

LOWERING CRIMINAL RECORD BARRIERS

CERTIFICATES OF
RELIEF/GOOD
CONDUCT AND
RECORD SEALING

LAC LEGAL
ACTION
CENTER

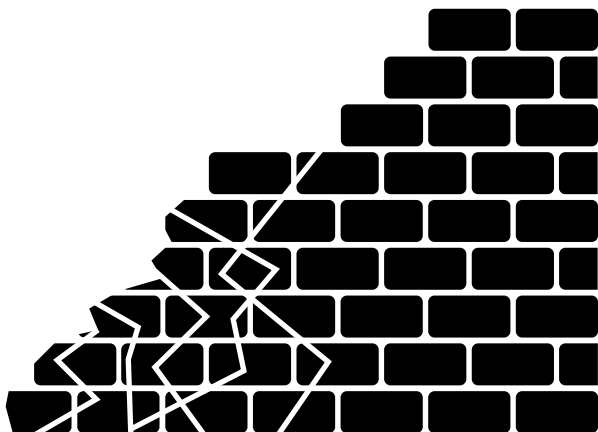


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INTRODUCTION

WHAT DOES THIS BOOKLET COVER?

This booklet explains which cases are eligible to be sealed and how to seal them. It also explains who is eligible for a Certificate of Relief from Disabilities or a Certificate of Good Conduct, which can improve your chances of getting a job or housing, as well as how to apply for these Certificates.

The Legal Action Center has written other booklets that can help you get a job or housing even with a criminal record. These booklets cover topics such as how to get a copy of your criminal record; how employers and others get criminal record information; how to correct any errors on your criminal record; and workplace rights. A list of these publications is at the end.

SECTION I. SEALING CASES

CAN I GET CASES COMPLETELY ERASED FROM MY RECORD?



No, you cannot erase or “expunge” criminal record information in New York State!

New York law only “seals” certain types of information held by the courts and DCJS so that it is not available to most people. Sealing means most people do not have access to the information. It does not mean the information is erased forever.

ARE ANY CASES AUTOMATICALLY SEALED?

Yes. Cases that ended in your favor or in a non-criminal conviction (violation or infraction) *after 1991* should usually be automatically sealed. More information is provided below, as is information about cases terminated *before 1991*.

WHAT KINDS OF CASES CAN BE SEALED?

ARRESTS THAT DID NOT LEAD TO CONVICTION (“TERMINATED IN YOUR FAVOR”)

Arrests that were “terminated in your favor” are sealed automatically under §160.50 of the New York Criminal Procedure Law (CPL). This includes arrests that ended in acquittals, dismissals, or adjournments in contemplation of dismissal (“ACDs”) *once the adjournment period ends*. It also includes arrests which the district attorney did not prosecute, (also known as “declined

prosecution”) or the arresting agency did not forward the case to the district attorney (also known as a “voided arrest”).

However, cases that were dismissed because you were convicted of another charge (dismissal due to conviction on related or unrelated charges or cases that were “covered by” or “in satisfaction of” another case) and cases that were dismissed due to mental incapacity, disease or defect (sometimes referred to as a “730 adjudication”) are not considered terminated in your favor and so cannot be sealed.

ARRESTS LEADING TO CONVICTIONS FOR NON-CRIMINAL OFFENSES

Another New York State law, §160.55 of the Criminal Procedure Law, allows records of most violation-level offenses to be sealed. A violation is a non-criminal offense and is less serious than a misdemeanor or felony. (Only misdemeanors and felonies are considered “crimes”.) Common violations are loitering, disorderly conduct and trespass. Most violation convictions can be sealed.

Two types of non-criminal convictions **cannot** be sealed through CPL § 160.50. “Driving While Ability Impaired,” (Vehicle and Traffic Law §1192(1)) and “Loitering for the Purpose of Prostitution” (Penal Law §240.37(2)). (See p. 6 for a different way to seal “Loitering for the Purpose of Prostitution” convictions.)

Usually, if you are convicted of a violation and sentenced to a one-year “Conditional Discharge”, the case will not be sealed during the one-year period. It should automatically expire when the Conditional Discharge expires, and your case will be sealed.

In limited circumstances, there may be an order not to seal a violation convictions (also known as a do-not-seal order). Your rap sheet probably will not show that a judge ordered this. You will only find out when you ask for a disposition slip from the court clerk’s office. If there is a do-not-seal order, the case will not be sealed (unless the “do-not-seal” order is only for a limited time, usually until the end of a conditional discharge period).

ARRESTS LEADING TO CONVICTIONS FOR POSSESSION OF MARIJUANA VIOLATIONS

A violation conviction for possession of marijuana (under Penal Law § 221.05) should be automatically sealed under CPL §160.50 three years after the date of the crime.

ARRESTS LEADING TO LOITERING CONVICTIONS

In 2012, a court found that convictions for loitering for the purpose of begging, loitering for the purpose of sexual behavior of a deviate nature and loitering in a transportation facility (under Penal Law, Secs.240.35 (1), (3) and (7)) were unconstitutional. If you were convicted of any of these offenses, the conviction should be vacated and dismissed without you doing anything. The law then treats them the same way as cases in which you were never convicted.

ARRESTS LEADING TO MISDEMEANOR AND FELONY CONVICTIONS

Most felony and misdemeanor convictions cannot be sealed, but there are limited exemptions.

New Law to Seal Convictions: Criminal Procedure Law §160.59

As of October 2017, New York's new sealing law, CPL 160.59, allows people who have been convicted in no more than two cases (only one of which can be a felony case) to apply to seal certain conviction(s) from New York, if it has been at least 10 years since their sentencing or release from jail or prison. Only certain convictions are eligible for sealing, and there are other requirements as well, so please talk with us individually if you are trying to figure out your eligibility.

Rockefeller Drug Laws

Since October 2009, judges may conditionally seal certain felonies and misdemeanors under Rockefeller drug law reform if:

- You completed a “court-sanctioned substance abuse treatment program”* AND
- You completed any other sentence imposed following the completion of treatment AND
- You have no pending charges.

*NOTE: The law does not precisely define “court-sanctioned treatment program.” The courts are deciding which programs are “court-sanctioned treatment programs” on a case-by-case basis. It is therefore extremely important that if you are seeking to have your record sealed, you consult an attorney **who has special expertise in this law**



or you may have your request denied when it could otherwise have been granted. If your conviction was in New York City, call the Legal Aid Society to see if they can help you, at: (212) 577-3300

Even if you satisfy all three of those requirements, only the following felonies and misdemeanors can be sealed:

- Burglary in the 3rd degree
- Criminal mischief in the 3rd degree
- Criminal mischief in the 2nd degree
- Grand larceny in the 4th degree
- Grand larceny in the 3rd degree (but not if the property at issue consists of one or more firearms, rifles or shotguns)
- Unauthorized use of a vehicle in the 2nd degree
- Criminal possession of stolen property in the 4th degree
- Criminal possession of stolen property in the 3rd degree (but not if the property at issue consists of one or more firearms, rifles or shotguns)
- Forgery in the 2nd degree

- Unlawfully using slugs in the 1st degree
- Or an attempt to commit any of the above offenses
- Any class B, C, D or E controlled substance (drug) or marijuana felony offense
- Controlled substance (drug) or marijuana misdemeanor offenses

When a judge decides to seal a felony, he or she can also seal up to three prior misdemeanors. (Drug and marijuana misdemeanors may also be possible to seal even when a felony is not sealed, as long as you meet the other conditions.)

Sealing of felonies and misdemeanors is “**conditional**.” This means that if you are arrested again for a misdemeanor or felony offense, the cases will be *unsealed*. But if the new charges against you are dismissed, you are acquitted, or the District Attorney declines to prosecute you, the convictions that were sealed before will be *resealed*.

To find out if you qualify for conditional sealing and for help getting your case sealed, contact the attorney who represented you in your case, the Legal Aid Society, or the local public defender’s office where your case was heard.

Convictions Related To Prostitution

Convictions related to **prostitution** can be vacated and sealed if you are a survivor of “sex trafficking.” Sometimes, courts have sealed convictions for charges other than prostitution when they resulted from being sex trafficked.

“Sex trafficking” means someone used force, dishonesty, drugs or other tactics to encourage you to commit prostitution. It does **not** matter how long ago you were convicted.

You need to file a motion to get these cases sealed and can get help from either the Legal Aid Society (212-298-5029) or the Sex Workers Project at the Urban Justice Center (646-459-3024).

“NOTE: As of April 1, 2014, OCA will no longer report criminal records that only include one misdemeanor when the conviction occurred more than 10 years ago. However, individuals are still required to report these convictions when asked about them on a job application”.

WHO CAN SEE SEALED CASES TERMINATED IN MY FAVOR?

DCJS releases sealed information about arrests that were terminated in your favor or ended in a marijuana violation (pursuant to CPL §160.50) to very few people or agencies, including to:

- You, if you request your own rap sheet
- Agencies that issue gun licenses or permits if you apply for such a license or permit
- Your employer, **ONLY IF** you apply for a job as a law enforcement or peace officer, or any other job that requires you to carry a gun
- Your P.O., if you are arrested while on parole or probation
- Prosecutors when you move for an ACD for a marijuana offense
- A law enforcement agency that makes a motion to a court claiming that “justice requires” that they have the information and wins an order to unseal the case. This is rare.

WHO CAN SEE SEALED VIOLATION OR TRAFFIC INFRACTION RECORDS?

When violations and infractions (other than possession of marijuana) are sealed, any state records, police records and records in the prosecutor’s office about the case are sealed, but **not** court files. This means that it is still possible for the information to be discovered by an employer or anyone else who is

willing to search the court records by contacting the clerks' office of the court where your case was heard. But the Office of Court Administration does not include these cases as part of the criminal record checks that it sells and commercial background check companies are not permitted to release them.



NOTE: Cases that were sealed because they ended in your favor are sealed in the court files as well.

HOW DO I APPLY TO HAVE MY CASE SEALED?

The answer to this question depends on when and how the case ended.

As of November 1991, most cases that can be sealed should be sealed *automatically*. Before November 1991, sealing was not always automatic, so many cases that should have been sealed were not. Since November 1991, the court only has to notify DCJS about the disposition of the case, which it does routinely anyway. If the case was dismissed or otherwise terminated in your favor or resulted in a conviction for a sealable violation or traffic infraction, DCJS will automatically seal the case unless there is a “do not seal” order.

NOTE: If you were sentenced to a conditional discharge when you were convicted of a violation or traffic infraction, DCJS will usually seal your case at the end of the conditional discharge period. Likewise, court records probably will not show that your case is sealed until the end of the conditional discharge period because judges enter do-not-seal orders that last until the end of the conditional discharge period. Also, if your case ended in an adjournment in contemplation of dismissal, it will not be sealed until the adjournment period ends (usually six months or a year).



If you have dismissed cases or violation convictions that are not sealed on your rap sheet and seem to qualify for sealing, follow these steps:

- Go to the court where your case was heard and get an official disposition slip (one that includes the seal of the court) from the court clerk
- Check that the disposition slip has a stamp saying “sealed”
- If it does not, ask the clerk to check the court file and if it confirms that the case should be sealed, ask the clerk to stamp sealed on the disposition. (If the file does not say that the case is sealed, ask the clerk if the case has a “do not seal” order)
- Send the original disposition to DCJS along with your fingerprint card (if you have it) and a challenge form or a letter explaining that you want the case sealed.



REMEMBER: DCJS cannot seal your record if a judge has issued a “do not seal” order

You may have to take these steps to seal records when the court records do not have the case listed as sealed and the case does not have a “do not seal” order:

- 1. Call or write to the court clerk and ask what procedure to follow to get a case sealed in the court.**

Ask if you can apply to have a case sealed through the mail; many local courts may be willing to issue a sealing order if you simply write a letter, but some courts will require you to apply in person. Find court addresses at:

<http://www.nycourts.gov/courts/>

2. If the clerk says you can apply to have a case sealed with a letter:

Ask how (and to whom) you should address the letter, and whether you should send a copy to the district attorney. In your letter be sure to provide your name and address, any aliases, your arrest date, your docket or index number, and any other information that will help the clerk find the records of your case, including your NYSID number if you know it. (*See Appendix for an example of a Letter to the Court Requesting Sealing of Case Without an Affidavit.*) Also, ask the clerk to notify you if and when your records have been sealed (or if the judge decides not to seal your case).

3. If the clerk tells you that a letter is not good enough, write a sealing motion for each case you want the court to seal.

A model sealing motion is available at LAC's website:

www.lac.org

If you do not have access to the internet, you can also write to LAC to request a model.

4. Make two photocopies of the motion and affidavit.

The original goes to the court clerk, one copy is for the district attorney (see below) and one copy is for your records.

5. Take the original and one copy of the motion papers to the district attorney's office.

Whether you send a letter or file a formal sealing motion, the local district attorney (DA) or prosecutor's office must be notified. The law requires the court to give the DA at least five days' notice in case the DA would like to object. In some small courts, the court clerk will do this for you, while in others you will have to notify the DA yourself. Addresses of District Attorney's Offices can be found at:

<http://www.daasny.com/>

Be sure to ask the court clerk whether or not you need to contact the DA. Many courts will want proof that you served the DA's office a copy of the

motion papers. Ask the DA's office to stamp or mark the original so the court clerk knows that you gave the DA a copy.

6. Take the original copy of the sealing motion papers to the court clerk.

What happens then depends on the court. Some courts will give you a date to appear in front of a judge who will decide whether to approve the sealing motion. Usually, the court appearance is a formality and you do not have to be represented by a lawyer. If you feel unsure about going to court alone, ask your local Legal Aid or public defender's office if it can help. If your sealing motion is approved, the court will send a sealing order to DCJS. DCJS should then destroy your fingerprints and photographs connected with that case.



NOTE: There can sometimes be more than one docket or case number resulting from a single arrest, especially if there were a number of charges which were dealt with at different times. Be aware of this because if there is more than one case number, you will have to seal each one separately. If you don't check for this, parts of your record, which you believe to be sealed, may not be.

HOW DO I WRITE A SEALING MOTION?

You need a “notice of motion” and an “affidavit.”

Examples of a completed sealing motion (a notice of motion and an affidavit) can be found on LAC's website (under forms).

Carefully follow the model forms to fill out your sealing motion(s).

REMEMBER: You will need to make two extra copies of each sealing motion. Get the original notarized before making the copies.



WHAT IF I AM INCARCERATED AND CANNOT GO TO COURT?

If you are incarcerated, even a court that usually requires people to appear in person to make a sealing motion will usually allow you to file your motion by mail once you explain that you are incarcerated.



You can mail your sealing motion to the court clerk and enclose a letter explaining your situation. Also tell the clerk that you have mailed a copy of the motion forms to the district attorney. It is a good idea to mail your motion papers by certified mail, return receipt requested, to make sure that your request does not get lost.

HOW LONG DOES IT TAKE TO SEAL A CASE RECORD?

Do not expect immediate results if you are trying to seal entries on your rap sheet.

The criminal justice system in New York State is one of the largest and busiest in the country. For this reason, it will probably take at least three months for you to seal your records. If you are going to be fingerprinted for a job, start working on sealing cases far in advance. Sometimes you can also ask your attorney to write a letter to your employer explaining that this type



of conviction is usually sealed and that they are helping you to get the case sealed now. Some employers will disregard the letter, but others might find it convincing. If the case was dismissed in your favor, the employer is not legally allowed to consider that record even if it is not sealed.

HOW DO I KNOW THAT MY CASE HAS BEEN SEALED?

The easiest way to check whether your records have been sealed with DCJS is to request a second copy of your rap sheet.



REMEMBER: when you request your DCJS record, you will see your entire file, including both sealed and unsealed entries. So, your sealed entries will still be listed on the rap sheet that you review.

You will know that your cases have been officially sealed if you see “sealed 160.50” or “sealed 160.55.” The sealed notation is the code that tells the computer to leave out the entry when your rap sheet is sent to an employer. Always check to make sure that the phrase “sealed 160.50” or “sealed 160.55” is attached to the arrest. If it is not, then the record probably has not been sealed. (The older and newer rap sheet formats will show if something is sealed in different places. If you have the older rap sheet it should say “sealed” in the disposition column with an asterisk in the first column next to your arrest date. If you have the newer rap sheet, it will say sealed at the end of the cycle for each docket or indictment or case number.)

If more than one docket number is shown for a single arrest, they must each be sealed separately or part of the arrest record will remain unsealed and will show up on your rap sheet.

HOW DO I SEAL A CASE ON MY FBI RAP SHEET?

When DCJS seals an arrest record, it notifies the FBI to purge its files pertaining to that arrest.

Once again, the only way to be sure that the FBI record is cleaned up is to send for another copy of it.

The FBI does not purge records of sealed state offenses on its own; it responds to whatever DCJS tells it. If a case that is sealed on your DCJS rap sheet shows up on your FBI rap sheet, or if there is another error you want to correct, contact DCJS and ask to speak to the DCJS/FBI liaison.

CAN A CASE FROM MY YOUTH BE SEALED?

For much more detailed information about arrests that happened before you turned 19, see the Legal Action Center's publication *"Know Your Rights: Understanding Juvenile and Criminal Records and their Impact on Employment in New York State"* listed at the end.

JUVENILE DELINQUENCY

A juvenile delinquency adjudication is sealed and is not available to any person or public or private agency, but is available to the criminal justice system. If you get convicted of a crime in the future, the judge can consider the records and information on file with the Family Court when imposing your sentence. At the age of 16, you can apply to have your Juvenile Delinquency records sealed to the criminal justice system. (*See below.*)

JUVENILE OFFENDER

A juvenile offender conviction can not be sealed and is available to any person or public or private agency (unless the judge grants you Youthful Offender status after your conviction).

YOUTHFUL OFFENDER

A youthful offender adjudication is considered confidential and generally may not be made public to any person or public or private agency. You do not have to file a sealing motion. However, a YO will be available to the criminal justice system and the school where you are enrolled.

HOW CAN I HAVE MY JD SEALED FROM THE CRIMINAL JUSTICE SYSTEM?

If you have not committed certain designated felonies by the time you reach the age of 16, you can file a motion asking the court to seal your JD so that it is not available even to people in the criminal justice system. (For more information on how to do this, see *“Know Your Rights: Understanding Juvenile and Criminal Records and their Impact on Employment in New York State”* listed at the end.) The judge will look at the time that has passed since you were adjudicated a JD, the seriousness of the offense, and whether you have had further involvement with the juvenile or criminal justice systems. These motions are not always granted, but you can file again after one year.

WILL MY RECORDS BE SEALED IF MY CASE WAS TRANSFERRED FROM CRIMINAL OR ANOTHER COURT TO FAMILY COURT?

Yes, the record from both courts should be sealed. The Criminal Court or other court action will still appear on a rap sheet you request but it should be marked as sealed and should not be available to any person or public or private agency.



STEP-BY-STEP GUIDE TO SEALING

Remember, most misdemeanor and felony convictions cannot be sealed. If you have dismissed cases or violation convictions that you think should have been sealed but are not sealed on your rap sheet, take the following steps:

1. Visit or contact the court where the case was heard and ask the court clerk for a disposition for the case.
2. Look to see if the disposition has a stamp that says the case was sealed.
3. If there is no stamp that says sealed, ask the court clerk if the case is sealed.

- **If the clerk says yes**

Ask them to stamp the disposition to show that the case has been sealed.

- **If the clerk says no**

Ask if the case has a “do not seal order” on it.

- **If the clerk says yes**

The case cannot be sealed unless the do-not seal order is removed (usually because the order was temporary).

- **If the clerk says no**

Ask the clerk what the process is for getting the case sealed.

a) In some cases, clerks may be able to seal the case themselves.

b) In other cases, courts may ask you to write a letter asking for them to seal the case. Court addresses are listed at: <http://www.nycourts.gov/courts/>

Ask the clerk whether you must also send your letter to the District Attorney’s Office or whether they will do this for you. Addresses of District Attorney’s Offices can be found at: <http://www.daasny.com/>
Click on Find Your District Attorney.

Make sure to include as much information as possible in your letter.

- c) Other courts will tell you to file a sealing motion. Instructions for filing a sealing motion and a model of the motion are available on LAC's website:

www.lac.org

- 4. **If you get a disposition with a stamp saying the case is sealed**, send the official court disposition (with a raised seal) to DCJS, with a copy of your fingerprints (if you have them) and either a completed challenge form or a letter explaining as clearly as possible which case you want sealed.

If your case ended because the District Attorney declined to prosecute you but the case is not sealed on the rap sheet, send DCJS a copy of your fingerprints and either a completed challenge form or a letter explaining as clearly as possible that you want your case sealed, along with the letter from the District Attorney's office saying that they declined to prosecute you.

If you have a felony or a misdemeanor that you think can be sealed because the convictions were related to substance abuse and you have since completed a drug treatment program, contact the attorney who represented you in the case or the local public defender or Legal Aid Society office.

If you are a survivor of "sex trafficking" you may be able to vacate and seal convictions related to prostitution. Contact the Legal Aid Society at (212) 298-5029 or the Sex Workers Project at the Urban Justice Center at (646) 459-3024 for help.

APPENDIX: LETTER TO THE COURT REQUESTING SEALING OF CASE WITHOUT AN AFFIDAVIT

John Doe
352 Clinton Street, #6F
Brooklyn, NY 11205

February 12, 2001

Town Justice Court
Town of Clarkstown
New City, NY 10956

Dear Clerk of the Court:

I was tried in the Town Justice Court of Clarkstown on November 10, 1977, under docket number P12-3577. I pled guilty to the charge of Trespass (140.05 PL) and paid a \$50.00 fine.

I am contacting you now to request that the records of my violation conviction be sealed pursuant to Section 160.55 of the New York State Criminal Procedure Law. Please forward sealing orders to any agency that has a record of my arrest, including the Division of Criminal Justice Services, the Clarkstown Police Department, and the District Attorney of Rockland County.

In addition, please send me notification of the outcome of my sealing motion request. Thank you for your attention.

Sincerely,
John Doe

cc: District Attorney's Office

SECTION II.

CERTIFICATES OF RELIEF FROM DISABILITIES AND CERTIFICATES OF GOOD CONDUCT

WHAT IS A CERTIFICATE OF RELIEF FROM DISABILITIES? WHAT IS A CERTIFICATE OF GOOD CONDUCT?

If you have a conviction, a Certificate of Relief from Disabilities or a Certificate of Good Conduct can restore rights you lost as a result of your conviction (such as getting a state occupational license or serving on a jury). A certificate can also help you get a job or an occupational license.

If you have a certificate when you apply for a job or occupational license, the employer or licensing agency must assume that you are “rehabilitated” unless there is evidence indicating otherwise.

New York has a number of laws and rules that bar people convicted of certain crimes from working in certain jobs, getting certain licenses, or having access to certain benefits, like public housing. These laws mostly apply to people with felony convictions, but some laws also bar people with certain misdemeanor or violation convictions. Certificates can remove these “statutory bars.” This means that, instead of automatically being disqualified for a particular job or license because of your conviction(s), the employer or licensing agency has to consider you on an individual basis.

Having a certificate does not completely protect you from being denied a job or license because of your criminal record. **A certificate is not a pardon; it does not erase or expunge your conviction.** You still must list your

convictions when asked on job applications and employers will still see your convictions if they get your rap sheet or background check. Also, though an employer must take your certificate into account when deciding whether to hire you, the law still allows an employer or licensing agency to refuse to hire or license you if they have a basis for finding that your convictions are “job related” or that hiring or licensing you would create an unreasonable risk.

WHAT ARE THE DIFFERENCES BETWEEN THE TWO CERTIFICATES?

The major difference between Certificates of Relief from Disabilities and Certificates of Good Conduct is who is eligible to apply for each.

(The application procedure may also be different.)

Under most circumstances, the number of your felony convictions will determine which certificate you apply for. There are almost no differences in the rights restored by the two different certificates and both certificates demonstrate rehabilitation equally. The one important difference between the certificates involves restoring the right to hold “public offices.” This is explained below. They may also have a different effect on gun rights. Call DOCCS Clemency Department at (518) 457-7565 for more information.



WHICH CERTIFICATE SHOULD I APPLY FOR?

You can apply for a Certificate of Relief from Disabilities if you have any number of misdemeanor convictions but no more than one felony conviction.



IMPORTANT: In counting your felony convictions, conviction of more than one felony in the same court on the same day counts as one felony in applying for certificates. You **MUST** count felony convictions for federal or out-of-state charges towards your total. Cases in which you were adjudicated a juvenile delinquent or youthful offender are not included because they are not convictions. (They are also kept confidential.)

This means that you can apply for a Certificate of Relief from Disabilities if you have no felony conviction at all and one or more misdemeanor convictions, or if you have one felony conviction (see box on pg. 20) and any number of misdemeanor convictions.

If you have two or more felony convictions and any number of misdemeanors, you can ONLY apply for a Certificate of Good Conduct.

One Certificate of Good Conduct will cover all your felony and misdemeanor convictions. However, there is a waiting period, and your application for a Certificate of Good Conduct will be considered only if enough time has passed since your conviction.

The waiting period depends on your **most serious felony** (not your last one).

- For an A or a B felony, the waiting period is 5 years.
- For a C, D, or E felony, the waiting period is 3 years.

The waiting period starts the last time you got out of prison (onto parole or maxed out) **OR** the date of your last criminal conviction if you didn't get state time for it, **whichever was last.**



HOW DO I APPLY FOR A CERTIFICATE OF RELIEF FROM DISABILITIES?

The procedure for applying for a Certificate of Relief from Disabilities depends upon where you were sentenced and what kind of sentence you received.

Each Certificate of Relief from Disabilities only covers one conviction. You must apply for a separate Certificate of Relief from Disabilities for each misdemeanor or felony conviction. You can get Certificates of Relief from Disabilities for all your convictions, even those that occurred out of state or in federal court. If your conviction record is long, you should at least try to get Certificates of Relief from Disabilities for your most recent and most serious convictions.

You **CAN** get a Certificate of Relief from Disabilities directly from the judge at the time you are sentenced, unless you are sentenced to time in a state-run facility. If you have a job or license that will be affected by a plea, or you live in public housing, this can be particularly important. Talk to your defense attorney about asking for a Certificate of Relief at sentencing.

WARNING: If you are not a US Citizen, consult an attorney before applying for a Certificate of Relief from Disabilities or a Certificate of Good Conduct.



NOTE: Even though none of the application forms for Certificates of Relief from Disabilities or Good Conduct say that you must include “evidence of rehabilitation” along with your application, it may be helpful to include it when you apply. For a list of possible “evidence of rehabilitation” to include in your application packet, visit our website: www.lac.org click on “Resources” and then “Criminal Justice.” Also click on the “Need Legal Help” tab on our website’s homepage.

If you are still on probation or parole, you can get a temporary Certificate of Relief from Disabilities. A temporary Certificate of Relief from Disabilities automatically becomes permanent after a specified date unless the issuing court or the parole board revoke it.

If you were convicted in New York of a misdemeanor or of a felony but served no time in state prison, you must apply to the court where you were convicted for your Certificate of Relief from Disabilities (unless your case was transferred to a different court).

The court can issue the Certificate any time after you are sentenced. Every court sets up its own procedure for processing applications, so you should contact the court clerk to learn what steps are required. You might have to meet with a probation officer who will evaluate your rehabilitation. The probation officer will prepare a report that includes a recommendation on whether you should get a Certificate. Under a law passed in 2006, the court should provide you with a copy of that report if you request it.

If you were convicted of a felony and served time in a state prison, or if you were convicted of a federal or out-of-state misdemeanor or felony, you must apply to the New York State Department of Corrections and Community Supervision (DOCCS) for a Certificate of Relief from Disabilities for that case.

You cannot apply if you are still incarcerated, but DOCCS will automatically consider giving you a Certificate of Relief from Disabilities when it considers you for early release. If the certificate is granted, it will be mailed to your parole officer 90 days after your release (if your parole has not been revoked). If you are currently on parole (and the certificate was not issued when you were released), you should make the request for the certificate to your parole officer. He or she will then forward the request to DOCCS. If you have an out-of-state felony conviction, you should also apply to DOCCS.

To apply to DOCCS (if you are no longer on parole), download one application for each conviction for which you would like a certificate at:

http://www.doccs.ny.gov/pdf/DOCCS-CRD-Application_Instructions.pdf

or call and ask DOCCS to send you the application(s) at:

(518) 485-8953

Complete the form or forms the Department sends back, have it (or them) notarized, and then return it (or them) to the Certificate Review Unit. If you have worked in the last three years, you will have to provide proof that you paid income taxes. The Certificate Review Unit will assign your application to a local parole officer, who will conduct an investigation of your character. After the investigation, the parole officer will send an evaluation to DOCCS. The Department will make the final decision about your Certificate of Relief from Disabilities and will notify you by mail. The entire process may take over one year.

HOW DO I APPLY FOR A CERTIFICATE OF GOOD CONDUCT?

Once the required waiting period of three years or five years has passed, you should download an application at :

http://www.doccs.ny.gov/pdf/DOCCS-CRD-Application_Instructions.pdf

or call and ask DOCCS to send you an application at:

(518) 485-8953.

See note on page 22 for information on how this may change.

Complete the form to the best of your ability. You must have the form notarized before returning it to DOCCS. If you have worked in the last three years, you must provide proof that you paid income taxes.

WARNING: If you are not a US Citizen, consult an attorney before applying for a Certificate of Relief from Disabilities or a Certificate of Good Conduct.

The Certificate Review Unit will review your application to make sure you are eligible to apply for a Certificate of Good Conduct and then will assign your application to a parole officer in the county where you live. The parole officer will conduct an investigation into your rehabilitation. He or she will want to meet with you in your home. After the investigation, the parole officer will send a report to DOCCS and will recommend whether or not you should be granted a Certificate of Good Conduct. DOCCS will consider the report and will send you its decision by mail.



WARNING: It may take over a year to obtain a Certificate of Good Conduct or a Certificate of Relief from Disabilities from Parole. If you need your certificate in a hurry, you should explain why in a letter when you send the Certificate Review Unit your completed application form.

WHAT IF THE JOB I AM SEEKING IS CONSIDERED A PUBLIC OFFICE?

Some jobs in New York (like police officer and fire fighter) are considered “public offices.”

Though a Certificate of Relief from Disabilities is normally sufficient to lift a statutory bar against employment of people with criminal records, it cannot do this if the position is considered a public office. Only a Certificate of Good Conduct can lift a statutory bar to a “public office.”



There is no complete list of all the public offices in New York, but they include some elected and appointed offices as well as other offices including firefighters, police officers, or local school board members. Some public offices have “conviction bars” which mean that people with certain types of convictions are barred from holding one of these jobs or licenses without a Certificate of Good Conduct.

You should also find out whether a felony bar (or even a bar for misdemeanor convictions) applies to the position. One way to do this is to ask the employer or licensing agency both questions: Is this job a public office? Is there a felony bar, or a statutory bar for certain kinds of convictions?

If the answer to both questions is yes, you should apply for a Certificate of Good Conduct, even if you have only one felony conviction, or only misdemeanor convictions. You must tell the Parole Board why you need a Certificate of Good Conduct. Generally, you must show the Parole Board that the specific job you want is a public office, and that a felony bar (or other statutory bar) applies to the position.

STEP-BY-STEP GUIDE TO OBTAINING CERTIFICATES

1. Make sure you know exactly what convictions you have on your record.

- If you are not sure, get a copy of your RAP Sheet. You can order it from the state directly or you can call us to make an appointment for our RAP sheet workshop on Wednesdays. For more information, see *“Your New York State Rap Sheet: A Guide to Getting, Understanding and Correcting Your Criminal Record”*.
- If you think you have a record in other states or in federal court, you should also order a RAP sheet from the FBI.
- You may also be able to get a copy of your record from the other states where you were arrested. To find out how to get these records, go to our HIRE Network at:
<http://www.hirenetwork.org/>
select the state, then look for information about its “criminal record repository”.

2. Figure out exactly how many felony convictions you have.

- Remember to include felonies in other states and federal felonies.

IMPORTANT: If you were convicted of more than one felony in the same courtroom on the same day, it counts as only one felony for the certificate application.



3. If you have MORE THAN ONE FELONY CONVICTION (see p. 21 for how to count felony convictions):

- You **must** apply for the Certificate of Good Conduct. This certificate will cover all of your convictions.
- You **must** apply through DOCCS. For an application, visit http://www.doccs.ny.gov/pdf/DOCCS-CRD-Application_Instructions.pdf
- There is a waiting period, which depends on your **most serious felony** (not your last one).
 - For an A or a B felony, the waiting period is 5 years.
 - For a C, D, or E felony, the waiting period is 3 years.
- The waiting period started the last time you got out of prison (onto parole or maxed out) **OR** the date of your last criminal conviction if you didn't get state time for it, **whichever was last.**

4. If you have **NO FELONIES (or only ONE FELONY CONVICTION)**:

- You are eligible to apply for the Certificate of Relief from Disabilities. (If you want to restore public office rights, contact us for more information. If you want to restore gun rights call DOCCS Clemency Department at (518) 457-7576.)
- Certificates of Relief only cover one conviction. You can apply for certificates for each of your convictions.
- If you served time in state prison for a New York felony, apply to DOCCS for the Certificate for the felony. For an application, visit:
http://www.doccs.ny.gov/pdf/DOCCS-CRD-Application_Instructions.pdf
- If you have a felony or a misdemeanor in another state or in federal court, apply to DOCCS for the certificates for these convictions. For an application, visit:
http://www.doccs.ny.gov/pdf/DOCCS-CRD-Application_Instructions.pdf
- If you only served probation or time in a local jail for a New York felony, apply for the certificate from the Court Clerk where you were convicted.
- For all New York misdemeanors, apply for the certificate from the Court Clerk where you were convicted.

5. **Include evidence of rehabilitation in your application packet, even though the form won't ask for it.** If you need more time to gather evidence of rehabilitation, you'll have a chance to submit it after DOCCS receives your application.

WHERE CAN I GET MORE INFORMATION?

The Legal Action Center has written booklets on a number of topics related to individuals with a criminal record. These publications are all available for free at our website:

www.lac.org

Click on “Resources” and then “Criminal Justice”

Also click on “Need Legal Help” tab on our website’s homepage.

Your New York State Rap Sheet: A Guide to Getting, Understanding and Correcting Your Criminal Record

Explains how to get a copy of your criminal record and correct any errors it contains, as well as how employers get information about your record and what they are able to see.

Criminal Records and Employment: Protecting Yourself from Discrimination

Explains what New York employers may legally ask about your criminal record, how you should describe your record, and what rights you have to be free of job discrimination.

Are You . . .

A guide for avoiding job discrimination based on HIV/AIDS, an alcohol/drug history, or a criminal record.

How to Gather Evidence of Rehabilitation

A list of evidence you can use to convince employers and others of your rehabilitation.



The Legal Action Center is a non-profit, public interest organization that works on legal issues involving criminal records, alcohol and drug problems, and HIV/AIDS.

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The material contained in this publication is general information, it is not legal advice for your specific situation.

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