

# CERTIFICATES THAT PROMOTE REHABILITATION: WHY THEY ARE SO IMPORTANT AND HOW TO GET THEM

## Why are these Certificates so Important?

- They can prevent evictions and preserve employment.
- They remove statutory collateral bars imposed because of convictions.
- They provide a rebuttable “presumption of rehabilitation” for employment applications.
- They appear on a person’s rap sheet beside relevant convictions.

## What Does Each Certificate Do and Who is Eligible?

There are two types of certificates: *Certificates of Relief from Disabilities* and *Certificates of Good Conduct*.

### **Certificate of Relief from Disabilities (CRD)** (Corr. L. §§ 701-703)

ALWAYS apply for a CRD **at the time of sentencing** for any eligible client, especially for violations such as Disorderly Conduct and Harassment. CRDs are invaluable tools that **promote rehabilitation** by removing automatic civil disabilities, allowing people to seek job and housing opportunities on their own merit.

- ***The U.S. Supreme Court Requires It.*** In *Padilla v. Kentucky*, 599 U.S. \_\_\_ (2010), the Court ruled that defense counsel must give affirmative, competent advice to clients of the risk of all penalties “enmeshed” with the criminal charges or potential pleas. The ruling concerned deportation specifically, but other major penalties “intimately related” to criminal charges include *public housing eligibility, employment, sex offense registration, voting, and student loans*. The Court explicitly encouraged creative pleas to avoid these enmeshed penalties. **CRDs provide a simple and valuable tool for avoiding or mitigating these penalties.**
- ***Court Rules Require It.*** Section 200.9 of the Uniform Rules for NYS Trial Courts requires that courts either grant a CRD at sentencing or advise the defendant of his or her eligibility to apply later. 22 NYCRR § 200.9.
- ***The Penal Law Requires It.*** On June 7, 2006, Penal Law § 1.05(6) was amended to add a new goal, “the promotion of [the convicted person’s] **successful and productive reentry and reintegration into society,**” to the four traditional sentencing goals of deterrence, rehabilitation, retribution and incapacitation. (2006 N.Y. Laws 98.)

***Eligible Persons:*** Granted to people with only one felony and/or any number of misdemeanor convictions

- i) You must get a certificate for each conviction.
- ii) Includes out-of-state and federal convictions.

***Effect:*** Relieves most automatic forfeitures and disabilities, including felony disenfranchisement and most state employment and license bars, automatically imposed by law as a result of the conviction.

- i) It can be limited to particular disabilities, or specifically except certain disabilities, such as those against firearms possession.
- ii) The court or Board of Parole may at any time issue a new CRD to enlarge the relief granted.

***Considerations:*** The issuing court or Board of Parole must determine that the relief to be granted by the CRD is consistent with (1) the rehabilitation of the person, and (2) the public interest. Corr. L. § 702.

**Limitations:**

- i) While CRDs generally will **not avoid deportability or inadmissibility** for non-citizens, a CRD **may** have a positive effect on some forms of discretionary relief.
- ii) Generally, a CRD does not affect driver's license suspensions.
- iii) Does not lift the felony bar to holding public office.  
(Obtain Certificate of Good Conduct – see below).
- iv) Does not trump discretionary considerations in employment and licensing (“good moral character,” etc.).

**Certificate of Good Conduct (CGC)** (Corr. L. §§ 703-a & 703-b)

**Eligible Persons:** Granted to those with multiple felony convictions.

**Effect:** The only certificate that lifts felony or misdemeanor bars to “public offices.”

If client is applying for a “public office,” she can apply for this certificate even if she has only one felony conviction or only misdemeanor convictions.

**Waiting period** (based on most serious conviction):

Time since last conviction, payment of fine, or release from prison or parole, whichever is later

- i) A & B felonies, 5 years from completion of sentence;
- ii) C, D, E, 3 years.
- iii) Misdemeanors only, 1 year

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## **How Can I Get One?**

### **Certificate of Relief from Disabilities (CRD)**

#### **Issuance by Court of Sentencing**

**Eligible Persons:** only one felony conviction permitted

**At Sentencing:**

- For *eligible offenses* – all misdemeanors, or a single felony that did not result in incarceration in a state correctional facility (*e.g.*, sentence was probation, conditional discharge, or suspended sentence) – of *eligible persons* (see above), the court can grant a CRD at sentencing.
- **Effect:** Can relieve automatic disabilities *and* forfeitures.
- Section 200.9 of the Uniform Rules for NYS Trial Courts **requires** that courts **either** grant a CRD at sentencing **or** advise the defendant of his or her eligibility to apply later. 22 NYCRR § 200.9.

**Any Time After Sentencing:**

- Client must make verified application to the Court. Probation investigates.
- **Effect:** Cannot relieve forfeitures when granted after sentencing.

**Temporary Certificates:** If the court imposes a revocable sentence (probation or Conditional Discharge), the CRD is temporary until the court's authority to revoke the sentence has expired. The CRD becomes permanent at the expiration of the sentence.

#### **Issuance by Board of Parole**

**Eligible Persons** (only one felony conviction permitted)

- i) Persons who have been incarcerated in a state correctional facility;
- ii) Persons who reside in NY with convictions from any other jurisdiction (including federal).

**Procedure:** Apply to the NYS Division of Parole.

#### **Forms**

*Certificate of Relief from Disabilities* (the Order a judge can sign at sentencing) (available at <http://dpca.state.ny.us/pdfs/dpca53.pdf>)

Visit [www.reentry.net/ny](http://www.reentry.net/ny) for sample forms and motions.

*Application for Certificate* (available at <http://www.courts.state.ny.us/courts/10jd/suffolk/dist/pdf/DPCA-52.pdf>)

## **Certificate of Good Conduct**

*Process:* Apply to the NYS Division of Parole.

- Process takes at least 6 months, but may be faster if you attach a letter explaining need for expediting (e.g., when a job or occupational license is at stake).

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## **Practice Tips**

- **Judges can issue a CRD at sentencing without investigation.**
  - You may have to give the Court advance notice so that it can refer your client to Probation for investigation. However, some judges will agree to issue a CRD at sentencing without investigation, particularly for violations.
  - If the Judge is worried about “proof” of rehabilitation, remind the Court that the CRD is *temporary* until the expiration of any conditional sentence (CD, probation, etc.). CRDs do not “reward” clients; rather, they are invaluable tools that **promote rehabilitation** by removing automatic civil disabilities, allowing people to seek job and housing opportunities **on their own merit**.
  - Judges may be sympathetic to hidden consequences that are grossly disproportionate to the offense, such as the 2-year ineligibility for New York City Public Housing after a conviction for a violation.
  - At the **very least**, ask the Court to grant a CRD relieving **Housing, Employment, and Voting** disabilities. Stress the unintended consequences: Employment (without a CRD, many employers won’t even consider client; current employees can be suspended or fired); Housing (See Below).
- **Myth:** Some judges believe that they cannot issue CRDs for violations.
  - **In fact**, CRDs are often most useful for violations convictions, and Corr. L. § 701(1) explicitly authorizes issuance of CRDs for any crime or “offense.” It can be helpful to provide the court with a copy of the statute.
- **Myth:** Some judges and prosecutors oppose CRDs because they think criminal records will be sealed as a result.
  - **In fact**, CRDs have nothing to do with sealing, and they do not restrict access in any way to the records of criminal convictions.

**Automatic Bars to Public Housing**  
(Certificates overcome automatic ineligibility and  
give the applicant a chance to be considered on his or her own merits.)

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