

Proposal to Amend the Human Rights Law So That Individuals with Confidential Youthful Offender Adjudications and Sealed Convictions for Non-Criminal Offenses are Protected Against Discrimination

Proposed Amendment

Under current law, individuals with criminal convictions and those whose cases have been terminated in their favor are protected against discrimination. However, individuals who have confidential youthful offender (YO) adjudications or sealed convictions for non-criminal offenses have no such protection. We propose that § 296(16) of the Executive Law be amended to equalize protections for these two groups, as follows:

16. It shall be an unlawful discriminatory practice... for any person, agency, bureau, corporation or association... to make any inquiry about... or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual.. which was followed by a termination of that criminal action or proceeding in favor of such individual... or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a traffic infraction or violation sealed pursuant to section 160.55 of the criminal procedure law, in connection with the licensing, employment..to such individual....

Need for Amendment

Section 296(15) of the Executive Law prohibits discrimination, as provided in Article 23-A of the Corrections Law, against individuals who have *criminal convictions*. Section 296(16) of the Executive Law prohibits discrimination against individuals whose *cases have been terminated in their favor*. YO adjudications, which are not judgements of convictions (*see* C.P.L. § 720.35), and convictions for non-criminal offenses, fall under neither of these categories, and thus individuals with these histories are entirely without protection against discriminatory practices. This oversight is probably due to the fact that when § 296(16) of the Executive Law was enacted, only cases that were terminated in an individual's favor could be sealed.

The state enacted sealing laws in order to prevent people who have never been convicted of a crime from suffering the stigma and discriminatory consequences that so often result from the disclosure and use of criminal history information. Yet, without the protection of the Human Rights Law, these two groups of individuals have no remedy for the illegal discrimination the Human Rights Law was enacted and is designed to end. The proposed amendment to Executive Law § 296(16) will eliminate this clearly unintentional gap in the law's coverage. In so doing, it will give full effect to the state's longstanding goal to provide strong, equal and consistent protections against discrimination in employment and licensing to all intended beneficiaries of these laws.