

THE CONSEQUENCES OF CRIMINAL CHARGES: A PEOPLE'S GUIDE

COPYRIGHT © REENTRY NET, THE BRONX DEFENDERS 2008

This manual is for informational purposes only and is NOT a substitute for legal advice. Because the law changes quickly, we cannot guarantee that the information provided in this manual will always be up-to-date or correct

THE CONSEQUENCES OF CRIMINAL CHARGES: A PEOPLE'S GUIDE

Kate Rubin, Reentry Net, The Bronx Defenders
McGregor Smyth, Reentry Net, The Bronx Defenders
Paul Keefe, Community Service Society
Marissa Baldacinni, LawHelp.org/NY, City Bar Justice Center

This manual is adapted from "The Consequences of Criminal Proceedings in New York State, A Guide for Criminal Defense Attorneys and Other Advocates for Persons with Criminal Records," Copyright 2000-2008 by The Bronx Defenders. Please note that many sections are specific to New York City. Much of the information is based on publications authored by the Legal Action Center, the Legal Aid Society of New York, and the Administration for Children's Services Children of Incarcerated Parents Project. Sections that draw heavily from existing publications are duly noted. Ray Barnes, Te-Ping Chen, Franklin Romeo, and Grant Zanker read and offered comments on successive drafts. Any errors, of course, are the responsibility of the authors. Please send comments and suggestions to Kate Rubin (kater@bronxdefenders.org)

TABLE OF CONTENTS

Table of Contents.....	i
I. Introduction.....	1
II. What is Reentry & What Are Collateral Consequences?.....	1
III. Encounters With The Police.....	2
What happens if I am arrested?.....	2
How do I get my stuff back?.....	3
IV. Civic Participation.....	5
Voting Rights.....	5
Jury Service.....	7
Running for Elected office.....	7
V. Family Connections.....	7
Parental Rights.....	8
Visitation.....	9
Adoption & Foster Care.....	9
Spousal maintenance and child support.....	10
VI. Government Benefits & Education Loans.....	11
Public Benefits & Welfare.....	11
Education Loans.....	13
VII. Housing.....	14
Federally Subsidized Housing.....	14
Admissions.....	14
Terminations of Tenancy.....	16
Private Housing.....	18
VIII. Immigration.....	19
IX. Employment.....	20
X. Records of Arrest & Prosecution.....	23
Credit reports.....	23
Criminal Records.....	25
XI. Certificates that Show Rehabilitation.....	29
Appendix 1: Voter Registration.....	i
Appendix 2 – Convictions preventing you from living in New York City Public Housing and Section 8.....	ii
New York City Public Housing.....	ii
Appendix 3 – States with a Lifetime Welfare Ban for Individuals with Felony Drug Convictions (as of 2005).....	iv
Appendix 4 - Intentional Program Violation (IVP) –Public Assistance Ineligibility Timetables ...v	v

I. INTRODUCTION

This manual provides basic information about some of the many consequences of criminal charges, arrest, and incarceration in New York State. It describes the legal barriers that can arise for individuals who have been arrested and their families, and provides some help navigating those barriers.

II. WHAT IS REENTRY & WHAT ARE COLLATERAL CONSEQUENCES?

The term “reentry” is used by many advocates, service providers, policy-makers, and formerly incarcerated people to define what happens to people coming home from prison. More broadly, it describes a process of reintegration, rehabilitation, and restoration of rights that should begin when an individual is arrested.

“Collateral consequences,” is a popular label for the legal, social, and economic barriers to a person’s reentry into his or her community. Although many people released from prison or jail leave with the hope of a fresh start, these barriers to reintegration can feel like the continuation of a prison sentence. In fact, these collateral consequences may take place at both ends of the criminal process system: at the beginning when an individual is arrested, charged, and perhaps considering a plea bargain; and at the end when an individual is released from prison. Even a mere arrest, or minor charges with no jail time, may result in collateral consequences.

Collateral consequences have been described as “invisible punishment¹” because they are not clearly set forth in the New York criminal law. Therefore, they are not usually explained the way prison terms and parole eligibility typically are, as part of the direct consequences of criminal convictions. Instead, the rules that result in collateral consequences are found scattered throughout New York and federal civil laws, making them more difficult to find and understand, and avoid. Though they can be long-lasting and very severe, many people don’t learn about collateral consequences until *after* they have chosen to take a guilty plea.

In this manual you will find information and materials geared towards helping you understand these consequences and strategies for preventing or overcoming them. Subtopics covered include: Encounters With the Police, Civic Participation (including voting rights and jury service), Employment, Family, Financial Impact, Housing, Immigration, Criminal Records, and Certificates of Rehabilitation. You can find more information, including many of the publications referenced in this manual, in the “Consequences of Criminal Charges” section of LawHelp/NY (www.lawhelp.org/ny). For a full clearinghouse of resources for advocates on practical solutions to reentry problems visit Reentry Net/NY (www.reentry.net/ny).

¹ Invisible Punishment The Collateral Consequences of Mass Imprisonment (Mauer & Chesney-Lind, eds., 2002).

III. ENCOUNTERS WITH THE POLICE

What happens if I am arrested?

Police officers are allowed to arrest you if they have probable cause to believe that you committed an offense. “Probable cause” is defined by the U.S. Constitution as a minimum amount of evidence that a crime was committed, and that you committed it, needed to arrest you and move forward with a prosecution against you.

Violations, misdemeanors, and felonies are the three main types of offenses that can result in imprisonment or payment of fines. They are defined in New York Penal Law Section 10.00. A violation, or non-criminal conviction, is the least serious of the three, and can result in a sentence of 15 days in jail or fewer. A misdemeanor, or “petty offense,” can result in imprisonment of up to one year, and a felony is the most serious, carrying with it no limit on the amount of time that can be imposed. In New York State, only felonies and misdemeanors are considered crimes.

Once you are in custody, the police must follow certain rules and procedures. These are laid out in the New York Criminal Procedure Law Sections 150 and 160. In New York City, once you are in the custody of the police, you will be handcuffed and searched. The officers are entitled to take personal property, any contraband (anything prohibited by law) or evidence of the crime (including proceeds of the crime and anything that may tie you to the crime). Remember that anything you say may be used against you in later court proceedings, so it is best to say “I want a lawyer” and nothing else. You have the right to a lawyer, and the court will appoint one when you get to court if you can’t afford one.

You will be transported to the local police station. Occasionally, once you are at the police station, the officers will decide they made a bad arrest, and do not have enough information to charge you. If this happens, they should release you from the precinct and end the case against you. This is called a “Voided Arrest.” Voided arrests should be sealed and should never show up on any criminal background checks.

If you are charged with a less serious crime, the officer may give you a Desk Appearance Ticket (referred to as a “DAT”), which releases you from police custody. It also provides the time and location where you must appear in court to learn what charges are being brought against you. This court proceeding is called an arraignment.

If the officer decides you should be charged with a more serious crime, you will be held in custody for up to twenty-four hours. During this time, you will be brought to a place often called “Central Booking” where you will be fingerprinted and photographed. A fingerprint report, more commonly referred to as a “rap sheet” is generated which documents your criminal history. Also during this time, the prosecutor meets with the arresting police officer to decide whether or not there is enough evidence against you. If he or she decides that there is not enough evidence to convict you, you will be released – this is called “Declined Prosecution”. Otherwise, you will be brought to the court for arraignment.

Before your arraignment you will have a chance to meet with a lawyer. If you can't afford a lawyer, the court will appoint you one and you will meet with him or her before you are brought before the judge. Your lawyer should explain the charges being brought against you, and will probably ask you questions that could help to get you released from jail while your case is open.

You will then appear with your lawyer before a judge, who will decide either to keep you in jail (this is called remand), order bail, or Release you on your own Recognizance (ROR.) Bail is cash or a bond posted by you as a guarantee that you will return to court. ROR means that the judge trusts that you will return to court even without bail at stake. While there are no guarantees, it is helpful to have family members in the courtroom at your arraignment. If a judge believes that you have strong ties in the community he or she is more likely to Release you on your own Recognizance or to set lower bail.

How do I get my stuff back?

When you are arrested, the police may take your property for four reasons. First, they can take your property for safekeeping because it is valuable, like your money, a car, cell phone, jewelry, or clothing. Second, they can take your property for forfeiture because they believe that it was used or obtained in the course of criminal activity. Third, they can take it as evidence of a crime. Fourth, they can take what they believe is contraband.

The process for getting your property back if it has been taken by the police varies from county to county. The following is the information for New York City, adapted from the Legal Aid Society's webpage, "How Do I Get My Stuff Back."

(<http://www.legal-aid.org/en/incedhelp/criminalproblem/faq/howdoigetmystuffback.aspx>).

Contact your local public defender office for information specific to the county where you live.

(http://www.nysda.org/html/chief_defenders.html)

1. How can I get my property back if it was held for safekeeping?

- If the police take your money or other valuables for safekeeping you are entitled to a voucher. The voucher is pink and lists every item that was taken from you.
- Present the voucher to the property clerk's office when you are released from central booking. If your property is not there, it is at the precinct where you were arrested.
- If you are being held in jail with pending charges (because bail was not set or you could not pay it), you may apply for the return of your property by mail.

2. What if I don't have a voucher?

- If you did not obtain a voucher when you were arrested because you were transferred to central booking before it was prepared, you can obtain one in person at the precinct where you were taken when you were arrested.
- Be prepared with the following information (your defense attorney will have it if you do not):
 - Arrest date
 - Arrest number
 - Name of arresting officer
- If the voucher is still not ready, ask the property officer for the number assigned to it.

- Don't sign a voucher that is missing any items that you know were taken. Indicate any missing item on the original white copy. You do not have to sign the voucher to have your property returned. Tell your attorney if the voucher given to you is incomplete.

3. *Can I pick up property for a friend or family member?*

- You may pick up property held for safekeeping while your friend or relative is being held with pending charges. You must bring the property voucher, a notarized letter authorizing you to pick up the property, and identification.

4. *What is "forfeiture"? How can I get my car or money back if there is a forfeiture hold?*

- If you are arrested for Driving While Intoxicated, the Police Department will take and hold your car. This is called a "forfeiture hold" and may lead to a "forfeiture case" about your car, money, or other property separate from your criminal case.
- Other charges that can lead to a "forfeiture hold" include:
 - Driving without a license
 - Car used to obtain drugs or services of a prostitute
 - Car carrying a loaded gun
 - Money seized from your apartment, car, or pocket during a drug arrest
- To start the process of getting your car back, you need:
 - A voucher - Obtain this from the Property Officer at the precinct where you were arrested. Provide them with the arrest date, arrest number, and arresting officer's name. You can get this information from your defense attorney
 - A DA's Release – Ask your defense attorney to make a written request for this from the Assistant District Attorney on your case.
- You have a right to a hearing within 10 business days from when your car was taken by the police. You can get a "Notice of Right to Retention Hearing" from the police. This packet includes a form to request a hearing and information about the hearing process. If you do not receive it from the police after your arrest, ask your defense attorney for help getting it.
- Within two weeks of when the police receive your hearing request, they will send you a letter with the date and time of your hearing. All hearings take place at Office of Administrative Trial and Hearings (OATH), 40 Rector St., in Manhattan. <http://www.nyc.gov/html/oath/>
- If you choose to have a hearing, you can be represented by an attorney at this hearing, but unlike in criminal court you will not be assigned one automatically. If you don't have an attorney you can represent yourself, or a friend can help represent you.
- At the hearing, the police will have to show that the car was used to commit a crime. You can challenge their evidence and story and present your own evidence. You can testify and tell your side of the story, but anything you say in this hearing can be used against you in criminal court. **So if you have an open criminal case you must talk to your defense attorney before testifying in an OATH hearing.**
- If you own the car but were not arrested and did not know it was being used in a crime, you may use the "innocent owner" defense – someone else used the car and committed a crime without your knowledge.
- The OATH judge will issue a written decision a few days after the hearing. It will state whether the car will remain impounded or be returned to you, and explain the reasons. This only decides what happens to the car during the course of the criminal case.

- In DWI cases, the police will usually offer you what they call a “settlement agreement” instead of a hearing. This agreement settles the civil forfeiture case that the police must bring to keep your car permanently. Get advice from your criminal defense attorney about whether your best option is to request a hearing or accept the terms of the settlement.
- In this settlement, you agree:
 - To complete a substance abuse program certified by the New York State Office of Alcoholism and Substance Abuse Services (OASAS). **There is usually a \$1,000 fee for completing an OASAS program
 - To pay a storage fee of \$5/day (maximum \$500) while you are completing the program and the car is being held.
- If all terms are met, you will receive a “release” and will be able to go to the Auto Pound and get your car. When you go, you will need to present:
 - Document from the Police Vehicle Seizure Unit telling the Pound to return your car
 - Valid ID
 - Proof that you own the vehicle
- How to get to the Pound: Ask the Vehicle Seizure Unit whether your car is being held at College Point, or at the Erie Basin or Gowanus Pound. The College Point pound can be reached by taking the No. 7 train to Main Street, Flushing, and the Q25 bus to the pound. By car, take the Van Wyck Expressway (Whitestone Expressway) to the Linden Pl. exit. Take 31st Ave. to the end on Flushing Bay. You may need to drive if your car is at the other pounds. Bring booster cables if your car has been in the pound for a long time.

IV. CIVIC PARTICIPATION

Civic participation includes all the ways citizens participate in the democratic process. It includes the right to vote, serve on a jury, and run for elected office.

Voting Rights

In New York State, as long as you are a U.S. citizen 18 or older, you **can vote** unless you are currently in state prison or on parole for a felony conviction. Once you no longer have to report to a parole officer, you can vote, even if you were convicted of a felony. If you were convicted of a felony but never went to prison, you can vote – even if you served time in a local jail, or are currently on probation. In New York, misdemeanor or violation convictions never affect your right to vote in any election.

1. *When do I lose my right to vote?*

- You **only** lose your right to vote in New York State if you have been convicted of a felony under state or federal law **and are currently** serving time in prison or on parole.
- **You can vote** even if you have been convicted of a felony if a) there was no prison sentence; b) the sentence has been suspended; or c) you have completed your prison sentence and are no longer on parole.
- Voting rights of individuals with criminal records are laid out in New York Election Law Section 5-106 (Qualifications for voters; reasons for exclusion).

- 2. *If I have been convicted of a misdemeanor or violation, can I vote?***
 - Yes. Misdemeanor and violation convictions do not bar you from voting.
- 3. *If I was convicted of a felony and got a suspended sentence, can I vote?***
 - Yes, you can vote if you have a suspended sentence, even for a felony.
- 4. *If I have been convicted in another state, do I lose my right to vote?***
 - If the conviction would have been a felony in New York, you can vote as soon as you have completed the sentence (of prison and/or parole) you received for the conviction. If it would have been a misdemeanor or violation, you never lose your right to vote.
- 5. *If I am on Federal post-release supervision in New York for a federal felony, can I vote?***
 - Yes. The Board of Elections has issued an official opinion stating that individuals on federal post-release supervision have completed their sentence and can vote. You can view the opinion on Reentry Net/NY (<http://www.reentry.net/ny/library/attachment.116267>).
- 6. *If I have been convicted of a felony, can I get my right to vote back?***
 - Yes. Your right to vote is automatically returned once you are out of state prison and off of parole. All you have to do is register to vote.
 - If you are on parole, you can get your right to vote back with a Certificate of Relief from Civil Disabilities or a Certificate of Good Conduct.
 - Under New York Election Law, individuals with felony convictions may also get their right to vote back if they are pardoned by the President of the United States (in cases of federal felony convictions) or the Governor of New York (in cases of state felony convictions).
 - However, these are very rarely granted.
 - The Executive Clemency Bureau, which is within the Division of Parole, screens candidates for eligibility requirements.
- 7. *How do I get my right to vote back after I have completed my sentence?***
 - You must register to vote. (Please see Appendix 1: Voter Registration.)
 - If you have any trouble registering to vote call the Voter Enfranchisement Project at The Bronx Defenders (718) 838-7878. If you have any trouble voting at the polls call Election Protection: (800) OUR-VOTE or (800) 687-8683.
- 8. *If I am on parole and not incarcerated, is there any way that I can still vote?***
 - Yes. If you are granted a Certificate of Relief from Disabilities, you may be able to register to vote. This is explained in Corrections Law Section 701. (See the section on Certificates of that Show Rehabilitation on p. 29.)
- 9. *How do I register to vote?***
 - See Appendix 1 “Voter Registration,” or log on to the New York State Board of Elections website at: <http://www.elections.state.ny.us> and click on the tab “Voting.”

Jury Service

1. *If I have been convicted of a felony, can I still serve on a jury?*

- No. The New York Judiciary Law Section 510 specifically states that people with felony convictions may not serve on juries. But if you have been convicted of a misdemeanor or violation you may still serve on a jury.

2. *Will a Certificate of Relief from Disability or Certificate of Good Conduct restore my ability to serve on a jury?*

- If you have a felony conviction, obtaining a Certificate of Relief from Disability or a Certificate of Good Conduct can make you *eligible* to serve on a jury again.
- Once you have one of these Certificates, you can apply to become a juror, but the Commissioner on Jurors may still reject you. A Certificate will get you around the law that prevents people with felony convictions from being jurors, but the local Commissioner on Jurors will still decide whether you are qualified.
- Jurors are chosen from “jury rolls,” which are lists of people from the State Department of Motor Vehicles, Department of Taxation and Finance, and Board of Election. If you have a Certificate, you may get selected from one of these lists. If you want to ensure that you will be called to serve on a jury, however, you can submit a qualification questionnaire and your Certificate to your local Commissioner of Jurors.
- To get a qualification questionnaire and find your local Commissioner of Jurors, see <http://www.nyjuror.gov/volunteer/>.

3. *If I have been convicted of a misdemeanor or violation and served a jail sentence, can I still serve on a jury?*

- Yes. Only people with felony convictions are not allowed to serve on juries.

Running for Elected office

1. *If I have been convicted of a felony may I run for elected office?*

- Yes.
- However, New York Civil Rights Law Section 79 states that if you are currently a public officer and convicted of a felony, “or a crime involving a violation of their oath of office,” then you must be removed from your position.
 - Similarly, judges must be removed from office if they are convicted of a felony, “or any other crime which involves moral turpitude” and once a judge is removed he or she cannot hold another judicial office.

V. FAMILY CONNECTIONS

The consequences of criminal proceedings do not only affect the individual who is going through the process – they can also affect whole families. Besides losing contact with family members while incarcerated or in police custody, there are also specific laws that affect parental rights and the ability to become an adoptive or foster parent. In New York City, the Administration for Children’s Services hosts a program called Children of Incarcerated Parents Program (CHIPP) that helps

families stay connected during periods of imprisonment. Much of the information below about parental rights is from their excellent manual *Out of Sight NOT Out of Mind :Important Information For Incarcerated Parents Whose Children Are In Foster Care* (available from NYC Children’s Services). Finally, arrears in spousal maintenance and child support can build up to impossible amounts while a person is incarcerated, resulting in garnished wages and revoked drivers’ licenses.

Parental Rights

1. *Can I lose my parental rights if I am convicted of a crime?*

- The Federal Adoption & Safe Families Act requires that the state sue in Family Court to end your parental rights if:
 - You have “been convicted of certain serious crimes against a child, such as murder, manslaughter, or assault;” OR
 - Your child is in foster care for (1) one year (in New York only) OR (2) fifteen of the last twenty-two months, which could happen if you are incarcerated for more than a year . . . *Unless there is a compelling reason.* Some examples of compelling reasons are:
 - i. You can demonstrate that you are in contact with your child and working towards a permanent arrangement for him/her.
 - ii. The court determines that the child should not be adopted
 - iii. The child is aged fourteen or older and will not consent to adoption
 - If you are serving a jail or prison sentence of one year or longer and your child is in foster care you **must**:
 - i. Consult a lawyer immediately about steps you can take to try to preserve your parental rights. You can call Legal Information for Families Today (LIFT) hotline at (212) 343-1122 for free advice and referrals to free legal services.
 - ii. Begin making efforts to stay in contact with your child right away, and keep copies of papers documenting every contact and attempted contact that you make with your child or with your child’s caseworker.

2. *If I can lose my parental rights when my child is in foster care for a certain period of time, what counts as time in foster care?*

- Only time when your child is in the care of a state agency counts as foster care.
- If you arrange to place your child with a responsible adult, that does not count as foster care. You will not have to go to court to regain custody of your child, unless the other adult refuses to give your child back. The Department of Correctional Services should have “Temporary Acknowledgement of Custody” forms you can use. Here’s the process:
 - Describe the custody arrangement in writing; and
 - Have both the parent and caretaker agree to the arrangement with their notarized signatures.
- A Voluntary Placement Agreement, however, does count as foster care. A Voluntary Placement Agreement gives custody of your child to the local child welfare office or Department of Social Services.

3. *Can I lose custody of my child simply by being in jail or prison?*

- You can't lose custody of your children just for being in jail or prison, but if you don't visit or communicate with your kids for six consecutive months, your parental rights can be permanently terminated on grounds of abandonment.

Visitation

1. *How do I visit my kids if the other parent has an order of protection against me?*

- Ask your defense attorney to get the criminal court to change it to a "limited" order of protection or to make it "subject to family court modification." If an order of protection is "subject to family court modification," you can go into family court yourself and ask the judge to let you visit your kids.

2. *What rights do I have if my children are in foster care?*

- You have the right to visit with your child *at least* once per month.
- You have the right to know the reason why your child is placed in foster care, and to identify a family-member or other people who should be explored as resources for your children while you are incarcerated.
- You have a right to an attorney to represent you in Family Court.
- You have a right to know the name of your child's caseworker, and to be in contact with him/her.
- You have the right to receive help in taking steps you need to take in order to be reunified with your child.
- You have a right to participate in planning for your child's future; you have a right to input into the "permanency plan" and to receive a copy of this plan.

Adoption & Foster Care

3. *Can I still become a foster or adoptive parent if I have been convicted of a crime?*

- It depends on the offense.
- You will be denied if you have a felony conviction for
 - Child abuse or neglect;
 - Spousal abuse;
 - A crime against a child, including child pornography;
 - A crime involving violence, including rape, sexual assault, or homicide, other than physical assault; or
 - Within the past five years, a felony for drugs or physical assault.
- Until recently, New York State "opted out" of the federal law that called for mandatory disqualification of adoptive and foster care parent applicants with these types of felony convictions. As of October 1, 2008 New York *is no longer opting out of this law*. This means that if you have a felony conviction that falls into any of the categories above you cannot be a foster or adoptive parent.
 - However, the law only applies to *new applications*. If you are already a foster or adoptive parent your children will not be removed from you based on past convictions.

- You can view the Policy Directive from the Office of Children & Family Services on Reentry Net/NY (<http://www.reentry.net/ny/library/attachment.130360>).
- You might be denied if:
 - You have been charged with or convicted of any crime; or
 - Someone in your house over the age of 18 has been charged with or convicted of any crime.

Spousal maintenance and child support

1. *While I was incarcerated, I accumulated a lot of debt because I couldn't make support payments. How do I get rid of those arrears?*

- It seems unfair, but you can't erase support arrears once you own them. The only thing you can do is seek a "downward modification" of the support you have to pay in the future – in other words, try to lower the amount that you have to pay going forward.
- However, under New York Family Court Act Section 413, an indigent person should not have to pay more than \$500 in child support arrears. One judge has ruled that this \$500 cap does not apply to people whose arrears built up while they were incarcerated, but the rule is still up for interpretation.
- Finally, if you owe arrears to the custodial parent and not to the Department of Social Services, the custodial parent may *choose* to forgive all or part of the arrears that you owe. If you can negotiate forgiveness of arrears with the custodial parent, have him/her write, sign and notarize a letter. Bring this letter to the local county support unit – **not** to Family Court.

2. *How do I seek a downward modification in my support payments?*

- Only a support magistrate in the family court that made your original child support order can change or "modify" it.
- You must submit a petition in family court showing a "significant change in circumstances" since the original support order was made. A "significant change in circumstances" means a change in your ability to earn money to pay child support since the order was made.
 - The petition should include information about your incarceration, your current income, and your job search. Your goal is to demonstrate that you cannot afford child support at the current level.
 - You also want to demonstrate that your inability to pay is not a result of your own "willful action" – that you are looking for work.
 - Finally, you need to demonstrate that you are making good faith efforts, by paying as much as you can every month.

3. *Can I get a downward modification while I am incarcerated?*

- Maybe. The New York City Department of Social Services changed its past policy and will agree to suspend support orders for incarcerated people, but only if you file a petition. This policy only affects child support owed to DSS, not to the custodial parent. To get a blank petition form, write to:

Thresa Andrews (first name spelling is correct)
 Petitions Division Supervisor, CSET
 Family Court
 60 Lafayette St.
 New York, NY 10013

- You will need the docket number of your support case. If you don't know it, include your Social Security number, date of birth, the name of the custodial parent or guardian, and the names and birth dates of your children.
- The Department of Social Services will consider your petition and make a determination, or decision, about the level of child support you should pay. They may modify it down to \$25/month or all the way to zero.

VI. GOVERNMENT BENEFITS & EDUCATION LOANS

New York State does not participate in the “welfare ban” for people convicted of drug offenses, so if you are a New York State resident you can apply for and receive government benefits like Food Stamps, Medicaid, TANF and cash assistance, no matter how many convictions you may have on your rap sheet.

However, arrest and incarceration can temporarily affect your government benefits and your eligibility for student loans in New York State. This section includes information about what can happen to your public benefits and loan eligibility if you are arrested, serve time, or have an open warrant. It also shows which states do have a lifetime welfare ban for people with drug convictions, which may be important to consider if you are thinking about moving to a different state.

Public Benefits & Welfare

While New York does not participate in the “welfare ban” for people convicted of drug offenses, a criminal case can affect your public assistance payments. This section includes information about at what point benefits will be suspended or terminated as a result of incarceration, and how to reactivate benefits upon release. It also has information about how having an open warrant – especially if it is a probation warrant – can affect your ability to receive benefits.

1. *Can I receive government benefits if I have a criminal conviction?*

- Yes, as long as you are a New York State resident.
- In some other states, people who have been convicted of any felony offense that includes “the possession, use, or distribution of a controlled substance (including marijuana) are banned for life from receiving federal cash assistance or food stamps. New York is one of 11 states that have completely “opted out” of this ban, or chosen not to put it into effect. If you are planning to move to a different state and you rely on public assistance, check the chart in Appendix 3 to see whether that state has a welfare ban in place.

2. *What happens to my benefits if I am arrested but not incarcerated?*

- Simply getting arrested will not affect your public benefits. If you are out in the community while you fight your case, and you return to court on all of your court dates, your benefits should not be affected. However, you must continue to comply with all of the conditions of public assistance, including work assignments, while your case is open.

3. *What will happen to my public assistance (TANF and state cash benefits) if I am incarcerated?*

- If you miss an appointment with HRA because you are in jail, HRA will send you a “notice of intent” to terminate your benefits. This is the same thing that happens if you miss a work assignment or any other HRA requirement, so you can challenge the termination in a fair hearing. Here are two issues you can raise:
 - Mailing: HRA has to prove that the notice was sent to you. If you were incarcerated and not at your home address, especially if the notice says you were incarcerated, argue that HRA knew where you were but sent the notice to an incorrect address.
 - Adequacy of notice: HRA has to explain why it intends to discontinue your benefits and include legal authority. If HRA wants to discontinue your benefits because you didn’t comply with work rules, it has to show you did so *willfully*. You didn’t willfully miss your work assignment; you couldn’t go because you were incarcerated.
- If you are incarcerated for less than six months, you can also claim a temporary absence. If you stay within the United States, remain in need, and intend to return to the household, you can leave the household for up to six months.

4. *What will happen to my Medicaid benefits if I am incarcerated?*

- You should not lose your Medicaid benefits because you are incarcerated. They will be suspended while you are incarcerated, but you will get them back as soon as you are released. If you don’t, you should contact the Medicaid office and ask for an expedited application based on the “Medicaid Suspension Law.” You will probably be asked to recertify within 60 to 90 days after you are released, however.

5. *What will happen to my Social Security Disability Insurance (SSDI) or Supplemental Security Insurance (SSI) benefits if I am incarcerated?*

- You must report your incarceration to the Social Security Administration. Your benefits will be affected differently depending on how long you are incarcerated:
 - Incarceration for less than a full calendar month should have no effect on SSI benefits.
 - Incarceration for more than a full calendar month, but less than a year: SSI benefits are suspended, but will be reinstated effective the day of release. Your check that month will be less than usual because it will only cover the days after you are released.
 - Incarceration for more than one year: SSI benefits will be terminated if you are incarcerated for longer than twelve months in a row. You can then re-apply for benefits when you are released or while incarcerated. If you are found to be eligible, you will receive the benefits starting the first day of the first month after your release
- Other Social Security Benefits: For Social Security benefits such as Social Security Disability, however, if you are convicted of a felony, you cannot receive benefits for any month or any part of a month during which you are incarcerated.

6. *Could having an open warrant affect my benefits?*

- The Department of Social Services will run a national warrant check on anyone applying for benefits.

- You will be denied TANF and other cash assistance, SSI, SSDI, public and federally-assisted housing, and Food Stamps if you:
 - Have an open warrant for violating a condition of your probation or parole, OR
 - Are found to be actively fleeing to avoid prosecution for a felony. A warrant for your arrest is not enough to prove this because many people don't know they have open warrants. Instead, the warrant must be issued because you are intentionally fleeing law enforcement.
- You remain eligible for Medicaid, even if you are found to be a “fleeing felon” or violating probation or parole.

5. *Will a conviction for welfare fraud affect my benefits?*

- It could. An intentional program violation or a criminal conviction for welfare fraud could affect your benefits.
- If you are found guilty of an Intentional Public Assistance Program Violation, you can use the table in Appendix 4 to see when you will become eligible for public assistance again.

Education Loans

Most people with criminal convictions are eligible to receive financial aid for higher education, but there are a few kinds of convictions that can affect your eligibility. This section includes information about which convictions affect your ability to get financial aid, and what you can do to overcome these obstacles.

1. *What kinds of convictions can make me ineligible to receive financial aid?*

- If you were convicted of any offense involving the possession or sale of drugs (including marijuana) if the conduct occurred while you were also receiving any federal grant, loan, or work assistance, then your financial aid eligibility can be suspended for one to two years.
- The Federal Law that defines ineligibility for financial aid is 20 U.S.C. § 1091(f)(1).

2. *I got a drug conviction while receiving financial aid. When can I get financial aid back?*

- Depending on how many convictions you have and whether they were for possession or sale, you will be ineligible for a certain amount of time, running from the date of conviction.
 - Possession of a controlled substance
 - One conviction: ineligible for one year
 - Two convictions: ineligible for two years
 - Three or more convictions: you can no longer receive financial aid
 - Sale of a controlled substance
 - One conviction: ineligible for two years
 - Two or more convictions: you can no longer receive financial aid

3. *Is there anything I can do to shorten the suspension period?*

- Yes. You can go to a drug treatment program for six months. The program must be certified by the New York State Office of Alcoholism and Substance Abuse Services (OASAS), and it must include two unannounced drug tests. Once you complete the program, you can receive a waiver that allows you to get financial aid again.

VII. HOUSING

A criminal history can affect your eligibility for both public housing and, if a landlord conducts a background check, private housing. An arrest – even before anyone is found guilty – can often trigger eviction of you or your entire household from public or private housing.

Federally Subsidized Housing

Federally subsidized housing includes all public housing developments (such as NYCHA in New York City and RHA in Rochester) and Section 8. Rules in subsidized housing can be very strict, and even minor arrests or criminal convictions can affect your right to stay in public housing. This section includes information about “Admissions” – or the rules guiding when your criminal conviction might prevent you from living in public housing, even if your family lives there, and about “Termination of Tenancy” - or eviction based on criminal justice involvement. Most of the information here is specific to the New York City Housing Authority (NYCHA) and to Section 8 administered by NYCHA. To find out about the laws specific to your city or county use LawHelp/NY (www.lawhelp.org/ny) to find a housing legal services provider in your area.

Admissions

Public housing agencies and Section 8 providers can and do obtain criminal records of applicants and tenants. Much of the information in this section is based on [*How to Get Section 8 or Public Housing Even With a Criminal Record*](#), a publication of the Legal Action Center. It is available on their website (www.lac.org) and on www.lawhelp.org/ny.

1. How can my past criminal involvement affect my chances at getting public housing or Section 8?

- When you apply, the Public Housing Authority runs a criminal background check of:
 - You;
 - Everyone you currently live with;
 - Everyone 16 or older who might live with you;
 - The biological parent of the youngest child in the household, even if that person doesn't live with you; and
 - Anyone who is a biological parent of all the children in the household, even if that person doesn't live with you.
- The rules governing who may be denied are very broad. The Housing Authority tries to exclude people it believes will risk the health and safety of other tenants. On the other hand, the Housing Authority can choose to overlook your criminal convictions and accept your application, especially if they see evidence that you have changed since the time of your conviction.
- The Housing Authority will look for evidence (such as an official rap sheet) that no member of your household has committed any new criminal activity in recent years. Federal Law (42 USC § 13661(c)) gives Housing Authorities the power to deny people based on criminal activity.

2. Are there any convictions that could permanently bar me from living in public housing or Section 8?

- Only two: Federal law says that a person who is subject to lifetime sex offender registration or who has been convicted of producing methamphetamine on public housing grounds may not ever be admitted to public housing or receive Section 8 again. If you have one of these convictions but are already living in public housing, you have a right to stay because Federal law only applies to people who want to live in public housing or receive Section 8, not those who already do. Call a lawyer if eviction proceedings are brought against you.

3. What about other convictions that could bar me?

- Each public housing authority, and each agency that manages Section 8 vouchers, has its own “ineligibility timetable.” For example, in the New York City Housing Authority (NYCHA) timetable, if you are convicted of a violation you may not live in public housing for two years after the end of your sentence.
 - To find out the rules in your local Public Housing Authority (PHA) use www.lawhelp.org/ny to find a housing attorney in your area
 - The full NYCHA ineligibility timetable is in Appendix 2.
 - A Certificate of Relief from Disabilities or Certificate of Good Conduct can help you overcome automatic ineligibility.
- In addition, if you or a member of your household has been evicted from public housing due to drug-related criminal activity within the past three years, your public housing or Section 8 application could be rejected. You can strengthen your application by demonstrating that:
 - The person evicted due to the drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or
 - That individual no longer lives in your household.

4. If my application for public housing or Section 8 includes someone with a record of criminal activity, as described above, how can I strengthen my application for public housing?

- Include in your application:
 - Evidence of treatment or rehabilitation, including evidence of completion of a drug counseling program or Certificates of Relief from Disabilities and Certificates of Good Conduct.
 - Evidence that your household is participating in, or willing to participate in, other social services or counseling programs.
- If you are denied admission or are evicted from public or Section 8 housing because of criminal activity, you MUST be provided with the grounds for denial or termination, a copy of your criminal record (if you have one), the other relevant PHA documents. You also must be given the opportunity to dispute the accuracy and relevance of it.
- Each Public Housing Authority can choose to be even stricter about admitting people with criminal histories than federal law requires. There are several resources that can help walk you through this process at www.lawhelp.org/ny in the “Consequences of Criminal Charges” section. For New York City residents, look for “How to Get Public Housing and Section 8 Even With a Criminal Record,” published by the Legal Action Center. Available: http://www.lac.org/doc_library/lac/publications/How_to_Get_Section_8_or_Public_Housing.pdf

Terminations of Tenancy

If you live in public housing and you or someone in your household is arrested, you are at risk for eviction from public housing, which is usually called “termination of tenancy.” If you are being evicted from public housing, you have a right to a hearing. There are some resources on www.lawhelp.org/ny that can help you understand this process and fight to keep your apartment.

1. *I was arrested but I haven’t been convicted of anything yet – can I be evicted before my criminal case is even over?*

- Unfortunately, yes. NYCHA and other public housing authorities can evict tenants based on even minor evidence that criminal activity has occurred – even if no one has been convicted of anything. In criminal court, a person is “innocent until proven guilty,” but in public housing, proof of guilt is not required to start eviction proceedings against a household.

2. *What kinds of activities could lead to eviction proceedings?*

- Under Federal Laws, Public Housing Authorities (like NYCHA in New York City, RHA in Rochester, etc.) are allowed, but not required, to evict anyone who:
 - Illegally uses drugs
 - Abuses alcohol
 - Lies or misleads on their applications about drug and alcohol abuse
 - Is involved in criminal activity that threatens other resident’s health, safety, or right to peaceful enjoyment of the housing
 - Is avoiding prosecution or custody after conviction for a felony or attempt to commit a felony
 - Is violating a condition of probation or parole
- Your entire household may be evicted if:
 - You, anyone in your household, or any guest is involved in drug-related criminal activity on or off of the public housing’s property
 - Someone who the Housing Authority says is “under your control” (even if they are not actually your guest) engages in drug-related activity in the development or building

3. *If I am worried about the possibility of eviction; what can I do?*

- Before you are evicted, the Housing Authority can consider the circumstance of your case. “Mitigating circumstances” about you and your family can convince the Housing Authority officers not to evict you, or terminate your tenancy. Examples include:
 - The criminal charges brought against you were dismissed or were very minor
 - If criminal activity has occurred, you have taken responsibility and are taking reasonable steps to prevent or lessen it
 - The person who was arrested for criminal activity got treatment for a condition that led to the arrest
 - The person who was arrested for criminal activity moved out
 - The person who was arrested for criminal activity never lived with you and you are willing to ban him or her from visiting your apartment
 - You have been a resident in public housing for many years and have been an upstanding member of the community

- You immediately should start gathering evidence of rehabilitation and of treatment if the activity is for drug or alcohol abuse. This includes evidence of completion of a drug counseling program or Certificates of Relief from Disabilities or Certificates of Good Conduct.

4. *What happens in the “termination of tenancy” process in a NYCHA development?*

- You will receive a notice from the project manager or the manager’s representative. The manager might meet with you and give you a chance to tell your side of the story. But only tell your story if you are prepared. It’s easy to talk too much and give the Housing manager more evidence to use to evict you.
- If the manager believes you should be evicted, you will get a notice with a hearing date. You should also get information about the hearing process and your rights
- Don’t miss your hearing date. This alone could get you evicted.
- Before your hearing, you have a right to see any papers and materials that may be used against you at your hearing.
- At your first hearing date, the Housing Authority is likely to try to convince you to sign a “stipulation” that will end the case without a hearing and allow you to stay in your apartment IF you agree to all of the Housing Authority’s conditions. These rules are often far more burdensome than anything NYCHA could make you do after a hearing. (See below). Read this stipulation carefully and do not feel pressured into signing it. It is usually a good idea to show it to someone else – a lawyer, advocate, friend, or family-member – and to discuss whether to sign it. Some conditional stipulations often included are:
 - Several years of probation, during which breaking even one minor rule can lead to your eviction.
 - Permanent exclusion of a member of your household – meaning that this person may not visit your apartment ever, even after your probation period has ended
 - Allow NYCHA employees to enter your apartment at any time to check to see whether someone who has been “permanently excluded” is there.
- If you decide not to sign the stipulation but to go ahead with the hearing, make sure you are ready to make your case:
 - You have taken steps to fix whatever problems led to arrests in your apartment or of people connected to your household
 - You have documented evidence of those steps (evidence that charges are dismissed, that the person is in treatment or in a program, that the person doesn’t live with you, etc.)
 - You have other evidence of your good standing in the community (such as letters of reference from neighbors, employers, pastors, or other community leaders)
- A lawyer or someone else may represent you
- If you’re not going to be ready by the date of the hearing, you can usually get it postponed (or “adjourned”) at least once, but you must make the request in advance.
 - If you do miss your hearing, go to the main Housing Authority office immediately. If you have a good excuse – like a medical or family emergency – they may reschedule your hearing.
- After the hearing, the Hearing Officer will choose one of five outcomes:
 - You can be evicted
 - You can be allowed to stay in your home, with probation for up to one year

- You can keep your apartment but you must permanently exclude a member of your household who was involved in criminal activity
- You can keep your apartment but are referred to social services for help
- You can keep your apartment without any condition

5. *If one person in my household gets arrested will we all get evicted?*

- Not necessarily. A Housing Authority can choose to evict only the person who was arrested or otherwise involved in “criminal activity.”
- Often, the Housing Authority will agree that instead of evicting an entire household, it will allow the head of the household to “permanently exclude” the person who was engaged in illegal or “non-desirable” activity. If you choose this, it will usually come with a probationary period. During a probationary period, even breaking one small rule can cause eviction of your entire household.
- Remember, exclusions are often permanent, and continue even after the period of probation ends. Housing Authority employees can and will check up on your household to discover whether an excluded individual is visiting, especially on weekends, holidays, and birthdays.

Private Housing

If you live in private housing and are arrested for a drug-related offense in your apartment or building, your landlord may try to evict you while your criminal case is still open. It is important to delay the eviction process so that no decision is made until the end of your criminal case – if you are evicted, it should be based on your conviction, not your simple arrest. Go to www.lawhelp.org/ny to find a lawyer who can represent you in housing court.

1. *Can a private landlord refuse to rent to me because of my criminal conviction?*

- Yes, but federal and state law prohibit private landlords from taking certain actions. Landlords of buildings with four or more apartments cannot have a policy of refusing to rent to *all* people with criminal convictions under the Federal Fair Housing Act and State and City Human Rights Laws.
- Additionally, if your conviction is for substance abuse, your past substance abuse is a disability under state and federal law, and people with disabilities enjoy greater protection against discrimination under the Americans with Disabilities Act.
- Finally, you are protected by the state and federal Fair Credit Reporting Acts as described in the next answer.

2. *How do landlords get my criminal history?*

- Most landlords get information about your criminal record from credit reports, which are subject to the federal and state Fair Credit Reporting Acts. In New York, such reports cannot show convictions for violations (which are not crimes).
- New York City landlords cannot ask for your social security number, but they are usually able to obtain credit reports with your name and date of birth.

VIII. IMMIGRATION

Non-citizens involved in the criminal justice system confront additional and severe civil consequences. It makes no difference if you have lived in the United States for a long time or if you have ties to the U.S. and family here; guilty pleas and convictions often lead to an immediate detention and the initiation of deportation (also called “removal”) proceedings.

1. What are the types of consequences I can face if I am not a citizen and I am arrested in the U.S.?

- In addition to immediate detention and the start of deportation proceedings, some of the other consequences include:
 - Not being able to get health insurance,
 - Not being able to become a U.S. citizen or renew or obtain a green card,
 - Not being able to return to the U.S. at least for a certain amount of time, and
 - Not being able to apply for asylum, even if faced with persecution in your home country.
- **Because these consequences are so severe and complex, it is absolutely critical to consult an immigration lawyer – and make sure that your defense attorney does so – before taking any plea or conviction.**

2. What types of crimes cause these consequences?

- In the area of immigration law it is difficult to make a simple list of specific types of crimes and their corresponding civil consequences.
- However, it is important to understand that even low-level, nonviolent offenses (such as shop-lifting, drug possession, and turnstile-jumping) can lead to deportation.
- Remember that anyone who is undocumented can be deported. Therefore, if you spend time in jail, even if in the end you are released and not convicted, you may risk disclosing your undocumented status to government officials. The government often questions people in custody regarding immigration issues.
- There are some excellent guides and materials on the topic that offer a lot more information. Families for Freedom publishes a guide called *Deportation 101: Detention, Deportation, and the Criminal Justice System*, available for FREE on their website:
<http://www.familiesforfreedom.org/>

3. Even if I have my green card, can I still be deported?

- Yes. You should contact an immigration lawyer to help figure out what steps you should take because depending on how long you have been living in the U.S. and what type of offense you are charged with, you may be able to avoid deportation by applying for relief.

4. Are there any organizations that can help me?

- **The New York State Defenders Association (“NYSDA”) Immigrant Defense Project**
The NYSDA Immigrant Defense Project runs a hotline Tuesdays and Thursdays from 1:30 p.m. to 4:30 p.m. at 718-858-9658 ext. 201. You can contact them by mail:

New York State Defenders Association Immigrant Defense Project
3 West 29th Street, Suite 803
New York, NY 10001
www.immigrantdefenseproject.org
(212) 725-6422

- **Families for Freedom**

Families for Freedom is a New York-based organization working to fight deportation. They provide support, education, and action for both families and communities affected by these issues.

www.familiesforfreedom.org
(646) 290-5551

- **Legal Aid Society**

www.legal-aid.org
(212) 577-3300

IX. EMPLOYMENT

1. An employer said it wouldn't hire me because it doesn't hire anyone with a criminal record. Is that legal?

- No. Employers must consider each person as an individual. Refusing to hire all people with criminal records violates Title VII of the Civil Rights Law of 1964, the New York State Corrections Law Sections 750-755 (often referred to as "Article 23-A" of the Corrections Law); the New York State Human Rights Law (New York Executive Law Section 296); and the New York City Human Rights Law (New York Administrative Code Section 8-107).

2. How can my criminal history affect my chances at getting a job?

- Under New York law, employers and state agencies that issue licenses cannot reject you simply because you have a criminal conviction. Instead, you may only be rejected if (1) there is a direct relationship between a conviction on your criminal record and the job or license you want; or (2) hiring you would pose an unreasonable risk to persons or property. Corrections Law Section 753 says that an employer must look at you as an individual and lays out the factors which they must consider:
 - New York's public policy promoting the employment and licensure of people with criminal histories;
 - How your conviction relates to the your fitness and ability to perform the job's duties;
 - How long ago and how serious your conviction was and your age at the time;
 - The employer's or agency's legitimate interest in protecting people and property;
 - Your evidence of rehabilitation and good conduct; and
 - A Certificate of Relief from Disabilities or Certificate of Good Conduct, which create a presumption of rehabilitation.

3. *The job I want requires an employment license, but I was told I couldn't get one because of my criminal record. Is that true?*

- If you want to apply for an occupational license but you are barred based on your criminal history, you can apply for a Certificate of Relief from Disabilities or Certificate of Good Conduct to overcome the automatic bar. For more information see the “Certificates that Demonstrate Rehabilitation” section.
- To find out if you will face an obstacle to getting a particular employment license based on your criminal history, check out the New York State Occupational Licensing Survey at: http://lac.org/doc_library/lac/publications/Occupational%20Licensing%20Survey%202006.pdf. Some of the common ones that have criminal history bars are private security guard, accountant, bus driver, real estate broker, nurse, and civil service employees of New York City.
- If you are looking for a job in the healthcare field, this reference chart from the Legal Action Center (<http://www.reentry.net/ny/library/attachment.90366>) has information about bars to employment regulated by the Department of Health (DOH), Office of Mental Health (OMH) and Office of Mental Retardation & Developmental Disability (OMRDD).

4. *I want to be a police officer, fire fighter, court officer, notary public, or hold any other public office. Can I hold these jobs if I have a criminal record?*

- The Public Officer's Law defines many occupations as “public office,” but public employment (meaning a job working for the state or the city) does not necessarily mean public office.
- There are many examples of public offices. Some of the most common include elected and appointed office, such as the Governor, legislators, judges, and local supervisors and commissioners. Police officers, corrections officers, parole and probation officers, district attorneys, and members of local school boards are also considered public officers.
- Certain convictions can permanently disqualify you for holding some public offices:
 - Felony convictions bar you from appointment to the town police department and New York City police force. Certain misdemeanor convictions may also make you ineligible for membership in a law enforcement agency.
 - If you are a member of the legislature or any officer or employee of the legislature and you are convicted of bribery-related crimes you are permanently disqualified from holding public office.
 - If you are convicted of arson in any degree you are not eligible for election or appointment to the office of fire district commissioner, treasurer, or secretary.
 - Section 3 of the Public Officers Law states that only people currently eligible to vote may serve as appointed police and peace officers. This means that you may not serve as an appointed police or peace officer if you are in prison or on parole (or not a U.S. citizen, or under 18 years of age.)
 - If you have a felony conviction you are disqualified from serving as a notary public.
- Certain convictions require you to give up a public office you currently hold, but may not disqualify you from holding a future public office. If you currently hold a public office and are sentenced to state prison you must give up the office that you currently hold.
- If you fall into one of these categories, a Certificate of Good Conduct may make you eligible for the office you want to hold, but a Certificate of Relief will not. For some public offices, however, even a Certificate of Good Conduct will not work, and you will not be able to apply for that office.

- If you have any questions regarding your eligibility for a certain type of employment or license, consult an attorney to help you determine whether your desired employment is a public office; whether the law imposes bars to the type of employment or license; and whether you need a Certificate of Relief from Disabilities or Certificate of Good Conduct.

5. *When I go for a job interview, what can the employer ask me about my criminal record?*

- An employer **may not** ask
 - Have you ever been arrested?
 - Have you ever been convicted of a violation or other non-criminal offense?
 - Have you ever been adjudicated as a youthful offender?
 - Do you have a history of drug or alcohol dependence?
 - Are you now, or have you ever been, treated for drug or alcohol dependence?
- An employer **can** ask you
 - Have you ever been convicted of a crime?
*Only felonies and misdemeanors are crimes. A violation is not a crime.
 - Do you have any convictions on your record?
* Felonies and misdemeanors are convictions, and you must disclose them even if you have a Certificate of Relief from Disabilities or Certificate of Good Conduct. Violations are also convictions, but they are sealed under New York State law (unless a court ordered that the case not be sealed when you were sentenced).
 - Do you use illegal drugs?
 - Do you currently have a mental or physical condition that might prevent you from doing the job?

6. *What can I do to increase my chances of getting a job even though I have a criminal history?*

- Review your credit report and rap sheet and make sure that there are no errors before you apply for your job. For more information regarding your rap sheet, please see the “Criminal Records” section.
- Get a Certificate of Relief from Disabilities or a Certificate of Good Conduct. These show potential employers that according to New York State, you have been rehabilitated and that you are not likely to commit another offense. For more information on these certificates, see the “Certificates of Rehabilitation” section.
- Bring the employer letters of reference from people who you think an employer would be interested in hearing from, such as former employers, counselors, and parole or probation officers. These are much more helpful than letters from family members.

7. *I was arrested and have been suspended from work. What should I do?*

- Unfortunately, New York is an “employment at will” state. This means that any employee who is not in a union can be suspended or fired at any time, including if you were arrested but have not yet been convicted of anything.
- If you are in a union, contact your union representative right away to find out whether you have any special rights or protections under your union contract.
- Tell your attorney where you work and ask him or her to find out whether a conviction could affect your ability to return to your job. You can also check the Legal Action Center’s Occupational Licensing Survey, available at www.lac.org and www.lawhelp.org/ny.

8. *Where can I find more resources?*

- The Legal Action Center publishes a manual called “Employment Discrimination and What to Do About It” available at:http://lac.org/doc_library/lac/publications/employment_discrimination.pdf
- Legal Action Center also publishes a shorter booklet called “Are You...” with basic information about your rights as a jobseeker with a criminal record, HIV/AIDS, or a history of drug or alcohol use. It is available at:
http://lac.org/doc_library/lac/publications/LAC--AreYou.pdf
- An excellent resource to help you understand your rights as they pertain to your juvenile and criminal records and employment is Know Your Rights: Understanding Juvenile & Criminal Records and Their Impact on Employment in New York State, by Laurie Parise, which is available at: http://www.lac.org/doc_library/lac/publications/kyr.pdf.pdf
- The New York Public Library publishes an online resource called “The Job Search” that includes tips on how you can prepare for the job search before leaving prison, where to look for jobs, resume-writing, and more. Available at:
http://www.nypl.org/branch/services/connections/job_search_table.html
- Visit www.lawhelp.org/ny for Know Your Rights and legal referral information.

X. RECORDS OF ARREST & PROSECUTION

If you have been convicted, or even arrested, for a crime, there is a record of it, often in many places at once. The court where you were sentenced maintains records of your criminal case, and those are public information available to credit reporting agencies. A record of your arrests and convictions—known as a “rap sheet”—is also kept by the Division of Criminal Justice Services, a state agency in Albany. It’s important to know who can access these records and that you have a right to correct any incorrect information.

Credit reports

Information for both credit checks and background reports generally come from the same source—credit reporting agencies. Background reports will contain criminal history information about you, but credit checks will not. Credit reporting agencies are governed by the Federal and State Fair Credit Reporting Act; these laws limit the type of information that can be reported about you.

1. *How can my employer get my credit report?*

- An employer cannot request your credit report without your consent, but it can refuse to hire you if you do not consent. Your consent must be obtained by a separate document that clearly says the report will be used for employment purposes. This is usually one of the documents you sign when you apply for the job.

2. *How do I get a copy of my credit report?*

- Under the Federal Fair Credit Reporting Act, everyone can get a free credit report once every twelve months. Reports are also free if:
 - Within the past 60 days, an “adverse action” was taken against you because of the information in your credit report.

- Adverse actions include: firing or failing to hire or promote you in a job; denying, or offering with less favorable terms, credit or insurance; denying, or requiring a higher deposit or co-signer for, an apartment rental.
- You are a victim of identity theft;
- You are on public assistance; or
- You are unemployed and intended to look for a job within the next 60 days;
- You can get a free copy of your credit report right away by going online to: <http://www.annualcreditreport.com/>
- You can also get your credit report—plus criminal record, employment history, theft database, alcohol and substance testing history, and motor vehicle information—through a private company called USIS. This takes a couple of weeks, but you will be able to see a lot more information about yourself—information an employer may be looking at, too.
 - Download and fill out the request form at: www.usis.com/consumers.
 - You can also request a form by calling 1-800-381-0645.

3. *What information cannot be disclosed on my credit report?*

- An arrest or criminal charge that didn't lead to a conviction, unless the case is open
- Your race, religion, color, ancestry, or ethnicity.
- Any results from a polygraph (lie detector) test.

Unless the job you're applying for will pay \$75,000 or more per year, the following cannot be disclosed under the Federal Fair Credit Reporting Act:

- Bankruptcies older than 10 years;
- Civil suits or civil judgments older than 7 years;
- Paid tax liens older than 7 years;
- Accounts referred to a collection agency more than 7 years ago; and
- Any other adverse information

Unless the job you're applying for will pay \$25,000 or more per year, the following cannot be disclosed under the New York Fair Credit Reporting Act:

- Civil judgments that have been satisfied more than 5 years ago;
- Criminal convictions older than 7 years;
- Confinement in a mental institution when release was more than 7 years ago; and
- Information regarding drug or alcohol addiction older than 7 years.

4. *How do I correct errors on my credit report?*

- Under the Fair Credit Reporting Act, the consumer reporting agency and the information provider (the person, company, or organization that provides information about you to a consumer reporting agency) are required under law to correct errors in your credit report.
- First, write a letter to the consumer reporting agency describing what information you think is inaccurate. Include copies (not originals) of documents to support your position.
 - The consumer reporting agency must investigate the items in question, usually within 30 days, and forward your claim to the information provider. If the information provider finds the disputed information is inaccurate, it will then notify all three nationwide consumer reporting agencies to correct your information.

- You can ask the consumer reporting agency to notify anyone who received your report in the past 6 months of the corrections and you can have a corrected copy of your report sent to any employer who received a copy during the past 2 years.
- For more information on how to write a dispute letter visit <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre21.shtm>.

5. *How do employers and other people find out about my criminal history?*

- Employers, and anyone else, may purchase copies of your Criminal History Record Search (“CHRS”) from the Office of Court Administration (“OCA”), the agency that operates all courts in New York State, for \$55.
- The search is conducted based upon your name and date of birth, and can be done without your permission or knowledge.
- Employers rarely purchase CHRS reports, even though they contain information that they couldn’t otherwise see, like sealed convictions and arrests that did not lead to conviction.
- However, most credit and consumer reporting agencies – which employers rely on for background screening – purchase their information from local court systems.

Criminal Records

If you have ever been arrested and fingerprinted, you have a rap sheet – an official record of your arrest and conviction history, kept in Albany, NY by the Division of Criminal Justice Services (DCJS). Rap sheets are most often used by criminal justice agencies – police, prosecutors, and defense attorneys, but some public employers do have access to official rap sheets. You will always know if an employer or other agency is requesting a copy of your official DCJS rap sheet because they will need to fingerprint you in order to get it.

Most employers and landlords, however, rely on court records instead of official DCJS rap sheets to check on the criminal backgrounds of prospective employees, tenants, etc. Your court records can be obtained directly from the New York State Office of Court Administration for a fee of \$55. They can also be purchased at a much cheaper rate from private credit reporting agencies – the kinds of companies that advertise on the internet: “background searches for \$10.” There are hundreds of small companies that buy information about criminal cases from local court systems and sell it over the internet. Because criminal history information is complicated, these criminal background reports often have many errors.

This section includes information about the different ways that information about your criminal history can become available, how to review your rap sheet for errors, and what to do if you find mistakes on your rap sheet. For more information, including a step-by-step guide to fixing rap sheet errors, visit the Legal Action Center (www.lac.org) or the Criminal Records section of Reentry Net/NY (http://www.reentry.net/ny/library/folder.77459-Criminal_Records).

1. *What is a rap sheet?*

- A rap sheet is a record of your arrest and conviction in history. If you have ever been arrested and fingerprinted, you have a rap sheet.

2. What are the different ways someone can find out about my criminal history?

- Division of Criminal Justice Services (DCJS) rap sheet – your official arrest and conviction history
 - Based on your fingerprints
 - Only criminal justice and some public agencies have access
 - All records kept in Albany, NY
- Office of Court Administration Criminal History Record Search – informal history of your convictions reported by the court system.
 - Based on your name and date of birth (not fingerprint)
 - Public access – anyone can purchase a record for \$55
 - Records available online through the Office of Court Administration (www.nycourts.gov/apps/chrs/)
- Credit Reporting Agencies – private companies that report on criminal backgrounds
 - Most information is summarized from court records
 - Also based on your name and date of birth (not fingerprint)
 - Public access – anyone can purchase records, price varies
 - Errors are frequent
- FBI Rap Sheet – The FBI should include information about convictions in every state in the US as well as Federal court.
 - Based on your fingerprints
 - Only government agencies and a small number of employers may have access
 - FBI records have a lot of errors and missing information – one report found that more than half of arrests in FBI rap sheets have no outcome reported
 - You can request a copy of your own record by sending a fingerprint card and \$18. More information below (#4) or on the web at : www.fbi.gov/hq/cjisd/fprequest.htm

3. How do I get a copy of my official DCJS rap sheet?

- If you were arrested in New York State, the New York State Division of Criminal Justice Services (“DCJS”) maintains your New York State rap sheet.
- Note that if you request your own DCJS rap sheet, the copy you receive will include sealed criminal history information. Do not share this rap sheet with a potential employer. If your employer needs a copy of your rap sheet, they must submit their own request.
- You can request a copy of your New York rap sheet by requesting and completing a Record Review Packet from DCJS, and following the directions for the completion and submission of a fingerprint card to DCJS along with a fee of \$50. (There is no fee for the application packet itself, however a fee of \$50 must be included when you complete the materials and return them to DCJS to obtain a copy of your records).
 - DCJS may waive the fee if you are currently incarcerated or if you send a copy of your Public Assistance or Medicaid card.
 - Note that a personal record review cannot be requested for another person.

- You may request a Record Review Packet either by email, standard mail or phone using the contacts shown below.
 - EMAIL: RecordReview@dcjs.state.ny.us
 - MAIL:
Record Review Unit
4 Tower Place
Albany, New York 12203-3764
(518) 485-7675.
- You must give your complete name and mailing address in order to receive a packet. In the e-mail or letter to the DCJS, you should say:
“Please send a copy of the Record Review Packet to me at the address provided. My mailing address is [fill in the blank with your address].”
- You can also call the Legal Action Center at (212) 243-1313 to schedule an appointment about getting your rap sheet.

4. *How can I get a copy of my FBI rap sheet?*

- You can get a copy of your FBI rap sheet by writing to:
FBI CJIS Division – Record Request
1000 Custer Hollow Road
Clarksburg, West Virginia 26306
- Your letter should include:
 - Your name, address, that you are requesting a personal record request pursuant to 28 C.F.R. § 16.30-16.34, and the address that you would like the results of the record check to be mailed to. You should also include your telephone number and/or e-mail address for them to contact you if they have any questions.
 - If you have a particular date which you need the results by, then you should also mention that in your letter to the FBI.
 - You must also include a complete set of fingerprints and your date of birth and your place of birth and \$18 a money order or certified check made payable to the Treasury of the United States. You may also pay by credit card if you are not requesting to rush the record search.
 - For more information regarding this process see the FBI’s website at:
<http://www.fbi.gov/hq/cjisd/fprequest.htm>

5. *Should I check for errors on my rap sheet?*

- Yes, rap sheets frequently have errors on them, including:
 - Information about records that should be sealed
 - Records from another person’s case (especially when the search is just based on your name and date of birth)
 - Cases with “no disposition reported” so they look like they are still open even if they are finished
 - Warrants that have been cleared up but continue to appear

6. *What kinds of information should be sealed?*

- Arrests that did not lead to a conviction. This can include:
 - Dismissed cases
 - “Voided Arrests” – cases where you were released from the precinct without a date to come back to court
 - “Decline Prosecution” – cases where the prosecutor decided there was not enough evidence to charge you, and released you from court before you saw a judge
 - “Acquittals” – cases where you went to trial and beat your case
 - “Adjournments in Contemplation of Dismissal” – special type of dismissal where your case stays officially open for six months or a year. If you do not get arrested again during that time, the case is dismissed and sealed automatically.
- Arrests that led to conviction for violations, also called “non-criminal offenses.” Violations are not crimes, and are the legal equivalent of a traffic ticket. They should be sealed automatically. Common violation convictions include:
 - Disorderly conduct
 - Harassment
- Youthful Offender adjudications – If you were convicted of an offense when you were 16, 17 or 18 years old, the judge could have chosen to set aside your conviction and offer you a Youthful Offender adjudication (often called a “YO”) instead. For first-time misdemeanor convictions, a YO should be automatic; for future convictions it is up to the judge. Check with your defense lawyer to see whether you have any YO adjudications. You don’t have to disclose them to employers, but it’s good to know about them.
- Family Court (Juvenile Delinquent) convictions – any conviction you got in Family Court is a juvenile delinquent conviction, not an adult criminal conviction, and should be sealed for employment, housing, and other civil purposes. In some cases law enforcement agents (like police officers and prosecutors) may have access to some Family Court records.

7. *Can I do anything to seal criminal convictions on my rap sheet?*

- Unfortunately, the answer is no. At this time, no criminal convictions – including ANY misdemeanor or felony – can be sealed or expunged in New York State, even if they are decades old.
- However, you can apply for certificates that show rehabilitation – information about this is in the next section.

8. *What if I find errors on my rap sheet?*

- The Legal Action Center has published a booklet to teach you how to get a copy of your rap sheet and then review and correct its mistakes. This booklet is called “How To Get and Clean Up Your Rap Sheet” and is available at:
http://www.lac.org/pubs/gratis/NYS_Rap_Sheet_Final.pdf

9. *Where can I get my fingerprints taken?*

- The best place to get your fingerprints taken is at a legal services office or community-based organization that will work with you to request your rap sheet, review it for errors, and prepare for job interviews. In New York City, the Legal Action Center will take your fingerprints for free. Call (212) 243-1313 to make an appointment. Visit www.lawhelp.org/ny to find service providers in your area.
- You can also get your fingerprints taken at the police station. However, if there is even the slightest chance that you have an open warrant – because of an old arrest, a summons that you forgot about, etc. – you could risk getting arrested if you are fingerprinted at the police station.

XI. CERTIFICATES THAT SHOW REHABILITATION

Unlike other states, New York does not allow you to expunge your criminal record or have any offense more serious than a violation sealed. If you have a felony or misdemeanor conviction, it will be on your record forever. You can, however, show that you've been rehabilitated by getting a Certificate of Relief from Disabilities or Certificate of Good Conduct. The existence of these Certificates, what they do, and how to get them are explained in Corrections Law Section 700-706.

1. *What do certificates do?*

- While there are small differences between the two Certificates, both have three main effects:
 - Anyone looking at your convictions must presume that you have been rehabilitated
 - They remove legal barriers (what the law calls “civil disabilities”) that you run into because of your conviction. Examples are barriers to employment, licenses, public housing, and Section 8. This includes the right to vote if you are on parole for a felony conviction.
 - They make you *eligible* to be employed by state or city departments like public safety officers (including fire fighters), transit, education, motor vehicle, park authority, and others. However, in these cases, employers still have discretion to review prior crimes and convictions and then terminate or refuse employment, even if you have a Certificate.
- Only Certificates of Good Conduct remove barriers to public offices, which include law enforcement jobs and notary public licenses.

2. *How do I know which certificate to apply for?*

- Generally, it depends on the number of felony convictions you have; the number of misdemeanors and violations doesn't matter.
- If you have no more than one felony and/or any number of misdemeanor convictions: Certificate of Relief from Disabilities (CRD).
 - You must get a CRD for each of your criminal convictions. That means your felony, if you have one, plus any misdemeanors.
 - There are two types of CRDs. Some remove **all** civil disabilities, or bars to employment or licenses. Others specifically cover only one civil disability, listed on the application and Certificate itself. If you are not sure which to apply for, speak to an attorney or other advocate.

- Two or more felonies: Certificate of Good Conduct (CGC).
 - One CGC covers all of your convictions.

3. *When do I apply?*

- You can't apply while you're incarcerated. Otherwise, it depends on whether you're trying to get a CRD or a CGC.
- You can apply for a CRD when you're sentenced or immediately after release from incarceration. You can apply even if you're still on parole.
- For a CGC, you can apply even if you're on parole, just like a CRD, but you must wait a certain number of years after you are released from prison and finished paying any fines that were part of your sentence. The amount of time depends on the most serious conviction in your entire record.
 - One year: Misdemeanor.
 - Three years: C, D, or E felony.
 - Five years: A or B felony.

If you violate parole, the clock restarts and you begin counting from the day you finish your sentence for the parole violation.

4. *Where do I apply?*

- You either apply to the court that sentenced you or to the Board of Parole in Albany depending on which certificate you want and where you were incarcerated.
- Sentencing court: You're applying for a CRD because you have no more than one felony, and you only did time in city or county jails. You were never incarcerated in state prison.
- Board of Parole: You're applying for anything different than the above. You want a CRD, but you were incarcerated in state prison or your conviction is from outside New York State (another state or the federal system). Or, you want a CGC.

5. *How do I apply?*

- It depends on whether you're going through your sentencing court or the Board of Parole.
- Sentencing court: Each court has its own application process so you should contact the clerk of the court or ask your probation officer. Generally, you will submit an application along with your evidence of rehabilitation. Later, a probation officer will interview you and write a report for the judge. Your application will then go before a judge, who will consider the probation report, your evidence of rehabilitation, and may ask you some questions. The judge will then decide whether to issue the CRD at the end of the hearing.
- Board of Parole: You can request an application online, by phone, or by mail; the information is below.
 - Online Applications: (<http://parole.state.ny.us/ParoleCert.pdf>).
 - Phone: (518) 485-8953.
 - Mail:
 - Certificate Review Unit
 - New York State Division of Parole
 - 845 Central Avenue
 - Albany, NY 12206

- The application is seven pages long. Fill everything out as best you can, even though the Division of Parole will conduct an independent investigation. The Division of Parole will schedule an interview with a local parole officer, who will write a report to the Board of Parole. Three members of the Board of Parole review the applications every month; they must all agree in order for you to get the CGC.

6. *Where Can I Find Out More Information?*

- Contact your probation officer or the Legal Action Center on Tuesday or Friday at (212) 243-1313.
- Read the Legal Action Center's Certificates of Relief from Disabilities and Certificates of Good Conduct: What You Can Do About Criminal Convictions When Looking for Work, available at: http://www.lac.org/pubs/gratis/certificates_of_rehabilitation.pdf.

APPENDIX 1: VOTER REGISTRATION

Am I allowed to register to vote?

In order to register to vote, you must meet 6 requirements. They are:

- a. be a United States citizen;
- b. be 18 years old by the date of the election in which you want to vote;
- c. be 18 years old by December 31st of the year in which you register;
- d. live at your present address at least 30 days before an election;
- e. not be in jail or on parole for a felony conviction and;
- f. not claim the right to vote elsewhere.

How do I register to vote?

- You may register by phone by calling 1-800-FOR-VOTE (1-800-367-8683)
- You may register in person by either
 - Going to your county board of elections office or at any New York State Agency-Based voter registration center
 - You can find out where these offices are by going to the New York State Board of Elections website at: <http://www.elections.state.ny.us/> and clicking on the tab titled “Voting”
- You may also download a copy of the application in both English and Spanish from the New York State Board of Elections website mentioned above

How much does it cost?

- It is free.

When is the last day before an election to register to vote?

- In order to vote on Election Day, you must register to vote at least 25 days before that election. To vote in the 2008 Presidential Election on November 4, 2008 your voter registration form must be postmarked no later than Friday, October 10, 2008.

APPENDIX 2 – CONVICTIONS PREVENTING YOU FROM LIVING IN NEW YORK CITY PUBLIC HOUSING AND SECTION 8

New York City Public Housing

The following chart represents some of the convictions that will prevent you and your household from access to Public Housing and Section 8 housing.

Type of Conviction	Number of years <i>after serving your sentence</i> (including completion of probation/parole and payment of fine) that you and your household are not allowed to live in NYCHA housing
Conviction that makes you subject to a lifetime registration requirement under a sex offender registration program	Permanent bar, or until you are no longer subject to lifetime sex offense registration
Conviction for producing methamphetamine on public housing grounds	Permanent Bar
Class A, B, and C Felonies	6 years
Class D and E felonies	5 years
Class A Misdemeanors	4 years, or 5 years if you have been convicted of 3 or more misdemeanors or any number of felonies within the past 10 years
Class B or unclassified Misdemeanors	3 years, or 4 years if you have been convicted of 3 or more misdemeanors or any number of felonies within the past 10 years
Violations or DWI	2 years, or 3years if you have been convicted of 3 or more misdemeanors or any number of felonies within the past 10 years

Type of Conviction	Number of years <i>after serving your sentence</i> (including completion of probation/parole and payment of fine) that you and your household are not allowed to live in NYCHA Section 8
Conviction that makes you subject to a lifetime registration requirement under a sex offender registration program	Permanent bar, or until you are no longer subject to lifetime sex offense registration
Class A, B, or C Felonies for Violent Behavior, Controlled Substances or Alcohol Related Offenses	6 years, but if you are in prison and cannot be released less than 10 years from the date of eligibility interview, your family is not ineligible on this ground
Class D or E Felonies for Violent Behavior, Controlled Substances or Alcohol Related Offenses	5 years, but if you are in prison and cannot be released less than 10 years from the date of eligibility interview, your family is not ineligible on this ground
Class A Misdemeanors Based on Controlled Substances or Alcohol Related Offenses	4 years, or 5 years if the person has been convicted of 3 or more misdemeanors involving drugs, alcohol, or violent felonies within the past 10 years
Class B or unclassified Misdemeanors Based on Controlled Substances or Alcohol Related Offenses	3 years, or 4 years if the person has been convicted of 3 or more misdemeanors involving drugs, alcohol, or violent felonies within the past 10 years
Violations or DWI Infractions Based on Controlled Substances or Alcohol Related Offenses	2 years, or 3 years if the person has been convicted of 3 or more misdemeanors involving drugs, alcohol, or violent felonies within the past 10 years

APPENDIX 3 – STATES WITH A LIFETIME WELFARE BAN FOR INDIVIDUALS WITH FELONY DRUG CONVICTIONS (AS OF 2005)

(1) 17 states have the full ban in place (including California)

Alabama	Kansas	South Dakota
Alaska	Mississippi	Texas
Arizona	Missouri	Virginia
California	Montana	West Virginia
Delaware	Nebraska	Wyoming
Georgia	North Dakota	
Indiana	Pennsylvania	

(2) 21 states have modified the ban by allowing benefits dependent upon drug treatment, denying benefits only for sales convictions, or placing a time limit on the ban.



Arkansas	Kentucky	North Carolina
Colorado	Louisiana	Rhode Island
Florida	Maryland	South Carolina
Hawaii	Massachusetts	Tennessee
Idaho	Minnesota	Utah
Illinois	Nevada	Washington
Iowa	New Jersey	Wisconsin

(3) 11 states and DC have completely opted out of the ban (including NY)

Connecticut	New Mexico	Oregon
Maine	New York	Vermont
Michigan	Ohio	District of Columbia
New Hampshire	Oklahoma	

APPENDIX 4 - INTENTIONAL PROGRAM VIOLATION (IPV) –PUBLIC ASSISTANCE INELIGIBILITY TIMETABLES

<i>What type of violation did you commit?</i>	<i>How many times have you committed it?</i>	<i>What was the amount lost?</i>	Then, you are not allowed to receive benefits for:
IPV Public Assistance Intentional Program Violation	1	\$1,000 and under	6 months
	1	between \$ 1,000 and \$3,900	1 year
	1	greater than \$3,900	1 year & 6 months
	2	\$3,900 and under	1 year
	2	greater than \$3,900	1 year & 6 months
	3	any amount	1 year & 6 months
	4 or more	any amount	5 years

<i>What type of violation did you commit?</i>	<i>How many times have you committed it?</i>	Then, you are not allowed to receive benefits for:
FS-IPV Food Stamp Intentional Program Violation	1	1 year However, if you used your food stamps to get illegal drugs, then you cannot receive food stamps for 2 years.
	2	2 years However, if this is the 2 nd time you used food stamps to get illegal drugs, then you will be banned from receiving food stamps
	3	Lifetime
- trading food stamps for firearms, ammunition or explosives		Automatic, lifetime
- convicted for knowingly using, transferring, acquiring, altering, or processing food stamps		Automatic, lifetime