phone: (404) 651-9361  
<http://dfcs.dhr.georgia.gov>

**Guam**

Department of Public Health and Social Services  
194 Hernan Cortez Avenue,  
Terlaje Professional Building, 3rd floor, Ste. 309  
Hagatna, Guam 96932  
Phone: (671) 475-2653  
FAX: (671) 477-0500  
<http://www.dphss.guam.gov/>

**Hawaii**

Department of Human Services  
1390 Miller Street, Room 209  
Honolulu, HI 96813  
Phone: (808) 586-4997  
Fax: (808) 586-4890  
<http://www.hawaii.gov/dhs>

**Idaho**

Idaho Department of Health & Welfare  
450 W. State Street #9  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
<http://www.healthandwelfare.idaho.gov>

**Illinois**

Department of Human Services  
401 S Clinton St  
Chicago, IL 60607  
Phone: (800) 843-6154 (toll-free)  
<http://www.dhs.state.il.us>

**Indiana**

Indiana Family and Social Services  
Administration  
Office of Communications  
P. O. Box 7083  
Indianapolis, IN 46207-7083  
Phone: (800) 622-4932 (toll-free)  
<http://www.in.gov/fssa>

**Iowa**

Iowa Department of Human Services  
Family Investment Program  
Hoover State Office Building  
1305 Walnut Street  
Des Moines, Iowa, 50319  
Phone: (515) 281-5454  
Fax: (515) 281-4980  
<http://www.dhs.state.ia.us>

**Kansas**

Kansas Department for Children and Families  
915 SW Harrison St.  
Topeka, KS 66612  
Phone: (888) 369-4777  
<http://www.dcf.ks.gov/services/ees/Pages/default.aspx>

**Kentucky**

Cabinet for Health and Family Services  
275 East Main Street  
Frankfort, KY 40621  
Phone: (800) 372-2973 (toll-free)  
<http://chfs.ky.gov>

**Louisiana**

Department of Children & Family Services  
627 N. Fourth St.  
Baton Rouge, LA 70802  
Phone: (888) 524-3578  
<http://www.dcf.la.gov/>

**Maine**

Office for Family Independence

35 Anthony Avenue, 11 SHS  
Augusta, ME 04333  
Phone: (800) 442-6003  
FAX: (207) 624-8124  
<http://www.maine.gov/dhhs/ofi/services/home.html>

**Maryland**

Department of Human Resources  
311 West Saratoga Street  
Baltimore, Maryland 21201  
Phone: (800) 332-6347  
<http://www.dhr.state.md.us>

**Massachusetts**

Health and Human Services  
Department of Transitional Assistance  
One Ashburton Place, 11<sup>th</sup> Floor  
Boston, MA 02108  
Phone: (617) 573-1600  
<http://www.mass.gov/eohhs/>

**Michigan**

Department of Human Services  
P.O. Box 30037  
235 S. Grand Avenue  
Lansing, MI 48909  
Phone: (855) 275-6424  
<http://www.michigan.gov/dhs>

**Minnesota**

Department of Human Services  
444 Lafayette Road North  
Saint Paul, MN 55155  
Phone: (651) 431-2000  
<http://mn.gov/dhs/>

**Mississippi**

Department of Human Services  
Division of Economic Assistance  
750 North State Street  
Jackson, MS 39202  
Phone: (800) 345-6347 (toll-free)  
<http://www.mdhs.state.ms.us/ea.html>

**Missouri**

Department of Social Services  
Broadway State Office Building  
P.O. Box 1527  
Jefferson City, MO 65102-1527  
Phone: (573) 751-4815  
FAX: (573) 751-3203  
<http://www.dss.mo.gov>

**Montana**

Department of Public Health and Human Services  
111 North Saunders St.  
Helena, MT 59601

Phone: (406) 444-5622  
<http://www.dphhs.mt.gov/>

**Nebraska**

Department of Health and Human Services  
301 Centennial Mall South  
Lincoln, NE 68509-5044  
Phone: (402) 471-3121  
<http://dhhs.ne.gov/Pages/default.aspx>

**Nevada**

Human Resources, Division of Welfare and Supportive Services  
1470 College Parkway  
Carson City, NV 89706  
Phone: (775) 684-0500  
FAX: (775) 684-0646  
<http://dwss.nv.gov/>

**New Hampshire**

Department of Health and Human Services  
Division of Family Assistance  
129 Pleasant Street  
Concord, NH 03301-3857  
Phone: (603) 271-9700  
<http://www.dhhs.state.nh.us>

**New Jersey**

Department of Human Services  
222 South Warren Street  
P.O. Box 700  
Trenton, NJ 08625-0700  
Phone: (609) 292-3717  
<http://www.state.nj.us/humanservices/>

**New Mexico**

Human Services Department  
2009 S. Pacheco St.  
Santa Fe, NM 87504  
Phone: (505) 827-6286  
Fax: (505) 476-6215  
<http://www.hsd.state.nm.us/>

**New York**

Office of Temporary and Disability Assistance  
40 North Pearl Street  
Albany, NY 12243  
Phone: (800) 342-3009 (toll-free)  
<http://www.otda.state.ny.us>  
New York City Human Resources Administration  
Phone: (877) HRA-8411

**North Carolina**

Department of Health and Human Services  
Division of Social Services  
2401 Mail Service Center  
Raleigh, NC 27601

Phone: (919) 733-3055  
Fax: (919) 334-1018  
<http://www.dhhs.state.nc.us/dss>

**North Dakota**

Department of Human Services  
Economic Assistance Policy Division  
600 E. Boulevard, Dept. 325  
Bismarck, ND 58505-0250  
Phone: (800) 755-2716 (toll-free)  
<http://www.nd.gov/dhs/services/>

**Ohio**

Department of Job and Family Services  
Office of Family Stability  
30 E. Broad St., 32nd Floor  
Columbus, OH 43215-3414  
Phone: (614) 466-4815  
FAX: (614) 466-1767  
<http://jfs.ohio.gov/ofam/index.stm>

**Oklahoma**

Department of Human Services  
Family Support Services Division  
P.O. Box 25352  
Oklahoma City, OK 73125  
Phone: (405) 521-3646  
<http://www.okdhs.org/>

**Oregon**

Department of Human Services  
500 Summer St. NE  
Salem, OR 97301-5944  
Phone: (503) 945-5651  
Fax: (503) 378-2897  
<http://www.oregon.gov/DHS>

**Pennsylvania**

Department of Public Welfare  
P.O. Box 2675  
Harrisburg, PA 17105-2675  
Phone: (800) 692-7462 (toll-free)  
<http://www.dpw.state.pa.us>

**Puerto Rico**

Department of the Family  
P.O. Box 11398  
Hato Rey, PR 00917  
Phone: (787) 294-4900  
<http://www.familia.gobierno.pr/>

**Rhode Island**

Department of Human Services  
Louis Pasteur Building #57  
600 New London Ave.  
Cranston, RI 02920  
Phone: (401) 462-5300

<http://www.dhs.ri.gov/>

**South Carolina**

Department of Social Services  
P.O. Box 1520  
Columbia, SC 29202-1520  
Phone: (803) 898-7601  
<http://www.state.sc.us/dss>

**South Dakota**

Department of Social Services  
700 Governors Drive  
Pierre, SD 57501  
Phone: (605) 773-3165  
<http://dss.sd.gov>

**Tennessee**

Department of Human Services  
400 Deaderick Street, 15th Floor  
Nashville, TN 37243-1403  
Phone: (615) 313-4700  
FAX: (615) 741-4165  
<http://www.tennessee.gov/humanserv>

**Texas**

Health and Human Services Commission  
4900 North Lamar Blvd.  
Austin, TX 78751  
Phone: (512) 424-6500  
<http://www.hhsc.state.tx.us>

**Utah**

Department of Workforce Services  
P.O. Box 45249  
Salt Lake City, UT 84145-0249  
Phone: (801) 526-9675  
<https://jobs.utah.gov>

**Vermont**

Economic Services Division  
Department for Children and Families  
103 South Main Street, Osgood 3  
Waterbury, VT 05671-2041  
Phone: (802) 241-2131  
<http://www.dsw.state.vt.us>

**Virginia**

801 E. Main St.  
Richmond, VA 23219-2901  
Phone: (800) 552-3431 (toll-free)  
<http://www.dss.state.va.us>

**U.S. Virgin Islands**

Department of Human Services  
Knud Hansen Complex Building A 1303 Hospital  
Ground, St. Thomas, USVI 00802  
Phone: (340) 774-0930  
<http://www.dhs.gov.vi>

**Washington**

Department of Social and Health Services  
Constituent Services  
P.O. Box 45130  
Olympia, WA 98504-5130  
Phone: (800) 737-0617 (toll-free)  
<http://www.dshs.wa.gov>

**West Virginia**

Department of Health and Human Resources  
One Davis Square, Ste. 100 E.  
Charleston, WV 25301  
Phone: (304) 558-0684  
FAX: (304) 558-1130  
<http://www.wvdhhr.org>

**Wisconsin**

Department of Workforce Development  
P.O. Box 7946  
Madison, WI 53707-7946  
Phone: (608) 266-3131  
<http://www.dwd.state.wi.us>

**Wyoming**

Department of Family Services  
3rd Floor Hathaway Building  
2300 Capitol Avenue  
Cheyenne, WY 82002-0490  
Phone: (307) 777-7561  
FAX: (307) 777-7747  
<http://dfsweb.state.wy.us>

## APPENDIX C\*

### TABLE OF SELECTED NEW YORK STATE LAWS THAT BAR OR RESTRICT PEOPLE WITH CRIMINAL RECORDS FROM WORKING IN CERTAIN OCCUPATIONS

Industry or Career	Law	Restriction or Bar The Law Creates On Employment of People with Criminal Convictions
Banking	N.Y. Banking Law § 592-a (Consol. 2003)	§ 592-a gives the Superintendent the power to deny a certificate of registration as a mortgage broker if the applicant has been convicted of certain felonies. For a business applying for one if a director, officer, partner, agent, employee, or substantial stockholder has been convicted of certain felonies.
State Civil Service jobs	N.Y. Civ Serv. Law § 50(4)(d) (Consol. 2003)	§50 allows the state civil service department to refuse to allow a person who has been found guilty of a crime to take any civil service examination or, if the person has already taken a civil service examination, to refuse to certify that person as eligible to take a civil service job.
Corrections	N.Y. Correct. Law § 22-a (Consol. 2003)	§22-a bars anyone who has been convicted of a felony from serving as a corrections officer. It also gives the commissioner the discretion to bar the appointment of anyone who has been convicted of a misdemeanor if the employment of that person would not be "in the best interest of the department."
Notary Public	N.Y. Exec. § 130 (Consol. 2003)	§ 130 bars the appointment of notaries public who have been convicted of a wide range of felonies. It also allows the secretary of state to suspend or remove from office, for misconduct, notaries public who have been convicted of those felonies.
Security System Installation and Maintenance	N.Y. Gen. Bus. Law § 69-q(5) (Consol. 2003)	§ 69-q requires employers of those who will install, service, or maintain security or fire alarm systems to submit fingerprints of all employees to the government so that the Division of Criminal Justice Services can perform a criminal background check for each employee. It also bars any employee that was convicted of a felony from being employed to install, service, or maintain security or fire alarm systems.
Private Investigators, Bail Enforcement Agents, and Private Security Agencies	N.Y. Gen. Bus. § 81(2)(d) (Consol. 2003)	§81 prohibits employers who are licensed as private investigators, bail enforcement agents, or private security agencies from hiring persons convicted of any felonies and certain misdemeanors.
Security Guards	N.Y. Gen. Bus. Law § 89-g(3)(a) (Consol. 2003);	§ 89-g makes it unlawful for security guard companies to hire persons convicted of "serious offenses" to work as security guards and gives the secretary discretion to bar hiring of misdemeanants to work as security guards in cases where the misdemeanor of which the person was convicted of committing "bears such a relationship to the performances of the duties of a

	N.Y. Gen. Bus. Law § 89-1(2)(a) (Consol. 2003)	security guard, as to constitute a bar to employment.” §89-1 authorizes the secretary to suspend or revoke a security guard’s registration card, after a hearing, if the security guard is convicted of a felony or certain misdemeanors.
Child Care	N.Y. Soc. Serv. Law 390-b (3)(a) (2002)	§390-b (3)(a) requires the office of Children and Family Services to reject a person’s application to be an operator of a child day care center, school age child care program, group family day care home, or family day care home if that person has been convicted of a felony that is a sex offense, a felony against a child, a felony involving violence, or a felony within the five years prior to the application for a drug-related offense unless the office determines, in its discretion, that approving the application will not in any way jeopardize the health, safety or welfare of the children in the center, program or home. It also allows the office of Children and Family Services to reject a person’s application to be an operator of a child day care center, school age child care program, group family day care home, or family day care home if that person has been convicted of any other crime.

\* This table does not provide a complete list of the bars against employment for people with criminal convictions imposed by New York State law – there are over 100. The law is always changing, so you should check the law that applies to the particular jobs you want.

## APPENDIX D

### CONTACT INFORMATION FOR EX-OFFENDER ASSISTANCE ORGANIZATIONS

**Legal Action Center**

Phone: (800) 223-4044 (toll-free)

<http://www.lac.org>

New York:

225 Varick Street

New York, NY 10014

Phone: (212) 243-1313

Phone: (800) 223-4044 (toll-free)

E-mail: [lacinfo@lac.org](mailto:lacinfo@lac.org)

District of Columbia:

236 Massachusetts Avenue NE., Suite 505

Washington, DC 20002-4980

Phone: (202) 544-5478

E-mail: [lacdc@lac.org](mailto:lacdc@lac.org)

**Office of Community Outreach Services: Correctional Facilities and Ex-Inmates**

455 Fifth Avenue

New York, NY 10016

Phone: (212) 340-0971

<http://www.nypl.org/help/community-outreach/correctional-services>

**The Fortune Society**

29-76 Northern Blvd.

Long Island City, NY 11101

Phone: (212) 691-7554

E-mail: [info@fortunesociety.org](mailto:info@fortunesociety.org)

<http://www.fortunesociety.org>

**Community Resources for Justice**

355 Boylston Street

Boston, MA 02116

Phone: (617) 482-2520

E-mail: [crj@crjustice.org](mailto:crj@crjustice.org)

<http://www.crjustice.org/>

**Offender Aid and Restoration**

1400 North Uhle Street, Suite 704

Arlington, VA 22201

Phone: (703) 228-7030

Fax: (703) 228-3981

Email: [Info@OARonline.org](mailto:Info@OARonline.org)

<http://www.oaronline.org>

**The Osborne Association**

300 Main Street, Suite 200

Beacon, NY 12508

Phone: (800) 344-3314

<http://www.osborneny.org>

809 Westchester Avenue  
Bronx, NY 10455  
175 Remsen Street, 8<sup>th</sup> Floor  
Brooklyn, NY 11201

**Center for Community Alternatives**

39 West 19th St, 10th Floor  
New York, NY 10011  
Phone: (212) 691-1911  
<http://www.communityalternatives.org>

25 Chapel Street, 7th Floor  
Brooklyn, NY 11201  
Phone: (718) 858-9658

115 E. Jefferson Street, Suite 300  
Syracuse, NY 13202  
Phone: (315) 422-5638

**Exodus Transitional Community**

2271 3rd Avenue, 2nd Floor  
New York, NY 10029  
Phone: (917) 492-0990  
E-mail: [info@etcny.org](mailto:info@etcny.org)  
<http://www.etcny.org>

**Center for Employment Opportunities**

32 Broadway, 15th floor  
New York, NY 10004  
Phone: (212) 422-4430  
E-mail: [mtrokan@ceoworks.org](mailto:mtrokan@ceoworks.org)  
<http://www.ceoworks.org>