

“A Certificate of What?”: The Mysterious Certificate of Relief from Disabilities

by Glenn Edward Murray

“A Certificate of what?” That’s a common response to questions about Certificates of Relief from Disabilities (“CRD”), an obscure and commonly misunderstood means of mitigating collateral consequences of conviction. Prominent Buffalo attorney, former Judge, and noted commentator Eugene W. Salisbury states that CRDs “until recently, have not been widely known or properly handled.” Yet, evaluating CRD eligibility and impact is often critical in advising criminal, civil, and business clients.

What is the purpose of a CRD?

In 1966, CRDs were created by Corrections Law (“Corr. L.”) Article 23 (Sec. 701, *et seq.*) to allow discretionary relief from the sentencing court or Board of Parole for eligible offenders from most forfeitures or disabilities that are automatically imposed upon conviction, and from which there is no other means to appeal to discretion based on the favorable character or fitness of the offender. See *Rehman v. I.N.S.*, 544 F.2d 71 (2d Cir. 1976).

Many licensing statutes in New York generally bar persons convicted of felonies and other enumerated criminal acts. Some such statutes provide an exception for individuals pardoned or granted a CRD, such as Alcoholic Beverage Control Law Sec. 102 & 126; Exec. Law Sec. 435; General Business Law Sec. 69-0; Gen. Mun. Law Sec. 189-a, 191, 476 & 481 and Unconsolidated Law Sec. 10051 & 10052).

A CRD does not operate as a pardon and will not prevent any administrative or licensing authority from exercising its discretionary powers to suspend, revoke or refuse to issue or renew any license. Corr. L. Sec. 701, 706. See *Ivory v. NYC Dep’t of Environmental Protection*, 125 A.D.2d 217 (1st Dep’t 1986)(court-granted CRD upon gambling conviction did not prohibit termination of a laborer who collected football bets while on duty); *Pulaski Inn, Inc. v. N.Y.S.L.A.*, 182 A.D.2d 1116 (4th Dep’t 1986) (discretionary SLA penalty upheld against corporation upon no-contest plea by former president who was granted CRD); *Mugalli v. Ashcroft*, 258 F.3d 52 (2d Cir. 2001)(CRD did not immunize convicted alien from immigration consequences).

Although a CRD will avoid the statutory ineligibility of a felon to serve as a fiduciary, a CRD does not prohibit discretionary denial to withhold letters of administration. In *Matter of Pullman*, 89 A.D.2d 608 (2d Dept. 1982), the

Second Department held that where a felon had obtained a CRD and applied for letters, the Surrogate had discretion to issue temporary letters testamentary, however, the Second Department found that the applicant could not obtain the letters because he was a “dishonest” person with the meaning of SCPA 707(1)(e).

What is the criteria for granting a CRD?

Although described as a “badge of rehabilitation” the statutory predicates are findings that the relief granted is consistent with the rehabilitation of an eligible offender and consistent with public interest. Corr. L. Sec. 702-4.

Who is eligible for a CRD?

A “person who has been convicted of a crime or of an offense but who has not been convicted more than once of a felony” is an “eligible offender.” Corr. L. Sec. 700(1)(a). Because a youthful offender adjudication (N.Y. Criminal Procedure Law Article 720) is not a deemed a conviction, such offender is not eligible for a CRD. *People v. Doe*, 52 Misc.2d 656 (Dist. Ct., Nassau County, 1967).

May a CRD be obtained from a NY Court if the defendant is convicted in federal court or the courts of other states?

Some defendants convicted in federal court or the courts of other states are eligible offenders. See *Application of Helmsley*, 152 Misc.2d 215 (N.Y. Co. Sup. Ct., 1991). Where the conviction is imposed under federal law or the law of other states, CRD eligibility depends on what N.Y. penal laws are “comparable.” *Southland Corp. v. N.Y.S.L.A.*, 181 A.D.2d 19 (1st Dep’t 1992).

May a CRD be obtained by a corporation?

A corporation may be eligible for a court-granted CRD, but only if the offender has the requisite predicate conviction. See *In re C.P. Ward, Inc.*, 184 Misc.2d 57 (2000); *Southland Corp. v. N.Y.S.L.A.*, 181 A.D.2d 19 (1st Dep’t 1992).

How is a CRD obtained?

If sentenced to “felony time” (a sentence of more than one year), a CRD must be obtained from the State Parole Board. Corr. L. Sec. 703-b. If sentenced to a revocable sentence (such as conditional discharge, probation or “local time” (a sentence of not more than one year), a CRD must be obtained from the sentencing Court. *Id.* at 702. See *Application of Helmsley*, 152 Misc.2d 215 (1991)(defendant convicted in federal court of tax fraud and sentenced to “felony time” not eligible for court-granted CRD); *Da Grossa v. Goodman*, 72 Misc.2d 806 (Sup. Ct. N.Y. Co. 1972)(equal protection clause of NYS Constitution requires that relief from federal conviction be available in state court). N.Y. Court Rule 200.9(b) requires that at sentencing, unless the court grants a CRD, the court shall advise every eligible defendant of such eligibility. Every presentence report notes whether the defendant is CRD eligible and whether it is recommended.

* **Glenn Edward Murray** is a Buffalo criminal defense lawyer and the author of: *Collateral Consequences of Criminal Conduct* (NYSBA, 1992).

Is a CRD revocable?

If the offender is or was sentenced to a revocable sentence, a CRD is deemed temporary until such time as the court's authority to revoke the sentence expires. Corr. L. Sec. 702(4).

May a CRD be granted with limited relief?

Yes. There are three kinds of CRDs: Type A, if granted by the sentencing court, relieves the holder of all forfeitures, disabilities and bars to employment; Type B relieves the holder of all disabilities and bars to employment (not forfeitures); Type C relieves the holder only of those specifically enumerated forfeitures, disabilities and bars to employment. Corr. L. Sec. 706. Certain kinds of forfeitures, disabilities and bars to employment, including forfeiture of public office, membership in the bar, the effect of Public Health Law Sec. 2806 (hospital operating certificate) and most drinking-driving suspensions and revocations are not relieved by a CRD.

Does a CRD entitle the holder to sealing of the records of conviction or prosecution?

No. However, a CRD may be entered on the criminal records maintained by the NYS Division of Criminal Justice Services ("DCJS"). Certified copies of granted CRDs should be mailed to DCJS (at the address on the CRD form) for entry.

Does a CRD entitle the holder to conceal a record of arrest or conviction?

No. *Rogers v. NYC Human Resources*, 154 A.D.2d 233 (1st Dep't 1989) (fact issue raised whether employee who provided CRD to employer had given notice of conviction); See 1981 Op. Atty. Gen. (inf.) 124.

Does a CRD bar impeachment of the holder?

No. A CRD does not vitiate a conviction and does not make evidence of the conviction inadmissible for impeachment purposes. *U.S. v. Hourigan*, 66 F.3d 458 (2d Cir. 1995); *U.S. v. DiNapoli*, 557 F.2d 962 (2d Cir. 1977) cert. denied, 434 U.S. 858; See *Morrisette v. Dilworth*, 59 N.Y.2d 449, 451, n.2 (1983) (CRD "does not eradicate or expunge the underlying conviction."); See also *Able Cycle Engines v. Allstate Ins. Co.*, 84 A.D.2d 140 mot for lv to app. den. 57 NY2d 607.

Does a CRD prohibit employment discrimination?

For some offenders, Corr. L. Article 23-a (Sec. 752 et seq) provides protection from unfair public or private employment discrimination. Article 23-a provides that discrimination is explicitly permissible where "the granting of employment would involve an unreasonable risk . . . to the safety or welfare of specific individuals . . ." and enumerates factors an employer may consider.

How does a CRD affect firearms possession?

In *People v Flook*, 164 Misc.2d 284 (Ontario Co. Ct., 1995), the court dismissed an indictment charging Criminal Possession of a Weapon in the Fourth Degree (Penal Law 265.01, which prohibits a person from possessing a rifle or shotgun after having been convicted of a felony or serious offense). Although that penal statute does not expressly except the holder of a CRD, it does except the holder of a certificate of good conduct issued pursuant to Corrections Law 703-b. The court in *Flook* found the distinction between the two kinds of certificates to be "insignificant."

In *Matter of Valhos*, 145 Misc.2d 657 (Schoharie County Court, 1989), a local criminal court-granted CRD specifically stating that the offender may retain any and all pistol permits, upon conviction of sexual misconduct, was held not to bar automatic or discretionary revocation of pistol permit. See 1975 Op. Atty. Gen. (inf.) 306; 1971 Op. Atty. Gen. 8.

Federal CRDs involving enforcement of the Federal Criminal Code are authorized by federal law, however funding and appropriations for the Bureau of Alcohol, Tobacco and Firearms to perform this administrative function is excluded by regulation. See *In re C.P. Ward, Inc.*, 184 Misc.2d 57 (2000).

Will a CRD avoid the impact of any drinking/driving conviction?

Only for some commercial drivers. If a CRD is obtained from the court, a commercial driver convicted of drinking/driving might be eligible to operate a commercial motor vehicle on a conditional license. Such CRDs are commonly granted as "Type C," stating that the holder is relieved of the "application of VTL Sec. 1196(7)(g) prohibiting the operation of a commercial motor vehicle with a conditional license."

Although a second Drinking/driving conviction within 10 years does not prevent a motorist from operating a commercial motor vehicle on a conditional license, a second Sec. 1192 conviction within 5 years does. See generally Gerstenzang, *Handling the DWI Case in New York*, Sec. 51:2 (West Publishing Co.).

Can a CRD avoid all prejudice resulting from conviction?

No. In advising clients about CRDs, attorneys must avoid general statements such as "a CRD will avoid all consequences of the conviction" or "a CRD will make it like it never happened."

Advice concerning the effect of a CRD requires case-by-case analysis that differentiates whether the prejudice from conviction is: (1) automatic or discretionary, (2) based on the conviction or independent evidence of misconduct, and (3) of a kind within the scope of the particular statutes. ⚖