Proposals to Improve Successful Reentry Into Society of Qualified Individuals with Criminal Records

Background

There are approximately 63,000 people in state prisons and 40,000 incarcerated in local jails throughout New York State, with another 100,000 under community supervision. Yearly, 27,000 people are released from state prison and more than 100,000 from local jails back into our communities. All are rightly expected to seek and maintain employment and become productive members of society, but they face many daunting roadblocks as they try to rebuild their lives and support their families.

During the past three decades New York has enacted a series of statutes to implement the state's strong public policy to encourage the employment of qualified individuals with histories of criminal justice system involvement so that those who pay their debt to society can earn a living and lead productive, tax-paying, and law-abiding lives. While these laws have been very beneficial, there is still one large gap – individuals who have demonstrated their rehabilitation and job-readiness can never escape their past no matter how long ago or minor their criminal convictions – and there are also some technical problems with the existing statutes. The Legal Action Center has drafted a package of proposals to remedy these problems.

"Second Chance"

Recognizing the wisdom of assisting individuals with criminal records to obtain employment and housing if they have completed their sentences, are qualified for employment, and are not a threat to public safety, a wide range of leaders, including a diverse group convened by former Mayor Ed Koch in 1989 and Governor Pataki when he proposed his drug law reform bill of 2003, have proposed that New York State enact a "Second Chance" law to permit the sealing of certain non-violent criminal records. Building on their proposals and consultations with Mayor Koch and a wide range of policymakers and experts, the Legal Action Center has drafted a bill to give qualified people with criminal records a "Second Chance" to achieve the American dream of a productive, self-sufficient life for themselves and their families.

Technical Amendments to Existing Legislation:

In our more than 30 years of experience assisting people with criminal records to obtain employment, housing, and other necessities of life, we have identified a number of technical problems with current laws that unintentionally deny adequate protections to young people who receive youthful offender status and others who have paid their debt to society and demonstrated rehabilitation. To fix these problems, the Legal Action Center and other organizations have drafted proposals to:

1. Amend Article 23-A of the Correction Law so that individuals who are employed, as well as individuals who are applicants for a job (who are currently protected under Article 23-A), are protected from unfair employment discrimination.

2. Amend the Human Rights Law (Executive Law § 296(16)) so that individuals with confidential youthful offender (YO) adjudications and sealed convictions for non-criminal offenses are protected against discrimination.

3. Amend Criminal Procedure Law § 160.60 so that individuals with YO adjudications or convictions for non-criminal offenses are restored to the status they had before their prosecutions.

4. Amend Corrections Law § 702.6 so that applicants for certificates of relief from disabilities or their attorneys can actually obtain reports prepared as part of the application, as required under current law.

5. Amend Criminal Procedure Law §160.55 so that convictions for non-criminal offenses are sealed, with certain exceptions, on the court level.

6. Support A.06393, a bill that would limit the length of time that conviction history can be posted on the department of corrections' website to 10 years after an individual is released from custody.

Draft legislation and memoranda in support of each proposal are attached.

Voter Notification and Registration

The Legal Action Center also supports the "**New York Voting Rights Notification and Registration Act**," which streamlines procedures for voter registration for people who are on probation or who have completed their incarceration and parole.

Memorandum in Support of Amending Article 23-A of Correction Law § 750-755

Proposed Amendment

Article 23-A of Correction Law prohibits unfair discrimination against individuals with criminal records whose convictions are unrelated to the job sought and do not constitute a threat to safety and encourages "the licensure and employment of persons previously convicted of one or more criminal offenses." However, gaps in the statute have limited the intended protections in several key respects. The Legal Action Center proposes to close these gaps by amending Article 23-A as follows:

- The anti-discrimination protections in §752 apply only to *applicants* for employment or occupational licenses who have criminal convictions. The law provides no protection to current employees or license holders who face unfair discrimination based on criminal records that predate their employment or licensure. The proposed amendment extends the anti-discrimination protections to current employees and license holders whose convictions predate employment or licensure and were not improperly denied by the applicant in response to legal inquiries from the employer or licensing agent.

- Section 752 (1) states that there must be a "direct relationship" between the criminal offense and the job or license sought for an individual with a criminal record to be denied a job or license, but provides no definition as to what constitutes a direct relationship, leaving employers and licensing agencies free to find such a connection when only the most tenuous relationship exists. The attached amendment includes such a definition.

- Section 752 (2) states that if there is an "unreasonable risk" to property, an individual with a criminal record should be denied a job or license, but again provides no definition as to what constitutes an unreasonable risk, allowing employers and licensing agencies to broadly interpret the language and decide that *any* risk is unreasonable. Because §753 enumerates in the factors that employers and licensing agencies should consider, which read together provide very clear guidance as to what constitute an unreasonable risk, the "unreasonable risk" prong of §752 (2) is unnecessary. The attached amendment eliminates this language.

- While §754 states that applicants with criminal records who are denied licensure or employment are entitled to a written statement setting forth the reasons for such denial, courts have interpreted this provision as allowing employers to merely state that they considered the factors enumerated in §753 without requiring them to state how they evaluated and weighed each of the eight factors. This places the burden on the applicant to prove that the employer or licensing agency did not act lawfully in making their decision. The attached amendment requires such specificity in the written statement.

Need for Amendment

With the advent of the computer age and all the other means by which criminal history information can be obtained, employers have easy access to criminal history information, leading more employers to refuse to hire, or fire individuals with criminal records. In order to ensure that New York's strong, longstanding policy of encouraging the employment of qualified

individuals with criminal records is enforced, §§750 through 755 of the Correction Law should be amended as suggested above.

ARTICLE 23-A
LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

§ 750. Definitions. For the purposes of this article, the following terms shall have the following meanings:

(1) "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.

(2) "Private employer" means any person, company, corporation, labor organization or association which employs ten or more persons.

(3) "Direct relationship" ~~means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license or employment sought.~~ requires a substantial and immediate connection between the crime or offense and the functions and responsibilities pertaining to the right, opportunity, or job in question.

(4) "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

(5) "Employment" means any occupation, vocation or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this article, include membership in any law enforcement agency.

§ 751. Applicability. The provisions of this article shall apply to any application by any person for a license or employment who has previously been convicted of one or more criminal offenses, and to any license or employment held by any person whose conviction of one or more criminal offenses preceded such employment or granting of the license in this state or in any other jurisdiction, to any public agency or private employer for a license or employment, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct.[1]

[1] This amendment will not protect individuals who lie on their applications and whose employers later uncover their criminal histories. Courts have long held that applicants who lie or withhold information on their applications have

§ 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited. No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the ~~applicant's~~ individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless~~:~~

(1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought~~; or~~

~~(2) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public~~.

§ 753. Factors to be considered concerning a previous criminal conviction; presumption. 1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

(a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license or employment sought.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

§ 754. Written statement upon denial of license or employment or termination of an individual . At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reason for such denial, including how the licensing agency or employer evaluated and weighed each of the eight factors enumerated in section 753(1) in deciding to terminate an individual whose conviction of one or more criminal offenses preceded such employment or to deny a license or employment or a promotion ~~the reasons for such denial~~.

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no protections under Article 23-A, and this reasoning would extend to current employees. Nor does it prevent employers from taking action if an employee is convicted after obtaining employment.

§ 755. Enforcement. 1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.

2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York City Commission on Human Rights.

Need for Amendment

With the advent of the computer age and all the other means by which criminal history information can be obtained, employers have easy access to criminal history information. Once this information is obtained, employers can act (and have acted) at will to terminate employees on the basis of their criminal histories, even if there is no direct relationship between the criminal offense(s) and the job and no unreasonable risk to the safety to the public or property, the criteria upon which an employer can deny a job to an applicant. (*See* § 752 of the Corrections Law.)

It is inconsistent to require employers to individually consider each person with a criminal history who applies for a job and make it illegal to deny that person a job unless specific criteria are met, but not extend that protection to individuals who are already employed. New York has a strong, longstanding policy of encouraging the employment of qualified individuals with criminal records. Sections 750 through 755 of the Correction Law should be amended to include current employees and license holders so that its protections are implemented consistently, evenly and fairly across the board.[1]

[1] This amendment will not protect individuals who lie on their applications and whose employers later uncover their criminal histories. Courts have long held that applicants who lie or withhold information on their applications have no protections under Article 23-A, and this reasoning would extend to current employees. Nor does it prevent employers from taking action if an employee is convicted after obtaining employment.

Memorandum in Support of Amending 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, employers cannot ask job applicants about arrest terminated in their favor nor use those arrests in making employment decisions. Furthermore, individuals with criminal convictions are protected against discrimination if their conviction is not job-related and they do not pose a threat to safety or property. However, individuals who have confidential youthful offender (YO) adjudications or sealed convictions for non-criminal offenses have none of these protections, frustrating New York State's important policy goal of helping them lead productive and crime-free lives. We propose that § 296(16) of the Executive Law be amended to extend the same protections to people with YO adjudications, a disposition granted by a judge to alleviate a youthful defendant from the stigma of a criminal conviction, and to people with non-criminal offenses, as those whose criminal cases have been terminated in their favor.

> 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... <u>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</u>, in connection with the licensing, employment..to such individual....

Need for Amendment

Section 296(15) of the Executive Law prohibits unfair employment and licensure discrimination, as provided in Article 23-A of the Corrections Law, against individuals who have *criminal convictions*. Section 296(16) of the Executive Law provides even greater protection to individuals whose *cases have been terminated in their favor*, not allowing employers even to ask about or use the arrest in making employment decisions. The state enacted these laws 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.

YO adjudications, which are not judgments 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 unfair employment and licensure discriminatory practices. Because of the failure to include them within the protection of the Human Rights Law, these two groups of individuals have no remedy if employers refuse to hire them. Indeed, it makes no sense that they have even less protection than people with adult criminal convictions. New York State should correct this oversight.

Memorandum in Support of Amending Criminal Procedure Law §160.60
To Correct Unforeseen Gaps in Sealing Law Protections

Proposed amendment

New York's sealing laws were enacted to prevent the inappropriate disclosure or use by employers of sealed criminal history information about records of arrests that did not result in a criminal conviction. For cases that are terminated in an individual's favor, §160.60 of the Criminal Procedure Law explains the legal effect of such termination. However for the two other groups whose cases are sealed or afforded comparable confidential protections, youthful offenders (YO) and individuals with non-criminal dispositions, no such provision exists. To remedy this, we propose the following amendment:

> **§ 160.60 Effect of termination of criminal actions in favor of the accused, or by youthful offender adjudication or conviction for noncriminal offense.**
>
> Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this chapter, or by a youthful offender adjudication, as defined in section 720.35 of this chapter, or by a conviction for a traffic infraction or violation sealed pursuant to section 160.55 of the criminal procedure law, the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he or she occupied before the arrest and prosecution....

Need for amendment

Section 160.60 of the criminal procedure law restores individuals whose cases have terminated in their favor to the legal status they had before the arrest occurred. It allows these individuals not to respond in the affirmative to inquiries about the sealed arrest or prosecution. Individuals who have confidential YO adjudications and sealed non-criminal convictions have no such protection. Thus, even though their cases are sealed or confidential, an employer can legally ask if individuals have these dispositions. And, because New York's two laws that protect individuals with past arrests or conviction records from unfair employment discrimination do not apply to these two groups, (see Exec. L. §§296(15) and (16); Article 23-A of the Correction Law, Corr. L. §§750-755), employers not only can ask about these dispositions, they can lawfully refuse to hire individuals with these histories.

An increasing number of employers are obtaining access to sealed criminal history records from sources that simply did not exist when the sealing laws were originally enacted. Records pertaining to sealed cases involving non-criminal convictions, not yet sealed at the court level, are available on the Office of Court Administration's new electronic criminal history information database. Rapidly increasing numbers of employers are also using consumer credit agencies to conduct background checks on job applicants and employees, and are being given reports containing information about non-criminal convictions even though that is in violation of the state Fair Credit Reporting Act provisions. (G.B.L. §380-j(a)(1).

Amending C.P.L. §160.60 will remedy the problems outlined above by bringing statutory protections for confidential YO adjudications and sealed non-criminal convictions in line with §160.60, thus ensuring that the same fundamental protections are afforded to records of individuals in all three categories of cases where arrests do not end in a criminal conviction.

Memorandum in Support of Amending the Correction Law So That Applicants and their Attorneys Can Obtain Copies of Reports Prepared Pursuant to Applications for Certificates of Relief from Disabilities

Proposed Amendment

Under § 702.6 of the Correction Law, reports prepared at the request of courts by probation departments pursuant to an application for a certificate of relief from disabilities are supposed to be available to the applicant's attorney or the applicant if he or she has no attorney. However, for reasons explained below, these reports are frequently unavailable despite the law's clear language. Thus, we propose that § 702.6 of the Correction Law be amended to achieve the law's original intent as follows:

6. Any written report submitted to the court pursuant to this section is confidential and may not be made available to any person or public or private agency except where specifically required or permitted by statute or upon specific authorization of the court. However, it shall be made available by or at the direction of the court [for examination by] to the applicant's attorney, or the applicant himself, if he has no attorney, upon the court's issuance of a decision on the application.

Need for Amendment

When attorneys try to examine reports written by a probation department at the request of the court pursuant to an application for a certificate of relief from disabilities, as provided in § 702.6 of the Correction Law, they are often informed by the court that the reports are unavailable. In some situations, the courts have stated that the reports have been shredded. The courts suggest that the attorneys get copies from the probation departments that wrote the reports. (See attached letter as an example of such a response.) However, probation departments interpret the current law as allowing only the courts to provide access to the reports. (See attached letter as example of such a response.) Thus, attorneys and applicants are left without a way to review the reports even though that right is afforded by the statute. They have no way to determine if the reports contain any inaccuracies or if there are steps that an applicant can take to improve his or her chances of obtaining a certificate on another occasion.

This amendment ensures reports will be available by 1) requiring that reports be given to applicants' attorneys or the applicants themselves if they have no attorneys, when a decision is issued, rather than merely making the reports available for inspection, and 2) allowing courts or their designees, such as probation departments, to make the reports available. Courts continue to have the authority to redact parts of the reports that they determine should not be released.

Certificates of relief from disabilities provide a valuable way for eligible people with criminal records to demonstrate rehabilitation and lift statutory bars to jobs or licenses that result from a conviction history. These certificates thus are an essential resource to support the employment of individuals with criminal histories, thereby promoting public safety. Amending correction law section 702.6 will achieve the original intent of the law and help facilitate the successful reintegration of individuals with criminal records.

Memorandum in Support of Amending the Criminal Procedure Law § 160.55 To Seal Court Records

Proposed Amendment:

Pursuant to CPL § 160.55, when a person is arrested and fingerprinted for a crime, but is convicted only of a non-criminal offense (with limited exceptions which this proposal would not change), the fingerprints and associated photographs are destroyed, and associated police and prosecution records are sealed, under the same terms as such records are sealed under §160.50. Court records, however, are not sealed. With the advance in technology and the proliferation of commercial background check companies that increasingly purchase their data directly from the Office of Court Administration, people who plead guilty to non-criminal convictions with the understanding that their records will be sealed now suffer unexpected disclosures and resulting barriers to employment and housing based on these minor, non-criminal convictions. To prevent unfair discrimination based on these sealed non-criminal convictions, we propose the following amendment:

CPL §160.55 (1)(c) should be amended to read:

"All official records and papers relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency, except as provided in paragraphs (d) or (e) of this subdivision;

This paragraph shall not apply to published court decisions or opinions, or records and briefs on appeal.

CPL §160.55(1)(d) should be amended to read:

(d) the records referred to in paragraph (c)of this subdivision shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (ii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iii) the New York state division of parole when the accused is under parole supervision as a result of conditional release or parole release granted by the New York state board of parole and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (iv) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision. Records made available to an officer or agency under this paragraph shall be used only by the officer or agency and shall not be re-disclosed, except with the consent of the accused or pursuant to a lawful court order, to any other person or public or private agency.

CPL §160.55(1)(e) shall be amended to read:

(e) the court records referred to in paragraph (c)of this subdivision shall be made available to the court's own personnel or to a prosecutor, on the court=s own motion or on the motion of a party, in the event that the criminal action or proceeding is re-opened, or in the event that the accused person is subsequently charged with an additional crime or offense, or in the event that the accused person subsequently becomes a witness and disclosure of his criminal record is required by this chapter or by court order. Disclosure under this paragraph shall occur, under the specified circumstances, only if the court determines that disclosure is required by law or in the interest of justice. Records made available to the court or the prosecution under this paragraph shall also be made available to the subject of the record. Records made available to the court or the prosecution under this paragraph shall be used only in the particular proceeding and shall not be re-disclosed, except with the consent of the accused or pursuant to a lawful court order, to any other person or public or private agency. At the conclusion of the proceeding, they shall be re-sealed.

[provision providing disclosure if accused subsequently moves for a marijuana ACD is deleted as superfluous; in this situation, disclosure would be required by law under the amended wording]

Existing CPL §160.55(1)(e) shall be re-designated (f).

CPL § 160.55, subd. 3 is replaced by the following language:

3. A person against whom a criminal action or proceeding was terminated as defined in subdivision one of this section [delete more specific language], prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

An additional section of the new law, not part of the Consolidated Laws, should provide,

The office of court administration shall develop and promulgate regulations which shall require the implementation of the amendments made by chapter .....of the Laws of 2006, requiring the sealing of court records under CPL § 160.55, with respect to criminal actions or proceedings terminated after the effective date of that section, but prior to the effective date of said amendments.

Need for Amendment:

Availability of non-criminal conviction information on the court level has become a serious problem because court records are now computerized, and the court system sells easy, computerized access to licensed investigative agencies, among others. Indeed, access to court records is easier than access to NYSIID (rap sheet) information. The result is that potential employers, creditors, and others who investigate applicants now often use court records, instead of rap sheet inquiries, to learn about criminal histories. These electronic court records contain not only the charge that led to conviction but also additional charges that appear in arrest

documents or accusatory instruments that were dropped by the prosecution or dismissed by the court, in many cases because they were unproven or inaccurate.

The Legislature's purpose in enacting CPL § 160.55, to shield persons who were arrested but not convicted of crimes from employment discrimination and damage to their reputations arising from the unproven charges, has been undermined and frustrated. These protections must be restored, and reinvigorated, by sealing the computerized court records and preventing employers from gaining access to information that they would not legally be allowed to gain from the Division of Criminal Justice Services or any other agency.

The proposed amendment restores the Legislature's original intent, while also respecting the purpose behind the Legislature's 1992 amendment (chapter 249, laws of 1992) clarifying that court records were not to be sealed under § 160.55. At the time § 160.55 was originally enacted, the goal of eliminating employment-related discrimination against this class of persons could be accomplished by sealing fingerprint-related records. Court records were not normally used to investigate job applicants because of the practical difficulty of traveling to every courthouse to look them up. The Legislature's 1992 amendment was not meant to facilitate the discrimination that § 160.55 prohibits, but to assure that persons who pled down to infractions or violations could not hide their past petty-offense convictions in the event of future violations of the law. (See, e.g., memo of Dept. of Motor Vehicles, expressing concern that sealing of court records could impair the Department's efforts to maintain accurate driving records and impose appropriate license sanctions.) The amendment would allow intended uses of these records while preventing unintended uses.

The amendment allows access to court records sealed under § 160.55 when a sealed case is re-opened (e.g., when a defendant has failed to perform restitution or community service), when the defendant is re-arrested, or when the former defendant testifies as a witness. This serves the legitimate desire of the prosecution to consider the previous charges in formulating their recommended disposition of the new case, and also serves the legitimate need of trial attorneys to be able to cross-examine witnesses about their prior convictions and bad acts. The provisions reinforce the distinction between CPL § 160.50, under which cases terminated in the defendant's favor are to be deemed a nullity, and CPL § 160.55, under which a conviction exists but should not be the basis for discrimination in employment or other non-criminal contexts.

The amendment also limits the use of unsealed records and prohibits re-disclosure by persons and agencies who have obtained lawful access. This prohibition is implicit in existing law, but making it explicit will provide added protection. Cf. § 995-d of the Executive Law, making DNA records confidential and prohibiting unauthorized redisclosure of such records outside the limited contexts in which disclosure is lawful.

Finally, the proposed legislation requires the court system to implement record-sealing for completed cases. This is readily achievable, particularly for computerized records and for paper records which are specifically requested. These Court records already bear an indication that they are sealed under CPL § 160.55. There is no reason to require a person whose law enforcement records are already sealed to come into court and move for sealing of the court records. Imposing such a requirement would nullify the value of the amendment for many tens of thousands of persons who would otherwise benefit from it.

Memorandum in Support of A.06393 to Streamline DOCS' Website Listing of Current and Former Inmates

The Legal Action Center and its National H.I.R.E. Network support A.06393, legislation that would limit the length of time that conviction history can be posted on the Department of Correctional Services (DOCS) website to 10 years after a person is released from custody. (This proposal does not affect sex offenders). Currently, DOCS maintains all information on people currently or formerly incarcerated on its website indefinitely, even if the person is deceased or has been released from custody for decades. We urge the New York State Senate to introduce companion legislation and the Senate and the Assembly to pass it.

The Department of Correctional Services has a legitimate need to maintain a website of individuals incarcerated in state prisons. Victims of crimes may want to ascertain if people who committed crimes against them are still incarcerated, and family and friends of people in prison may need a means of determining where their loved ones are being held. Once a person is released from prison, however, those reasons disappear. Those individuals who need criminal record information can obtain it from New York State's Division of Criminal Justice Services, which provides comprehensive criminal conviction information for individuals and agencies who are authorized to conduct such requests, and from the Office of Court Administration, which also provides statewide criminal conviction information.

Instead, the DOCS information database, available on the Internet as a free service, *is being misused as an inappropriate criminal background check resource for employers and others*. The result of this practice is that large numbers of qualified jobseekers are being denied access to employment and housing based on information that is incomplete and potentially misleading. For example, it contains information about when a person is eligible for release from parole, but, because the database is maintained by DOCS and not the Division of Parole, omits information that the person has been discharged from parole, leaving the impression that they are still under state supervision. Moreover, the DOCS database can be accessed by name alone, making it likely that a person with a common name but no criminal history might be confused with another person, currently or formerly incarcerated, with the same name.

Old, incomplete, and misleading information about a person's incarceration is simply irrelevant once that individual is released from prison. Given the other options in New York for individuals to obtain complete criminal history information, the time that a conviction history can be posted on the DOCS website should be limited, at most, to 10 years after a person is released from custody. This is consistent, also, with the ten year period used by the courts to determine second and persistent felony offender status.

Memorandum In Support of "Second Chance" Legislation to Conditionally Seal Non-Violent Criminal Records

Thousands of New Yorkers currently must deal with the stigma associated with having a criminal record for the rest of their lives as they seek employment and housing and strive to become productive members of society – even after they have fully paid their debt to society and, in many cases, lived law-abiding lives for many years after completion of their sentences. New York State has long been a leader in providing fair employment opportunities for qualified individuals with histories of criminal justice system involvement for the sensible reason that people with criminal records who are able to earn a living are much more likely to lead productive, tax-paying lives and much less likely to return to crime.

Recognizing the wisdom of assisting individuals with criminal records who are qualified and not a threat to public safety to obtain employment and housing, a wide range of leaders, including a diverse group convened by former Mayor Ed Koch in 1989 and Governor Pataki when he proposed his drug law reform bill of 2003, have proposed that New York State enact a "Second Chance" law to permit the sealing of certain non-violent criminal records. Building on their proposals and consultations with a wide range of policymakers and experts, the Legal Action Center has drafted a Second Chance that has the following key components:

- Provides for the sealing of different categories of non-violent convictions. An individual who has a drug felony conviction and is mandated into chemical dependence treatment can petition to have his or her record conditionally sealed upon completion of sentence; a person with a class D or E non-violent felony can petition for a conditional seal after 3 years of completion of sentence, and after 5 years after completion of sentence on a class B or C non-violent felony. In all of these cases, individuals cannot have any other felony convictions and cannot have more than two other non-violent misdemeanor convictions. In some cases the petition is filed with the court, in other instances with an administrative tribunal. Individuals with longer records of non-violent convictions can petition to have their records sealed 10 years after completion of sentence for the last conviction.

- Gives prosecutors in all cases notice of the petition and an opportunity to support or oppose the petition.

- Lists the factors that a court or administrative tribunal has to consider, based on those listed in the Governor's bill.

- Conditionally seals records. If an individual is subsequently arrested for a crime, the record is conditionally unsealed. If the arrest results in a conviction, the sealing order is vacated; if the case is dismissed, it is reinstated. This is identical to the conditional sealing provisions in the Governor's bill.

- Renders ineligible individuals whose records contain a conviction for a sexual offense defined in section 130 of the penal law.
- Deems a conviction that has been conditionally sealed a nullity. An employer may only inquire about convictions of crimes that have not been sealed.

SECOND CHANCE PROPOSAL

The criminal procedure law is amended by adding a new section 160.65 to read as follows:

Petition to conditionally seal certain convictions

1. A person may petition for the record of conviction or convictions to be conditionally sealed:

   (a) Upon a person's completion of sentence on a felony defined in article 220 or 221 of the penal law, such sentence imposed prior to or after the effective date of this chapter, where such person stands convicted of no other felony and not more than two non-violent misdemeanor convictions not including misdemeanor offenses defined in section 130 of the penal law, and such person was mandated into and completed a term of chemical dependence treatment, or upon completion of a sentence on a non-violent misdemeanor, such misdemeanor imposed prior to or after the effective date of this chapter, where such person stands convicted of not more than two other non-violent misdemeanor convictions not including misdemeanor offenses defined in section 130 of the penal law; or

   (b) three years after the completion of a sentence on a class D or E non-violent felony, other than offenses defined in section 130 of the penal law, such sentence imposed prior to or after the effective date of this chapter, where such person stands convicted of no other felony and not more than two non-violent misdemeanor convictions not including misdemeanor offenses defined in section 130 of the penal law, or

   (c) five years after the completion of a sentence on a class B or C non-violent felony, other than offenses defined in section 130 of the penal law, such sentence imposed prior to or after the effective date of this chapter, where such person stands convicted of no other felony and not more than two non-violent misdemeanor convictions not including misdemeanor offenses defined in section 130 of the penal law, or

   (d) 10 years after a person's completion of a sentence on his or her last conviction on a non-violent felony or misdemeanor offense, such sentence imposed prior to or after the effective date of this chapter, where such person stands convicted of only non-violent offenses not including non-violent offenses defined in section 130 of the penal law.

   (e) Notwithstanding the provision of paragraph (a) (b) (c) and (d) of subdivision one of this section, an individual who has been convicted of 140.20 of the penal law or upon a determination by the court following a hearing that (a) the defendant was the victim of physical, sexual or psychological abuse by the victim or intended victim of such offense, (b) such abuse was a factor in causing the defendant to commit such offense and (c) the victim or intended victim of such offense was a member of the same family or household as the defendant as such term is defined in subdivision two or section four hundred fifty-nine-a of the social services law, shall be eligible to petition for the record of conviction or convictions to be conditionally sealed.

   (f) For the purposes of this section, a conviction of a misdemeanor or felony shall include a conviction in any other jurisdiction of an offense that includes all the essential elements

of a felony or a misdemeanor as defined in the penal law.

2. Such petition shall include:

(a) identification of the conviction or convictions for which the petitioner is seeking relief;

(b) documentation that the sentence imposed on the conviction or convictions has been completed and date of completion;

(c) if the petitioner was mandated into chemical dependence treatment, evidence that the petitioner completed such treatment or other evidence that the petitioner is not dependent on alcohol or drugs except as prescribed by a medical practitioner;

(d) (i) for petitions to conditionally seal convictions or convictions pursuant paragraph (a) (b) and (c) of subdivision one of this section, a sworn affirmation that no charges are pending against the petitioner, and the petitioner has not been convicted of more than one non-violent felony and the allowable number of non-violent misdemeanors not including offenses defined in section 130 of the penal law, (ii) for petitions to conditionally seal convictions or convictions pursuant paragraph (d) of subdivision one of this section, a sworn affirmation that no charges are pending against the petitioner and the petitioner has not been convicted of any crimes for the ten year period following the petitioner's completion of sentence on the petitioner's last conviction.

(e) any other supporting materials that would assist in determining whether it would be in the interest of justice to grant the petition.

3. For convictions to be sealed pursuant to paragraphs (b) (c) and (d) of subdivision one of this section, the petition shall be filed with [an administrative tribunal], with notice to the prosecutors of the jurisdictions in which the petitioner was convicted. The prosecutors, within 10 days of receiving the petition, may submit materials in support of the petition or to demonstrate that the interest of justice would not be served by granting the petition. If the prosecutors do not submit materials in opposition to the petition, the [administrative tribunal] shall determine if the petition complies with sections 1 and 2 (a), (b), (c) and (d) of this article, and if it does so comply, shall grant the petition. The [administrative tribunal] shall notify the division of criminal justice services, and the division of criminal justice services shall notify the heads of all appropriate police departments and other law enforcement agencies of the conditional sealing of such conviction or convictions. The [administrative tribunal] shall also notify the petitioner that any subsequent arrest for any misdemeanor or a felony shall conditionally unseal the record of the conviction or convictions for which the conditional sealing order was granted and that if such arrest results in a criminal conviction the conditional sealing order will be automatically vacated. Upon issuing a conditional sealing order, the [administrative tribunal] shall follow the procedures set forth in section 160.50 of this article except that the [administrative tribunal] shall specify in the order that it is based upon the authority of this section.

4. If the prosecutors submit materials in opposition to the petition, the [administrative

tribunal] shall request from the division of criminal justice services a copy of the petitioner's current criminal history record, including any sealed information. The [administrative tribunal] shall determine whether the petitioner has demonstrated, by a preponderance of the evidence, that it would be in the interest of justice to grant the petition. In making its determination, the [administrative tribunal] shall consider the following factors: (a) the circumstances and seriousness of the offense or offenses that resulted in the conviction or convictions; (b) the character of the petitioner, including evidence that the petitioner participated in and successfully completed chemical dependence treatment or otherwise is in recovery if it is determined that the petitioner has a history of chemical dependence; (c) the criminal history of the petitioner; (d) the impact of granting the petition upon the criminal justice system; and (e) any other relevant factor. The [administrative tribunal] shall state the reasons for its determination on the record. If the petition is granted, the [administrative tribunal] shall notify the division of criminal justice services, and the division of criminal justice services shall notify the heads of all appropriate police departments and other law enforcement agencies of the conditional sealing of such conviction or convictions. The [administrative tribunal] shall notify the petitioner that any subsequent arrest for any misdemeanor or a felony shall conditionally unseal the record of the conviction or convictions for which the conditional sealing order was granted and that if such arrest results in a criminal conviction the conditional sealing order will be automatically vacated. Upon issuing a conditional sealing order, the [administrative tribunal] shall follow the procedures set forth in section 160.50 of this article except that the [administrative tribunal] shall specify in the order that it is based upon the authority of this section.

5. For petitions to be sealed pursuant to paragraph (a) of subdivision one of this section, the petition shall be filed with the sentencing court for the felony conviction, with notice to the prosecutor of the jurisdiction in which the petitioner was convicted. The prosecutor, within 10 days of receiving the petition, may submit materials in support of the petition or to demonstrate that the interest of justice would not be served by granting the petition. The court to which the petition is submitted shall request from the division of criminal justice services a copy of the petitioner's current criminal history record, including any sealed information. The court shall determine whether the petitioner has demonstrated, by a preponderance of the evidence, that it would be in the interest of justice to grant the petition. In making its determination, the court shall consider the following factors: (a) the circumstances and seriousness of the offense or offenses that resulted in the conviction or convictions; (b) the character of the petitioner, including evidence that the petitioner participated in and successfully completed treatment or otherwise is in recovery if it is determined that the petitioner has a history of drug abuse; (c) the criminal history of the petitioner; (d) the impact of granting the petition upon the criminal justice system; and (e) any other relevant factor. The court shall state the reasons for its determination on the record. If the petition is granted, the court shall notify the division of criminal justice services, and the division of criminal justice services shall notify the heads of all appropriate police departments and other law enforcement agencies of the conditional sealing of such conviction or convictions. The court shall notify the petitioner that any subsequent arrest for any misdemeanor or a felony shall conditionally unseal the record of the conviction or convictions for which the conditional sealing order was granted and that if such arrest results in a criminal conviction the conditional sealing order will be automatically vacated. Upon issuing a conditional sealing order, the court

shall follow the procedures set forth in section 160.50 of this article except that the court shall specify in the order that it is based upon the authority of this section.

6. In the event that a person who has had a record conditionally sealed under this section is subsequently arrested for any crime, the records relating to the conviction or convictions shall be conditionally unsealed pending the final disposition of the arrest. If such arrest results in a conviction of a crime, the order of conditional sealing shall be deemed automatically vacated. The division of criminal justice services and any other entity subject to such order shall unseal any records that had been sealed by virtue of this section. All records unsealed pursuant to this subdivision shall be restored to their original status and treated as though the order had never been entered. If such subsequent arrest results in proceedings that are terminated as described in subdivision three of section 160.50 or 160.55 of this article, the original conditional sealing order shall remain in effect and the records relating to the original order shall be sealed again in accordance with the provisions of section 160.50 or 160.55 of this article.

7. For purposes of this section, conditional sealing shall mean that the records of the subject conviction or convictions are sealed and shall not be made available to any person or public or private agency, as provided in section 160.50, except those persons or public or private agencies who are mandated by law to fingerprint individuals as part of a background check; provided, however, that any record conditionally sealed pursuant to this section shall also be made available, if otherwise admissible, for use before the jury, or the judge as trier of fact, if the person who is the subject of the record is a witness as defined in paragraph (b) or (c) of subdivision one or paragraph (b) or (c) of subdivision two of section 240.45 of this chapter.

Effect of termination of criminal actions in favor of the accused or by conviction that has been conditionally sealed.

N.Y. Crim. Proc. Law § 160.60 shall be amended as follows:

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this [chapter] article, or upon the conditional sealing of a conviction or convictions, as defined in section 160.65 of this chapter, the arrest and prosecution and conviction or convictions conditionally sealed shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest, prosecution and conviction or convictions. The arrest or prosecution or conviction(s) conditionally sealed shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling. Except where specifically required in section 160.65 of the criminal procedure law or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or prosecution or conviction or convictions conditionally sealed. In the case of a conviction conditionally sealed, an employer, except those persons or public or private agencies who are mandated by law to fingerprint individuals as part of a background check, may only ask whether a person has been convicted of a crime that has not been conditionally sealed. In the event that an employer other than those persons or public or private agencies who are mandated by law to fingerprint individuals as part of a background check, asks an illegal

question, the person will only have to reveal those criminal convictions that have not been conditionally sealed.

N.Y. Exec. Law § 296(16) shall be amended as follows:

It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or any conviction or convictions that have been conditionally sealed, as defined in section 160.65 of the criminal procedure law in connection with the licensing, employment or providing of credit or insurance to such individual; provided, however, that the provisions hereof shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty- three and thirty-four of section 1.20 of the criminal procedure law.

New York Voting Rights Notification and Registration Act

Summary: The Voting Rights Notification and Registration Act strives to increase participation in the democratic system by eligible voters with felony convictions by providing notice regarding voting rights, assistance with voter registration and voting by absentee ballot, and data sharing among the department of corrections, the division of parole, and the state board of elections.

SECTION 1. SHORT TITLE

This Act shall be called the "Voting Rights Notification and Registration Act."

SECTION 2. PURPOSE AND JUSTIFICATION

(A) PURPOSE – The purposes of this Act are to strengthen democratic institutions by increasing participation in the voting process, to help people with felony convictions become productive members of society, and to streamline procedures for voter registration for people who are on probation or who have completed their incarceration and parole.

(B) JUSTIFICATION – The legislature finds that:

(ADD findings)

SECTION 3. The opening paragraph and subdivisions 2, 4, and 5 of section 5-211 of the election law are amended to read as follows:

§ 5-211. Agency assisted registration. Each agency designated as a participating agency under the provisions of this section shall implement and administer a program of distribution of voter registration forms pursuant to the provisions of this section. The following offices which provide public assistance and/or provide state funded programs primarily engaged in providing services to persons with disabilities are hereby designated as voter registration agencies: designated as the state agencies which provide public assistance are the department of social services and the department of health. Also designated as public assistance agencies are all agencies of local government that provide such assistance. Designated as state agencies that provide programs primarily engaged in providing services to people with disabilities are the department of labor, office for the aging, division of veterans' affairs, office of mental health, office of vocational and educational services for individuals with disabilities, commission on quality of care for the mentally disabled, office of mental retardation and developmental disabilities, commission for the blind and visually handicapped, office of alcoholism and substance abuse services, the office of the advocate for the disabled and all offices which administer programs established or funded by such agencies. Additional state agencies designated as voter registration offices are the department of state, [and] the division of workers' compensation, the division of probation and correctional alternatives when providing direct probation supervision services under section 247 of the executive law, as well as county probation departments. Such agencies shall be required to offer voter registration forms to persons upon initial application for services, renewal or recertification for services [and], change of address relating to such services, and orientation or initial intake for the division of probation and correctional alternatives and county probation departments. Such agencies shall also be

responsible for providing assistance to [applicants] such persons in completing voter registration forms, receiving and transmitting the completed [application] registration form from all [applicants] persons who wish to have such form transmitted to the appropriate board of elections. The state board of elections shall, together with representatives of the department of defense, develop and implement procedures for including recruitment offices of the armed forces of the United States as voter registration offices when such offices are so designated by federal law. The state board shall also make request of the United States Immigration and Naturalization Service to include applications for registration by mail with any materials which are given to new citizens. All institutions of the state university of New York and the city university of New York, shall, at the beginning of the school year, and again in January of a year in which the president of the United States is to be elected, provide an application for registration to each student in each such institution. The state board of elections may, by regulation, grant a waiver from any or all of the requirements of this section to any office or program of an agency, if it determines that it is not feasible for such office or program to administer such requirement.

1. The state board of elections shall adopt such rules and regulations as may be necessary to carry out the requirements of this section and shall prepare and distribute to participating agencies written instructions as to the implementation of the program and shall be responsible for establishing training programs for employees of participating agencies involved in such program. The state board of elections shall provide a toll free telephone to answer registration questions.

2. Strict neutrality with respect to a person's party enrollment shall be maintained and all persons seeking voter registration forms and information shall be advised that government services are not conditioned on being registered to vote. No statement shall be made nor any action taken to discourage the [applicant] person from registering to vote.

3. If a participating agency provides services to a person with a disability at the person's place of residence, the agency shall offer the opportunity to complete a voter registration form at such place of residence.

4. Each participating agency shall provide to each [applicant] person who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the agency with regard to the completion of its own form unless the [applicant] person refuses such assistance.

5. Employees of a voter registration agency who provide voter registration assistance shall not:

(a) seek to influence [an applicant's] a person's political preference or party designation;

(b) display any political preference or party allegiance;

(c) make any statement [to an applicant] or take any action the purpose or effect of which is to discourage [the applicant] a person from registering to vote; or

(d) make any statement [to an applicant] or take any action the purpose or effect of which is to lead [the applicant] a person to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

6. The state board of elections shall coordinate and monitor the distribution of voter registration forms by those state agencies, departments, divisions and offices selected to participate in the program to maximize the efficient and non partisan distribution of voter registration information and forms. The board shall also adopt such rules and regulations as may be necessary to require county boards and participating agencies to provide the state board with such information and data as the board deems necessary to assess compliance with this section and to compile such statistics as may be required by the federal elections commission.

7. Each participating agency, department, division and office that makes available voter registration forms shall prominently display promotional materials designed and approved by the state board of elections, informing the public of the existence of voter registration services.

8. Each participating agency, department, division or office that makes available voter registration forms pursuant to this section shall offer with each application for the services or assistance of such agency, department, division or office, or, in the case of the county probation departments and the division of probation and correctional alternatives, upon orientation or initial intake, and with each recertification, renewal or change of address form relating to such service or assistance, a registration form together with instructions relating to eligibility to register and for completing the form except that forms used by the department of social services for the initial application for services, renewal or recertification for services and change of address relating to such services shall physically incorporate a voter registration application in a fashion that permits the voter registration portion of the agency form to be detached therefrom. Such voter registration application shall be designed so as to ensure the confidentiality of the source of the application. Included on each participating agency's application for services or assistance or on a separate form shall be:

(a) the question, "If you are not registered to vote where you live now, would you like to apply to register here today?"

(b) the statement, "applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency."

(c) boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote.

(d) the statement in prominent type, "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME."

(e) the statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."

(f) the statement, "If you believe that someone has interfered with your right to register or decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the state board of elections (address and toll free telephone number)."

(g) a toll free number at the state board of elections that can be called for answers to registration questions.

9. Disclosure of voter registration information, including a declination to register, by a participating agency, its agents or employees, for other than voter registration purposes, shall be deemed an unwarranted invasion of personal privacy pursuant to the provisions of subdivision two of section eighty-nine of the public officers law and shall constitute a violation of this chapter.

10. The form containing the declination to register to vote shall be retained by the recipient agency for the same period of time as such agency retains the accompanying application for services or for such shorter period of time as may be approved by the state board of elections.

11. The participating agency shall transmit the completed applications for registration and change of address forms to the appropriate board of elections not later than ten days after receipt except that all such completed applications and forms received by the agency between the thirtieth and twenty-fifth day before an election shall be transmitted in such manner and at such time as to assure their receipt by such board of elections not later than the twentieth day before such election.

12. Completed [application] registration forms, when received by a participating agency not later than the twenty-fifth day before the next ensuing primary, general or special election and transmitted by such agency to the appropriate board of elections so that they are received by such board not later than the twentieth day before such election shall entitle the [applicant] person to vote in such election provided the board determines that the [applicant] person is otherwise qualified.

13. The state board of elections shall provide [application] registration forms for use pursuant to this section except that any agency which uses a form other than such registration form shall be responsible for providing such form. Forms which vary in design and or content from the form approved by the state board of elections may only be used with the approval of such board.

14. [Applications] Registration forms shall be processed by the board of elections in the manner prescribed by section 5-210 of this title or, if the [applicant] person is already registered to vote from another address in the county or city, in the manner prescribed by section 5-208 of this title. The board shall send the appropriate notice of approval or rejection as required by either subdivision nine of such section 5-210 or subdivision five of such section 5-208.

15. The head of each participating agency shall take all actions which are necessary and proper for the implementation of this section. Each agency head shall designate one person within the agency as the agency voter registration coordinator who will, under the direction of the state board of elections, be responsible for the voter registration program in such agency.

16. The state board shall develop and distribute public information and promotional materials relating to the purposes and implementation of this program.

17. Each agency designated as a participating agency under this section shall conduct a study and prepare a report to determine the feasibility, practicality and cost-effectiveness of designing their agency intake forms to serve also as voter registration forms that comply with state and federal law. Such study and report shall be completed by December 1, 1996. Copies of such reports shall be provided to the governor, the temporary president of the senate, the speaker of the assembly and the state board of elections. After submission of the report, participating agencies that determine that it is feasible, practical and cost-effective to have such forms also serve as voter registration forms shall do so upon the approval of the state board of elections. For each agency that determines it is feasible, practical and cost effective to use agency intake forms that serve also as voter registration forms, the state board of elections shall approve or disapprove such use within six months of the submission of the report by the agency.

SECTION 4. Section 220.50 of the criminal procedure law is amended by adding a new subsection 8 to read as follows:

8. Prior to accepting a defendant's plea of guilty to a count or counts of an indictment or a superior court information charging a felony offense which will impose a sentence of incarceration, the court must advise the defendant on the record that conviction will result in loss of the right to vote until the individual has served his maximum sentence of incarceration and parole.

SECTION 5. The criminal procedure law is amended by adding a new section 380.51 to read as follows**:**

§ 380.51. Statements regarding voting rights. Before imposing a sentence of incarceration for a felony conviction, the court must advise the defendant on the record that

conviction will result in the loss of the right to vote until the individual has served his maximum sentence of incarceration and parole.

SECTION 6. The correction law is amended by adding a new section 510 to read as follows:

§510. Voting by qualified inmates. 1. At the time of the initial orientation or intake of an inmate at a local correctional facility, the chief administrative officer of such local correctional facility, or his or her designee, shall inform the inmate in writing of his or her right to apply to register to vote. In addition, such notice shall be printed in block letters and posted in a prominent place where inmates congregate. Such posted notice shall include qualifications required to exercise the right to vote, and the availability at the correctional facility of assistance to apply to register to vote, to request an absentee ballot application, and to vote by absentee ballot. Such chief administrative officer, or his or her designee, shall assist inmates in applying to register to vote in the same manner and to the same extent as the agencies listed in section 5-211 of the election law.

2. On an annual basis, 30 days before each primary and general election, the chief administrative officer, or his or her designee, shall provide each inmate with written information about qualifications and procedures for voting by absentee ballot and shall make absentee ballot applications available to all inmates. [took out assistance re: completing ballots]

(a) In the event that an inmate of a local correctional facility is temporarily absent from such facility, including but not limited to inmates receiving medical care at a local healthcare facility, the information required under this section shall be mailed to such inmate.

SECTION 7. Section 8-406 of the election law is amended to read as follows:

§ 8-406. Absentee ballots, delivery of. If the board shall find that the applicant is a qualified voter of the election district containing his residence as stated in his statement and that his statement is sufficient, it shall, as soon as practicable after it shall have determined his right thereto, mail to him at an address designated by him, or deliver to him, or to any person designated for such purpose in writing by him, at the office of the board, such an absentee voter's ballot or set of ballots and an envelope therefor. If the ballot or ballots are to be sent outside of the United States to a country other than Canada or Mexico, such ballot or ballots shall be sent by air mail. However, if an applicant who is eligible for an absentee ballot is a resident of a facility operated or licensed by, or under the jurisdiction of, the department of mental hygiene, or a resident of a facility defined as a nursing home or residential health care facility pursuant to subdivisions two and three of section two thousand eight hundred one of the public health law, or a resident of a hospital or other facility operated by the Veteran's Administration of the United States, or an inmate of a local correctional facility as defined by subdivision sixteen of section two of the correction law, such absentee ballot need not be so mailed or delivered to any such applicant but, may be delivered to the voter in the manner prescribed by section 8-407 of this chapter if such facility is located in the county or city in which such voter is eligible to vote.

SECTION 8. The section heading and subdivision 1 and 3 of section 8-407 of the election law are amended as follows:

§ 8-407. Voting by residents of nursing homes, residential health care facilities, facilities operated or licensed, or under the jurisdiction of, the department of mental hygiene or hospitals

or facilities operated by the Veteran's Administration of the United States, or by inmates of local correctional facilities.

1. The board of elections of a county or city in which there is located at least one facility operated or licensed, or under the jurisdiction of, the department of mental hygiene, or a facility defined as a nursing home or residential health care facility pursuant to subdivisions two and three of section two thousand eight hundred one of the public health law or an adult care facility subject to the provisions of title two of article seven of the social services law, or a hospital or other facility operated by the Veteran's Administration of the United States, or a local correctional facility as defined by subdivision sixteen of section two of the correction law, shall provide that residents or inmates of each such facility for which such board has received [twenty-five] fifteen or more applications for absentee ballots from voters who are eligible to vote by absentee ballot in such city or county at such election, may vote by absentee ballot only in the manner provided for in this section. Such board may, in its discretion, provide that the procedure described in this subdivision shall be applicable to all such facilities in such county or city without regard to the number of absentee ballot applications received from the residents of any such facility.

3. Not earlier than thirteen days before or later than the day before such an election such a board of inspectors shall, between the hours of nine o'clock in the morning and five o'clock in the evening, attend at each such facility for the residents or inmates of which the board of elections has custody of [twenty-five] fifteen or more absentee ballots or, if the board of elections has so provided, each such facility for which the board has custody of one or more such absentee ballots, pursuant to the provisions of this chapter.

SECTION 9. The correction law is amended by adding a new section 75 to read as follows:

§75. Voting rights upon completion of sentence. 1. Upon the discharge from a correctional facility of any person who has reached his or her maximum sentence of imprisonment for the conviction of a felony, the department, and, subject to their agreement, federal correctional institutions in New York, shall notify such person of his or her right to vote, provide such person with a form of application for voter registration together with written information distributed by the board of elections on the importance and the mechanics of voting and shall assist such person in registering to vote in the same manner and to the same extent as the agencies listed in section 5-211 of the election law.

2. The department of corrections and, subject to their agreement, federal correctional institutions in New York, shall, on or before the 15th day of each month, transmit to the board of elections a list containing the following information about persons age 18 or older who, during the preceding period, have become eligible to vote because of their discharge from incarceration: (a) name, (b) date of birth, (c) last known address with county of residence, and (d) driver's license number (if known) or last four digits of Social Security number (if known).

SECTION 10. The executive law is amended by adding a new section 259-jj to read as follows:

§259-jj. Voting rights upon discharge. 1. Upon discharge of a person from presumptive release, parole, or conditional release, or upon the expiration of a person's maximum sentence of imprisonment while under the supervision of the division of parole, the division of parole shall notify such person of his or her right to vote, provide such person with a form of application for voter registration together with written information distributed by the board of elections on the

importance and the mechanics of voting and shall assist such person in registering to vote in the same manner and to the same extent as the agencies listed in section 5-211.

2. The division of parole shall, on or before the 15th day of each month, transmit to the board of elections a list containing the following information about persons age 18 or older who, during the preceding period, have become eligible to vote because of their discharge from presumptive release, parole or conditional release: (a) name, (b) date of birth, (c) last known address with county of residence, and (d) driver's license number (if known) or last four digits of Social Security number (if known).

SECTION 11. Section 5-614 of the election law is amended by adding new subsections 6.1 and 6.2 and 12(b)(4) to read as follows:

6.1. Once every month, and within five days of receipt, the state board of elections shall obtain and transmit to local boards of elections the information provided by the department of correctional services pursuant to section 75(2) of the correction law, and by the division of parole pursuant to section 259-jj(2) of the executive law.

6.2. Each local board of elections shall use such list, within ten days after receipt, to ensure that there are no remaining barriers to registration, including the use of electronic codes or other forms of eligibility demarcation, resulting from past convictions of the people so listed, and to ensure that their names are added to the official statewide list of registered voters in the same manner as all other names are added to that list.

6.3. Any voter registration application that was rejected prior to the local board's receipt and processing of the information described in sections 6.1 and 6.2, and that, upon receipt and processing of that same information, is found to be eligible, shall be approved and the voter shall be registered and so notified.

SECTION 12. The election law is amended by adding a new section 3-102.1 to read as follows:

§ 3-102.1 State board of elections; duties under the Voting Rights Notification and Registration Act.

1. The state board of elections shall develop and implement a program to educate attorneys; judges; election officials; corrections officials, including parole and probation officers; and members of the public about the requirements of the Voting Rights Notification and Registration Act, ensuring that:

a. Judges are informed of their obligation to notify criminal defendants of the potential loss and restoration of their voting rights, in accordance with sections 220.50(8) and 380.51 of the criminal procedure law.

b. The department of corrections and, subject to their agreement, federal correctional institutions in New York, are prepared to assist people with registration to vote in anticipation of their discharge from incarceration, including by forwarding their completed voter registration forms to the local election boards.

c. The language on voter registration forms makes clear that people are disqualified from voting only while they are serving sentences of incarceration or parole on felony convictions and that they regain the right to vote upon completion of their maximum sentence.

d. The department of corrections and, subject to their agreement, federal correctional institutions in New York, and the division of parole, are prepared to transmit to the state board of elections the information specified in section 75(2) of the corrections law and section 259jj(2) of the executive law.

e. All local boards of elections are prepared to restore names to the computerized statewide voter registration list in accordance with section 5-614 of the election law.

f. Probation and parole officers are informed of the changes in the law and are prepared to notify probationers and parolees of their voting rights.

g. Accurate and complete information about the voting rights of people who have been charged with or convicted of crimes is made available through a single publication to government officials and the public.

2. The state board of elections shall amend or promulgate pertinent rules and regulations as necessary to implement this act.

SECTION 13. EFFECTIVE DATE: This Act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.