

NEW YORK

New York Correction Law Article 23 -- Discretionary Relief From Forfeitures and Disabilities Automatically Imposed By Law

- Section 700. Definitions and rules of construction.
701. Certificate of relief from disabilities.
702. Certificates of relief from disabilities issued by courts.
703. Certificates of relief from disabilities issued by the board of parole.
- 703-a. Certificate of good conduct.
- 703-b. Issuance of certificate of good conduct.
704. Effect of revocation; use of revoked certificate.
705. Forms and filing.
706. Certificate not to be deemed to be a pardon.

§ 700. Definitions and rules of construction. 1. As used in this article the following terms have the following meanings:

- (a) "Eligible offender" shall mean a person who has been convicted of a crime or of an offense, but who has not been convicted more than once of a felony.
- (b) "Felony" means a conviction of a felony in this state, or of an offense in any other jurisdiction for which a sentence to a term of imprisonment in excess of one year, or a sentence of death, was authorized.
- (c) "Revocable sentence" means a suspended sentence or a sentence upon which execution was suspended pursuant to the penal law in effect prior to September first, nineteen hundred sixty-seven; or a sentence of probation or of conditional discharge imposed pursuant to the penal law in effect after September first, nineteen hundred sixty-seven.

2. For the purposes of this article the following rules of construction shall apply:

- (a) Two or more convictions of felonies charged in separate counts of one indictment or information shall be deemed to be one conviction;
- (b) Two or more convictions of felonies charged in two or more indictments or informations, filed in the same court prior to entry of judgment under any of them, shall be deemed to be one conviction; and (c) A plea or a verdict of guilty upon which sentence or the execution of sentence has been suspended or upon which a sentence of probation, conditional discharge, or unconditional discharge has been imposed shall be deemed to be a conviction.

§ 701. Certificate of relief from disabilities. 1. A certificate of relief from disabilities may be granted as provided in this article to relieve an eligible offender of any forfeiture or disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein. Such certificate may be limited to one or more enumerated forfeitures, disabilities or bars, or may relieve the eligible offender of all forfeitures, disabilities and bars. Provided, however, that no such certificate shall apply, or be construed so as to apply, to the right of such person to retain or to be eligible for public office.

* 2. Notwithstanding any other provision of law, except subdivision five of section twenty-eight hundred six of the public health law or paragraph (b) of subdivision two of section eleven hundred ninety-three of the vehicle and traffic law, a conviction of a crime or of an offense specified in a certificate of relief from disabilities shall not cause automatic forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right or a disability to apply for or to receive any license, permit or other authority or privilege, covered by the certificate; provided, however, a conviction for a second or subsequent violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law committed within the preceding ten years shall impose a disability to apply for or receive an operator's license during the period provided in such law. A certificate of relief from a disability imposed pursuant to subparagraph (v) of paragraph b of subdivision two and paragraphs i and j of subdivision six of section five hundred ten of the vehicle and traffic law may only be issued upon a determination that compelling circumstances warrant such relief.

* NB Repealed October 1, 2003

* 2. Notwithstanding any other provision of law, except subdivision five of section twenty-eight hundred six of the public health law or paragraph (b) of subdivision two of section eleven hundred ninety-three of the vehicle and traffic law, a conviction of a crime or of an offense specified in a certificate of relief from disabilities shall not cause automatic forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right or a disability to apply for or to receive any license, permit or other authority or privilege, covered by the certificate; provided, however, a conviction for a second or subsequent violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law committed within the preceding ten years shall impose a disability to apply for or receive an operator's license during the period provided in such law.

* NB Effective October 1, 2003

3. A certificate of relief from disabilities shall not, however, in any way prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege.

§ 702. Certificates of relief from disabilities issued by courts. 1. Any court of this state may, in its discretion, issue a certificate of relief from disabilities to an eligible offender for a conviction that occurred in such court, if the court either (a) imposed a revocable sentence or (b) imposed a sentence other than one executed by commitment to an institution under the jurisdiction of the state department of correctional services. Such certificate may be issued (i) at the time sentence is pronounced, in which case it may grant relief from forfeitures as well as from disabilities, or (ii) at any time thereafter, in which case it shall apply only to disabilities.

2. Such certificate shall not be issued by the court unless the court is satisfied that:

- (a) The person to whom it is to be granted is an eligible offender, as defined in section seven hundred;
- (b) The relief to be granted by the certificate is consistent with the rehabilitation of the eligible offender; and
- (c) The relief to be granted by the certificate is consistent with the public interest.

3. Where a certificate of relief from disabilities is not issued at the time sentence is pronounced it shall only be issued thereafter upon verified application to the court. The court may, for the purpose of determining whether such certificate shall be issued, request its probation service to conduct an investigation of the applicant, or if the court has no probation service it may request the probation service of the county court for the county in which the court is located to conduct such investigation, or if there be no such probation service the court may request the state director of probation and correctional alternatives to arrange for such investigation. Any probation officer requested to make an investigation pursuant to this section shall prepare and submit to the court a written report in accordance with such request.

4. Where the court has imposed a revocable sentence and the certificate of relief from disabilities is issued prior to the expiration or termination of the time which the court may revoke such sentence, the certificate shall be deemed to be a temporary certificate until such time as the court's authority to revoke the sentence has expired or is terminated. While temporary, such certificate (a) may be revoked by the court for violation of the conditions of the sentence, and (b) shall be revoked by the court if it revokes the sentence and commits the person to an institution under the jurisdiction of the state department of correctional services. Any such revocation shall be upon notice and after an opportunity to be heard. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the court's authority to revoke the sentence.

5. Any court that has issued a certificate of relief from disabilities may at any time issue a new certificate to enlarge the relief previously granted, provided, however, that the provisions of subdivisions one through four of this section shall apply to the issuance of any such new certificate.

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 the court for examination by the applicant's attorney, or the applicant himself, if he has no attorney. In its discretion, the court may except from disclosure a part or parts of the report which are not relevant to the granting of a certificate, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. The action of the court excepting information from disclosure shall be subject to appellate review. The court, in its discretion, may hold a conference in open court or in chambers to afford an applicant an opportunity to controvert or to comment upon any portions of the report. The court may also conduct a summary hearing at the conference on any matter relevant to the granting of the application and may take testimony under oath.

§ 703. Certificates of relief from disabilities issued by the board of parole. 1. The state board of parole shall have the power to issue a certificate of relief from disabilities to:

- (a) any eligible offender who has been committed to an institution under the jurisdiction of the state department of correctional services. Such certificate may be issued by the board at the time the offender is released from such institution under the board's supervision or otherwise or at any time thereafter;
- (b) any eligible offender who resides within this state and whose judgment of conviction was rendered by a court in any other jurisdiction.

2. Where the board of parole has issued a certificate of relief from disabilities, the board may at any time issue a new certificate enlarging the relief previously granted.

3. The board of parole shall not issue any certificate of relief from disabilities pursuant to subdivisions one or two, unless the board is satisfied that:

- (a) The person to whom it is to be granted is an eligible offender, as defined in section seven hundred;
- (b) The relief to be granted by the certificate is consistent with the rehabilitation of the eligible offender; and
- (c) The relief to be granted by the certificate is consistent with the public interest.

4. Any certificate of relief from disabilities issued by the board of parole to an eligible offender who at time of the issuance of the certificate is under the board's supervision, shall be deemed to be a temporary certificate until such time as the eligible offender is discharged from the board's supervision, and, while temporary, such certificate may be revoked by the board for violation of the conditions of parole or release. Revocation shall be upon notice to the parolee, who shall be accorded an opportunity to explain the violation prior to decision thereon. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the board's jurisdiction over the offender.

5. In granting or revoking a certificate of relief from disabilities the action of the board of parole shall be by unanimous vote of the members authorized to grant or revoke parole. Such action shall be deemed a judicial function and shall not be reviewable if done according to law.

6. For the purpose of determining whether such certificate shall be issued, the board may conduct an investigation of the applicant.

§ 703-a. Certificate of good conduct. 1. A certificate of good conduct may be granted as provided in this section to relieve an individual of any disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein. Such certificate may be limited to one or more enumerated disabilities or bars, or may relieve the individual of all disabilities and bars.

2. Notwithstanding any other provision of law, a conviction of a crime or of an offense specified in a certificate of good conduct shall not be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right or a disability to apply for or to receive any license, permit or other authority or privilege, covered by the certificate.

3. A certificate of good conduct shall not, however, in any way prevent any judicial administrative, licensing or other body, board or authority from considering the conviction specified therein in accordance with the provisions of article twenty-three-a of this chapter.

§ 703-b. Issuance of certificate of good conduct. 1. The state board of parole, or any three members thereof by unanimous vote, shall have the power to issue a certificate of good conduct to any person previously convicted of a crime in this state, when the board is satisfied that:

- (a) The applicant has conducted himself in a manner warranting such issuance for a minimum period in accordance with the provisions of subdivision three of this section;
- (b) The relief to be granted by the certificate is consistent with the rehabilitation of the applicant; and
- (c) The relief to be granted is consistent with the public interest.

2. The state board of parole, or any three members thereof by unanimous vote, shall have the power to issue a certificate of good conduct to any person previously convicted of a crime in any other jurisdiction, when the board is satisfied that:

(a) The applicant has demonstrated that there exist specific facts and circumstances, and specific sections of New York state law that have an adverse impact on the applicant and warrant the application for relief to be made in New York; and (b) The provisions of paragraphs (a), (b) and (c) of subdivision one of this section have been met.

3. The minimum period of good conduct by the individual referred to in paragraph (a) of subdivision one of this section, shall be as follows:

Where the most serious crime of which the individual was convicted is a misdemeanor, the minimum period of good conduct shall be one year; where the most serious crime of which the individual was convicted is a class C, D or E felony, the minimum period of good conduct shall be three years; and, where the most serious crime of which the individual was convicted is a class B or A felony, the minimum period of good conduct shall be five years. Criminal acts committed outside the state shall be classified as acts committed within the state based on the maximum sentence that could have been imposed based upon such conviction pursuant to the laws of such foreign jurisdiction. Such minimum period of good conduct by the individual shall be measured either from the date of the payment of any fine imposed upon him or the suspension of sentence, or from the date of his unrevoked release from custody by parole, commutation or termination of his sentence. The board shall have power and it shall be its duty to investigate all persons when such application is made and to grant or deny the same within a reasonable time after the making of the application.

4. Where the board of parole has issued a certificate of good conduct, the board may at any time issue a new certificate enlarging the relief previously granted.

5. Any certificate of good conduct by the board of parole to an individual who at time of the issuance of the certificate is under the board's supervision, shall be deemed to be a temporary certificate until such time as the individual is discharged from the board's supervision, and, while temporary, such certificate may be revoked by the board for violation of the conditions of parole or release. Revocation shall be upon notice to the parolee, who shall be accorded an opportunity to explain the violation prior to decision thereon. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the board's jurisdiction over the individual.

§ 703-b. Issuance of certificate of good conduct. 1. The state board of parole, or any three members thereof by unanimous vote, shall have the power to issue a certificate of good conduct to any person previously convicted of a crime in this state, when the board is satisfied that:

- (a) The applicant has conducted himself in a manner warranting such issuance for a minimum period in accordance with the provisions of subdivision three of this section;
- (b) The relief to be granted by the certificate is consistent with the rehabilitation of the applicant; and
- (c) The relief to be granted is consistent with the public interest.

2. The state board of parole, or any three members thereof by unanimous vote, shall have the power to issue a certificate of good conduct to any person previously convicted of a crime in any other jurisdiction, when the board is satisfied that:

- (a) The applicant has demonstrated that there exist specific facts and circumstances, and specific sections of New York state law that have an adverse impact on the applicant and warrant the application for relief to be made in New York; and
- (b) The provisions of paragraphs (a), (b) and (c) of subdivision one of this section have been met.

3. The minimum period of good conduct by the individual referred to in paragraph (a) of subdivision one of this section, shall be as follows:

Where the most serious crime of which the individual was convicted is a misdemeanor, the minimum period of good conduct shall be one year; where the most serious crime of which the individual was convicted is a class C, D or E felony, the minimum period of good conduct shall be three years; and, where the most serious crime of which the individual was convicted is a class B or A felony, the minimum period of good conduct shall be five years. Criminal acts committed outside the state shall be classified as acts committed within the state based on the maximum sentence that could have been imposed based upon such conviction pursuant to the laws of such foreign jurisdiction. Such minimum period of good conduct by the individual shall be measured either from the date of the payment of any fine imposed upon him or the suspension of sentence, or from the date of his unrevoked release from custody by parole, commutation or termination of his sentence. The board shall have power and it shall be its duty to investigate all persons when such application is made and to grant or deny the same within a reasonable time after the making of the application.

4. Where the board of parole has issued a certificate of good conduct, the board may at any time issue a new certificate enlarging the relief previously granted.

5. Any certificate of good conduct by the board of parole to an individual who at time of the issuance of the certificate is under the board's supervision, shall be deemed to be a temporary certificate until such time as the individual is discharged from the board's supervision, and, while temporary, such certificate may be revoked by the board for violation of the conditions of parole or release. Revocation shall be upon notice to the parolee, who shall be accorded an opportunity to explain the violation prior to decision

thereon. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the board's jurisdiction over the individual.

§ 704. Effect of revocation; use of revoked certificate. 1. Where a certificate of relief from disabilities is deemed to be temporary and such certificate is revoked, disabilities and forfeitures thereby relieved shall be reinstated as of the date upon which the person to whom the certificate was issued receives written notice of such revocation. Any such person shall upon receipt of such notice surrender the certificate to the issuing court or board.

2. A person who knowingly uses or attempts to use, a revoked certificate of relief from disabilities in order to obtain or to exercise any right or privilege that he would not be entitled to obtain or to exercise without a valid certificate shall be guilty of a misdemeanor.

§ 705. Forms and filing. 1. All applications, certificates and orders of revocation necessary for the purposes of this article shall be upon forms prescribed pursuant to agreement among the state commissioner of correctional services, the chairman of the state board of parole and the administrator of the state judicial conference. Such forms relating to certificates of relief from disabilities shall be distributed by the director of the state division of probation and correctional alternatives and forms relating to certificates of good conduct shall be distributed by the chairman of the board of parole.

2. Any court or board issuing or revoking any certificate pursuant to this article shall immediately file a copy of the certificate, or of the order of revocation, with the New York state identification and intelligence system.

§ 706. Certificate not to be deemed to be a pardon. Nothing contained in this article shall be deemed to alter or limit or affect the manner of applying for pardons to the governor, and no certificate issued hereunder shall be deemed or construed to be a pardon.