

CHAPTER 37

RIGHTS UPON RELEASE*

A. Introduction

This Chapter discusses legal issues you may face after your release from prison, focusing mostly on federal and New York State law. The parts of this Chapter that discuss 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 where you live. For more details about how your conviction may affect you in your state, visit the National Inventory of Collateral Consequences of Conviction website (<https://niccc.nationalreentryresourcecenter.org>).

This Chapter is divided into six parts. **Part B** discusses housing rights and registration laws. **Part C** discusses your eligibility for public benefits, **Part D** addresses employment, and **Part E** discusses child custody issues. **Part F** addresses your eligibility for military service when you have a criminal conviction, and **Part G** describes the effects of criminal convictions on your right to vote and other political rights.

The Appendices of this Chapter provide a list of resources that can help you after your release from prison. **Appendix A** provides information on federal and New York housing resources. **Appendix B** provides the contact information for the human service departments in all fifty states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. **Appendix C** provides a selection of laws that can prevent people with criminal records from being employed in certain industries. **Appendix D** lists some organizations that support people after their release from prison.

B. Housing Rights and Registration

1. Private Housing

(a) Buying or Renting

If you are trying to buy or rent housing from a private party, your criminal conviction will probably make things more difficult for you. (If you want public housing assistance, see Subsection 2(a) below.) The federal Fair Housing Act prevents public and private parties from discriminating against potential buyers or renters on the basis of race, color, religion, sex, disability, familial status, or national origin.¹

There is no law that prevents private parties from deciding not to sell or rent to you because of your criminal history. However, a landlord cannot place a blanket ban on anyone with a criminal record.² Landlords denying someone for past convictions should take into consideration how much time has passed since the conviction(s) and the nature or seriousness of the crime.³ 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 or performs a background check. In addition, a lender will also likely check your credit history before agreeing to give you a mortgage.

* This Chapter was revised by Jasmin Ouseph, based in part on previous versions by Tomica Burke, Leah Laben, Sara Manaugh, and Laura Kittross.

¹ 42 U.S.C. § 3604.

² OFF. OF GEN. COUNS., U.S. DEPT. OF HOUS. & URBAN DEV., GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS 6 (Apr. 4, 2016), *available at* https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF (last visited Mar. 16, 2024).

³ OFF. OF GEN. COUNS., U.S. DEPT. OF HOUS. & URBAN DEV., GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS 7 (Apr. 4, 2016), *available at* https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF (last visited Mar. 16, 2024).

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.”⁴ Under this provision, as well as under some state laws, a landlord may refuse to sell or rent to you if they decide that your criminal history poses a threat to others and their property.⁵ The landlord or seller may refuse to rent or sell to you on these grounds 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 brought to court, a landlord who wants to exclude you on the basis of your criminal history 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.”⁶

(b) Exceptions for Past Drug or Alcohol Addiction

There is a possible exception to the landlord’s ability to reject your application based on your criminal history. If your conviction was related to your past drug or alcohol addiction and you no longer use drugs or alcohol, then the landlord may not reject your application based on your criminal conviction alone. This is because drug or alcohol addictions are protected disabilities under The Fair Housing Act. The Fair Housing Act outlaws discrimination against someone based on his handicap/disability.⁷ 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.”⁸ “Handicap” does not include “current, illegal use of or addiction to a controlled substance.”⁹ However, *recovering* from drug addiction *is* considered a handicap.¹⁰ If you were previously addicted to drugs and are in active recovery, the landlord may not reject your application based only on your past drug possession conviction.

⁴ 42 U.S.C. § 3604(f)(9).

⁵ See *Talley v. Lane*, 13 F.3d 1031, 1034 (7th Cir. 1994) (finding that under the Fair Housing Act, landlords have 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 applications”); see also *Collins v. AAA Homebuilders*, 175 W. Va. 427, 428, 333 S.E.2d 792, 793 (W. Va. 1985) (finding that under West Virginia state law, “a private landlord may consider all factors, including criminal convictions, which may affect the health, safety, or welfare of other tenants . . .”).

⁶ *United States v. Mass. Indus. Fin. Agency*, 910 F. Supp. 21, 27 (D. Mass. 1996) (finding that the “direct threat” exemption from the Fair Housing Act should be interpreted narrowly, meaning that someone simply inferring that a person poses a threat is not a valid reason 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 assumptions made about a tenant, such as speculating that they are the reason for increased vandalism, are not enough to show that the tenant poses a direct threat).

⁷ 42 U.S.C. § 3604(f)(2).

⁸ 42 U.S.C. § 3602(h).

⁹ 42 U.S.C. § 3602(h).

¹⁰ See *Peabody Props., Inc. v. Sherman*, 418 Mass. 603, 605–606, 638 N.E.2d 906, 908 (Mass. 1994) (holding that a person’s drug dependency combined with his later participation in a drug rehabilitation program was considered a handicap); see also *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (holding that people recovering from substance abuse 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, 1185–1186 (10th Cir. 2011) (finding that 30 days of sobriety was not by itself sufficient under the safe harbor provision when the employer had reasonable concerns about the employee’s ongoing drug use); *Shafer v. Preston Mem’l Hosp. Corp.*, 107 F.3d 274, 277 n.4 (4th Cir. 1997) (suggesting that a person who had been drug-free for less than one year may not have a “handicap” under the Fair Housing Act, unlike the people recovering from addiction in *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 919 (4th Cir. 1992)) (abrogated on other grounds).

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 low-cost housing in public housing projects, subsidized rents for certain private rental units, Section 8 housing,¹¹ and help with mortgages and down payments on homes.¹²

(a) Federal Housing Restrictions

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 completely deny housing assistance to some individuals:

- (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.¹³ 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.¹⁴ The three-year period begins to run from the date of the eviction.¹⁵
- (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 B(3) below.¹⁶
- (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.¹⁷
- (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.¹⁸ The housing provider may decide to admit you to housing or allow you to remain in your residence if you (or a member of your household, where applicable) demonstrate that you are not currently abusing alcohol or illegally using drugs and have been rehabilitated in any one of three ways: (1) completion of a supervised alcohol or drug rehabilitation program, (2) successful rehabilitation in some other manner, or (3) participation in a supervised alcohol or drug rehabilitation program.¹⁹

¹¹ “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. § 982.201(b) (2024); U.S. DEPT. OF HOUS. & URBAN DEV., HOUSING CHOICE VOUCHERS FACT SHEET, *available at* https://www.hud.gov/topics/housing_choice_voucher_program_section_8 (last visited Mar. 16, 2024).

¹² *See* U.S. Dept. of Hous. & Urban Dev., *Buying a Home*, *available at* https://www.hud.gov/topics/buying_a_home (last visited Mar. 16, 2024). Also, see Appendix A of this Chapter to find out how to contact HUD by mail or phone.

¹³ 42 U.S.C. § 13661(a). “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).

¹⁴ 42 U.S.C. § 13661(a).

¹⁵ 42 U.S.C. § 13661(a).

¹⁶ 24 C.F.R. § 5.856 (2024).

¹⁷ 42 U.S.C. § 1437n(f).

¹⁸ 42 U.S.C. § 13661(b)(1).

¹⁹ 42 U.S.C. § 13661(b)(2).

- (5) Finally, public housing assistance will be denied or revoked if you are fleeing to avoid prosecution on a felony charge or conviction²⁰ or if you are in violation of the conditions of your probation or parole under state or federal law.²¹

Federal public housing laws also allow housing assistance to be denied to you if you have certain other kinds of criminal records.²² You may be denied public, Section 8, and other federally assisted housing 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 someone else's right to peaceful enjoyment of the premises.²³ The housing authority can only deny you for these crimes if the crime occurred "reasonably" recently.²⁴ 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.²⁵

If you have engaged in any of the three categories of criminal activities listed in the above paragraph, the housing authorities may also choose to terminate your existing lease. In determining whether to end a lease 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 possible steps to prevent the action from occurring.²⁶

(b) Housing Restrictions Specific to New York City

The New York City Housing Authority (NYCHA) is one of the local agencies that provides housing assistance in New York City. NYCHA has a specific set of rules regarding whether and for how long someone with a criminal conviction is ineligible for public housing assistance. The chart below shows how NYCHA applies public housing laws to people with past convictions. The first column represents the conviction, and the second column represents how long someone with that conviction remains ineligible for public housing assistance.²⁷

²⁰ 42 U.S.C. § 1437f(d)(1)(B)(v)(I). If you are in New Jersey, your public housing assistance will also be denied if you are fleeing to avoid prosecution, custody, or confinement on a "high misdemeanor" charge. "High misdemeanors" are crimes of the first, second, or third degree, and references to the term "misdemeanor" alone encompass all degrees of crimes.

²¹ 42 U.S.C. § 1437f(d)(1)(B)(v)(II).

²² 42 U.S.C. § 13661(c)(1). The unfortunate reality is that most public housing agencies will exclude individuals on the basis of most criminal records.

²³ 42 U.S.C. § 13661(c).

²⁴ There is no specific 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 (2024). *See also* Screening and Eviction for Drug Abuse and Other Criminal Activity, 66 Fed. Reg. 28,776, 28,779 (May 24, 2001) (to be codified at 24 C.F.R. Pt. 5) (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").

²⁵ 42 U.S.C. § 13661(c)(2).

²⁶ 24 C.F.R. § 5.852(a) (2024).

²⁷ *Know Your Rights: Housing and Arrests or Criminal Convictions*, BRONX DEFS. (Oct. 2, 2010), available at <https://www.bronxdefenders.org/housing-and-arrests-or-criminal-convictions/> (last visited Mar. 17, 2024). For more information about NYCHA, see N.Y.C. HOUS. AUTH., available at <http://www1.nyc.gov/site/nycha/index.page> (last visited Mar. 17, 2024).

NYCHA Public Housing	
Criminal Conviction	Years After Serving Sentence <i>(When you finish probation/parole and pay off any fines)</i>
<u><i>Sex Offenses</i></u> <ul style="list-style-type: none"> • Offenses 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
<u><i>Felonies</i></u> <ul style="list-style-type: none"> - Class A, B, and C - Class D and E 	6 years 5 years
<u><i>Misdemeanors</i></u> <ul style="list-style-type: none"> - Class A - Class B or unclassified 	4 years (5 years if 3+ convictions for Class A misdemeanors or felonies within last 10 years) 3 years (4 years if 3+ convictions for misdemeanors or felonies within last 10 years)
<u><i>Violations or Infractions</i></u> <ul style="list-style-type: none"> - Violations or DWI 	2 years (3 years if more than three convictions for felonies, misdemeanors, violations, or DWI infractions within the last 10 years)
<u><i>Multiple Convictions</i></u>	Ineligible for longest of the ineligibility periods for each conviction <i>For example, if you have a Class B felony and a Class A misdemeanor, you would be ineligible for the 6-year period for Class B felonies because it is longer than the 4-year period for Class A Misdemeanors)</i>

Formerly incarcerated people are usually “automatically ineligible” to live in NYCHA housing. This means you will not be allowed to live in NYCHA housing as a result of your criminal record. However, this is not permanent (see table above). There are two certificates that may help you live in NYCHA despite your record. These are called “Certificate of Relief from Disabilities” or a “Certificate of Good Conduct.”²⁸ See Subsection C(2)(a) of this Chapter to learn more about applying for these certificates. There are other programs that may help you access NYCHA housing. If you have family in NYCHA, the NYCHA Family Reentry Program may let you join them. However, the program only lasts two years.²⁹ You may qualify if you were released within the last three years³⁰ or if you are close

²⁸ See N.Y. State Dept. of Corr. & Cmty. Supervision, *Certificate of Relief / Good Conduct & Restoration of Rights*, available at <https://doccs.ny.gov/certificate-relief-good-conduct-restoration-rights> (last visited Mar. 17, 2024).

²⁹ See N.Y.C. Hous. Auth., *Family Re-entry Pilot Program: Frequently Asked Questions (as revised Dec. 12, 2014)*, available at <https://www1.nyc.gov/assets/nycha/downloads/pdf/family-reentry-pilot-faqs-revised-english-12-12-14.pdf> (last visited Mar. 17, 2024).

³⁰ See N.Y.C. Hous. Auth., *Family Re-entry Pilot Program: Frequently Asked Questions (as revised Dec. 12, 2014)*, available at <https://www1.nyc.gov/assets/nycha/downloads/pdf/family-reentry-pilot-faqs-revised-english-12-12-14.pdf> (last visited Mar. 17, 2024).

to your release date.³¹ To apply for the Family Reentry Program, contact the Program by phone at (212) 306-6024 or by email at family.reentry@nycha.nyc.gov.

When you apply for housing assistance, the housing assistance agency has the right to look at your criminal record.³² These records may come from the National Crime Information Center. They may also come from law enforcement agencies.³³ If you are applying for Section 8 housing, the housing assistance agency can also get your criminal record. The agency can then make eligibility determinations based on your criminal records for the building owner.³⁴ If the agency or building owner denies your application based on your criminal record, you have some procedural protections. They must give you a copy of the criminal record that they got from the police.³⁵ They must also give you an opportunity to dispute the accuracy or relevance of the record.³⁶ You also have a right to confidentiality. This means that the housing agency or building owner cannot disclose the information in your record to anyone else.³⁷ This is true unless the information is necessary during eviction proceedings.³⁸

Another agency that provides housing assistance is the New York City Department of Housing & Preservation (HPD). The HPD only provides Section 8 vouchers to (1) families who live in buildings either developed or renovated under HPD programs and (2) people who qualify as a “homeless household.”³⁹ HPD defines a homeless household in two ways. First, a homeless household can be someone whose primary nighttime residence at a temporary living shelter in the city. Second, a homeless household can be someone that HPD’s Emergency Housing Service classified as homeless but who is currently temporarily living at someone else’s home in the city.⁴⁰

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.⁴¹

Both HPD and DHCR have restrictions for individuals with criminal convictions. There are only two reasons these agencies can automatically reject you because of your criminal history: (1) you have a conviction for producing methamphetamine at home, or (2) you have a conviction that led to lifetime registration on a state or federal sex offender database.⁴² HPD and DHCR have some discretion in

³¹ See N.Y.C. Hous. Auth., *Family Re-entry Pilot Program: Frequently Asked Questions (as revised Dec. 12, 2014)*, available at <https://www1.nyc.gov/assets/nycha/downloads/pdf/family-reentry-pilot-faqs-revised-english-12-12-14.pdf> (last visited Mar. 17, 2024).

³² 42 U.S.C. § 1437d(q)(1)(A).

³³ 42 U.S.C. § 1437d(q)(1)(A).

³⁴ 42 U.S.C. § 1437d(q)(1)(B).

³⁵ 42 U.S.C. § 1437d(q)(2).

³⁶ 42 U.S.C. § 1437d(q)(2).

³⁷ 42 U.S.C. § 1437d(q)(5)–(7).

³⁸ 42 U.S.C. § 1437d(q)(5). 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).

³⁹ To be classified as a homeless household by HPD, your primary nighttime residence must be either a publicly or privately operated shelter in HPD’s jurisdiction designed to provide temporary living accommodations, or the home of another household in HPD’s jurisdiction that is allowing the applicant to reside temporarily. See N.Y.C. Dept. of Hous. Pres. & Dev., *Section 8: Eligibility*, available at <https://www1.nyc.gov/site/hpd/services-and-information/section-8-eligibility.page> (last visited Mar. 17, 2024).

⁴⁰ To be classified as a homeless household by HPD, your primary nighttime residence must be either a publicly or privately operated shelter in HPD’s jurisdiction designed to provide temporary living accommodations, or the home of another household in HPD’s jurisdiction that is allowing the applicant to reside temporarily. See N.Y.C. Dept. of Hous. Pres. & Dev., *Section 8: Eligibility*, available at <https://www1.nyc.gov/site/hpd/services-and-information/section-8-eligibility.page> (last visited Mar. 17, 2024).

⁴¹ See N.Y. State Homes & Cmty. Renewal, *Section 8 – Housing Choice Voucher (HCV) Program*, available at <https://hcr.ny.gov/section-8-housing-choice-voucher-hcv-program> (last visited Mar. 17, 2024).

⁴² N.Y. State Homes and Community Renewal, *Know Your Rights: New York State’s Anti-Discrimination Policy When Assessing Justice-Involved Applicants for State-Funded Housing* (2022), available at

deciding whether to give benefits to someone with a criminal record, but they cannot automatically reject you because of your criminal record other than in the two situations mentioned above.⁴³ They also follow the federal regulations on housing mentioned in this Section.

Note that Appendix A at the end of this Chapter lists various emergency housing shelters in New York City.

(c) Appealing Ineligibility for Housing Assistance

If the housing authority considers you ineligible for public housing or Section 8 assistance, you may ask for a hearing to appeal the housing authority's decision. The hearing would be before an administrative hearing officer. A hearing officer acts like a judge.⁴⁴ At the hearing, the hearing officer will consider evidence of your rehabilitation. This is to determine if a person with a criminal conviction is eligible for housing assistance. Many things can show your rehabilitation. Examples are evidence of participation in counseling programs, work records, and job-training programs. If your charges involved drugs or alcohol, evidence of drug and/or alcohol treatment may show rehabilitation. Still, most sex offenders are not eligible for housing assistance.⁴⁵ Section 3 below explains the tier ratings for sex offenses. For NYCHA, if the hearing officer finds in your favor, your application will be sent back to the Department of Housing Applications to be reconsidered. The hearing officer's decision is final when you receive written notification of their decision.⁴⁶ Both HPD and DHCR also have an informal review process to challenge determinations of ineligibility for housing assistance.⁴⁷

There is often a long waiting list for public housing assistance. So, you will want to begin the application process as soon as you can. 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. Housing Laws and Sex Offenses⁴⁸

(a) State Restrictions

If you are a registered sex offender, almost all states restrict your ability to live near areas where children often go. Examples include schools, daycare centers, and playgrounds. Under New York State law, level III sex offenders or sex offenders whose victims were under 18 at the time of the offense cannot live within 1000 feet of a school.⁴⁹ "School" is defined broadly to include any part of the grounds of any public or private elementary, middle, or high school.⁵⁰ Most states also restrict where sex

https://hcr.ny.gov/system/files/documents/2022/09/doc-w-kyr-justice-involvement_9.12.2022.pdf (last visited Mar. 17, 2024); N.Y.C. Dept. of Hous. Pres. & Dev., *Section 8: Eligibility*, available at <https://www1.nyc.gov/site/hpd/services-and-information/section-8-eligibility.page> (last visited Mar. 17, 2024).

⁴³ For more information on what housing operators may consider when deciding whether or not to grant you access to state-funded housing, see N.Y. State Homes and Community Renewal, *Know Your Rights: New York State's Anti-Discrimination Policy When Assessing Justice-Involved Applicants for State-Funded Housing* (2022), available at https://hcr.ny.gov/system/files/documents/2022/09/doc-w-kyr-justice-involvement_9.12.2022.pdf (last visited Mar. 17, 2024).

⁴⁴ See N.Y.C. Dept. of Hous. Pres. & Dev., *Section 8: Eligibility*, available at <https://www1.nyc.gov/site/hpd/services-and-information/section-8-eligibility.page> (last visited Mar. 17, 2024).

⁴⁵ See N.Y.C. DEPT OF HOUS. PRES. & DEV., HOUSING CHOICE VOUCHER PROGRAM ADMINISTRATIVE PLAN § 15.3 (Apr. 15, 2023), available at <https://www.nyc.gov/assets/hpd/downloads/pdfs/services/administrative-plan.pdf> (last visited Mar. 17, 2024).

⁴⁶ See N.Y.C. HOUS. AUTH., GRIEVANCE PROCEDURES, at 7 (Jan. 2022), available at <https://www.nyc.gov/assets/nycha/downloads/pdf/NYCHA-Grievance-Procedures-English-Oct-2022-update.pdf> (last visited Mar. 17, 2024).

⁴⁷ See N.Y.C. DEPT OF HOUS. PRES. & DEV., HOUSING CHOICE VOUCHER PROGRAM ADMINISTRATIVE PLAN § 15.3 (Apr. 15, 2023), available at <https://www.nyc.gov/assets/hpd/downloads/pdfs/services/administrative-plan.pdf> (last visited Mar. 17, 2024).

⁴⁸ If you were convicted of a sex offense, you may want to read *JLM*, Chapter 36, "Special Considerations for Sex Offenders."

⁴⁹ *People v. Diack*, 24 N.Y.3d 674, 681–682, 26 N.E.3d 1151, 1155–1156, 3 N.Y.S.3d 296, 301–302 (2015).

⁵⁰ *People v. Diack*, 24 N.Y.3d 674, 681–682, 26 N.E.3d 1151, 1155–1156, 3 N.Y.S.3d 296, 301–302 (2015).

offenders can live. Cities and towns may also have their own restrictions. For New York State, only state law controls where sex offenders can live, not city laws.⁵¹ Other states may be different. It is your responsibility to check local laws. You must make sure you do not live in a location that is illegal for you as a registered sex offender.

(b) Federal Restrictions

If you were convicted of a sex offense, you must register with the sex offender registry.⁵² You will have to comply with federal, state, 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.⁵³ Each tier is defined below:

- Tier III⁵⁴ includes people convicted of an offense that is *both* (1) punishable for more than one year in prison and (2) falls under any of the following categories:
 - o Offenses (including attempts and conspiracy) that are comparable to or more severe than aggravated sexual abuse, sexual abuse involving coercion or threats of force, sexual abuse against a person incapable of consenting, or abusive sexual contact against a minor less than thirteen years old;
 - o Offenses involving kidnapping of a minor (unless you were the parent or guardian of the minor); or
 - o Offenses that occurred after you became a tier II offender.
- Tier II⁵⁵ includes people convicted of an offense that is (1) punishable for more than one year in prison, (2) not included in Tier III, *and* (3) falls under any of the following categories:
 - o Offenses (including attempts and conspiracy) involving the use of a minor that are comparable to or more severe than sex trafficking, coercion and enticement, transportation with intent to engage in criminal sexual activity, or abusive sexual contact;
 - o Offenses involving the use of a minor in a sexual performance, solicitation of a minor to practice prostitution, or the production/distribution of child pornography; or
 - o Offenses that occurred after you became a tier I offender.
- Tier I⁵⁶ includes people convicted of any sex offense that is not included in tier II or tier III.

The length of time you are in the registry depends on the tier of your sex offense. Tier I offenders must register for fifteen years.⁵⁷ Tier II offenders must register for twenty-five years.⁵⁸ Tier III offenders must register for the rest of their lives.⁵⁹

The federal sex offender registry laws require that each state have its own sex offender registry.⁶⁰ If you were convicted of a sex offense, you are required to register in each state where you live, work, or go to school.⁶¹ After you are released, you must keep your information current and updated. For example, if you change your name, move, change jobs, or enroll in school, you must update your registration information in person within three business days.⁶² Each state has its own criminal

⁵¹ People v. Diack, 24 N.Y.3d 674, 685–686, 26 N.E.3d 1151, 1158–1159, 3 N.Y.S.3d 296, 304–305 (2015).

⁵² 34 U.S.C. § 20913(a).

⁵³ 34 U.S.C. § 20911(1)–(4).

⁵⁴ 34 U.S.C. § 20911(4).

⁵⁵ 34 U.S.C. § 20911(3).

⁵⁶ 34 U.S.C. § 20911(2).

⁵⁷ 34 U.S.C. § 20915(a)(1).

⁵⁸ 34 U.S.C. § 20915(a)(2).

⁵⁹ 34 U.S.C. § 20915(a)(3).

⁶⁰ 34 U.S.C. § 20912(a).

⁶¹ 34 U.S.C. § 20913(a).

⁶² 34 U.S.C. § 20913(c).

sanctions for sex offenders who fail to comply with registry requirements.⁶³ You should make sure to check your state's registry requirements and penalties.

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.⁶⁴ Some states require more information. The state must provide information such as your criminal history, a current picture of you, and your fingerprints.⁶⁵ 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.⁶⁶ 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, like firefighters and public parks, are available to everyone. Other benefits—like 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. However, for the most part, a criminal record is not enough to disqualify you from receiving benefits. One important exception is drug-related felonies. As this Part 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.⁶⁷ This Part will discuss the law governing the eligibility of people with criminal records for different categories of public benefits.

Be aware that, 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. If you want or need public benefits, you can find more information at <https://www.usa.gov/benefits/>.

1. Federal and State Financial Assistance

(a) Federal Programs

Various federal programs provide direct assistance to low-income, disabled, and elderly people in the form of cash and food stamps. However, there are some restrictions on these programs that may affect you. These programs and restrictions that may affect you are described below.

⁶³ 34 U.S.C. § 20913(e).

⁶⁴ 34 U.S.C. § 20914(a)(1)–(3). 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 a student or will be a student,” “[t]he license plate number and description of any vehicle owned or operated by the sex offender,” “[i]nformation relating to intended travel of the sex offender outside the United States,” and “[a]ny other information required by the Attorney General.” 34 U.S.C. § 20914(a)(4)–(8).

⁶⁵ 34 U.S.C. § 20914(b)(3)–(5). 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.” 34 U.S.C. § 20914(b)(1)–(2), (6)–(8).

⁶⁶ *See* 34 U.S.C. § 20923(b) (listing more parties who may be notified when a sex offender registers in the state registry or updates his information).

⁶⁷ For example, under New York state law, you will be prohibited 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 about 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 2022).

(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 either have not been able to find work or you have a job that pays you a very low income. TANF works by giving federal funds to states and giving each state the flexibility to develop its 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 agencies that will be able to give you information about your local TANF program. You can also get more information from the website of the American Public Human Services Association (<https://aphsa.org>) and from the TANF website (<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 to work.⁶⁸ There is also a maximum total amount of time for which you can receive assistance during your lifetime (usually five years).⁶⁹ In addition, federal law makes many non-citizens ineligible for benefits.⁷⁰ Some states, such as New York, have state-funded programs that provide benefits beyond the time limits or to people who would not qualify for TANF under federal law.

There are three circumstances in which criminal activity may result in restrictions to your access to TANF funds: (1) if you are a fugitive from justice on a felony charge or conviction, (2) if you have violated parole or probation conditions, or (3) if you have a drug-related felony conviction. States cannot give assistance to anyone who is a fugitive from justice on a felony charge or conviction, or who has violated parole or probation conditions.⁷¹ 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 Subsection C(1)(b).

Another federal benefits program, the Supplemental Nutrition Assistance Program (SNAP), provides food stamps to low-income households. Generally, in order to be eligible for SNAP, you must also be working, looking for work, or being trained for work. You can check with your local SNAP office to find out whether you are eligible for SNAP benefits at <https://www.fns.usda.gov/snap/state-directory>.

A drug-related felony conviction may prevent you from getting cash assistance or food stamps through federal programs.⁷² 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.⁷³ 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.⁷⁴

⁶⁸ 42 U.S.C. § 602(a)(1)(A)(i)–(iii); *see also* 42 U.S.C. § 607(d) (providing a definition of "work activities").

⁶⁹ 42 U.S.C. § 608(a)(7).

⁷⁰ 8 U.S.C. § 1611; *see* 7 U.S.C. § 2015(f) (food stamps); *see also* 8 U.S.C. § 1641 (providing a definition of non-citizens who are not prohibited from receiving public assistance).

⁷¹ *See* 42 U.S.C. § 608(a)(9) (TANF); 7 U.S.C. § 2015 (food stamps).

⁷² 21 U.S.C. §§ 862a(a)–(b).

⁷³ 21 U.S.C. § 862a(a).

⁷⁴ 21 U.S.C. § 862a(d)(2). 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

States are allowed to change this restriction against people with drug felony convictions by passing laws that make it clear that the state is choosing not to adopt the federal restriction. The state may also choose to modify the restriction.⁷⁵ Many states have either modified or completely removed the restrictions. The drug felon 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.⁷⁶ 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.⁷⁷

(ii) *Other Federal Programs*

Supplemental Security Income (SSI) is a means-tested program (meaning it depends on your income and assets) for people who are blind, disabled, or elderly (over 65). If you were on SSI when you were arrested, benefits will be suspended for the month(s) in which you were incarcerated. Suspension of your SSI benefits will continue on a monthly basis for the duration of your incarceration, meaning that they may remain suspended for up to a month after your release. 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—meaning that you have to go through the application process again to get them back. Technically speaking, you are supposed to report your incarceration to the Social Security Administration (SSA).

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 where staff are expected to provide help with these applications, especially with SSI. 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. Even though you should be able to apply on your own, you may need help for practical reasons. For example, you could have issues contacting your local SSA office because of restrictions on the phone and mail in your prison. Also, your local SSA office might not know all the answers to your questions, and you may need to get help from someone at your facility. For more information on Supplemental Security Income, go to <http://www.socialsecurity.gov/pgm/ssi.htm/>.

There are a variety of other Social Security benefits. Social Security Disability Insurance (SSDI) benefits are an insurance-based program for workers who become blind or disabled, or who have 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 Social Security Retirement benefits when you are 62, but your benefits will be lower than if you waited until reaching “full retirement age,” which depends on your year of birth. If you are on Social Security Disability Insurance benefits, Social Security Retirement benefits, or other “Title II” benefits when you are arrested, 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.⁷⁸ (This may vary if you were incarcerated prior to April 1, 2000.) These benefits will remain suspended (rather than terminated) until you are released. So, all you need to do to get them back is visit an SSA office with copies of your release papers. If you have a spouse or child who is getting benefits based on your work history, your family benefits should remain unchanged while you are incarcerated and after you are released.

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. *See United States v. Littlejohn*, 224 F.3d 960, 965 (9th Cir. 2000).

⁷⁵ 21 U.S.C. § 862a(d)(1)(A). To learn more about restrictions in each state, see L. Darrel Thompson and Ashley Burnside, *No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Convictions*, CTR. AND SOC. POL’Y (Apr. 19, 2022), available at <https://www.clasp.org/publications/report/brief/no-more-double-punishments> (last visited Mar. 15, 2024).

⁷⁶ For more information on health assistance, see Part C(2), “Medical and Mental Health Assistance,” below.

⁷⁷ 21 U.S.C. § 862a(f).

⁷⁸ *See* U.S. SOC. SEC. ADMIN., WHAT PRISONERS NEED TO KNOW (2003), available at <https://www.ssa.gov/pubs/EN-05-10133.pdf>.

Criminal convictions do not affect your eligibility for these benefits, although you generally cannot receive them while you are incarcerated, and you cannot receive them if you are a fleeing felon or are in violation of probation or parole.⁷⁹ Federal law states that even if your disability stems from actions that led to your conviction or was caused while you were incarcerated, that cannot be used in deciding whether you are eligible to receive federal disability benefits.⁸⁰ If you want to apply for Social Security, you should go to the Social Security webpage, <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 8 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 the federal restrictions and conditions discussed above in Part C(1)(a)(i). SNA is a separate program. SNA is administered by the state of New York and is 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, which again is subject to most of the same federal restrictions on TANF. You should note that New York has opted out of the federal restriction that denies welfare and food stamps to people with drug felony convictions. That means **you can get FA even if you have a drug-felony conviction.**

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.⁸¹ In New York, you are considered a probation or parole violator if (1) you have a warrant issued for your arrest because of a violation of your probation or parole, (2) a court has determined you violated probation or the Department of Corrections and Community Supervision has determined you violated parole, or (3) you have violated a condition of probation or parole under federal law.⁸² 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.⁸³ Finally, probation or parole violations include violations of conditions imposed under federal law, as well as violations of conditional release.⁸⁴

If you want to apply for FA, you should go to a welfare or job center.⁸⁵ The application may take thirty days to be processed, so you should apply as soon as possible.⁸⁶

Adults with no 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 (again, usually five years) may also receive SNA. The amount you can receive in SNA benefits 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.⁸⁷ If you came to New York from another state less than a year ago and are in need of public assistance, you will only be able to receive

⁷⁹ 42 U.S.C. § 1382(e)(4). 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. 42 U.S.C. § 1382(e)(4).

⁸⁰ 42 U.S.C. § 423(d)(6).

⁸¹ N.Y. SOC. SERV. LAW § 131(14)(a) (McKinney 2022).

⁸² N.Y. SOC. SERV. LAW § 131(14)(b) (McKinney 2022).

⁸³ N.Y. SOC. SERV. LAW § 131(14)(b) (McKinney 2022).

⁸⁴ N.Y. SOC. SERV. LAW § 131(14) (a), (c)–(d) (McKinney 2022).

⁸⁵ For a list of job centers in New York City, see N.Y.C. HUM. RES. ADMIN., *Benefits Access Centers*, available at <https://www.nyc.gov/site/hra/locations/job-locations-and-service-centers.page> (last visited Mar. 18, 2024), or look in your phone book under the governmental listings, or “blue pages.”

⁸⁶ See N.Y. STATE OFF. OF TEMP. & DISABILITY ASSISTANCE, *Temporary Assistance (TA)*, available at <http://otda.ny.gov/programs/temporary-assistance/> (last visited Mar. 18, 2024).

⁸⁷ See N.Y. SOC. SERV. LAW § 159 (McKinney 2022).

half of the New York state benefit, or the benefit level of the state you came from, whichever is higher.⁸⁸

Non-cash benefits (in the form of vouchers for shelter and utilities) are available to families when the head of the household has reached the end of the SNA five-year limit and to individuals receiving drug or alcohol treatment and their families. These benefits are also available to families of those refusing the drug screening, assessment, or treatment that is required to receive cash benefits under SNA. There is no time limit on non-cash benefits as long as you continue to qualify.⁸⁹

If you want to apply for SNA, you must file an application in person at your local Department of Social Services center.⁹⁰ 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, including:
 - (a) Drug screening,
 - (b) Fingerprinting,
 - (c) Cooperation with child support requirements,
 - (d) Looking for work and accepting a job when offered, and
 - (e) Complying with other employment requirements.

It usually takes forty-five days to process your application for SNA, so you should apply as soon as possible. If you need assistance more quickly than that, you should ask about receiving emergency assistance.⁹¹ You should be as specific as possible about your needs, especially 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 caseworker. 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. Medicaid funds medical and mental health care for those who cannot afford to pay for it.⁹² Medicaid, like TANF (discussed above in Part C(1)(a)(i)), 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.⁹³ Medicare, like Social Security and SSI benefits (discussed in Part C(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.⁹⁴ Each state may have its own

⁸⁸ See N.Y. SOC. SERV. LAW § 117 (McKinney 2003).

⁸⁹ See N.Y. State Off. of Temp. & DISABILITY ASSISTANCE, *Temporary Assistance (TA)*, available at <http://otda.ny.gov/programs/temporary-assistance/> (last visited Mar. 18, 2024).

⁹⁰ You can find a list of New York's Departments of Social Services at N.Y. STATE OFF. OF TEMP. & DISABILITY ASSISTANCE, *Local Departments of Social Services*, available at <http://otda.ny.gov/workingfamilies/dss.asp> (last visited Mar. 18, 2024), or see N.Y. STATE DEP'T OF HEALTH, *New York State Local Departments of Social Services*, available at <http://www.health.state.ny.us/nysdoh/medicaid/ldss.htm> (last visited Mar. 18, 2024).

⁹¹ See N.Y.C. Hum. Res. Admin., *Cash Assistance*, available at <https://www.nyc.gov/site/hra/help/cash-assistance.page> (last visited Mar. 18, 2024).

⁹² See 42 U.S.C. §§ 1396–1396v.

⁹³ See 42 U.S.C. § 1396d.

⁹⁴ For example, in New York, a single person may be eligible for Medicaid if he makes less than \$750 a month. For every additional person in your family, the maximum income level goes up. If you are blind, disabled, or over the age of 65, your Medicaid eligibility is determined based on the amount of financial resources you have available. For example, a single person in New York is eligible for Medicaid if he has less than \$14,400 in available resources. You can also own a home, a car, and other personal property and still qualify. These numbers may

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 or Medicaid benefits while you are in prison. However, you *can* receive them while on probation or parole. If you otherwise meet all of the requirements for Medicare or Medicaid eligibility, your criminal record will not disqualify you from receiving these benefits, even if you have a drug felony conviction. A violation of the conditions of your probation or parole will also not disqualify you.

If you want to apply for Medicare or Medicaid, you can 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 by using the "Find Local Help" tool at <https://localhelp.healthcare.gov>. 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 illnesses. For example, New York residents 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, not terminated, so that it can restart as soon as they are released. In New York, 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 upon release from prison.⁹⁵ Incarcerated people who enroll in the Medication Grant Program should also submit an application for Medicaid prior to their release.

3. Higher Education Assistance

The federal government provides financial aid through grants and loans to people who attend an approved institution of higher education that awards degrees, certificates, or credentials.⁹⁶ But if you were convicted under state or federal law for 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.⁹⁷ This is only if the conviction is *on your record*. A conviction that was reversed, set aside, removed from your record, or a juvenile proceeding does not count.⁹⁸ If you have been convicted of selling or possessing drugs, the amount of time you are ineligible for educational aid depends on how many previous convictions for those offenses you have.⁹⁹ The law says the amount of time of ineligibility after the date of conviction is:

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

change, so check with your local Medicaid office to see if you qualify, or see N.Y. Dep't of Health, *New York State Medicaid*, available at http://www.health.ny.gov/health_care/medicaid/ (last visited Mar 25, 2024).

⁹⁵ See N.Y. State Off. of Mental Health, *Medication Grant Program*, available at https://omh.ny.gov/omhweb/med_grant/mghome.htm (last visited March 25, 2024).

⁹⁶ The federal government outlines its specifications for approved institutions at 20 U.S.C. § 1094. Comprehensive rules for students' eligibility are contained in 20 U.S.C. § 1091.

⁹⁷ 20 U.S.C. § 1091(r).

⁹⁸ 34 C.F.R. § 668.40(a)(2).

⁹⁹ Conviction of multiple counts of sale or possession count as a single conviction. 64 Fed. Reg. 57356 (Oct. 22, 1999).

The amount of time you are ineligible is not set in stone. 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.¹⁰⁰ 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
- (4) Administered or recognized by a federally or state-licensed hospital, health clinic, or medical doctor.¹⁰¹

If you want to receive federal education assistance, you have to first apply and be accepted to the institution of higher education that you want to attend.¹⁰² Once you are 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. Getting a job after your release from prison is often difficult because some employers may fear or distrust individuals convicted of crimes. Many employers believe that people with prior convictions will not be reliable employees. There is no federal law that stops employers from asking you in an interview or on a job application if you have ever been convicted of an offense. The majority of states and over 150 cities have passed “ban the box” laws that forbid employers from automatically disqualifying applicants because of criminal records.¹⁰³

There are laws that prevent people with certain kinds of criminal convictions from working in particular jobs or professions.¹⁰⁴ Visit <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-comparison-of-criminal-records-in-licensing-and-employment/> to see whether your state follows any law that might prevent you from obtaining the type of job you want.¹⁰⁵

However, while a criminal record may make your job search more difficult, it will not prevent you from finding a job in many fields of work. Federal and state laws contain some protections against employment discrimination for people with criminal records. Also, many states provide ways for you to remove or overcome barriers to certain jobs.

The following Sections describe the laws protecting you against discrimination and explain ways to defend yourself against discriminatory employment practices in New York State. If you are finding it difficult to obtain employment, you should strongly consider getting help from free civil legal aid

¹⁰⁰ See 20 U.S.C. § 1091(r)(2).

¹⁰¹ See 34 C.F.R. § 668.40(d)(2)(i)–(iv) (2022).

¹⁰² See 20 U.S.C. § 1091(a)(1).

¹⁰³ AccuSource, *List of States and Municipalities with Ban the Box Laws*, available at <https://www.accusourcehr.com/list-of-states-and-municipalities-with-ban-the-box-laws/> (last visited March. 25, 2024).

¹⁰⁴ For example, Congress has required a criminal-history investigation of any airport employee with access to airplanes or secure areas. See 49 U.S.C. § 44936(a)(1)(A)(i)–(ii). Occasionally, the courts have struck down such laws. For example, in *Nixon v. Commonwealth*, 789 A.2d 376, 382 (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, it is very uncommon that these types of laws are declared unconstitutional.

¹⁰⁵ Restoration of Rts. Project, *50-State Comparison: Criminal Record in Employment & Licensing*, available at <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-comparison-of-criminal-records-in-licensing-and-employment/> (last visited March. 25, 2024).

providers, such as the Legal Aid Society.¹⁰⁶ They can tell you whether certain crimes can be expunged from your record 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. Still, it is likely that an employer will consider your previous criminal convictions in deciding whether you are fit to work for the federal government.¹⁰⁷

If you are convicted of a criminal offense involving dishonesty, a breach of trust, or money laundering, you will be disqualified from working for banks or other financial institutions that are insured by the Federal Deposit Insurance Corporation.¹⁰⁸ Also, federal law forbids people with certain felony convictions from working in the insurance industry without first getting permission from an insurance regulator.¹⁰⁹ Some felony convictions may bar you from holding certain positions in unions or other organizations that manage employee benefit plans.¹¹⁰ You may be barred from these positions for up to thirteen years after your conviction or the end of your imprisonment, whichever is later. Some of these barred positions include union officers and the director of the union's governing board.¹¹¹ Federal law also forbids people convicted of certain crimes from providing health care services that receive payment from Medicare¹¹² or from working for the pharmaceutical industry.¹¹³

(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.¹¹⁴ The Supreme Court has interpreted Title VII to prohibit employment practices that have a "disparate impact."¹¹⁵ An employment practice has a "disparate impact" when it appears to be neutral to all groups, but it affects one group more harshly than another and it cannot be justified by business necessity.¹¹⁶

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 completely bar people just because they have a conviction record.¹¹⁷ This is because denying

¹⁰⁶ The Legal Aid Society is a nonprofit provider of free legal services. You can look up your nearest local county or city Legal Aid Society online.

¹⁰⁷ See U.S. DEPT OF JUST., FEDERAL STATUTES IMPOSING COLLATERAL CONSEQUENCES UPON CONVICTION (*as revised* Nov. 13, 2006), *available at* https://www.justice.gov/sites/default/files/pardon/legacy/2006/11/13/collateral_consequences.pdf (last visited March. 25, 2024).

¹⁰⁸ See 1 U.S.C. § 1829(a)(1)(A)–(B).

¹⁰⁹ See 18 U.S.C. § 1033(e)(1)(A).

¹¹⁰ See 29 U.S.C. §§ 504(a), 1111(a).

¹¹¹ See 29 U.S.C. § 504(a)(2).

¹¹² See 42 U.S.C. § 1320a-7(a)(1)–(4).

¹¹³ See 21 U.S.C. § 335a(a)(2).

¹¹⁴ See 42 U.S.C. § 2000e-2(a)–(d).

¹¹⁵ See *Griggs v. Duke Power Company*, 401 U.S. 424, 431, 91 S. Ct. 849, 853, 28 L. Ed. 2d 158, 164 (1971) (stating that Title VII forbids "not only overt discrimination but also practices that are fair in form, but discriminatory in operation").

¹¹⁶ See 42 U.S.C. § 2000e-2(k)(1)(A); *see also Raytheon Co. v. Hernandez*, 540 U.S. 44, 52, 124 S. Ct. 513, 519, 157 L. Ed. 2d 357, 365 (2003) (explaining what a disparate impact claim is).

¹¹⁷ See, e.g., *Green v. Missouri Pac. R. Co.*, 523 F.2d 1290, 1294–1295 (8th Cir. 1975) (finding that a railroad's policy of excluding from consideration any job applicant with a conviction, other than for a minor traffic offense, discriminated against Black people and was not justified by business necessity).

people jobs based on conviction records has a disparate impact on racial minorities.¹¹⁸ 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 the conviction they rejected you for is related to your ability to do the job competently and safely.¹¹⁹

Employers cannot reject you simply because you have any conviction. An employer must consider the following factors to determine whether there is a business necessity in denying you the job:

- (1) The nature and gravity of the offense(s),
- (2) The amount of time that has passed since the conviction or completion of the sentence, and
- (3) The nature of the job.¹²⁰

The first two factors listed above mean that, if you have committed a recent, serious offense, it is more “reasonable” for an employer to deny you the job. The third factor 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, and so denying you the position because of your conviction record, is a matter of “business necessity.”¹²¹

If the employer demonstrates a business necessity for denying your application, you can still win if you show that, instead of excluding all people with criminal convictions, the employer could use a different practice to achieve its business and employment goals that would work just as well. However, if you try to show that the employer could use a different practice, you must consider the burdens on the employer, like the costs of the alternative practice.¹²²

¹¹⁸ The EEOC found that racial minorities are convicted at a rate disproportionately higher 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 more than non-minorities. See EEOC Decision No. 78-35, 2, 26 Fair Empl. Prac. Cas. (BNA) 1755 (1978) (deciding that a civic center’s choice to withdraw a job offer from a candidate because of his convictions for rape, assault and battery, drunkenness, and firearm possession was not a Title VII violation because it was justified by a business necessity).

¹¹⁹ Courts have defined “business necessity” in different ways. See, e.g., 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, 1486–1503 (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. See 42 U.S.C. § 2000e-2(k). 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, 593–594 (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).

¹²⁰ U.S. EQUAL EMP. OPPORTUNITY COMM’N., 915.002, ENFORCEMENT GUIDANCE ON THE CONSIDERATION OF ARREST AND CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT (Apr. 25, 2012), available at <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions> (last visited Mar. 18, 2024).

¹²¹ See, e.g., *Richardson v. Hotel Corp. of America*, 332 F. Supp. 519, 521 (E.D. La. 1971) (upholding a hotel’s policy requiring bellmen to be free from convictions of serious crimes, because the job would give them access to hotel guests’ rooms and luggage).

¹²² See 42 U.S.C. § 2000e-2(k)(B)(i). See *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 998–999 (1988) (plurality opinion) (holding that if the plaintiff’s suggested alternative practices are more costly for the employer, these increased costs would be considered when the court determines the effectiveness of the suggestions).

Even if you have a criminal conviction, federal law forbids employers from using a lie detector test as a basis for employment.¹²³ 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 the policy because they wanted to discriminate against someone based on their race, color, religion, sex, or national origin.¹²⁴

2. New York State Law¹²⁵

Article 23-A of the New York Correction Law says that you cannot be denied any public or private employment or be denied a job license just because of your past criminal convictions.¹²⁶ Under this law, you may only be denied a job or license due to your criminal history if the conviction directly relates to the job¹²⁷ or the conviction indicates that you pose an unreasonable threat to people or property.¹²⁸ 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 people previously convicted,
- (2) The duties of the job you are applying for,
- (3) The relation between the job duties and the crime(s) you were convicted of,
- (4) The length of time that has passed since the offense(s),
- (5) Your age at the time of the offense(s),
- (6) The seriousness of the 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.¹²⁹

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

¹²³ See 29 U.S.C. §§ 2001–2009; see also *Veazey v. Commc'ns & 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. Tournneau, Inc.*, 797 F. Supp. 247, 253 (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 after 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. See 29 C.F.R. § 801.23(a)(1) (2023).

¹²⁴ See 42 U.S.C. § 2000e-2(k)(3).

¹²⁵ If you live in New York City, you should visit the N.Y.C. Commission on Human Rights website to learn more about city-specific protections from employment discrimination. For information on city-specific employment policies, see N.Y.C. Cmm'n on Hum. Rts. L., *The Law*, available at <https://www1.nyc.gov/site/cchr/law/the-law.page> (last visited Mar. 18, 2024). Additionally, you should read the City's Fair Chance Act Factsheet for Employees. See N.Y.C. Cmm'n on Hum. Rts., *Fair Chance Act Factsheet for Employees* (2019), available at <https://www1.nyc.gov/site/cchr/media/fair-chance-act-factsheet-for-employees.page> (last visited Mar. 18, 2024). For information about how to file a complaint if you feel you have been discriminated against based on your criminal record or other protected status, see N.Y.C. Cmm'n on Hum. Rts., *Complaint Process*, available at <https://www1.nyc.gov/site/cchr/enforcement/complaint-process.page> (last visited Mar. 18, 2024).

¹²⁶ Art. 23-A is named “Licensure and Employment of Persons Previously Convicted of One or More Criminal Offenses.” See N.Y. CORRECT. LAW §§ 750–755 (McKinney 2014).

¹²⁷ See N.Y. CORRECT. LAW § 752(1) (McKinney 2014). “Direct relationship” means that the criminal conduct that 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) (McKinney 2014).

¹²⁸ See N.Y. CORRECT. LAW § 752(2) (McKinney 2014).

¹²⁹ See N.Y. CORRECT. LAW § 753(1)(g) (McKinney 2014); see also *La Cloche v. Daniels*, 195 Misc.2d 329, 333, 755 N.Y.S.2d 827, 830 (Sup. Ct. N.Y. County 2003) (holding that the statutory factors must be taken into account before an applicant can be denied a license on the basis of his criminal record, and finding that it would violate state public policy to deny a license applicant who had taken a barbering vocational program while incarcerated). But, 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 (unfair). See *Klein v. Levin*, 305 A.D.2d 316, 317–320, 760 N.Y.S.2d 462, 465–467 (1st Dept. 2003) (holding that when an administrative agency denies a job license based on an applicant's criminal history, but it is shown that the same agency previously *granted* a license to an applicant with almost the same history, it is an unfair decision that should be overturned).

Employers may legally take your conviction(s) into account when they make hiring decisions, as 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 that 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 unlawful discrimination.¹³⁰

In New York City, the Fair Chance Act prevents most employers from asking about prior convictions until after a job offer. This means that employers who do not need employees to pass a background check by law may not ask about your criminal history during the interview process or on job applications. However, employers may conduct a background check after they give you an offer and revoke your offer for failing the background check.¹³¹ (See Section 3 below on Rap Sheets.) If your offer is revoked after an employer runs a background check, the employer must give you a copy of the criminal record that they relied on in deciding to revoke your offer, and they must file a "Fair Chance Notice" with the city explaining why they chose to revoke your offer.¹³² The cities of Buffalo, Rochester, and Syracuse also have similar rules banning most employers from asking about criminal records in job applications or during interviews.¹³³

While employers are allowed to ask about your criminal convictions, it is illegal under Article 23-A of New York State's Correction Law 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.¹³⁴ If an employer does ask about arrests, New York law allows you to not tell them about arrests that did not result in conviction.¹³⁵ Law enforcement agency employers are granted an exception to this rule. If you are applying for a police or peace officer job, law enforcement agency employers can ask you about all arrests, and you must report all arrests if they ask about them.¹³⁶

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 required to perform background checks before hiring a job applicant and may make employment decisions based on past convictions.¹³⁷ 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,¹³⁸ licenses for real estate brokers and salespeople,¹³⁹ and positions as security guards¹⁴⁰ or private investigators.¹⁴¹

These restrictions are some of 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

¹³⁰ 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).

¹³¹ See N.Y.C. Comm'n on Hum. Rts., *Fair Chance Act Campaign*, available at <http://www1.nyc.gov/site/cchr/media/fair-chance-act-campaign.page> (last visited Mar. 18, 2024).

¹³² See N.Y.C. Comm'n on Hum. Rts., *Fair Chance Act Campaign*, available at <http://www1.nyc.gov/site/cchr/media/fair-chance-act-campaign.page> (last visited Mar. 18, 2024).

¹³³ See BUFFALO, N.Y., CITY CODE §§ 154-25–154-29 (2014).

¹³⁴ See N.Y. EXEC. LAW § 296(16) (McKinney 2018).

¹³⁵ See N.Y. CRIM. PROC. LAW § 160.60 (McKinney 2019).

¹³⁶ N.Y. EXEC. LAW § 296(16) (McKinney 2018).

¹³⁷ See, e.g., N.Y. COMP. OF CODES R. & REGS. tit. 9, § 6654.17(k) (2024) (regulating in-home elder care); N.Y. COMP. OF CODES R. & REGS. tit. 10, § 402.7 (2024) (regulating hiring in health care provision generally); N.Y. COMP. CODES R. & REGS. tit. 10, § 405.3(e)(1)(iii)–(2)(iii) (2024) (regulating the reporting of information by health care providers about the criminal histories of their employees).

¹³⁸ N.Y. ALCO. BEV. CONT. § 126 (McKinney 2019).

¹³⁹ N.Y. REAL PROP. § 440-a (McKinney 2015).

¹⁴⁰ N.Y. GEN. BUS. §§ 89-g(3)(a), 89-h(5) (McKinney 2022).

¹⁴¹ N.Y. GEN. BUS. § 74(2) (McKinney 2022).

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 next.

(a) Certificates of Relief from Disabilities and Certificates of Good Conduct¹⁴²

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 (discussed in Part G 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 afresh and become a productive member of society.”¹⁴³

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 mainly on your criminal record. In order to be eligible for a Certificate of Relief from Disabilities, you cannot have more than one felony conviction, although multiple misdemeanors are acceptable.¹⁴⁴ 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.¹⁴⁵ If you have been convicted of more than one felony, you may be eligible for a Certificate of Good Conduct, but only after a minimum period of time has elapsed from the date of your release.

(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 (people convicted of a misdemeanor) 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 Department of Corrections and Community Supervision (DOCCS) 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, a revocable (or suspended) sentence, or a sentence that didn't include incarceration in any New York state prison, you can apply to the court in which you were convicted for your certificate.¹⁴⁶ The court may issue the certificate at the time the sentence is pronounced or at any time thereafter.¹⁴⁷ You should contact the court clerk for information on how to apply and information on the court's procedures for processing applications.

¹⁴² See N.Y. CORRECT. LAW §§ 700–706 (McKinney 2014).

¹⁴³ *Rodgers v. N.Y.C. Human Res. Admin.*, 154 A.D.2d 233, 235, 546 N.Y.S.2d 581, 582 (1st Dept. 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 Certificates of Relief from Disabilities on his job application, because the certificates amounted to “badge[s] of rehabilitation”).

¹⁴⁴ N.Y. CORRECT. LAW § 700(1)(a) (McKinney 2014). 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) (McKinney 2014).

¹⁴⁵ N.Y. CORRECT. LAW § 700(2)(c) (McKinney 2014).

¹⁴⁶ N.Y. CORRECT. LAW §§ 700(1)(c), 702(1) (McKinney 2014).

¹⁴⁷ N.Y. CORRECT. LAW § 702(1) (McKinney 2014).

If you (1) served state time for a felony conviction, or (2) were convicted in a federal or out-of-state court, you may apply for a Certificate of Relief from Disabilities from DOCCS any time after your release.¹⁴⁸ 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.¹⁴⁹ You can apply online or by mail using the information at the end of this Part.

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,” including notaries public, have statutory bars against all people with felony records, even those who have been issued a Certificate of Good Conduct, and some even bar people with misdemeanor convictions.¹⁵⁰ 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 you are not sure, 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.

(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 can be limited to one or more specific bars, or it may remove all the bars created by all of the offenses on your record.¹⁵¹ You are able to apply for a Certificate of Good Conduct if you have been convicted of more than one felony or any number of misdemeanors. However, before applying, you will have to wait for a period of time (the “period of good conduct”) after your release.¹⁵² When the most serious crime on your record is a misdemeanor, you have to wait at least one year. When the most serious crime on your record is a class C, D or E felony, you must wait at least three years. When the most serious crime on your records is a class A or B felony, you must wait at least five years.¹⁵³ To get an application for a Certificate of Relief from Disabilities or a Certificate of Good Conduct, visit <https://doccs.ny.gov/certificate-relief-good-conduct-restoration-rights>, or send a letter to:

Department of Corrections and Community Supervision
ATTN: Certificate Review Unit
The Harriman State Campus – Building 2
1220 Washington Avenue
Albany, NY 12226-2050
(518) 485-8953

3. Rap Sheets¹⁵⁴

Getting a certificate of rehabilitation can be an important and valuable step toward restoring your rights and improving your employment prospects. However, these certificates do not seal or erase any

¹⁴⁸ N.Y. CORRECT. LAW § 703(1) (McKinney 2014).

¹⁴⁹ N.Y. CORRECT. LAW § 703(4) (McKinney 2014).

¹⁵⁰ See N.Y. CORRECT. LAW § 701(1) (McKinney 2014) (specifying that Certificates of Relief from Disabilities do not remove bars to eligibility for public office); see, e.g., *People v. Olensky*, 91 Misc. 2d 225, 225, 397 N.Y.S.2d 565, 565 (Sup. Ct. Queens County 1977) (stating that the office of a notary public is a “public office”).

¹⁵¹ N.Y. CORRECT. LAW § 703-a(1) (McKinney 2014).

¹⁵² N.Y. CORRECT. LAW § 703-b(1)(a), (3) (McKinney 2014).

¹⁵³ N.Y. CORRECT. LAW § 703-b(3) (McKinney 2014).

¹⁵⁴ See LEGAL ACTION CTR., YOUR NEW YORK STATE RAP SHEET: A GUIDE TO GETTING, UNDERSTANDING & CORRECTING YOUR CRIMINAL RECORD (2013), available at https://www.sunyulster.edu/docs/admissions/guide_to_getting_criminal-record.pdf (last visited Mar. 18, 2024).

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 Section, 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 to many employers and licensing agencies, subject to important exceptions that are discussed below. In New York, private employers (including childcare agencies,¹⁵⁵ hospitals,¹⁵⁶ museums, some private transportation companies, financial institutions, and home healthcare agencies) all have the right to get copies of your rap sheet.¹⁵⁷ Public employers—including police and fire departments, the United States Postal Service, the New York City Transit Authority, school districts, and the Department of Sanitation—can also obtain your record.¹⁵⁸ Furthermore, state and local agencies that issue occupational licenses—for anything ranging from driving a taxi, to cutting hair, to selling real estate, to practicing medicine—may also be able to access to your criminal record, as can bonding agencies.¹⁵⁹ Foster care and adoption agencies are also required to inquire into the criminal history of anyone who wants to foster or adopt, as well as anyone who lives with a present or prospective foster or adoptive parent (*see* Part E(2) 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 because 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. They can even 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 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

¹⁵⁵ N.Y. EXEC. LAW § 837-n(2)(a) (McKinney 2020).

¹⁵⁶ N.Y. PUB. HEALTH LAW § 230(10)(a)(vi) (McKinney 2023).

¹⁵⁷ *See* LEGAL ACTION CTR., YOUR NEW YORK STATE RAP SHEET: A GUIDE TO GETTING, UNDERSTANDING & CORRECTING YOUR CRIMINAL RECORD 9 (2013), *available at* https://www.sunyulster.edu/docs/admissions/guide_to_getting_criminal-record.pdf (last visited Mar. 18, 2024).

¹⁵⁸ N.Y. EDUC. LAW §§ 305(30)(b), 3004-b (McKinney 2019, 2023); *see also* LEGAL ACTION CTR., YOUR NEW YORK STATE RAP SHEET: A GUIDE TO GETTING, UNDERSTANDING & CORRECTING YOUR CRIMINAL RECORD 9 (2013), *available at* https://www.sunyulster.edu/docs/admissions/guide_to_getting_criminal-record.pdf (last visited Mar. 18, 2024).

¹⁵⁹ *See* LEGAL ACTION CTR., YOUR NEW YORK STATE RAP SHEET: A GUIDE TO GETTING, UNDERSTANDING & CORRECTING YOUR CRIMINAL RECORD 10 (2013), *available at* https://www.sunyulster.edu/docs/admissions/guide_to_getting_criminal-record.pdf (last visited Mar. 18, 2024).

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 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. **This information only applies 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 below in Subsection D(3)(d).

(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. If you are incarcerated for fewer than forty-five days, you need to follow the same two steps. First, you have to either call or write a letter to the Division of Criminal Justice Services and ask for an out-of-state "Record Review." If you choose to call the Record Review Unit, their phone number is (518) 485-7675. If you choose to e-mail, send it to 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:

Record Review Unit
Division of Criminal Justice Services
80 South Swan Street, 5th Floor
Albany, New York 12210

There is a fee of either \$43.50 or \$57 to obtain your rap sheet. If you cannot afford the fee, you can ask for it to be waived when you make your request. A photocopy of your Medicaid or Food Stamp card or something similar will count as proof you cannot afford the fee. If you do not receive public assistance of any kind and cannot afford the fee, you need to send a notarized statement to DCJS that lists all of your income, expenses, and any assets you have.

They will send you a packet with a form to fill out. You will also need to provide your fingerprints. You can visit <https://www.criminaljustice.ny.gov/ojis/recordreview.htm> for instructions on how to complete your request, including how to get your fingerprints.

(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 to view your rap sheet 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. If you prefer to have the printed record and can afford the extra time it may take, you can choose to request your rap sheet by following the steps described above.

(iii) *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 above). There is no fee to request your rap sheet if you are currently incarcerated. The letter you write should include 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 (NYS ID), 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, to avoid errors on your rap sheet affecting your job search, you should begin the correction process earlier rather than later.

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 (NYS ID) 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 whether you send a letter or a Statement of Challenge 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 noncriminal offenses is sealable. That means 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 and 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.¹⁶⁰

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

¹⁶⁰ N.Y. CRIM. PROC. LAW §§ 160.50(1)(d), 160.55(1)(d) (McKinney 2019).

a conviction at trial are sealable.¹⁶¹ Section 160.55 of the New York Criminal Procedure Law provides that several violations (noncriminal offenses) and traffic infractions may also be sealed.¹⁶²

Many marijuana convictions that occurred before April 2021 are required to be sealed under New York state law. Specifically, unlawful possession of marijuana; third-, fourth-, and fifth-degree criminal possession of marijuana; and fourth- and fifth-degree criminal sale of marijuana must all be sealed. Additionally, some minor marijuana convictions may be completely wiped from your record. A formal request to destroy those records must be made to the state Office of Court Administration (OCA). Visit the OCA website for more information about that process at <https://www.nycourts.gov/FORMS/destroy-expunged-marihuana-conviction/index.shtml>.

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 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,¹⁶³ 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.¹⁶⁴ This is usually available in the form of an application to be filled out.¹⁶⁵ 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 "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

¹⁶¹ 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(1); (3) (McKinney 2019). 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. N.Y. CRIM. PROC. LAW § 160.55(1) (McKinney 2019).

¹⁶² The convictions that may be sealed under § 160.55 include the following: criminal solicitation in the fifth degree (N.Y. PENAL LAW § 100.00 (McKinney 2021)); trespass (N.Y. PENAL LAW § 140.05 (McKinney 2022)); unlawfully posting advertisements (N.Y. PENAL LAW § 145.30 (McKinney 2022)); failing to respond to an appearance ticket (N.Y. PENAL LAW § 215.58 (McKinney 2024)); disorderly conduct (N.Y. PENAL LAW § 240.20 (Consol. 2008)); harassment in the second degree (N.Y. PENAL LAW § 240.26 (McKinney 2017)); appearance in public under influence of narcotics or a drug other than alcohol (N.Y. PENAL LAW § 240.40 (McKinney 2017)); exposure of a person (N.Y. PENAL LAW § 245.01 (McKinney 2017)); promoting the exposure of a person (N.Y. PENAL LAW § 245.02 (McKinney 2017)); and offensive exhibition (N.Y. PENAL LAW § 245.05 (McKinney 2017)). N.Y. CRIM. PROC. LAW § 160.55 (1) (McKinney 2019).

¹⁶³ 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.

¹⁶⁴ See N.Y. State Unified Ct. Sys., *CPL160.59 Sealing Application*, available at <https://www.nycourts.gov/LegacyPDFs/forms/criminal/pdfs/CPL160.59SealingApplication.pdf> (last visited Mar. 18, 2024) (Notice of Motion and Affidavit in Support).

¹⁶⁵ See N.Y. State Unified Ct. Sys., *CPL160.59 Sealing Application*, available at <https://www.nycourts.gov/LegacyPDFs/forms/criminal/pdfs/CPL160.59SealingApplication.pdf> (last visited Mar. 18, 2024) (Notice of Motion and Affidavit in Support).

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”) stating 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 your name, address, NYS ID, and Social Security Number in this letter.

Sealing your records may take 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, what the FBI calls an “Identity History Summary,” 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, you can submit a request online at <https://www.edo.cjis.gov>. You can also submit a request via mail to the address below. You will need to include several items in your mail application, including an application form, fingerprints, and payment. You can read more about the required items at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>.

FBI CJIS Division – Summary Request
1000 Custer Hollow Road
Clarksburg, WV 26306

The FBI charges a processing fee of \$18, which is payable to the “Treasury of the United States” by money order or certified check. If you cannot afford to pay the fee, you can request a fee waiver. To request a fee waiver, write a notarized letter or affidavit explaining why you can’t pay the fee, and mail it to the FBI with the other items.

You can also request your rap sheet from an FBI-approved Channeler, which is a private business that has contracted with the FBI.¹⁶⁶

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

JLM, Chapter 33, “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 33 also explains the procedures that New York State follows with custodial

¹⁶⁶ Currently, the following businesses are FBI-approved Channelers: Accurate Biometrics; Biometrics4All, Inc.; Digital Trusted Identity Services, LLC; Fieldprint, Inc.; Idemia Identity & Security USA LLC; Inquiries Screening; National Background Check, Inc.; National Credit Reporting; STS SID LLC (Sterling Identity); Telos Identity Management Solutions, LLC; TRP Associates, LLC (ID Solutions); and VetConnex. For a current list of FBI-approved Channelers, see Federal Bureau of Investigation, *List of FBI-Approved Channelers for Departmental Order Submissions*, available at <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/identity-history-summary-checks/list-of-fbi-approved-channelers-for-departmental-order-submissions> (last visited Apr. 11, 2024).

parents who are incarcerated.¹⁶⁷ That includes the procedures that you are required to follow in making arrangements for the care of your child,¹⁶⁸ the rights and continued obligations that you have as an incarcerated parent,¹⁶⁹ and the things you can do while incarcerated to defend yourself against the state's involuntary termination of your parental rights.¹⁷⁰ 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 (end) your rights during your incarceration and that you did not surrender (give up) 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. Reestablishing Custody

Even if your children were voluntarily or involuntarily placed in foster care upon your incarceration,¹⁷¹ or you granted temporary custody to a friend or relative,¹⁷² you should be able to reassert your parental rights upon your release as long as the State did not terminate your parental rights and you did not surrender those rights.

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 social services will usually name a date when the State 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 your state's social services department to return your children.¹⁷³ On that date or when that event happens, the State 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, 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.¹⁷⁴ Ordinarily, you will have received notice of these proceedings and an opportunity to attend and participate in hearings before any such order is entered.¹⁷⁵

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 notify you within ten days that your request is denied.¹⁷⁶ 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

¹⁶⁷ See *JLM*, Chapter 33, "Rights of Incarcerated Parents."

¹⁶⁸ See *JLM*, Chapter 33, "Rights of Incarcerated Parents," Parts B and C.

¹⁶⁹ See *JLM*, Chapter 33, "Rights of Incarcerated Parents."

¹⁷⁰ See *JLM*, Chapter 33, "Rights of Incarcerated Parents," Part D(2).

¹⁷¹ See *JLM*, Chapter 33, "Rights of Incarcerated Parents," Part C.

¹⁷² See *JLM*, Chapter 33, "Rights of Incarcerated Parents," Part B.

¹⁷³ N.Y. SOC. SERV. LAW § 384-A(2)(a) (McKinney 2010).

¹⁷⁴ N.Y. SOC. SERV. LAW § 384-A(2)(a) (McKinney 2010); see also N.Y. SOC. SERV. LAW § 384-B (McKinney 2010). Chapter 33 of the *JLM*, "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.

¹⁷⁵ See *JLM*, Chapter 33, "Rights of Incarcerated Parents," Part D.

¹⁷⁶ N.Y. SOC. SERV. LAW § 384-A(2)(a) (McKinney 2010).

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.¹⁷⁷

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.¹⁷⁸ 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.¹⁷⁹

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 permanently relinquished any of your parental rights.¹⁸⁰ 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 returned to you.¹⁸¹ 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) Preventive 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.¹⁸² 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.¹⁸³

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.¹⁸⁴

The Department of Social Services must provide you with preventive services if the Department believes that you would not be able to adequately take care of your children without help.¹⁸⁵ Such services are not likely to be provided to you and your family long-term. This is 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 plan to use these services only temporarily (for a short time) to help your family get back on its feet.

If your children have been returned 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.¹⁸⁶ 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.¹⁸⁷

¹⁷⁷ N.Y. SOC. SERV. LAW § 384-A(2)(a) (McKinney 2010).

¹⁷⁸ N.Y. SOC. SERV. LAW § 384-A(2)(a) (McKinney 2010).

¹⁷⁹ N.Y. SOC. SERV. LAW § 384-A(2)(a) (McKinney 2010).

¹⁸⁰ See *JLM*, Chapter 33, "Rights of Incarcerated Parents," Part B.

¹⁸¹ N.Y. SOC. SERV. LAW § 384-B (McKinney 2010).

¹⁸² N.Y. SOC. SERV. LAW § 409-A (McKinney 2010).

¹⁸³ N.Y. COMP. CODES R. & REGS. tit. 18, § 423.2(b)(1)–(19) (2023).

¹⁸⁴ N.Y. SOC. SERV. LAW § 409-A(1)(b) (McKinney 2010); N.Y. COMP. CODES R. & REGS. tit. 18, § 423.4(b)(1) (2023).

¹⁸⁵ N.Y. COMP. CODES R. & REGS. tit. 18, § 430.9(c) (2023).

¹⁸⁶ N.Y. COMP. CODES R. & REGS. tit. 18, § 423.4(c)(1)(ii)(d) (2023).

¹⁸⁷ N.Y. COMP. CODES R. & REGS. tit. 18, § 423.4(c)(1)(ii)(d)(2)(i) (2023).

2. Becoming a Foster or Adoptive Parent

In compliance with the Adoption and Safe Families Act of 1997 (ASFA),¹⁸⁸ New York State has a law that restricts the ability of people with criminal histories to be adoptive or foster parents, or to even live in households with foster or adopted children.¹⁸⁹ The information in 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.¹⁹⁰

Certain felony convictions in your criminal history will (1) result in the denial of your application to be a foster or adoptive parent,¹⁹¹ (2) result in the denial of your application for renewal if you are a current foster parent,¹⁹² (3) result in the revocation of your certification if you are a current foster parent,¹⁹³ and (4) result in the revocation of your approval to be an adoptive parent if you have not completed the adoption process.¹⁹⁴ These felony convictions are:

- (1) Child abuse or neglect;¹⁹⁵
- (2) Spousal abuse;¹⁹⁶
- (3) A crime against a child, including child pornography;¹⁹⁷ or
- (4) A crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery.¹⁹⁸

Furthermore, a felony conviction in the last five years for physical assault, battery, or drug-related offenses will have the same result.¹⁹⁹

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 at risk and will be

¹⁸⁸ 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.).

¹⁸⁹ N.Y. SOC. SERV. LAW § 378-A(2) (McKinney 2010).

¹⁹⁰ N.Y. SOC. SERV. LAW § 378-A(2)(a)–(b) (McKinney 2010).

¹⁹¹ N.Y. SOC. SERV. LAW § 378-A(2)(e)(1)(A)–(B) (McKinney 2010). *But see* Matter of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (Fam. Ct. Bronx County 2011) (finding that § 378-A(2)(e)(1) was unconstitutional as applied to the petitioner because it violated his due process right to an individualized determination of whether he should be able to adopt a child).

¹⁹² N.Y. SOC. SERV. LAW § 378-A(2)(e)(4) (McKinney 2010).

¹⁹³ N.Y. SOC. SERV. LAW § 378-A(2)(e)(5) (McKinney 2010).

¹⁹⁴ N.Y. SOC. SERV. LAW § 378-A(2)(e)(5) (McKinney 2010).

¹⁹⁵ N.Y. SOC. SERV. LAW § 378-A(2)(e)(1)(A)(i) (McKinney 2010). *But see* Matter of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (Fam. Ct. Bronx County 2011).

¹⁹⁶ N.Y. SOC. SERV. LAW § 378-A(2)(e)(1)(A)(ii) (McKinney 2010). *But see* Matter of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (Fam. Ct. Bronx County 2011). 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) (McKinney 2010).

¹⁹⁷ N.Y. SOC. SERV. LAW § 378-A(2)(e)(1)(A)(iii) (McKinney 2010). *But see* Matter of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (Fam. Ct. Bronx County 2011).

¹⁹⁸ N.Y. SOC. SERV. LAW § 378-A(2)(e)(1)(A)(iv) (McKinney 2010). *But see* Matter of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (Fam. Ct. Bronx County 2011).

¹⁹⁹ N.Y. SOC. SERV. LAW § 378-A(2)(e)(1)(B) (McKinney 2010). *But see* Matter of Abel, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (Fam. Ct. Bronx County 2011).

in the best interests of the child.²⁰⁰ 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.²⁰¹

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,²⁰² or (2) if you live with someone over the age of eighteen who has been charged with, or convicted of, any crime.²⁰³ In addition, if you have any pending criminal charges, your application will be suspended until the matter is resolved.²⁰⁴

If the record of any foster or adoptive parent, or of anyone living in the same household above the age of eighteen, contains any criminal charges or convictions, the foster care agency or adoption agency is 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.²⁰⁵

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 Part, the agency must remove the child from your home if the child is currently living there.²⁰⁶

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.²⁰⁷ The Office must also tell you about its review and remedial procedures.²⁰⁸ 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.²⁰⁹ If you officially completed the adoption process prior to your conviction, despite the above, 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 as accurate as possible. Additionally, you should make sure that the criminal record of

²⁰⁰ The court in *Matter of Abel* found that § 378-A(2)(e)(1) was unconstitutional as applied to the petitioner because it violated his due process right to an individualized determination of whether he should be able to adopt a child. The court allowed the petitioner and his wife to adopt the child because denial would have created an unreasonable risk of harm to the child and because granting adoption was in the child's best interest and would not have placed his safety in jeopardy. *Matter of Abel*, 33 Misc.3d 710, 717–718, 931 N.Y.S.2d 829, 834–835 (Fam. Ct. Bronx County 2011).

²⁰¹ This is called an “as applied” challenge to a statute. In an “as applied” challenge, you are not arguing that the statute is *always* unconstitutional. Arguing that a statute is always constitutional is called a “facial challenge,” because you are arguing the statute is unconstitutional “on its face” (meaning, from the text of the statute). Instead, in an “as applied” challenge, you are arguing that the statute cannot be applied to *you* because applying the statute to you would violate your constitutional rights. To learn more about facial versus as applied challenges, read the definition of the word “facially” in the *JLM*'s Appendix V: Definitions of Words Used in the *JLM*.

²⁰² N.Y. SOC. SERV. LAW § 378-A(2)(e)(3)(A) (McKinney 2010).

²⁰³ N.Y. SOC. SERV. LAW § 378-A(2)(e)(3)(B) (McKinney 2010).

²⁰⁴ N.Y. SOC. SERV. LAW § 378-A(2)(e)(2)(A)–(B) (McKinney 2010).

²⁰⁵ N.Y. SOC. SERV. LAW § 378-A(2)(h) (McKinney 2010).

²⁰⁶ N.Y. SOC. SERV. LAW § 378-A(2)(h) (McKinney 2010).

²⁰⁷ N.Y. SOC. SERV. LAW § 378-A(2)(g) (McKinney 2010). *See also* N.Y. COMP. CODES R. & REGS. tit. 18, § 421.27(e) (2023) (explaining the procedures if your application is denied).

²⁰⁸ N.Y. SOC. SERV. LAW § 378-A(2)(g) (McKinney 2010). *See also* N.Y. COMP. CODES R. & REGS. tit. 18, § 421.27(e) (2023) (explaining the procedures if your application is denied).

²⁰⁹ *See Matter 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 to the petitioner because it violated his due process right to an individualized determination of whether he should be able to adopt a child).

anyone who lives with you is also as clean and as accurate as possible. For more information on how to clean up your record or rap sheet, please consult Part D(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.²¹⁰ 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 draft 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 \$250,000.²¹¹

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.”²¹² In other words, the government may choose to exempt you from the draft because of a felony conviction—but you still must register. You are not automatically exempt because of a felony conviction, and you will never be exempt because of a misdemeanor conviction.²¹³ Also, if the draft is ever reinstated, a felony conviction will not automatically exempt you from military service.

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 D. 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 D(1)(b) above), does not apply to uniformed members of the military.²¹⁴ 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.”²¹⁵ In other

²¹⁰ USAGov, *Selective Service*, available at <https://www.usa.gov/register-selective-service> (last visited Mar. 18, 2024).

²¹¹ Selective Serv. Sys., *Benefits & Penalties*, available at <https://www.sss.gov/register/benefits-and-penalties/> (last visited Feb. 25, 2024).

²¹² 50 U.S.C. § 3806(m).

²¹³ *Korte v. United States*, 260 F.2d 633, 637 (9th Cir. 1958) (holding that a person convicted of a felony may, but not necessarily shall, be excused from military service, while those convicted of misdemeanors are not categorically excused from service).

²¹⁴ *See Overton v. N.Y. 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 U.S.C § 2000e-16(A). *See Roper v. Dept. 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).

²¹⁵ *Goldman v. Weinberger*, 475 U.S. 503, 506–507, 106 S. Ct. 1310, 1312–1313, 89 L. Ed. 2d 478, 483 (1986) (holding that the “First Amendment did not prohibit application of air force regulation to prevent wearing of yarmulke by plaintiff while on duty and in uniform”) (internal citations omitted), *superseded in part by statute*, 10 U.S.C. § 774(a)–(b) (2012) (stating that “a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member’s armed force . . . [unless] . . . the wearing of the item would interfere with the performance of the member’s military duties; or if the Secretary determines . . . that the item of apparel is not neat and conservative”).

words, certain exceptions regarding an individual's rights are acceptable in the military though those exceptions would be unacceptable in non-military spheres.

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 Section 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 because it is a violation of federal law to do so.²¹⁶

No branch of the U.S. armed forces will *automatically* deny admission to anyone with misdemeanor convictions, but some branches may choose to deny admission based on a misdemeanor. 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."²¹⁷ In general, the Military Services have a policy against allowing people with criminal records to enlist because they feel that doing so might cause disciplinary problems or present security risks.²¹⁸ 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.²¹⁹ The Army may issue waivers to allow people to join when it decides that their criminal history does not make them a disciplinary risk.²²⁰ These waivers are required for people who have been convicted of felonies.²²¹

If you apply for a waiver, you have the burden to prove both that you can overcome the reason for your disqualification and that it would be in Army's best interest to accept you.²²² You will have to undergo a "suitability review" if you have been accused of a serious offense or even for some lower-

²¹⁶ 10 U.S.C. § 907; 10 U.S.C. § 904.

²¹⁷ 10 U.S.C. § 504(a); *see also* 32 C.F.R. § 96.4 (2023) (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).

²¹⁸ U.S. DEP'T OF DEF., 1304.26, INSTRUCTION: QUALIFICATION STANDARDS FOR ENLISTMENT, APPOINTMENT, AND INDUCTION, ENCLOSURE 3(2)(h) (2015) (*as revised* Oct. 26, 2018), *available at* <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130426p.pdf?ver=2018-10-26-085822-050> (last visited Mar. 18, 2024) (discussing necessity of enlisting those with good moral character in the Armed Forces).

²¹⁹ 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* Army Publishing Directorate, Army Directive 2020-09 (*as revised* Aug. 31, 2016, 2020), *available at* https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30547-ARMY_DIR_2020-09-000-WEB-1.pdf (last visited Mar. 18, 2024) (prescribing documents necessary for waiver requests and defining waivable and nonwaivable disqualifications).

²²⁰ U.S. DEP'T OF DEF., 1304.26, INSTRUCTION: QUALIFICATION STANDARDS FOR ENLISTMENT, APPOINTMENT, AND INDUCTION, ENCLOSURE 3(2)(h)(2) (2015) (*as revised* Oct. 26, 2018), *available at* <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130426p.pdf?ver=2018-10-26-085822-050> (last visited Mar. 26, 2024) (listing a "significant criminal record" as a possible disqualification for service, but also providing for a waiver in that circumstance).

²²¹ Army Publishing Directorate, Reg. 601-210, Regular Army and Reserve Components Enlistment Program, ch. 4-7 (2023), *available at* <https://milreg.com/File.aspx?id=1340>, (last visited Mar. 26, 2022) ("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.") Additionally, note that any criminal history, including arrests, will require you to undergo a suitability review. Ch. 4-2(f)(1); U.S. DEP'T OF DEF., 1304.26, INSTRUCTION: QUALIFICATION STANDARDS FOR ENLISTMENT, APPOINTMENT, AND INDUCTION, ENCLOSURE 3(2)(h)(2) (2015) (*as revised* Oct. 26, 2018), *available at* <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130426p.pdf?ver=2018-10-26-085822-050> (last visited Mar. 26, 2024) ("Except as limited by paragraph (3) [conviction of various sex offenses] below, persons 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.")

²²² Army Publishing Directorate, Reg. 601-210, Regular Army and Reserve Components Enlistment Program, ch. 4-2(c) (2023), *available at* <https://milreg.com/File.aspx?id=1340> (last visited Mar. 26, 2024).

level offenses if you have more than one.²²³ Depending on the seriousness of the offense, different levels of review will be appropriate.²²⁴ You may also be required to apply for a waiver if you have certain non-criminal offenses on your record, such as traffic violations,²²⁵ or other offenses for which you received penalties other than prison.²²⁶

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.²²⁷ 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.²²⁸ Additionally, keep in mind that there may be a waiting period following your release before you can submit your waiver.²²⁹

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.

G. Voting Rights

The impact of a criminal conviction on your right to vote varies widely from state to state. Most states have placed some restrictions on the right to vote for people who have been convicted of a crime. The Supreme Court has held that it does not violate the Constitution if states pass laws that “disenfranchise” (take away the right to vote from) individuals who have been convicted of a felony.²³⁰ However, this does not mean that you will necessarily be denied the right to vote. For both federal and

²²³ Army Publishing Directorate, Reg. 601-210, Regular and Reserve Components Enlistment Program, ch. 4-2(f)(1) (2023), *available at* <https://milreg.com/File.aspx?id=1340> (last visited Mar. 26, 2024). Serious offenses include, but are not limited to, such crimes as aggravated assault, burglary, domestic violence, forgery, kidnapping, larceny, murder, narcotics, rape, and robbery. Ch. 4-11. For some offenses and conditions, however, you will not be able to get a waiver. You cannot enlist if you are on probation or parole, or if you are on the sex offender registry. Ch. 4-22(h) and (j). For instance, if you have been convicted of a misdemeanor crime of domestic violence, you cannot enlist, and a waiver will not be approved. Ch. 4-7(b)(1).

²²⁴ Army Publishing Directorate, Reg. 601-210, Regular Army and Reserve Components Enlistment Program, chs. 4-2(e)(2)(a), 4-4 (2023), *available at* <https://milreg.com/File.aspx?id=1340> (last visited Mar. 26, 2024) (describing types of charges that require a suitability review, the level of command that conducts that review, and the evaluation guidelines).

²²⁵ Army Publishing Directorate, Reg. 601-210, Regular Army and Reserve Components Enlistment Program, ch. 4-6(a)(1) (2023), *available at* <https://milreg.com/File.aspx?id=1340> (last visited Mar. 26, 2024).

²²⁶ Army Publishing Directorate, Reg. 601-210, Regular Army and Reserve Components Enlistment Program, ch. 4-6 (2023), *available at* <https://milreg.com/File.aspx?id=1340> (last visited Mar. 26, 2024), (requiring waivers for applicants who have had a certain number of civil court convictions or dispositions that are not serious criminal misconduct).

²²⁷ Army Publishing Directorate, Reg. 601-210, Regular Army and Reserve Components Enlistment Program, ch. 4-28(e) (2023), *available at* <https://milreg.com/File.aspx?id=1340> (last visited Mar. 26, 2024) (laying out waiver approval procedures).

²²⁸ U.S. DEP’T OF DEF., 1304.26, INSTRUCTION: QUALIFICATION STANDARDS FOR ENLISTMENT, APPOINTMENT, AND INDUCTION, ENCLOSURE 4(1)(c) (2015) (*as revised* Oct. 26, 2018), *available at* <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130426p.pdf?ver=2018-10-26-085822-050> (last visited Mar. 26, 2024)

²²⁹ Army Publishing Directorate, Reg. 601-210, Regular Army and Reserve Components Enlistment Program, ch. 4-31(b) (2023), *available at* <https://milreg.com/File.aspx?id=1340>, (last visited Mar. 26, 2024) (laying out waiting periods for different amounts of confinement); *see also* Army Publishing Directorate, Reg. 601-210, Regular Army and Reserve Components Enlistment Program, ch. 4-7(a) (2023), *available at* <https://milreg.com/File.aspx?id=1340>, (last visited Mar. 26, 2024) (noting that for serious criminal misconduct, applicants have a 24-month wait from the date of conviction prior to waiver processing).

²³⁰ Richardson v. Ramirez, 418 U.S. 24, 56, 94 S. Ct. 2655, 2671, 41 L. Ed. 2d 551, 572 (1974) (holding that the exclusion of people convicted of felonies from the vote is not a violation of any provision of the Constitution).

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.

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.²³¹ 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, you could face criminal penalties.²³²

1. Voting While Incarcerated

Some states allow you to vote via an absentee ballot even while you are incarcerated. Those states are Maine and Vermont, and also the District of Columbia and Puerto Rico.²³³ Even so, it may still be difficult to obtain a voter registration form or 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 voting laws, they 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.

2. Restoring Your Right to Vote²³⁴

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 after release. Some states automatically restore your right to vote after you are released from jail or prison,²³⁵ while others do so only after you have completed your entire sentence, including any parole or other supervision.²³⁶ In some states you must petition the

²³¹ See, e.g., VT. STAT. ANN. tit. 17, § 2121–2122 (2012); ME. REV. STAT. ANN. tit. 21-A, §§ 111, 112(14) (2012).

²³² 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) (McKinney 2022). 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 2019). 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 (2015). 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) (2018). 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.

²³³ THE SENT’G PROJECT, VOTING RIGHTS IN THE ERA OF MASS INCARCERATION: A PRIMER 1 (2021), available at <https://www.sentencingproject.org/app/uploads/2022/08/Voting-Rights-in-the-Era-of-Mass-Incarceration-A-Primer.pdf> (last visited Mar. 27, 2024).

²³⁴ The National Conference of State Legislatures publishes a website with state-by-state information about how to restore your right to vote after a felony conviction. See Nat’l Conf. of State Legislatures, *Felon Voting Rights (as revised Dec. 5, 2023)*, available at <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx> (last visited Mar. 27, 2024).

²³⁵ Some states allow formerly incarcerated people to vote once they are released, even if they are still on probation or parole. For more information, see Nat’l Conf. of State Legislatures, *Felon Voting Rights (as revised Dec. 5, 2023)*, available at <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx> (last visited Mar. 27, 2024).

²³⁶ For more information, see Nat’l Conf. of State Legislatures, *Felon Voting Rights (as revised Dec. 5, 2023)*,

sentencing court or the governor's office in order to have your civil rights restored, including your right to vote.²³⁷ (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).²³⁸ 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.²³⁹ 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.²⁴⁰ Finally, some states may revoke your voting rights until you have served your full sentence or had your civil rights restored, or they may revoke your voting rights permanently for certain specific convictions.²⁴¹

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 answers basic questions you may have about voting rights.²⁴² Similarly, the National Conference of State Legislatures provides information regarding voter restoration online.²⁴³ Remember that if you move to a different state, the

available at <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx> (last visited Mar. 27, 2024).

²³⁷ For more information, see Nat'l Conf. of State Legislatures, *Felon Voting Rights* (as revised Dec. 5, 2023), available at <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx> (last visited Mar. 27, 2024).

²³⁸ 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 people convicted of felonies are to be excluded from the voting rolls, and how they can be restored, there is no statute that either specifically disqualifies a person convicted of a felony from holding office or describes how the right to hold office can be restored. N.Y. ELEC. LAW § 5-106 (McKinney 2022). 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 D(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 three years have passed following your conviction of a felony. CONN. GEN. STAT. ANN. §§ 9-46, 9-46a (West 2018); CONN. GEN. STAT. ANN. § 51-217 (West 2016).

²³⁹ For more information, see Nat'l Conf. of State Legislatures, *Felon Voting Rights* (as revised Dec. 5, 2023), available at <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx> (last visited Mar. 27, 2024).

²⁴⁰ 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).

²⁴¹ In Delaware, if you are convicted of murder, manslaughter (except vehicular homicide), any felony that is a sexual offense, or improper influence or abuse of office you cannot have your voting rights restored. For other offenses, your right to vote may be restored once you are pardoned or have finished serving your sentence, whichever comes first. DEL. CONST. art. V, § 2. Missouri permanently disqualifies from voting those convicted of certain crimes related to voting. For other offenses, you maybe be deprived of the right to vote while you are serving your sentence and permanently barred from serving as a juror. MO. REV. STAT. 561.026 (2012). The Missouri statute does allow for an exception if your conviction has been successfully expunged under MO. REV. STAT. 610.140 (2012). The Florida Constitution was recently amended so that most people with felony convictions will regain the right to vote once they have completed their sentence, including any term of parole or probation. There is an exception for people convicted of murder and felony sex offenses who cannot vote until their civil rights are restored. FLA. CONST. art. VI, § 4. There has been ongoing litigation about whether or not someone who has not paid all their fines and fees will be considered to have served their whole sentence. It may be best to check with a local legal aid organization before registering to vote.

²⁴² Am. C.L. Union, *Know Your Rights: Voting Rights*, available at <https://www.aclu.org/know-your-rights/voting-rights/> (last visited Mar. 27, 2024).

²⁴³ Nat'l Conf. of State Legislatures, *Felon Voting Rights* (as revised Dec. 5, 2023), available at <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx> (last visited Mar. 27, 2024).

laws governing the right to vote for people with felony convictions 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.²⁴⁴

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 provides contact information for each state election agency. If this agency is unable to help you, or if you want to report a problem, you may contact:

U.S. Department of Justice
Civil Rights Division - Voting Section
950 Pennsylvania Avenue AV NW
4CON 8th Floor
Washington, DC 20530
Phone: (202) 307-2767; (800) 253-3931 (toll-free)
Fax: (202) 307-3961
Email: voting.section@usdoj.gov
<http://www.justice.gov/crt/voting-section>

H. 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 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.

²⁴⁴ For more information about federal pardons, you can visit the website of the Office of the Pardon Attorney of the Department of Justice at: <https://www.justice.gov/pardon> (last visited Mar. 27, 2024). You can contact the Office of the Pardon Attorney to ask for additional information. The Office prefers to be contacted by email: USPardon.Attorney@usdoj.gov. You can also contact the Office by mail: U.S. Department of Justice, Office of the Pardon Attorney, 950 Pennsylvania Avenue – RFK, Main Justice Building, Washington D.C. 20530. Finally, you can call the Office at (202) 616-6070.

APPENDIX A

CONTACT INFORMATION FOR HOUSING ASSISTANCE AGENCIES

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>

**New York Housing and Urban Development
(HUD) Offices****New York City**

Jacob K. Javits Federal Building
26 Federal Plaza, Suite 3541
New York, NY 10278-0068
Phone: (212) 264-8000
Fax: (212) 264-0246
Email: 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

Buffalo

Lafayette Court
465 Main Street, 2nd Floor
Buffalo, NY 14203-1780
Phone: (716) 551-5755
Fax: (716) 551-5752
Email: NY_Webmanager@hud.gov

New York City Housing Assistance**NYCHA**

250 Broadway
New York, NY 10007
Phone: (212) 306-3000
<https://www1.nyc.gov/site/nycha/index.page>

New York City Emergency Shelters:

Five drop-in centers throughout the city
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. Dial 311 to contact
any drop-in center, receive directions, or
obtain other information.

Manhattan

Olivieri Center (7:30am to 8:30pm)
257 West 30th Street
New York, NY 10001

Mainchance (24 Hours)

120 E. 32nd Street
New York, NY 10017

Bronx

The Living Room (24 Hours)
800 Barretto Street
Bronx, NY 10474

Brooklyn

The Gathering Place (7:30am to 8:30pm)
2402 Atlantic Avenue
Brooklyn, NY 11233

Staten Island

Project Hospitality (7:30am to 8:30pm)
150 Richmond Terrace, Upper Level
Staten Island, NY 10031

APPENDIX B

STATE HUMAN SERVICES DEPARTMENTS/ASSISTANCE FOUNDATIONS

Alabama

Alabama Department of Human Resources
Family Assistance Division
50 North Ripley Street
Montgomery, AL 36130
Phone: (334) 242-1773
Email: dhr_fad@dhr.alabama.gov
<https://dhr.alabama.gov/family-assistance/>

Alaska

Alaska Temporary Assistance Program
P.O. Box 110640
Juneau, AK 99811-0640
Phone: (907) 465-3347
Fax: (907) 465-5254
<https://dhss.alaska.gov/>

Arizona

Department of Economic Security
Family Assistance Administration
1717 W. Jefferson Street
Phoenix, Arizona 85007
Phone: (855) 432-7587
<https://des.az.gov/>

Arkansas

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

California

Department of Social Services
744 P Street
Sacramento, CA 95814
Phone: (916) 445-6951
<https://www.cdss.ca.gov/>

Colorado

Department of Human Services
1575 Sherman St.
Denver, CO 80203-1714
Phone: (303) 866-5700
Fax: (303) 866-4047
<https://cdhs.colorado.gov/>

Connecticut

Department of Social Services
25 Sigourney Street
Hartford, CT 06106-5033
Phone: (800) 842-1508 (toll-free)
<http://www.ct.gov/dss/>

Delaware

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

Department of Children and Families
Office of Economic Self Sufficiency
ACCESS Central Mail Center
P.O. Box 1770
Ocala, FL 34478-1770
Phone: (850) 300-4323
Fax: (1-866) 886-4342
<https://www.myflfamilies.com/>

Georgia

Department of Human Resources
Division of Family & Children Services
2 Peachtree Street, N.W. Suite 18-486
Atlanta, Georgia 30303
Phone: (404) 651-9361, or (877) 423-4746
<http://dfcs.dhr.georgia.gov>

Guam

Bureau of Social Services Administration
194 Hernan Cortez Avenue,
Terlaje Professional Building, 3rd Fl., Ste. 309
Hagatna, Guam 96932
Phone: (671) 475-2653 or (671) 475-2672
Fax: (671) 477-0500
<http://www.dphss.guam.gov/>

Hawaii

Department of Human Services
1390 Miller Street, Room 209
Honolulu, HI 96813
Mailing Address:
P.O. Box 339
Honolulu, HI 96809-0339
Phone: (808) 586-4997
Fax: (808) 586-4890
<http://www.hawaii.gov/dhs/>

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

Family & Social Services Administration
P. O. Box 7083
Indianapolis, IN 46207-7083
Phone: (800) 457-8283 (toll-free)
<http://www.in.gov/fssa/>

Iowa

Department of Health & Human Services
Lucas Building
321 E. 12th Street
Des Moines, Iowa, 50319
Phone: (800) 972-2017 (toll-free)
Fax: (515) 281-4980
<http://www.dhs.state.ia.us/>

Kansas

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

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

Department of Health & Human Services
109 Capitol Street
11 State House Station
Augusta, Maine 04333
Phone: (207) 287-3707
Fax: (207) 287-3005
<https://www.maine.gov/dhhs/>

Maryland

Department of Human Services
311 West Saratoga Street
Baltimore, MD 21201
Phone: (800) 332-6347 (toll-free)
<https://dhs.maryland.gov/>

Massachusetts

Executive Office of Health & Human Services
Department of Transitional Assistance
One Ashburton Place, 11th Floor
Boston, MA 02108
Phone: (877) 382-2363
<http://www.mass.gov/eohhs/>

Michigan

Department of Human Services
235 S. Grand Avenue
P.O. Box 30037
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)
<https://www.mdhs.ms.gov/>

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 & Human
Services
111 North Sanders Street
Helena, MT 59601
Phone: (406) 444-5622
<http://www.dphhs.mt.gov/>

Nebraska

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

Nevada

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

New Hampshire

Department of Health & 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
P.O. Box 2348
Santa Fe, NM 87504-2348
Phone: (505) 827-7130
<http://www.hsd.state.nm.us/>

New York

Office of Temporary & Disability Assistance
40 North Pearl Street
Albany, NY 12243
Phone: (800) 342-3009 (toll-free)
<http://www.otda.state.ny.us/>

North Carolina

Department of Health and Human Services
2401 Mail Service Center
Raleigh, NC 27601
Phone: (919) 733-3055
Fax: (919) 334-1018
<https://www.ncdhhs.gov/assistance/>

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 * Family Services
Office of Family Stability
30 E. Broad St., 32nd Floor
Columbus, OH 43215
Phone: (614) 466-4815
Fax: (614) 466-1767
<http://jfs.ohio.gov/ofam/>

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 97301-1063
Phone: (503) 945-5944
Fax: (503) 945-6214
<http://www.oregon.gov/DHS/>

Pennsylvania

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

Puerto Rico

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

Rhode Island

Department of Human Services
Louis Pasteur Building #57
600 New London Ave.
Cranston, RI 02920
<https://dhs.ri.gov/>

South Carolina

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

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
<https://www.tn.gov/humanserv/>

Texas

Health & Human Services Commission
4900 North Lamar Blvd.
Austin, TX 78751-2316
Phone: (512) 424-6500
<https://www.hhs.texas.gov/>

Utah

Department of Human Services
195 North 1950 West
Salt Lake City, UT 84116
Phone: (801) 538-4171
FAX: (801) 538-4016
<http://www.hs.utah.gov/>

Vermont

Economic Services Division, Department for
Children & Families
103 South Main Street, Osgood 3
Waterbury, VT 05671-2401
Phone: (802) 241-2131
<http://def.vermont.gov/esd/>

Virginia

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

Washington

Department of Social & 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 & Human Resources
One Davis Square, Ste. 100 E.
Charleston, WV 25301
Phone: (304) 558-0684
Fax: (304) 558-1130
<https://dhhr.wv.gov/>

Wisconsin

Department of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946
Phone: (608) 266-3131
<https://dwd.wisconsin.gov/>

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.wyo.gov/home>

Appendix C*

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

*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.*

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. 2013)	§ 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. 2013)	§ 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. 2013)	§ 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. 2013)	§ 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. 2013)	§ 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. 2013)	§ 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. 2013); N.Y. GEN. BUS. LAW § 89-1(2)(a) (Consol. 2013)	<p>§ 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 security guard, as to constitute a bar to employment.”</p> <p>§ 89-1 authorizes the secretary to suspend or revoke a security guard’s registration card if the security guard is convicted of a felony or certain misdemeanors. The security guard may request a hearing to contest the suspension.</p>
Child Care	N.Y. SOC. SERV. LAW § 390-b (3)(a) (2013)	<p>§ 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.</p>

Appendix D

ASSISTANCE ORGANIZATIONS FOR FORMERLY INCARCERATED PEOPLE

Legal Action Center (NY & D.C.)

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

District of Columbia:
236 Massachusetts Avenue NE., Suite 505
Washington, DC 20002-4980
Phone: (202) 544-5478
E-mail: lacdc@lac.org

NYPL Library Jail & Prison Services (NY)

The New York Public Library
455 Fifth Avenue
New York, NY 10016
Phone: (212) 340-0812
<http://www.nypl.org/help/community-outreach/correctional-services>

The Fortune Society (NY)

29-76 Northern Blvd.
Long Island City, NY 11101
Phone: (212) 691-7554
E-mail: info@fortunesociety.org
<http://www.fortunesociety.org>

Community Resources for Justice (MA)

355 Boylston Street
Boston, MA 02116
Phone: (617) 482-2520
E-mail: crj@crjustice.org
<http://www.crjustice.org/>

Offender Aid and Restoration (VA)

1400 North Uhle Street, Suite 704
Arlington, VA 22201
Phone: (703) 228-7030
Fax: (703) 228-3981
Email: Info@OARonline.org
<http://www.oaronline.org>

The Osborne Association (NY)

809 Westchester Avenue
Bronx, NY 10455
Phone: (718) 707-2600
Fax: (718) 707-3102
<http://www.osborneny.org>

Center for Community Alternatives (NY)

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

Exodus Transitional Community (NY)

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

Center for Employment Opportunities (NY)

32 Broadway, 15th Floor
New York, NY 10004
Phone: (212) 422-4430
<http://www.ceoworks.org>

Anti-Recidivism Coalition (CA)

1320 E. 7th St. Suite 260
Los Angeles, CA 90021
Phone: (213) 955-5885
<https://antirecidivism.org>

Criminal Justice & Mercy Ministries (OK)

PO Box 1149
Oklahoma City, OK 73101
Phone: (405) 525-3522
<https://www.cjamm.org>

Texas Re-Entry Services (TX)

1408 Saint Louis Avenue
Fort Worth, TX 76104
Phone: (817) 834-2833
<https://texasreentry.wixsite.com/txrs>