

CERTIFICATES OF RELIEF FROM DISABILITIES AND CERTIFICATES OF GOOD CONDUCT: PROTECTION FROM THE COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS

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More often than not, when a client is about to be sentenced by a court upon a conviction for one of more criminal offenses (felonies, misdemeanors and violations), counsel is primarily concerned about the potential direct consequences thereof (e.g. conditional discharge, probation, imprisonment, fine, restitution), that will impact upon the client's immediate future. Obtaining a "no-jail" or probationary sentence (or local jail time instead of state time), depending on the circumstances, may well be a victory worth celebrating and for which the client is (or at least should be) grateful.

There may, however, be additional "real-world" considerations (i.e. collateral consequences of the conviction), that counsel should take into account including certain civil "disabilities" (e.g. ineligibility for licenses and certain types of employment), that are automatically imposed and rights and privileges (voting in an election, seeking public office) that may be forfeited on account of the criminal conviction.

In an effort to ameliorate some of the adverse secondary effects of criminal convictions, including obstacles to employment opportunities and, in more serious cases, to promote productive re-entry of convicted felons into society, the Legislature introduced certain "golden tickets" including a Certificate of Relief From Disabilities (CRD) and Certificates of Good Conduct (CGC) that an eligible offender (EO) can apply for (and hopefully obtain), if not from the sentencing court at sentencing (or thereafter), then from the State DOCCS/ Division of Parole (DOP), if the offender has been sentenced to (and has served) a term of state imprisonment and has been released to parole (or thereafter).

To be eligible for a CRD, (whether from a court or DOP), the offender cannot, among other things, have been subject to more than one felony conviction. If the offender has been sentenced to state prison (or is otherwise ineligible for a CRD), his/her avenue for relief would be to apply to the DOP for a CGC upon proof that he/she has, inter alia, completed a statutory period of good conduct (five years for a Class A or B felony, three years for a Class C, D, or E felony and one year for a misdemeanor). Unlike a CRD, a CGC is NOT limited to one felony conviction.

While a CRD and a CGC create a PRESUMPTION that the offender has been REHABILITATED for the offenses which are contained therein, (Meth. v Manhattan and Bronx Surface Transit Operation Authority 134 AD2d 431 [2d dep't 1987]), they do NOT establish prima facie entitlement to the relief sought (Greenberg v Wynn 86 AD3d 437 [1st dept 2011]), nor do they constitute a vacatur of (or pardon for) the conviction itself.

Also, they do not deprive a licensing agency, administrative authority or prospective (or current) employer from considering the conviction (in conjunction with other factors), in deciding whether to grant or deny the ultimate relief that the offender seeks (e.g. licensure or obtaining or maintaining employment). What they cannot do, however, is base an adverse determination (e.g. refusal to hire or grant a license) SOLELY upon of the fact of the conviction. (Panessa v LiMandri 2011 NY Misc LEXIS 4329 [Sup. Ct. NY County 8/12/11]).

What the certificate does prevent, then, is a summary rejection of the offender's application or request solely on account of his/her criminal conviction. But, it can certainly be considered in determining appropriate action to be taken. In *Matter of Riforgiato v Board of Education* 86 AD2d 757 (4th dep't 1982), the court noted that under Correction Law (CL) 701(3), a CRD bars only AUTOMATIC FORFEITURES but not necessarily the loss of one's position (e.g. public school teacher), after a hearing in which the prior crimes and convictions may be considered by the appropriate agency (e.g. Board of Education), in the exercise of its discretion.

In that case, the petitioner, a high school teacher, was convicted by guilty plea to a Class E felony drug count (in satisfaction of a multi-count indictment which included allegations of drug sales), for which he was sentenced to probation and granted a CRD. Thereafter, the School Board brought disciplinary proceedings based on the dismissed sale counts and the conviction. The Board ultimately decided to reprimand the petitioner for his misconduct.

The petitioner brought an Article 78 proceeding, arguing that the conviction should have been barred from consideration by virtue of the CRD. The respondent cross-moved to have the petitioner dismissed from his employment, and appealed to the Commissioner of the Board of Education who ordered his dismissal.

On appeal, the Fourth Department held that the respondent was within its rights to consider the conviction in its determination (since the CRD only applies to automatic forfeitures), but abused its discretion in only reprimanding the petitioner on these facts. Deciding, however, that it did not have the authority to increase an administrative penalty that it deemed to be an abuse of discretion (as opposed to reducing a penalty it deemed to be unfairly harsh), the court, (citing *Pell v Board of Education* 34 NY2d 233 [1974]), remanded the case for the respondent to impose a penalty that was more in line with the petitioner's misconduct.

UNLAWFUL DISCRIMINATION IN EMPLOYMENT: CORRECTION LAW ARTICLE 23-A:

Section 752 of the Corrections Law expressly prohibits an employer (whether public or private), from UNFAIRLY DISCRIMINATING against persons who have been previously convicted of one or more criminal offenses. Specifically, it states that:

No application for any license or employment, and no employment or license held by an individual, to which (this article's) provisions apply, shall be denied or acted upon adversely by reason of his/her previous criminal conviction or by reason of a lack of good moral character when such finding is based on his/her criminal conviction of one or more criminal offenses UNLESS: 1. there is a DIRECT RELATIONSHIP between one or more of the previous criminal offenses and the SPECIFIC LICENSE SOUGHT; or 2. the issuance of the license or granting of employment would involve an UNREASONABLE RISK to PROPERTY or to the SAFETY AND WELFARE of SPECIFIC INDIVIDUALS or to the GENERAL PUBLIC.

So, absent a DIRECT NEXUS between the prior conviction and the license or employment sought, or a demonstrated risk of harm, the fact of a conviction alone cannot serve as the basis for denial of employment. (*Donovan v LiMardi* 107 A3d 590. [1st dep't 2013]).

In *Bonaventure v Perales* 106 AD3d 665 (1st dep't 2013), the petitioner was properly denied a license to be a security guard because there was a direct relationship between his convictions (assault and theft) and the job duties including the protection of persons and property.

See also *Gorelik v NYC Dep't of Buildings* 128 AD3d 624 (1st dep't 2015): Defendant's conviction for paying off a public servant to ensure that meters were properly installed was properly denied a license where the license sought required compliance with building codes.

Where however, an individual's conviction has been overturned, there is no basis for an unlawful discrimination claim under Article 23-a of the Corrections Law which only proscribes discrimination on account of criminal convictions. (*Schwartz v Con. Ed. Inc* 147 AD3d 147 [1st dep't 2017]). (See also *DaCruz v NYS Banking Dep't* 103 AD3d 559 [1st dep't 2013]: Article 23-a not applicable where the petitioner lost his securities license in a regulatory proceeding but not as the result of any criminal conviction).

CL 753(2) provides that a public agency or a private employer MUST GIVE CONSIDERATION to a CRD or a CGC which creates a PRESUMPTION OF REHABILITATION with respect to the offenses specified therein.

And in making a determination under CL 752(1), the public agency or private employer SHALL CONSIDER:

- a. the State's public policy to ENCOURAGE the LICENSURE and EMPLOYMENT of persons previously convicted of one or more criminal offenses;
- b. the specific duties and responsibilities necessarily related to the license or employment sought or held by the person;
- c. the bearing, if any, that the criminal conviction will have on the person's fitness or ability to perform one or more of such duties or responsibilities;
- d. the time elapsed since the occurrences of the offenses;
- e. the person's age at the time of the offense(s);
- f. the seriousness of the offense(s);
- g, any information regarding the person's rehabilitation;
- h. the agency/employer's legitimate interest in protecting property and the safety of specific individuals or the general public.

A PUBLIC AGENCY includes the state or any local subdivision, or any state or local department, agency board or commission.

A PRIVATE EMPLOYER is any person, company, corporation, labor organization or association employing ten or more people .

A LICENSE is any certificate, license, permit or grant of permission required by the laws of the state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation business or profession. BUT, a license does not, for purposes of this Article (23-A of the NY Corrections Law) include any license or permit to own, possess or carry or fire any explosive, pistol, handgun rifle, shotgun or other firearm.

EMPLOYMENT means any occupation, vocation, employment or any form of vocational or educational training but does not include membership in a law enforcement agency.

Obtaining a license for certain positions generally signifies that the person so licensed has undergone certain required training and passed a written and/or oral test demonstrating a basic proficiency in the particular field. A CRD can remove the automatic bar that might otherwise apply to the offender's ability to seek and obtain a license that may be required for his/her chosen occupation or endeavor.

Some positions that require licensing include: acupuncturist (Dep't of Ed.), aquatic anti-soiling paint applicator (DEC), architect (Dep't of Ed.), armored car operator (Dep't of State), asbestos handler (Dep't of Labor), athletic agent (Dep't of State), audiologist (Dep't of Ed.), barber (Dep't of State), blaster (Dep't of Labor).

Other licensed occupations include teachers, land surveyors, doctors, lawyers, building contractors, counselors, therapists, electricians, artists, auctioneers, shampooers, florists, residential painters, food truck operators, restaurants, bar owners, security guards, private investigators, insurance brokers, interior designers and travel agents. (Licensing requirements vary by state). (see labor.ny.gov).

While some clients, in particular those who have served a long stretch in state prison, or who have no specialized skills, might consider themselves fortunate to obtain even a menial job after release from prison, others may well have talents and aspirations for employment that may require some type of licensing. For such clients, a CRD or CGC can prove to be a valuable key to achieving their goals and becoming a productive member of society.

CERTIFICATE OF RELIEF FROM DISABILITIES (CRD):

DEFINITIONS: CL 700(1):

- a. ELIGIBLE OFFENDER (EO): a person convicted of a crime or offense (includes felonies, misdemeanors and violations PL 10.00[1]), BUT NOT CONVICTED MORE THAN ONCE OF A FELONY.

More than one felony conviction arising under separate counts of a single indictment (or SCI) constitute ONE FELONY CONVICTION for CRD purposes (CL 700[2][a]), as do two or more felony convictions arising from charges contained in two or more indictments (or SCI'S) FILED IN THE SAME COURT PRIOR TO THE ENTRY OF JUDGMENT under any one of them. (CL 700[2][b]).

- b. FELONY: a conviction in this state or an offense in any other jurisdiction for which a sentence IN EXCESS OF ONE YEAR (or death) is authorized.

- c. REVOCABLE SENTENCE: a suspended sentence (where the judge either postpones imposition of sentence or declines to actually execute it), or a sentence of probation, conditional discharge (CD). (In each of those sentences, the defendant is subject to possible re-sentencing if he/she violates a condition of probation, the discharge or the reporting or other requirements attached to service of the intermittent sentence).

A suspended sentence or a sentence of probation, CD or unconditional discharge all qualify as a conviction.

CERTIFICATE OF RELIEF FROM DISABILITIES (CRD) CL 701:

1. A CRD may be granted to relieve an EO of any FORFEITURE or DISABILITY, or to REMOVE ANY BAR TO EMPLOYMENT AUTOMATICALLY IMPOSED BY LAW by reason of his/her conviction of the crime/offense specified therein. Such certificate MAY BE LIMITED to one or more enumerated forfeitures, disabilities or bars, or may RELIEVE the EO of ALL FORFEITURES, DISABILITIES and BARS.

HOWEVER, NO SUCH CRD SHALL APPLY (OR BE CONSTRUED TO APPLY) to the right of such person to RETAIN OR BE ELIGIBLE FOR PUBLIC OFFICE.

2. Notwithstanding any other law, (except for PHL 2806[5] [suspension of hospital operating certificates and VTL 1193[2][b] [sanctions for VTL 1192 offenses]), a conviction of a crime/offense SPECIFIED IN THE CRD SHALL NOT CAUSE AUTOMATIC FORFEITURE of any license, (other than a firearms license issued pursuant to PL 400.00 to a person convicted of a Class A-1 or Violent Felony Offense [VFO/PL70.02]), permit, employment or franchise including the right to REGISTER TO VOTE at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate.

Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a BAR to any EMPLOYMENT, a DISABILITY to exercise ANY RIGHT, or a DISABILITY to apply for or to receive ANY LICENSE, PERMIT or OTHER AUTHORITY or PRIVILEGE COVERED BY THE CERTIFICATE.

PROVIDED HOWEVER, that a conviction for a second or subsequent violation on any subdivision of VTL 1992 committed within the preceding 10 years SHALL IMPOSE A DISABILITY TO APPLY FOR AND RECEIVE AN OPERATOR'S LICENSE during the period provided in such law;

PROVIDED FURTHER, HOWEVER, that a conviction for a class A-1 or VFO SHALL IMPOSE A DISABILITY TO APPLY FOR AND RECEIVE A LICENSE/PERMIT PURSUANT to PL400.00.

A CRD imposed pursuant to VTL 510 (2)(b)(v) and 510 (6)(i)(j) (suspension/revocation of licenses/registrations) may only be issued upon determination that COMPELLING CIRCUMSTANCES warrant such relief.

3. A CRD SHALL NOT in any way prevent any judicial, administrative, licensing or other body, board or authority from RELYING UPON THE CONVICTION specified therein as the BASIS for the EXERCISE OF DISCRETIONARY POWER to SUSPEND, REVOKE, REFUSE to ISSUE or REFUSE TO RENEW any license, permit or other authority or privilege.

So, a CRD CANNOT overcome the automatic forfeitures attendant to a convictions for for violations of PHL 2806(5) and VTL 1192). Nor can it avoid the automatic forfeiture of a license to carry a firearm by one convicted of a class A-1 felony or VF offense.

A person convicted of a non-violent felony (NVF) is also divested of the right to possess a firearm. Doing so without a valid license constitutes a violation of PL 265.01(4) (possession of a rifle, shotgun, antique firearm, black powder rifle or shotgun, any muzzle-loading firearm,

having been convicted of a felony or serious offense), a class A misdemeanor. (See also PL 400.00[1][c]).

In order to be exempt from such prosecution, the offender must have obtained a CGC pursuant to CL 703-b. (See PL 265.20[5]). In *People v Navarro* 158 AD3d 1242 (4th dep't 2008), the court rejected the defendant's claim of INEFFECTIVE ASSISTANCE OF COUNSEL for failing to argue that the defendant was exempt from prosecution for a violation of PL 265.01(4) based on a CRD because the exemption under PL 265.20(5) specially references a CGC, not a CRD, and there was no evidence that the defendant had the former. (Why a CGC but not a CRD can provide an exemption is not entirely clear. Perhaps it is because it signifies that the defendant has completed a statutorily required period of good behavior which is necessary for its issuance).

While a CRD may not exempt a person from prosecution under PL 265.01(4), it can enable the person to apply for a license from the Pistol Permit bureau. To obtain such license, the applicant must otherwise comply with PL 400.00. The safer bet, it would seem, would be to obtain a CGC through the State DOCCS (as courts do not have authority to issue them).

Convicted clients seeking to obtain or regain gun possession privileges need also consult with federal laws (Federal Gun Control Act [FGCA]168) because the state-issued certificates only remove state statutory bars to apply for and receive a license to possess a firearm. FGCA 168 prohibits certain classes of persons (including federal, state and local government employees in their official and private capacities) from transporting, receiving or possessing firearms if they are: 1. convicted of a felony, 2. a user/addict of controlled substances, 3. are subject to an order of protection with respect to an intimate partner, 4. are an illegal alien, 5. dishonorably discharged from the military or 6. convicted of a qualifying misdemeanor DV offense under federal or state law.

Federal Authorities (e.g ATF) may require proof that the individual's state rights have been fully restored including the right to vote, hold public office and serve on a state jury before satisfying any federal bar to possession of a firearm.

VOTING:

A convicted felon who is sentenced to straight probation can still vote in an election. If he/she receives a split sentence (up to six months in jail followed by probation) or to an intermittent sentence, he/she may vote AFTER completion of the term of incarceration. A felon sentenced to STATE PRISON cannot vote, and if/when he/she is released to parole, he/she MUST obtain a CRD from the DOP in order to register or re-register to vote. (Election Law 5-106[2], 701[2]). Once the offender has been discharged from parole, he/she can register to vote without a CRD.

PUBLIC OFFICE:

The right to pursue public office (whether appointed or elected) is not forfeited by a felony conviction if the offender is NOT SENTENCED to state prison (i.e. sentenced to straight probation or local imprisonment). A person sentenced to STATE PRISON LOSES his/her right to seek/hold public office (Civil Rights Law 79[1]), BUT if he/she completes his maximum term of imprisonment or is discharged from parole, then, by operation of law, he may seek public office without the need for a CGC. (A CRD cannot be used to apply for or retain public office). However, if the individual is convicted of a felony while in public office, he/she would forfeit the right to remain in such office.

JURY ELIGIBILITY:

A convicted felon is INELIGIBLE for jury service per Judiciary Law 510. Such right is not automatically restored upon completion of a sentence and it would appear that the individual would have to obtain a CGC in order to regain such right. (How many offenders would actually seek such relief is open to question).

It should be noted that a CRD and a CGC are INAPPLICABLE where the defendant has been granted a YOUTHFUL OFFENDER (YO) ADJUDICATION pursuant to CPL 720.35. That is because a YO is NOT a criminal conviction and, therefore, does not give rise to automatic forfeitures and disabilities associated with a criminal conviction.

COURT-ISSUED CERTIFICATES OF RELIEF FROM DISABILITIES: CPL 702: (REVOCAABLE SENTENCE OR NOT STATE PRISON):

1. ANY court of this state may, in its discretion, issue a CRD to an EO for a conviction that occurred in such court, if the court either a. imposed a REVOCAABLE SENTENCE or b. imposed a sentence OTHER THAN ONE executed by commitment to an institution under the jurisdiction of the state department of corrections and community service (DOCCS) (i.e state prison). (People v Serrano 81AD3d 753 [2d dep't 2011]: County Court was NOT authorized to issue a CRD since the sentence imposed was not revocable and the defendant was sentenced to state prison).

Such certificate may be issued i. at the time SENTENCE IS PRONOUNCED (in which case it applies to forfeitures and disabilities), or ii. At ANY TIME THEREAFTER (in which case it only applies to disabilities). Where the court either imposes a REVOCAABLE SENTENCE or sentences the defendant OTHER THAN TO STATE PRISON, the court shall INITIALLY DETERMINE THE FITNESS OF AN EO for such certificate PRIOR TO OR AT THE TIME sentence is pronounced.

2. Such certificate SHALL NOT issue by the court UNLESS the court is satisfied that:

- a. the grantee is an EO (CL 700);
- b. the relief sought is CONSISTENT WITH THE EO'S REHABILITATION; and
- c. is CONSISTENT WITH THE PUBLIC INTEREST.

3. Where a CRD is NOT issued at sentencing, it shall only be issued thereafter upon a VERIFIED APPLICATION to the COURT. The court may, in connection with such application, request its PROBATION SERVICE (or the County Probation Service) to CONDUCT AN INVESTIGATION of the applicant. The probation officer assigned to such investigation shall PREPARE AND SUBMIT a WRITTEN REPORT to the court.

4. Where the court has issued a REVOCAABLE SENTENCE and the CRD is issued before the expiration or termination of the revocable sentence, the certificate shall be deemed to be a TEMPORARY CERTIFICATE until the court's authority to revoke the sentence has expired or is terminated .

While temporary, such certificate a. MAY BE REVOKED for a VIOLATION OF THE CONDITIONS of the sentence, and b. SHALL BE REVOKED by the court if it REVOKES THE SENTENCE AND COMMITS THE PERSON TO STATE PRISON.

Any such revocation shall be ON NOTICE and after an OPPORTUNITY TO BE HEARD. If the certificate is NOT so revoked, it shall become a PERMANENT CERTIFICATE upon expiration or termination of the court's authority to revoke the sentence.

5. Any court that has issued a CRD may, at any time, issue a NEW CERTIFICATE to ENLARGE the relief previously granted. But, the provisions of subdivisions 1-4 above apply to the issuance of a new certificate.

6. Any written report submitted to the court under this statute is CONFIDENTIAL and may NOT be made available to any person or public/private agency except where where required or permitted by statute or upon specific authorization by the court.

Upon receipt of such report, the court shall provide a copy to the applicant's counsel (or to the applicant pro se).

The court may EXCEPT from disclosure (i.e. hold back or redact) any part(s) of the report that it deems not relevant to granting the CRD, or if sources of information were obtained upon a promise of confidentiality, or any portion disclosure of which would not be in the interest of justice. The court's action in EXCEPTING information from disclosure is SUBJECT TO APPELLATE REVIEW.

The court may HOLD A CONFERENCE, in open court or in chambers, to give the applicant an opportunity to controvert or comment upon any portions of the report. The court may also conduct a SUMMARY HEARING (including taking sworn testimony) on any relevant matter.

CERTIFICATE OF RELIEF FROM DISABILITIES (CRD) ISSUED BY DOCCS: PL 703:
(DEFENDANT SENTENCED TO STATE PRISON):

1. DOCCS has the power to issue a CRD to:
 - a. any EO who has been committed to an institution under its jurisdiction (i.e. state prison). Such certificate may be issued AT THE TIME the offender is RELEASED FROM SUCH INSTITUTION or otherwise at any time thereafter;
 - b. any EO who RESIDES within this state and whose judgment of conviction was rendered by a court in any other jurisdiction;
2. Where the department has issued a CRD, it may, at any time, issue a NEW CERTIFICATE enlarging the relief previously granted.
3. The department shall NOT issue any CRD unless it is satisfied that:
 - a. the applicant is an EO;
 - b. the relief to be granted is CONSISTENT with his/her REHABILITATION;
 - c. and is CONSISTENT WITH the PUBLIC INTEREST.

4. Any CRD issued to an EO while he/she is under the department's supervision (e.g. on parole), shall be deemed to be a TEMPORARY CERTIFICATE until the EO is DISCHARGED from such supervision, and while temporary, it may be revoked by the department for VIOLATION of the conditions of community supervision.

Revocation shall be on NOTICE to the "releasee" who must be accorded an opportunity to explain the violation before decision therein. If the certificate is NOT revoked, it shall become a PERMANENT CERTIFICATE upon expiration/termination of the department's jurisdiction over the individual.

5. In granting or revoking a CRD, the department's action constitutes a JUDICIAL function and shall NOT be reviewable if done according to law.

6. The department may conduct an INVESTIGATION to determine whether a CRD should issue.

7. WHERE A CRD is sought pursuant to subdivision 1(b) upon a judgment of conviction rendered by a FEDERAL DISTRICT COURT in this state and the department is in receipt of a WRITTEN RECOMMENDATION from the CHIEF PROBATION OFFICER of the district in favor of the issuance of the CRD, the department SHALL ISSUE the CRD UNLESS it finds that the requirements of subdivisions 3(a-c) have NOT been satisfied or that the INTERESTS of justice would not be advanced by the issuance of such certificate.

CERTIFICATE OF A GOOD CONDUCT: (CGC) CL 703-a:

1. A CGC may be granted to relieve an individual of any disability, or to remove any bar to his/her employment automatically imposed by law by reason of his/her conviction of the crime/offense specified therein. Such certificate may be LIMITED to one or more enumerated disabilities or bars, or may relieve the individual of ALL disabilities or bars.
2. Notwithstanding any other provision of law, a conviction of a crime or offense specified in a CGC shall NOT be deemed a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right, a disability to apply for or receive any license, permit, or other authority or privilege covered by the CGC.

HOWEVER, a conviction for a class A-1 felony or VFO SHALL IMPOSE A DISABILITY to apply for or receive a license or permit pursuant to PL 400.00.

3. A CGC SHALL NOT in any way prevent any judicial, administrative, licensing or other body board or authority from considering the conviction specified therein in accordance with CL Article 23-a.

ISSUANCE OF THE CERTIFICATE OF GOOD CONDUCT (CGC): CL 703-b:

1. DOCCS has the power to issue a CGC to any person PREVIOUSLY CONVICTED OF A CRIME IN THIS STATE when it is satisfied that:
 - a. the applicant has conducted himself/herself in a MANNER WARRANTING such issuance

for a MINIMUM period set forth in subdivision 3;

- b. the relief sought is CONSISTENT WITH the applicant's rehabilitation;
- c. and is CONSISTENT WITH the PUBLIC INTEREST.

2. The department has the power to issue a CGC to ANY PERSON PREVIOUSLY CONVICTED of a CRIME IN ANY OTHER JURISDICTION, when it is satisfied that :

- a. the applicant has demonstrated SPECIFIC FACTS AND CIRCUMSTANCES AND SPECIFIC SECTIONS OF NYS LAW THAT HAVE AN ADVERSE IMPACT on the applicant and WARRANT the application for relief to be made in NY; and
- b. the provisions of paragraphs 1(a-c) above have been met.

3. The MINIMUM PERIOD OF GOOD CONDUCT under subdivision 1(a) above is as follows:

ONE YEAR where the highest count is a MISDEMEANOR ;
THREE YEARS for a Class E, D and C FELONIES;
FIVE YEARS for a Class B or A FELONY.

Criminal acts committed outside this state are classified as acts committed within this state based on the MAXIMUM sentence that could have been imposed upon such conviction pursuant to the laws of such foreign jurisdiction.

Such MINIMUM period shall be MEASURED EITHER FROM THE DATE OF THE PAYMENT OF ANY FINE IMPOSED UPON HIM/HER, or the SUSPENSION OF SENTENCE, OR FROM THE DATE OF HIS/HER UN-REVOKED RELEASE FROM CUSTODY BY PAROLE, COMMUTATION OR TERMINATION OF HIS HER SENTENCE.

The department shall have the power and duty to INVESTIGATE all persons when such application is made and to grant or deny the same within a reasonable time after the application is submitted.

Such investigation is likely to look into the applicant's employment history, including any job training, education, payment of any/all fines, restitution orders, payment of any tax obligations and any letters of recommendation from parole, probation, clergy and the like.

4. Where the department has issued a CGC, it may, at any thereafter, issue a NEW CERTIFICATE ENLARGING the relief previously granted.

5. Any CGC granted to any person who is then under the department's supervision, shall be deemed a TEMPORARY CGC until such time as the individual is DISCHARGED from the department's supervision and, while temporary, it may be REVOKED for violation of the conditions of community supervision.

Revocation shall be on NOTICE to the releasee, who shall be accorded an opportunity to explain the violation prior to a decision thereon. If the CGC is NOT so revoked, it shall become permanent upon expiration or termination of the department's jurisdiction over the individual.

EFFECT OF REVOCATION: CL 704:

1. Where a CRD is deemed to be temporary and is revoked, any disabilities and forfeitures thereby relieved SHALL BE REINSTATED as of the date upon which the person to whom it was issued RECEIVES WRITTEN NOTICE of such revocation. Upon receipt of notice, the individual SHALL SURRENDER it to the issuing court or board.
2. Any person who KNOWINGLY uses or attempts to use a revoked CRD to obtain or exercise any right or privilege that he/she would not be entitled to obtain/exercise without a valid certificate is GUILTY OF A MISDEMEANOR.

FORMS AND FILING: CL 705:

1. All applications, certificates and orders of revocation under this Article shall be upon FORMS PRESCRIBED pursuant to agreement among the commissioner of corrections and community supervision, the chairman of the DOP and the administrator of the state judicial conference. Such forms relating to CRD'S SHALL BE DISTRIBUTED by the office of PROBATION and CORRECTIONAL ALTERNATIVES, and forms relating to CGC'S SHALL BE DISTRIBUTED by DOCCS.
2. In this regard, counsel should contact: doccs.ny.gov. Applications should be sent to: State of New York Department of Corrections and Community Supervision, (Attn: CERTIFICATE REVIEW UNIT), The Harriman State Campus, Build #2 120 Washington Ave. Albany NY. 12226-2050. (Phone # 518-485-8953).

CERTIFICATE IS NOT A PARDON: CL 706:

Nothing in this Article shall be deemed to alter, limit or affect the manner of applying for pardons to the governor, and no certificate issued here under shall be deemed or construed to be a pardon.

SUM: CRD v CGC:

ELIGIBILITY: CRD: Defendant convicted of any number of misdemeanors and/or only one felony as defined in CL 700(1)(a).

CGC: Defendant is eligible even if convicted of more than one felony.

ISSUANCE: CRD: May be issued by a court upon a revocable sentence or other sentence that does not involve confinement/supervision by DOCCS/DOP (i.e. state sentence). May also be issued by DOCCS upon recommendation of the supervising parole officer (SPO) while defendant is on parole or upon the defendant's release from prison.

CGC: By DOCCS after the defendant has completed the minimum statutory period of eligibility per CL703-b(3).

EFFECT: CRD: May remove all (or specified) mandatory legal bars or disabilities imposed as a result of the conviction of the crime(s) specified in the CRD. It does NOT allow one to retain or to become eligible for public office. It allows the defendant to apply for and be considered for employment or license but does NOT guarantee that it will be granted.

CGC: Same as CRD but it may restore an individual's right to seek public office.

NATURE: CRD: Temporary (and revocable) if issued before revocable sentence is no longer revocable or, if DOCCS issued, while parolee is still under supervision. It then becomes permanent.

CGC: Temporary (and revocable) if issued while defendant is under parole supervision and thereafter, becomes permanent upon discharge from supervision.

Neither a CRD (from DOCCS) nor a CGC can be issued BEFORE the defendant is released from prison.

DISABILITY: A disqualification by operation of law from holding certain jobs/positions or enjoying other rights by as a result of a criminal conviction.

FORFEITURE: Relinquishment of certain rights as a result of a criminal conviction.

Whenever a client stands convicted by plea or verdict of a crime (or crimes), counsel should consider requesting, before sentence is imposed (assuming it will not involve state time), that the court grant a CRD that provides relief that is specific to the client's circumstance or, otherwise provides the broadest relief possible.

If the client is going upstate, when he/she approaches parole release, he/she should apply to DOCCS/DOP for the CRD. If it is denied, the individual should consider applying to DOCCS/DOP for a CGC after the pertinent statutory good-time period has been reached. If nothing else, if granted, it may provide him/her with options that might otherwise have been foreclosed.