COLLATERAL CONSEQUENCES OF CONVICTION

Housing, Public Benefits, Employment, Licensing, and Sex Offender Registry

Practitioner's Guide
# Table of Contents

What Are Collateral Consequences? ........................................ 1  
Collateral Consequences Covered in this Guide....................... 2  
**Housing** .................................................................................. 3  
  Federal Public Housing .............................................................. 3  
      Mandatory Denials ............................................................... 4  
      Presumptive Denials ............................................................ 5  
  Federal Section 8 Vouchers ....................................................... 6  
  New York City Section 8 Vouchers ............................................ 7  
  Offenses Affecting Eligibility .................................................... 7  
**Private Housing** ...................................................................... 8  
  Bawdy House Evictions ........................................................... 8  
  Nuisance Evictions .................................................................. 9  
**Welfare and Public Benefits** .................................................. 11  
  Drug-related Felony Convictions ............................................. 11  
  Drug Trafficking ...................................................................... 13  
  Drug Possession ...................................................................... 14  
  Fugitive Felons and Parole Violators ...................................... 15  
  Welfare Fraud/Intentional Public Assistance Program Violations.. 16  
**Employment Discrimination** ............................................... 18  
  Illegal Pre-Employment Inquiries ............................................. 18  
  Remedies ................................................................................ 20  
  Legal Pre-Employment inquiries ............................................. 21  
  Disclosure of Crimes Committed as a Minor ......................... 22  
  Tips to the Ex-Offender .......................................................... 22  
**Licensing** ............................................................................ 24  
  Drivers License ...................................................................... 24  
  Security Guard ...................................................................... 27  
  Installing Security or Fire Alarm Systems ............................... 28  
  Private Investigators, Bail Enforcement Agents and Watch,  
    Guard and Patrol Agencies .................................................. 29  
  Armored Car Carriers ......................................................... 29
What Are Collateral Consequences?

Thinking Beyond Incarceration, Probation, and Fines.

Collateral consequences are civil punishments, usually some sort of restriction, that are imposed automatically upon a criminal conviction or guilty plea.\(^1\) What makes a consequence collateral is that it lies outside penal laws, criminal codes, and sentencing guidelines and is not necessarily imposed by the sentencing court.\(^2\) In other words, a consequence that is imposed by an entity other than a court, such as a government agency, and that may be found in an administrative code.\(^3\) Such consequences are growing in number, and can be debilitating, stigmatizing, long-lasting and may impede an ex-offender’s reentry into the community.\(^4\) Collateral effects of a criminal conviction or guilty plea are, in many instances, wide-reaching and long-lasting. However, few criminal defendants are aware that there may be consequences beyond incarceration and/or probation. Compounding this problem, the people to whom criminal defendants turn to for legal advice, criminal defense attorneys, are likewise largely unaware of the potential consequences of their clients’ guilty pleas or convictions. Those that are aware of the existence of collateral consequences, may not be aware of all of those that attach to the offense at hand. Defense attorneys are, therefore, unable to advise their clients of the full ramifications of a conviction or guilty plea.

Because collateral consequences are scattered throughout state and federal administrative codes, it is a time-consuming process to determine all of the collateral effects that might attach to a conviction of a particular offense. What would be most helpful to criminal defense attorneys in advising their clients of the collateral consequence of a guilty plea of conviction is if each offense of the penal laws and

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1 Penny Beardslee, Civil/Collateral Consequences of Criminal Convictions, Sept. 21, 2001, http://www.sado.org/training/collateral1.htm. Because a guilty plea has the same effect as a conviction, in this guide, the term “conviction” includes guilty plea.

2 See United States v. Gonzalez, 202 F.3d 20, 27 (1st Cir. 2000).

3 Beardslee, supra note 1.

4 See id.
criminal codes contained cross-references to all of the collateral consequences that attach to that offense. However, until such an undertaking is carried out, a practice guide such as this is necessary.

**COLLATERAL CONSEQUENCES COVERED IN THIS GUIDE**

This practitioner’s guide will outline several of the most serious collateral sanctions affecting a large segment of the individuals convicted of criminal offenses. Chapter 2 discusses the effects that an offender’s criminal convictions or criminal activity may have on public housing, including project-based and Section 8 government-subsidized housing, and also private housing. Chapter 3 outlines the various offenses, convictions of which affect access to welfare and other public benefits. Chapter 4 explains the extent of limitations on employment because of criminal convictions, and advises of impermissible employment discrimination practices. Chapter 5 deals with a subject that is closely related to limited access to employment opportunities — licensing restrictions on ex-offenders, including driver and occupational licensing. Chapter 6 reviews arguably the most stigmatizing of the collateral consequences — sex offender registration.

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5. This guide only reviews a select few of the most serious collateral consequences that affect a large number of criminal defendants. For information on collateral consequences relating to Voting Rights, Civic Rights, Education, Parental Rights, and Ability to Obtain or Possess a Firearm, see Jill J. Janeczko, Justice Action Center Capstone Project; Collateral Sanctions Resource (2006).
Housing

Public and Private.

Access to government-subsidized housing can be severely limited as a consequence of not only criminal convictions, but also criminal activity that does not necessarily result in a conviction. An individual may be denied admission to federal and state government-subsidized housing because of a past conviction and can be evicted due to convictions or criminal activity that occur after admittance into a housing program. These consequences are far-reaching in that they do not only affect the offender’s access to government-subsidized housing. A non-offender residing in public housing can lose access to because of the criminal activity of a housemate or guest.6

FEDERAL PUBLIC HOUSING

The Public Housing Administration (PHA) is charged with overseeing the selection of families for admission to the public housing program.7 With this oversight, the PHA is responsible for screening family behavior and determining a family’s suitability for tenancy.8 The information that the PHA may consider includes a “history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants.”9 Note that the PHA does not necessarily require a conviction in order to consider eligibility. Mere evidence of criminal activity in the absence of conviction may be considered. In addition, a household may be excluded because of non-criminal substance abuse. The PHA may consider:

- Drug-related criminal activity10
- Current illegal drug use11

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8 Id. § 960.203(c).
9 Id. § 960.203(c)(3).
10 Id. § 960.204(a)(1).
Conviction of methamphetamine production

Sex offender registration requirement

Alcohol abuse

Effect of PHA Finding of Criminal Activity

If the PHA finds that an individual who is applying for or currently lives in public housing engages in the criminal activity set forth above, it may deny admission or initiate eviction proceedings. The PHA has the utmost discretion to determine whether to deny admission and for how long, however, in some instances, the PHA is required to deny admission.

Mandatory Denials

Mandatory Denial for Methamphetamine Production

If you want to turn your taxpayer-subsidized residence into a meth lab, the only public housing you will be eligible for in the future is the penitentiary.

Because of the danger that meth labs present, Congress has imposed particularly harsh consequences for households with members who have been convicted of methamphetamine production on the premises of public housing.

In theory, mandatory denial applies only to households with members convicted of running a meth lab in public housing. However, in practice, PHA officials interpret the mandatory denial provision to apply to households with members convicted of running meth labs in non-public housing and members convicted of mere possession and not production of methamphetamine.

Any individual convicted of methamphetamine production faces a lifetime ban from public housing. The households of which they are members are also mandatorily denied admission. In addition, current public housing residents are subject to

11 Id. § 960.204(a)(2).
12 Id. § 960.204(a)(3).
13 Id. § 960.204(a)(4).
14 Id. § 960.204(b).
17 The Human Rights Watch conducted interviews with PHA officials in Los Angeles, CA who stated that they would exclude individuals convicted of methamphetamine production regardless of where the production took place, because conviction records do not specify whether production took place in public housing. Other PHA officials reported that they understood the exclusion provision to apply to individuals convicted of possession as well as production of methamphetamine. HUMAN RIGHTS WATCH, NO SECOND CHANCE, PEOPLE WITH CRIMINAL RECORDS DENIED ACCESS TO PUBLIC HOUSING 77 (2004), available at http://hrw.org/reports/2004/usa1104/usa1104.pdf.
mandatory eviction in the event a member is convicted of methamphetamine production.

Federal law prohibits admission to public housing for households with members who are subject to lifetime registration under state sex offender registration programs. In addition, current public housing residents face mandatory eviction in the event a member of the household becomes subject to lifetime sex offender registration.

The PHA is required to deny admission to public housing if any member of the household has previously been evicted for drug-related criminal activity, unless an exception applies. Alternatively, the PHA may admit the family, so long as it requires the family to exclude the offender from the household.

The offender is statutorily prohibited from admission to the public housing program for at least three years from the date of eviction for drug-related criminal activity. However, the PHA is granted with the discretion to extend the exclusion period beyond three years.

There are two exceptions to denial of admission. The PHA may admit the household in its entirety if the individual who caused eviction due to drug-related criminal activity has completed a supervised drug rehabilitation program. Previously evicted applicants should, therefore, be prepared to present evidence that such a program was completed. Note that the PHA will only consider admitting a previously evicted household if the program the individual completes is a program approved by the PHA. A household may also be admitted if the circumstances leading to the eviction no longer exists, such as if the member who caused the eviction is deceased.

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18 24 C.F.R. § 960.204(a)(4).
19 Id. § 960.204(a)(1).
20 Id. § 960.203(c)(3)(i).
21 Id. § 960.204(a)(1).
22 Id. § 960.203(c)(3)(ii).
23 Id. § 960.204(a)(1)(i).
24 Id.
25 Id. § 960.204(a)(1)(ii).
The PHA is required to determine if a household member is currently engaging in illegal drug use. A household must be denied admission if the PHA finds either one of two situations exists. First, that a member of the household currently uses illegal drugs. The PHA’s discretion here is quite broad. The PHA need not have direct evidence that a household member is currently using drugs. The PHA can use evidence of recent drug use (“recent” is not defined in the act) in order to draw the inference that the individual is currently using drugs. Second, the PHA must deny admission of a household if it finds that a household member’s pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. In addition to the presumptive denial of admission, the PHA has the discretion to evict a current household because of a member’s illegal drug use.

Remedy – Successful completion of a drug rehab program or otherwise rehabilitated

However, as with the more general exclusion for drug-related criminal activity, there are exceptions to denial of a household based on the illegal drug use of one of its members. The PHA may, but is not required to, consider evidence that the member is no longer engaging in illegal drug use and has either successfully completed a drug rehabilitation program or has otherwise been successfully rehabilitated.

Presumptive Denial of Admission for Alcoholic Abuse

Federal law prohibits admission to public housing for households with members who abuse alcohol or show a pattern of alcohol abuse, if the PHA finds that the member’s alcohol abuse may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. In addition to the presumptive denial of admission, the PHA has the discretion to evict a current household because of a member’s alcohol abuse.

Remedy – Successful completion of a rehabilitation program or otherwise rehabilitated

Just as with the denial of a household based on the illegal drug use of one of its members, for denial based on alcohol abuse, the PHA may, but is not required to consider evidence that the member is no longer engaging in alcohol abuse and has either successfully completed a rehabilitation program or has otherwise been successfully rehabilitated.

Federal Section 8 Vouchers

Section 8 Housing is a federal program that grants vouchers to low-income families. The vouchers are used to assist families in renting privately owned housing. Eligibility and eviction standards are the same as for federal public housing.
NEW YORK CITY SECTION 8 VOUCHERS

The New York City Housing Authority (NYCHA) administers Section 8 vouchers in New York City. The NYCHA standards for admission into the Section 8 program are less stringent than the standards for public housing. Convictions for offenses result in the collateral consequence of various periods of ineligibility for Section 8 vouchers. The ineligibility period begins to run after the individual has completed incarceration, probation, parole, whichever are applicable, and has paid any imposed fines. The offenses affecting eligibility for Section 8 housing vouchers are:

- Offenses resulting in lifetime sex offender registration
- Felonies relating to violent behavior, controlled substances, or alcohol
- Misdemeanors relating to controlled substances or alcohol
- Controlled substances or alcohol violations and DWI offenses

**Offenses Affecting Eligibility**

<table>
<thead>
<tr>
<th>Lifetime Sex Offender Registration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals subject to lifetime sex offender registration are ineligible for Section 8 housing vouchers. The ineligibility period extends until the individual is no longer subject to lifetime registration.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Violent, Controlled Substance, Or Alcohol Related Felonies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A, B, and C felonies carry a 6-year ineligibility period. Class D and E felonies carry a 5-year ineligibility period.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ineligibility for Controlled Substance or Alcohol Related Misdemeanors</th>
</tr>
</thead>
<tbody>
<tr>
<td>A first time offender convicted of a Class A misdemeanor faces a 4-year ineligibility period. There is no increase in the ineligibility period for a second Class A misdemeanor conviction. However, there is a 5-year ineligibility period if the individual convicted of a Class A misdemeanor has been convicted of a felony within the 10 years prior, or has been convicted of 3 or more Class A misdemeanors.</td>
</tr>
</tbody>
</table>

A first time offender convicted of Class B or unclassified misdemeanors faces a 3-year

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31 NEW YORK COUNTY LAWYERS ASSOCIATION, COLLATERAL CONSEQUENCES OF CONVICTION (2005).
32 Id.
33 Id.
34 Id.
35 Id.
36 Id.
ineligibility period. As with Class A misdemeanors, there is no increase in the ineligibility period for a second misdemeanor conviction. An individual convicted of a Class B or unclassified misdemeanor who has been convicted of a felony within the 10 years prior, or has been convicted of 3 or more misdemeanors faces an ineligibility period of 4 years.

Ineligibility for Controlled Substance or Alcohol Related Violations or DWI Offenses

A first time offender convicted of a controlled substance or alcohol related violation or DWI offense faces a 2-year ineligibility period. Again, there is no increase in the ineligibility period for a second conviction in the same class of offense. There is a 3-year ineligibility period imposed upon an individual who has been convicted of 3 or more felonies, misdemeanors, violations or DWI infractions within the 10 years prior to the conviction for the instant offense within this class.

PRIVATE HOUSING

Bawdy House Evictions

New York’s Real Property Law and Real Property Actions and Proceedings Law give landlords and third parties the right to initiate eviction proceedings against a lessee when either the lessee or occupant uses the building or premises for “any illegal trade, manufacture or other business.” Conviction of a crime is not required in order to evict a tenant. A tenant can be evicted based on a finding of criminal activity made by the Housing Court.

The types of activity for which an individual can be evicted under Bawdy House are prostitution, drugs, and gambling. Although a conviction is not necessary, convictions can be used as presumptive evidence of criminal activity in an eviction proceeding in Housing Court. For example, two or more convictions within a one-year period for prostitution offenses that took place on the premises is presumptive evidence of unlawful use of the premises; two or more convictions within a one-year period for gambling offenses engaged in at the premises is presumptive evidence of unlawful use of the premises. Although drug offenses are not explicitly set out in the statute, case

37 Id.
38 Id.
39 Id.
40 Id.
41 N.Y. REAL PROP. LAW § 231(1) (Consol. 2005).
42 The offenses include Prostitution under N.Y. PENAL LAW § 230.00 (Consol. 2005), Patronizing a Prostitute under Id. § 230.50, Promoting Prostitution in the First, Second, and Third Degrees under Id. §§ 230.30, 230.25, and 230.20, respectively, and Permitting Prostitution under Id. § 230.40. N.Y. REAL PROP. LAW § 231(3) (Consol. 2005); N.Y. REAL PROP. ACTS. LAW § 715(2) (Consol. 2005).
43 These offenses include N.Y. PENAL LAW § 225.00, Promoting Gambling in the Second Degree under id. § 225.05, Promoting Gambling in the First Degree under id. § 225.10, Possession of Gambling Records in the Second Degree under id. § 225.15, Possession of Gambling Records in the First Degree under Id. § 225.20, Possession of a Gambling Device under id. § 225.30. N.Y. REAL PROP. LAW § 231(5) (Consol. 2005); N.Y. REAL PROP. ACTS. LAW § 715(5) (Consol. 2005).
law includes use of the premises for drug offenses in the meaning of “illegal trade” and is, therefore, conduct for which a landlord can evict.\footnote{People v. Robertson, 61 A.D.2d 600, 604-605 (1st Dep’t 1978).}

If any illegal trade, manufacture or other business takes place on the premises, the lease is immediately void and the landlord automatically has the right of reentry.\footnote{N.Y. REAL PROP. LAW § 231(1) (Consol. 2005).} The RPAPL, however, gives landlords a cause of action to evict.\footnote{Id. § 711(5).} In an eviction proceeding, the landlord must prove the following elements:

- Illegal conduct
- Engaged in a business
- On more than one occasion
- Involving the premises
- With the participation, knowledge, or passive acquiescence of one or more of the tenants

Not only may the landlord initiate eviction proceedings, but the also gives or owner or tenant of a dwelling within 200 feet of the premises the right to compel the landlord to initiate eviction proceedings.\footnote{N.Y. REAL PROP. ACTS. LAW § 711(1) (Consol. 2005).}

The RPAPL also provides a less harsh consequence than eviction for a tenant engaged in illegal activity on the premises. The landlord, owner, or other tenant on the premises may commence an action to enjoin the illegal activity.\footnote{N.Y. REAL PROP. LAW § 231(6) (Consol. 2005).} Any landlord, owner, or tenant of a dwelling within 200 feet of the premises may also commence an action to enjoin the illegal activity.\footnote{Id.} The Attorney General may commence action in Supreme Court to enjoin illegal activities.\footnote{Id. § 231(5).}

**Nuisance Evictions**

Private landlords can also evict individuals under a nuisance theory. Most residential leases contain provisions that the tenant may not interfere with other tenants’ use and enjoyment of the property. Activity that interferes with other tenant’s use and enjoyment of the property can constitute a breach of the lease and, therefore, can constitute grounds for eviction.

A landlord can evict under the nuisance theory if he can show that the tenant’s conduct
interfered with the use or enjoyment of the property in that the tenant:

- Engages in ongoing and continuous offensive conduct
- Uses or permits the premises to be used for illegal or immoral purposes
- Engages in conduct or permits conduct that substantially damages the premises
- Engages in conduct that substantially interferes with the comfort and safety of the landlord or tenants of the premises or an adjacent building
Welfare and Public Benefits

Federal law imposes the collateral consequence of ineligibility for welfare benefits and food stamps upon individuals convicted of any drug-related felonies. These include drug trafficking and drug possession offenses.\textsuperscript{51} Fugitive felons and individuals convicted of welfare fraud are also ineligible.\textsuperscript{52} This collateral consequence affects not only the offender, but, similar to the collateral consequence of ineligibility for public housing, affects also the household to which the offender is a member.\textsuperscript{53} As with eligibility for public housing, eligibility for welfare and public benefits can be restored in some cases and there are certain federal benefits, from which offenders are not excluded.

**DRUG-RELATED FELONY CONVICTIONS**

A drug-related felony conviction is “any conviction under Federal or State law classified as a felony that involved the possession, use, or distribution of a controlled substance.”\textsuperscript{54} The impact that a drug-related felony conviction has on access to public benefits is harsher than the impact of convictions of non-felony drug trafficking or possession.

**Lifetime Exclusion**

An individual convicted of a Federal or State drug-related felony faces a lifetime of ineligibility for certain public benefits.\textsuperscript{55}

**Benefits Affected**

- the Temporary Assistance for Needy Families program (42 U.S.C. § 601); and

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\textsuperscript{51} Personal Responsibility and Work Reconciliation Act § 115.

\textsuperscript{52} Personal Responsibility and Work Reconciliation Act § 115.

\textsuperscript{53} 21 U.S.C. § 862a(b).

\textsuperscript{54} Id. § 862a(a).

\textsuperscript{55} Id.
There are many benefits that are not included in the lifetime ban as a result of a drug-related felony conviction, however access may be denied during periods of incarceration. Individuals convicted of a drug-related felony conviction may still access:

- Emergency medical services
- Short-term, non-cash emergency disaster relief
- Public health assistance for immunizations and testing and treatment of communicable diseases
- Prenatal care
- Job training programs
- Drug treatment programs
- Medicaid
- Federal disability benefits under Social Security Disability and Supplemental Security Income

As with public housing benefits, a family’s access to public benefits may be affected due to the conviction of a member of the family. If an individual convicted of a drug-related felony is a member of a family that received assistance under the Temporary Assistance for Needy Families program, the family’s assistance will be reduced by the amount allotted for the individual. For distribution of food stamps, a convicted individual will not be included as a family member in order to determine the amount of food stamps allotted.

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56 Id. § 862a(a)(1).
57 Id. § 862a(f)(1).
58 Id. § 862a(f)(2).
59 Id. § 862a(f)(3)(A).
60 Id. § 862a(f)(3)(B).
61 Id. § 862a(f)(4).
62 Id. § 862a(f)(5).
63 Id. § 862a(f)(6).
67 Id. § 862a(b)(1).
to the household. However, the individual’s income will be included as family income in determining the family’s eligibility to receive food stamps.68

**Duty of the Court to Advise** At least one jurisdiction has imposed a duty on the court, before accepting a guilty plea, to advise the defendant of the collateral consequence of a lifetime ban on access to food stamps and public benefits under 21 U.S.C. § 862a.69 Failure to advise of the effects of 21 U.S.C. 862a may render the guilty plea involuntary, however not necessarily per se involuntary.70

**State Opt Out** Individual states may decide to opt out of the lifetime ban of benefits under TANF and the Food Stamps Program. Some states have opted out completely, while others have modified the lifetime ban. New York is one of twelve jurisdictions that has opted out of the ban completely.71 However, convicted individuals in New York should be aware that the ban could kick in if they move to a state that has not opted out.72

**Drug Trafficking** Drug trafficker is defined as “any individual who is convicted of any Federal or State offense consisting of the distribution of controlled substances.”73 Federal law denies convicted drug traffickers from receiving federal benefits.74 The duration of the exclusion period varies depending on the number of times the individual has been convicted.75

**Duration of Exclusion**

<table>
<thead>
<tr>
<th>Offense</th>
<th>Exclusion Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>First offense</td>
<td>up to 5 years</td>
</tr>
<tr>
<td>Second offense</td>
<td>up to 10 years</td>
</tr>
<tr>
<td>Third offense</td>
<td>lifetime</td>
</tr>
</tbody>
</table>

For a first or second drug trafficking conviction, the duration of the ineligibility period is at the discretion of the court. For a first offense, the court may impose a period of ineligibility for Federal benefits for up to 5 years after the date of conviction.76 For a second offense, the court may impose an ineligibility period for up to 10 years after conviction.77 For a third drug trafficking conviction, the duration of ineligibility is not at the discretion of the court. Upon a

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68 Id. § 862a(b)(2).
69 United States v Littlejohn, 224 F.3d 960 (9th Cir. 2000).
70 Id.
71 N.Y. Soc. Serv. Law § 95.
72 Seventeen states have not opted out and impose the lifetime ban upon a conviction for a drug-related felony. Twenty-one states have modified the ban and will reinstate benefits if the individual satisfies some condition, such as undergoing drug treatment. LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY (2004), available at http://www.lac.org/lac/main.php?view=law&subaction=5.
74 Id. § 862.
75 Id. § 862(a).
76 Id. § 862(a)(1)(A).
77 Id. § 862(a)(1)(B).
third offense, an individual becomes permanently ineligible for federal benefits.  

**Benefits Affected**  
Individuals convicted of drug trafficking become ineligible for federal grants, contracts, loans, professional licenses, and commercial licenses provided by a Federal agency or federal funds.  

Federal benefits that are not affected as a result of a drug trafficking conviction are retirement, welfare, Social Security, health, disability, veterans benefit, and public housing.

**Exception to Exclusion**  
There is an exception to exclusion from federal benefits for an individual convicted of drug trafficking. Such individuals are not excluded from benefits relating to long-term drug addiction treatment programs. In addition, individuals who cooperate as a government witness will not be excluded from receiving benefits.

**Reinstatement of Benefits**  
An individual who is excluded from receiving public benefits due to a drug trafficking conviction may have benefits reinstated if he is deemed rehabilitated by the Secretary of Health and Human Services.

**DRUG POSSESSION**  
A drug possessor is defined as “any individual who is convicted of any Federal or State offense involving the possession of a controlled substance.” Federal law denies convicted drug possessors from receiving federal benefits. As with the length of exclusion for individuals convicted of drug trafficking, the duration of the exclusion period for individuals convicted of drug possession varies depending on the number of times the individual has been convicted.

**Duration of Exclusion**  
The ineligibility period for individuals convicted of drug possession is less severe than for those convicted of drug trafficking. For a first drug possession conviction, the court has the discretion whether to impose the penalty of exclusion of benefits, and if so, may render the individual ineligible for a period of up to one year. In addition, the court may require the individual to successfully complete a drug treatment program, submit to periodic drug testing, and perform community

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78 Id. § 862(a)(1)(C).
79 Id. § 862(d)(1)(A).
80 Id. § 862(d)(1)(B).
81 Id. § 862(a)(2).
82 Id.
83 Id. § 862(b)(1).
84 Id. § 862.
85 Id. § 862(a).
86 Id. § 862(b)(1)(A)(i).
87 Id. § 862(b)(1)(A)(ii).
service. For a second conviction the court may impose a period of ineligibility for Federal benefits for up to 5 years after the date of conviction. For a second offense, the court may impose an ineligibility period for up to 10 years after conviction and may also impose drug treatment or community service, or both, as a condition for the reinstatement of benefits after the ineligibility period.

**Benefits Affected**

Individuals convicted of drug possession become ineligible for federal grants, contracts, loans, professional licenses, and commercial licenses provided by a Federal agency or federal funds. Federal benefits that are not affected as a result of a drug trafficking conviction are retirement, welfare, Social Security, health, disability, veterans benefit, and public housing.

**Exceptions to Exclusion**

An individual who is convicted of drug possession will remain eligible for federal benefits if he declares himself an addict and enters long-term drug treatment or is deemed rehabilitated by the Secretary of Health and Human Services. In addition, individuals who cooperate as a government witness will not be excluded from receiving benefits.

**Reinstatement of Benefits**

Federal benefits will be reinstated for an individual convicted of drug possession if he either 1) completes a supervised drug program after becoming ineligible; 2) has otherwise been rehabilitated; or 3) has made a good faith effort to be admitted to a drug rehab program but was unable to do so because of inaccessibility or availability of a program or inability to pay.

**Fugitive Felons and Parole Violators**

Federal law prohibits states from providing certain public benefits to fugitive felons and parole violators. A fugitive felon is an individual who is fleeing to avoid prosecution, custody or confinement after conviction, for a crime or attempted crime that is a felony under the laws of the state from which the individual flees. A probation or parole violator is an individual who violates a condition of probation or parole under Federal or State law.

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88 Id. § 862(b)(1)(A)(iii).
89 Id. § 862(a)(1)(A).
90 Id. § 862(b)(1)(B).
91 Id. § 862(b)(1)(B).
92 Id. § 862(d)(1)(A).
93 Id. § 862(d)(1)(B).
94 Id. § 862(b)(2)
95 Id.
97 18 N.Y. COMP. CODES R. & REGS. § 351.2(k).
98 N.Y. SOC. SERV. LAW § 131 (14).
Benefits Affected

An individual classified as a fugitive felon or probation or parole violator is ineligible for TANF, SSI, public housing, and Food Stamps.99 However, the individual remains eligible for Medicaid. Note that the Department of Social Services will run a national warrant check on any individual applying for public assistance.

Welfare Fraud/Intentional Public Assistance Program Violations

In New York, an individual who is found through an administrative hearing to have committed intentional public assistance program violation (IPV) or food stamp intentional program violation (FS-IPV) becomes ineligible to receive public assistance.100 The duration of exclusion varies depending on the number of times the individual has committed such an offense and the amount of loss.

**IPV Duration of Exclusion**

<table>
<thead>
<tr>
<th>First offense</th>
<th>6 months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second offense</td>
<td>1 year</td>
</tr>
<tr>
<td>Third offense</td>
<td>18 months</td>
</tr>
<tr>
<td>Fourth offense</td>
<td>5 years</td>
</tr>
</tbody>
</table>

For a first IPV, an individual becomes ineligible for public assistance for a period of 6 months.101 However, if the first IPV causes a loss of between $1,000 and $3,900, the individual is ineligible for benefits for a period of 1 year.102 A first offense that causes loss in excess of $3,900 results in an ineligibility period of 18 months.103 An individual that commits a second IPV is ineligible for public assistance for a period of 1 year,104 however, if the IPV caused a loss in excess of $3,900, the ineligibility period is 18 months.105 A third IPV results in an ineligibility period of 18 months.106 Fourth and subsequent IPVs result in an ineligibility period for 5 years.107

**FS-IPV Duration of Exclusion**

<table>
<thead>
<tr>
<th>First offense</th>
<th>1 year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second offense</td>
<td>2 years</td>
</tr>
<tr>
<td>Third offense</td>
<td>lifetime</td>
</tr>
</tbody>
</table>

For a first FS-IPV, an individual becomes ineligible for food stamps for a period of 1 year.108 However, if the first FS-IPV is for using food stamps to purchase illegal drugs, the individual is ineligible for benefits for a period of 2 years.109 A second FS-IPV renders the individual ineligible for a period of 2 years,110 but if the FS-IPV is a second offense for trading food stamps for

100 18 N.Y. Comp. Codes R. & Regs. § 359.9.
101 Id. § 359.9(a)(1).
102 Id. § 359.9(a)(2).
103 Id. § 359.9(a)(3).
104 Id. § 359.9(a)(2).
105 Id. § 359.9(a)(3).
106 Id. § 359.9(a)(3).
107 Id. § 359.9(a)(4).
108 Id. § 359.9(c)(1).
109 Id. § 359.9(c)(2)(ii).
110 Id. § 359.9(c)(2)(i).
illegal drugs, then the individual becomes ineligible for life. An individual also becomes ineligible for life upon a third FS-IPV; if the individual traded food stamps for firearms, ammunition or explosives; or is convicted for knowingly using, transferring, acquiring, altering, or processing food stamps in violation of the Food Stamps Program.

**Duty of the Court to Advise** New York law provides that an individual may not be rendered ineligible for public benefits on the basis of a guilty plea to a federal or state offense unless the individual was advised on the record and in writing that the conviction may serve as the basis for disqualification from receipt of public assistance benefits. However, the court’s failure of the duty to advise does not necessarily mean that an individual who pleads guilty will be entitled to benefits. New York law also provides that an individual not advised of this collateral consequence may be denied access to public benefits after an administrative hearing to determine the same facts which were the basis of the guilty plea.

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111 Id. § 359.9(c)(3)(ii).
112 Id. § 359.9(c)(3)(i).
113 Id. § 359.9(c)(3)(iii).
114 Id. § 359.9(c)(3)(iv).
115 Id. § 359.9(d)(5).
116 Id.
Employment Discrimination

x-offenders face significant challenges in securing meaningful employment. Licensing restrictions may limit the jobs available to ex-offenders,\textsuperscript{117} student loan exclusions may foreclose opportunities for ex-offenders to obtain marketable skills,\textsuperscript{118} and although employment discrimination on the basis of a conviction is illegal, employers have certain rights in considering applicants that may have a discriminatory effect against ex-offenders.

It is important, therefore, for ex-offenders to understand their rights when applying for a job and to be aware of impermissible employment discrimination and the remedies available to them if discrimination takes place. One of the main areas affecting ex-offenders rights is the aspect of disclosure: what must an ex-offender disclose to a prospective employer; and to what extent may a prospective employer inquire into an applicant’s criminal history. One question that seems to perplex many ex-offenders is how much information must they give on an employment application concerning their criminal history. Both Federal and New York State law limit the type of information that an employer may solicit on an employment application. In New York, it is illegal to inquire into an applicant’s arrest that did not lead to conviction or inquire into a history of alcohol or drug dependence.

ILLEGAL PRE-EMPLOYMENT INQUIRIES

Arrests

There is no federal law that expressly prohibits employers from inquiring into an individual’s arrest record. However, federal courts have ruled that denying individuals jobs because of an arrest that did not lead to a conviction is illegal under Title VII of the Civil Rights Act of 1964.\textsuperscript{119} The reasoning is that minorities are arrested at a greater rate than their percentage of the population and, therefore, denying employment on the basis of an arrest has a racially discriminatory effect.\textsuperscript{120} On the other hand, New York State law, along with the laws

\textsuperscript{117} See infra, ch. 5
\textsuperscript{118} See JANEZCO, supra, note 5.
\textsuperscript{120} LEX K. LARSON, EMPLOYMENT DISCRIMINATION § 28.05 (Matthew Bender 2005).
of nine other states,\textsuperscript{121} expressly makes it illegal to inquire into or consider an applicant’s arrest that did not lead to conviction.\textsuperscript{122} In New York, this prohibition applies to any employer that is a “person, agency, bureau, corporation or association, including the state and any political subdivision thereof.”\textsuperscript{123} New York State Executive Law prohibits employers from asking for information regarding applicants’ arrests\textsuperscript{124} and prohibits discrimination on basis of arrest that did not lead to conviction.\textsuperscript{125} This prohibition applies to public employers, private employers, and licensing agencies, however, does not apply to law enforcement agencies.

New York State Correction Law makes it illegal to discriminate against current employees or applicants on the basis of a conviction.\textsuperscript{126} This prohibition applies to public employers, occupational licensing authorities, and private employers with 10 employees or more. While it is legal to ask applicant about past convictions, it is illegal to deny an individual employment on the basis of a conviction. The employer must consider each applicant as an individual and can only deny employment on the basis of a conviction if the offense is \textit{directly related} to the job in question and would create an unreasonable risk to the safety of people or property—for example, the conviction is of a DUI offense and the individual is applying for a position as a driver. In other words, the employer cannot have policy of not hiring ex-offenders.

\textbf{Disclosure of Arrests that did not Lead to Conviction} New York law provides that no individual that has been arrested but not convicted “shall be required to divulge information pertaining to the arrest or prosecution.”\textsuperscript{127} Thus, under New York law, an individual is protected from answering questions regarding arrests that do not lead to conviction.\textsuperscript{128} An individual has the right not to answer the question “Have you ever been arrested” and has the right to answer “No” to such a question.

\textbf{Exceptions to the Prohibition on Arrest Inquiries} There are two distinct exceptions to this rule. First, the law applies to arrests “not then pending.”\textsuperscript{129} Therefore, presumably, an employer may inquire into arrests not yet adjudicated and may refuse to hire on the basis of that arrest if it is directly related to the duties of the position. Second, the prohibition against inquiring into and

\textsuperscript{121} The nine other states are California, Hawaii, Illinois, Massachusetts, Michigan, Ohio, Rhode Island, Utah, and Wisconsin. \textit{LEGAL MOMENTUM, KNOW YOUR RIGHTS: ANSWERING QUESTIONS FROM EMPLOYERS ABOUT CRIMINAL RECORDS OR ARRESTS 1} (2005).

\textsuperscript{122} \textit{N.Y. EXEC. LAW} § 296(16) (Consol. 2006).

\textsuperscript{123} Id.

\textsuperscript{124} Id. § 296(15).

\textsuperscript{125} Id. § 296(16).

\textsuperscript{126} \textit{N.Y. CORRECT. LAW} § 750 (Consol. 2006).

\textsuperscript{127} \textit{N.Y. CRIM. PROC. LAW} § 160.60 (Consol. 2006).

\textsuperscript{128} Id.

\textsuperscript{129} Id.
discriminating on the basis of arrests that did not lead to conviction does not apply to “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.”

**Alcohol and Substance Abuse**

It is illegal for an employer to ask how much an applicant drinks and the frequency of the applicant’s past drug use. Answers to these questions can suggest addiction, and employers are prohibited from asking questions about addiction. Addiction is considered a disability, and it is, therefore, illegal discrimination to deny employment because of current or past alcohol addition or past drug use or addiction.

The Rehabilitation Act of 1973 prohibits discrimination against individuals with a past or current disability who are otherwise qualified for the job. The prohibition applies to private employers who hold government contracts, private and public employers who receive federal aid or grants, and the federal government. Under the Act, the definition of disability includes recovery from alcoholism or drug dependency. Employers may not discriminate on the basis of an applicant’s history of treatment for alcohol or drug dependence. If an applicant no longer illegally uses drugs, and is currently in drug treatment, employers may not discriminate on the basis that the applicant is in treatment. However, the protection against discrimination does not extend to individuals currently engaged in the illegal use of drugs.

The Americans with Disabilities Act (ADA) also protects individuals with current or past alcohol addiction or past drug addiction. The ADA Prohibits employers from discriminating against a qualified applicant with a disability. An employer must make reasonable accommodations for a disabled employee. The ADA defines disability as a past, current, or perceived mental or physical impairment that substantially limits one or more major life activity. Alcohol and drug dependency can constitute an impairment that substantially limits major life activity, but is determined on case by case basis. The ADA protects recovered, perceived, and current alcoholism and drug dependency, as well as individuals in treatment.

**Remedies**

**Remedies for Illegal Pre-Employment Inquiries**

New York State Human Rights Law provides remedies to individuals who have been asked illegal pre-employment questions or denied employment on the basis of arrests that did not lead to conviction. An individual may file a complaint with the State Division of Human Rights or file a lawsuit in state court.

130 Id.
133 N.Y. EXEC. LAW § 297 (Consol. 2006).
Ex-offenders who have been denied employment on the basis of a conviction may seek recourse. The remedies vary depending on whether the individual has been denied employment by a private or by a public entity.

If a public employer or public licensing agency discriminates against an applicant, New York State Human Rights Law authorizes a private right of action in state court. The statute of limitations, however, is only four months from the date the applicant was denied employment or license.\(^\text{134}\)

If an applicant is discriminated against by a private entity, he may seek recourse under New York State Human Rights Law and file a complaint with the State Division of Human Rights.\(^\text{135}\) The complaint must be filed within one year of the denial of employment.\(^\text{136}\) New York State law does not provide a private right of action as a remedy. In New York City, however, an individual has broader remedies available than merely the right to file a complaint as provided by state law.

New York City’s Human Rights Law provides applicants a private right of action against New York City employers who discriminate on the basis of an arrest or conviction. For claims against public New York City employers, the claim must be brought within four months of the denial of employment—just as under state law. However, for claims against a New York City employer in New York City, the rejected applicant has three years to file a complaint, rather than the one year provided for under state law.\(^\text{137}\)

**Legal Pre-Employment Inquiries**

It is legal for employers to ask applicants to list their convictions of “criminal offenses.” However, not all convictions are necessarily considered “criminal offenses,” and it is, therefore, important for an ex-offender to understand what exactly must be disclosed.

**Violations**

A conviction of a violation, for which the penalty may be a fine or up to 15 days imprisonment is not a criminal offense. An applicant is not required to disclose convictions of violations if asked about prior convictions.

**Misdemeanors**

A misdemeanor conviction, for which the penalty may be a fine and between 15 days and 1 year of imprisonment is a criminal offense. An Applicant must disclose convictions of misdemeanors if asked about prior convictions.

\(^{134}\) N.Y. CORRECT. LAW § 755; N.Y. EXEC. LAW § 296(15).

\(^{135}\) N.Y. EXEC. LAW § 296(15) (Consol. 2006).

\(^{136}\) Id.

\(^{137}\) N.Y. CITY ADMIN. CODE §§ 8-107(10)&(11), 8-502(d).
**COLLATERAL CONSEQUENCES OF CONVICTION**

**Felonies**  Conviction of a felony, for which the statutory penalty is at least one year imprisonment, is a criminal conviction and must be disclosed. The conviction must be disclosed even if the applicant did not serve time.

**DISCLOSURE OF CRIMES COMMITTED AS A MINOR**

Whether crimes committed when the individual was a minor must be disclosed is not as straightforward. When an individual commits a Crime as a minor, he is placed into one of three classifications: Juvenile Delinquency, Juvenile Offender, or Youthful Offender. Whether a conviction of a crime committed as minor must be disclosed depends on the classification.

**Juvenile Delinquent**  An individual is classified as a juvenile delinquent if he commits an act that would be a crime if committed by an adult, but the individual is between the ages of 7 and 16. Convictions of crimes that classify an individual as a juvenile delinquent are considered criminal offenses and must be disclosed.

**Juvenile Offender**  A juvenile offender is an individual between the ages of 13 and 16 who committed certain serious criminal acts. If the individual is convicted of these offenses, it is considered a criminal conviction and must be disclosed. These serious offenses are limited to violent felonies: kidnapping, murder, arson, rape, robbery.

**Youthful Offender**  A youthful offender is an individual between ages of 16 and 18 who committed a criminal offense and who the court decides to adjudicate as a youthful offender. Generally, youthful offender status is not granted unless the defense attorney persuades the judge that it is an appropriate case to do so. A youthful offender conviction is not considered a criminal conviction, and therefore, need not be disclosed unless employer specifically asks if applicant was adjudicated as a youthful offender.

**TIPS TO THE EX-OFFENDER**

**Don't Lie!**  An ex-offender should never lie on an employment application in response to legal pre-employment questions. However, as to illegal pre-employment questions, go ahead and lie. As discussed above, these illegal questions are questions that seek information pertaining to arrests that did not lead to a conviction. Withholding information about these arrests is not considered lying. As to legal pre-employment questions concerning convictions, the ex-offender should be candid. Employers have means available to them to discover the information on their own, such as credit reports and background checks.

**Check Your Credit Report**  It is legal for employers to obtain copies of an applicant’s credit report and to conduct a background investigation. Although it is illegal for credit reporting agencies to include information about an individual’s arrests that did not lead to conviction, it is legal for these agencies to list convictions. Therefore, if an applicant fails to disclose a conviction to a prospective
employer, the employer may very well find out about it by looking at a credit report. Under certain circumstances, it is illegal for credit reporting agencies to report convictions that are more than seven years old. If an individual is applying for a job for which the annual salary is less than $25,000, convictions from more than seven years prior may not be disclosed to the employer. An ex-offender should obtain a copy of his credit report to ensure that only convictions, and not arrests, appear, and that the information reported is accurate. Federal law now provides that consumers are entitled to obtain their credit report for free once a year from each of the three major credit reporting bureaus. Free reports from all three agencies may be requested on the World Wide Web at www.annualcreditreport.com. Inaccurate information on a credit report can be disputed with the credit reporting bureau. After a dispute is filed, the credit reporting agency is required by law to conduct an investigation and either correct or remove inaccurate information.

**Clean Up Your Rap Sheet**

Credit reporting bureaus obtain their information from public records, which are compiled from rap sheets. Therefore, it is important to ensure that rap sheets are accurate. Copies of New York rap sheets can be obtained from DCJS for a small fee. In some cases, the fee may be waived due to economic hardship. Federal rap sheets can be obtained from the FBI under the Freedom of Information Act.

Rap sheets should be checked for accuracy. An individual can challenge inaccurate information on a New York State rap sheet by filing a Statement of Challenge with DCJS. An individual may also request that DCJS seal: arrests that did not lead to conviction,\textsuperscript{138} youthful offender adjudications, and convictions of violations.\textsuperscript{139} Sealed information will still be available to law enforcement, but will not appear on rap sheets that DCJS distributes to credit reporting agencies.

\textsuperscript{138} N.Y. CRIM. PROC. LAW § 160.50.
\textsuperscript{139} Id. § 160.55.
Although discrimination on the basis of prior convictions is legally impermissible, several occupational licensing statutes exclude certain ex-offenders from eligibility. Such exclusions may seriously impact the post-conviction employment available to ex-offenders.\(^{140}\) Driver’s license restrictions may also seriously impact employment options to ex-offenders.

**Drivers License**
Revocation or suspension of an individual’s driver’s license obviously has serious implications for an individual’s employment opportunities. Many low skilled jobs may require an employee to be licensed to drive — taxi cab driver, delivery jobs, truck driving — and therefore an individual’s job pool may be severely limited. In addition, lack of transportation can geographically restrict an ex-offender’s employment prospects, particularly in those areas outside of the New York metropolitan area where public transportation is not as convenient, accessible, or dependable.

**Mandatory Revocation**
As a consequence of a conviction of the following crimes, a judge is required to revoke a driver’s license:

- Criminally negligent vehicular homicide\(^{141}\)
- A crime advocating overthrow of the government\(^{142}\)
- Leaving the scene of an accident without reporting\(^{143}\)
- Three or more violations of violating speed limit regulations\(^{144}\)
- Drag racing and speeding contests\(^{145}\)

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\(^{140}\) Most occupational licensing requirements are laid out in New York’s General Business Law. This guide will outline only a few of the restrictions to occupational licensing for ex-offenders. Consult the Articles of the General Business Law for restrictions that may attach to obtaining other occupational licenses.

\(^{141}\) N. Y. VEH. & TRAF. LAW § 510(a)(i) (Consol. 2006).

\(^{142}\) As set out in 18 U.S.C. § 2385. Id. § 510(a)(ii).

\(^{143}\) Id. § 510(2)(a)(iii).

\(^{144}\) Id. § 510(2)(a)(iv).
Second conviction of operating a vehicle as a taxicab or livery without obtaining the appropriate license

Mandatory Suspension

Mandatory suspension of a driver’s license for various periods follows as a consequence of conviction of the following offenses:

- Assault against a traffic enforcement agent – suspension between 30 and 180 days
  - First conviction – three month suspension
  - Second conviction – six month suspension
  - Third or subsequent convictions – one year suspension or until the age of 21, whichever is greater
- Youthful offender or juvenile delinquency adjudication of Penal Law §§ 240.62 or 240.60(5) – one year
- First conviction of operating a vehicle as a taxicab or livery without obtaining the appropriate license – sixty days
- Any controlled substance or marijuana misdemeanor or felony defined in Articles 220 or 221 of the Penal Law, including those adjudicated as juvenile or youthful offender – six month suspension
- Any violation of the federal controlled substances act – six month suspension

145 Id. § 510(2)(a)(vi).
146 Id. § 510(2-a)(a).
147 Id. § 510(2-b)(iv).
148 Id. § 510(2-b)(ix).
149 Id. § 510(2-b)(x).
150 Id. § 510(2-b)(xi).
151 Id. § 510(2-b)(xii).
152 Id. § 510(2-a)(a).
153 Id. § 510(2-b)(v).
154 Id.

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Driving while impaired by drugs – six month suspension

Discretionary Suspensions and Revocations

A judge is permitted, but not required, to suspend or revoke a driver’s license as a consequence of the following:

- Any violation of a local ordinance or regulation prohibiting dangerous driving
- Disability due to alcohol or drug use
- Conviction of any felony
- Habitual and persistent violation of traffic laws
- Gross negligence in the operation of a motor vehicle
- Knowingly permitting a motor vehicle to be used in furtherance of the commission of any crime
- Willfully evading lawful arrest or prosecution while operating a motor vehicle
- Any crime committed while under the age of eighteen; or under the age of 19 and adjudicated as a youthful offender - maximum suspension of one year for person
- Menacing against a traffic enforcement agent - maximum suspension of ninety days
- Failure to answer an appearance ticket or pay a fine in connection with the

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155 Id.
156 Id. § 510(3)(a).
157 Id. § 510(3)(b).
158 Id. § 510(3)(c).
159 Id. § 510(3)(d).
160 Id. § 510(3)(e).
161 Id. § 510(3)(f).
162 Id. § 510(3)(g).
163 Id. § 510(3)(a).
164 Id. § 510(3)(j).
violation of traffic laws

**Refusing a Breathalyzer**

In New York, it is illegal to refuse to submit to a breathalyzer test. Refusing a breathalyzer is not a lesser included offense of Driving Under the Influence or Driving While Intoxicated. Refusing a breathalyzer is an offense entirely independent of whether the individual is found guilty or not guilty of DUI or DWI. Refusing a breathalyzer results in immediate and automatic suspension of license for 6 months, even if found not guilty of DUI or DWI.

**Restoration of Drivers License**

An individual whose driver’s license was revoked may have his license restored under two circumstances: by direction of the commissioner of motor vehicles; or if the conviction that served the basis or the revocation or suspension was reversed on appeal.

**SECURITY GUARD**

Security guard positions are regulated by the Department of State. In order to be employed as a security guard, an individual must apply to the Department for a registration card. In order to qualify for a registration card, an applicant must not have been convicted of a “serious offense” or of a misdemeanor that bears a relationship to the performance of the duties of a security guard. It is illegal for a security guard company to knowingly employ an individual as a security guard if the individual has been convicted of an offense that bars eligibility for a registration card. The Department maintains a registry of all security guards and applicants and includes information such as name, address, and date of birth is kept on file. Although it is not permissible to keep criminal history information on file, the Department must be notified when a security guard or a security guard applicant is charged with a serious offense, and the Department will, in turn, notify the security guard company of the offense. The “serious offenses” that bar employment as a security guard are felonies involving:

- Possession of a controlled substance under sections 220.06, 220.09, 220.16, 220.18 and 220.21 of the Penal Law
- Sale of a controlled substance under sections 220.31, 220.34, 220.39, 220.41, 220.43 and 220.44 of the Penal Law
- Sale of marijuana under sections 221.45, 221.50 and 221.55 of the Penal Law

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165 Id. § 510(3)(k).
166 Id. § 510(5).
168 Id. § 89-h(5).
169 N.Y. GEN. BUS. § 89-g(3)(a) (2005).
171 Id. § 99(6) (2005).
 COLLATERAL CONSEQUENCES OF CONVICTION

- assault, aggravated assault and reckless endangerment
- vehicular manslaughter, manslaughter and murder
- any sex offense
- unlawful imprisonment, kidnapping, or coercion
- trespass and burglary
- criminal mischief, criminal tampering, and tampering with a consumer product
- arson
- larceny and theft
- computer crimes
- robbery
- forgery or making false written statements
- bribery
- perjury, tampering with or intimidating a witness, or tampering with physical evidence

Remedies
An individual’s eligibility to be employed as a security guard may be restored under four circumstances: an executive pardon of a conviction; a conviction has been vacated and replaced by a youthful offender; a conviction has been sealed; a certificate of relief from disabilities has been issued.

INSTALLING SECURITY OR FIRE ALARM SYSTEMS
In order to work in the business of installing, servicing, or maintaining security or fire alarm systems, an individual must be licensed to do so by the Secretary of State. An individual is not eligible to work with such systems if he has been convicted of felonies involving fraud, bribery, perjury, or theft. An individual who is already licensed may have his license suspended or revoked in the event he is convicted of any such crimes.

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172 N.Y. GEN. BUS. LAW § 89-g (2006).
COLLABORAL CONSEQUENCES OF CONVICTION

Remedies

An individual’s eligibility to work with security and fire alarm systems may be restored under three circumstances: a conviction has been vacated and replaced by a youthful offender; a conviction has been expunged or sealed; a conviction for which a certificate of relief from disabilities or certificate of good conduct has been issued.177

PRIVATE INVESTIGATORS, BAIL ENFORCEMENT AGENTS AND GUARD AND PATROL AGENCIES

An individual is ineligible to obtain a license to work as a private investigator, bail enforcement agent and watch, guard, or for a patrol agency if he has been convicted of a firearm or dangerous weapon offense, making or possessing burglar’s instruments, aiding escape from prison, unlawful entry of a building, or possession or distribution of habit-forming narcotics, or sections 165.25, 165.30, 240.35 of the Penal Law.178

Remedies

An individual’s eligibility to work as a private investigator, bail enforcement agent and watch, guard, or for a patrol agency may be restored under two circumstances: an executive pardon has issued or a conviction for which a certificate of relief from disabilities or certificate of good conduct has been issued.179

ARMORED CAR CARRIERS

An individual is ineligible to obtain a license to work as an armored car carrier if he has been convicted of a serious offense. These serious offenses are identical to those that bar eligibility to work as a security guard.

NAIL, HAIR, AND COSMETOLOGY

In order to work as a manicurist, pedicurist, waxer, or cosmetologist, an individual must be licensed.180 An individual is ineligible for a license if he has been convicted of fraud, falsifying business records, bribery, robbery, manslaughter, kidnapping, unlawful imprisonment, weapons offenses, or sex offenses.181

BARBER

An individual may not be licensed to work as a barber if he has been convicted of any crime involving moral turpitude.182

179 N.Y. GEN. BUS. LAW § 74(2) (2006).
Sex Offender Registration

New York Sex Offender Registry

New York law requires any sex offender to register with the New York Division of Criminal Justice Services (DCJS) if convicted of a registerable offense. There are a great number of offenses of which a conviction requires registration with the DCJS. A conviction of attempting to commit these offenses also requires registration. Most of the included offenses fall within the Sex Offenses Article of New York’s Penal Law. However, there are some scattered offenses that fall outside of the Sex Offenses Article that are included. Most of the offenses are felonies, but, perhaps surprisingly to some, a good number of the offenses are classified as misdemeanors.

REGISTERABLE OFFENSES

Sex Offenses

An individual convicted of committing or attempting to commit the following New York sex offenses is subject to registration as a sex offender with the DCJS:

- 130.20 – Sexual Misconduct
- 130.25 – Rape in the Third Degree
- 130.30 – Rape in the Second Degree
- 130.40 – Criminal Sexual Act in the Third Degree
- 130.45 – Criminal Sexual Act in the Second Degree
- 130.60 – Sexual Abuse in the Third Degree
- 130.52 – Forcible Touching, provided the victim of such offense is less than eighteen years of age
- 130.55 – Sexual abuse in the Third Degree, provided the victim of such offense is less than eighteen years of age

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offense is less than eighteen years of age

- 130.53 – Persistent Sexual Abuse
- 130.65-a – Aggravated Sexual Abuse in the Fourth Degree
- 130.90 – Facilitating a Sex Offense with a Controlled Substance

**Offenses Against the Right to Privacy**

An individual convicted of committing or attempting to commit Unlawful Surveillance in the First Degree under section 250.50 of the Penal Law is subject to registration as a sex offender with the DCJS.

**Offenses Affecting the Marital Relationship**

An individual convicted of incest or attempting to commit incest under section 255.25 of the Penal Law is required to register as a sex offender.

**Sexual Performance by a Child**

An individual convicted of committing or attempting to commit the following offenses against children is required to register as a sex offender:

- 263.05 – Use of a Child in a Sexual Performance
- 263.10 – Promoting an Obscene Sexual Performance by a Child
- 263.11 – Possessing an Obscene Sexual Performance by a Child
- 263.15 – Promoting a Sexual Performance by a Child
- 263.16 – Possessing a Sexual Performance by a Child

**Kidnapping Offenses**

An individual convicted of committing or attempting to commit the following kidnapping offenses is required to register as a sex offender:

- 135.05 – Unlawful Imprisonment in the Second Degree
- 135.10 – Unlawful Imprisonment in the First Degree
- 135.20 – Kidnapping in the Second Degree
- 135.25 – Kidnapping in the First Degree, provided the victim is less than seventeen years old and the offender is not the parent of the victim
An individual convicted of committing or attempting to commit the following prostitution offenses is required to register as a sex offender:

- 230.04 - Patronizing a prostitute in the Third Degree, if the person patronized is in fact less than seventeen years of age,
- 230.05 – Patronizing a prostitute in the Second Degree
- 230.06 or subdivision two of section 230.30
- 230.32 - Patronizing a prostitute in the Second Degree

An individual convicted of committing or attempting to disseminate indecent materials to a minor in the first degree under section 235.22 of the Penal Law is required to register as a sex offender.

A conviction of or a conviction for an attempt to commit any of the following offenses is a sexually violent offense:

- 130.35 – Rape in the First Degree
- 130.50 – Criminal Sexual Act in the First Degree
- 130.65 – Sexual Abuse in the First Degree
- 130.66 – Aggravated Sexual Abuse in the Third Degree
- 130.67 – Aggravated Sexual Abuse in the Second Degree
- 130.70 – Aggravated Sexual Abuse in the First Degree
- 130.75 – Course of Sexual Conduct Against a Child in the First Degree
- 130.80 - Course of Sexual Conduct Against a Child in the Second Degree

The duration of the sex offender registration requirement depends on two factors: the risk level determination and the designation determination. A convicted individual’s risk level is an individualized finding; therefore, two individuals who commit the same crime may be subject to differing registration requirements.

**Risk Level Determination**

After an individual has been convicted of a registerable offense (or an attempt thereof) a judge must determine the offender’s “risk level” upon the offender’s release to the community. The risk level reflects the individual’s likelihood of recidivism and the danger the individual poses to the community. The risk level determination is made at the discretion of the judge. Risk Levels range from 1 to 3, with level 1 representing the lowest likelihood of
recidivism and level 3 representing the highest likelihood of recidivism.

**Designation Determination**

In addition to making a risk level determination, the judge must determine whether the individual should be given a designation of sexual predator, sexually violent offender, or predicate sex offender. A sexual predator is defined as a sex offender who has been convicted of a sexually violent offense and who suffers from a mental condition that makes the individual likely to engage in predator violent offenses.\(^{184}\) A sexually violent offender is anyone who has been convicted of committing or attempting to commit sections 130.35, 130.50, 130.65, 130.66, 130.67, 130.70, 130.75 and 130.80, 130.53, 130.65-a, or 130.90 of the Penal Law or committing or attempting to commit any of the general offenses requiring registration as a hate crime.\(^{185}\) A predicate sex offender is any sexual predator or sexually violent offender who has commits a second offense.\(^{186}\)

<table>
<thead>
<tr>
<th>Risk Level 1 with no Designation</th>
<th>The duration of the registration requirement for an individual classified as Risk Level 1 with no designation must register annually for a period of 20 years.(^{187})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk Level 1 with Designation; Risk Level 2 or 3 Lifetime registration</td>
<td>The duration of the registration requirement for an individual classified as Risk Level 1 and who has been designated a sexual predator, sexually violent offender, or a predicate sex offender must register annually for life.(^{188}) Any individual classified as Risk Level 2 or 3 with or without designation must register annually for life.(^{189})</td>
</tr>
<tr>
<td>Risk Level 3 or Sexual Predator Designation Verification Requirement</td>
<td>Any individual who has been classified as Risk Level 3 or any Risk Level but designated a sexual predator must, in addition to registering annually, verify his or her address every ninety days with the police department.(^{190})</td>
</tr>
</tbody>
</table>

**Records Kept**

The DCJS keeps a directory of registered offenders. The information collected and maintained in the registry is quite extensive and is shared with other registries and is accessible to the public. Directory information includes the individual’s:

- Description

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\(^{184}\) N.Y. CORRECT. LAW § 168-a(7)(a) (2006).

\(^{185}\) *Id.* § 168-a(7)(b).

\(^{186}\) *Id.* § 168-a(7)(c).

\(^{187}\) *Id.* § 168-h(1).

\(^{188}\) *Id.* § 168-h(2).

\(^{189}\) *Id.* § 168-h(2).

\(^{190}\) *Id.* § 168-h(3).
• Aliases
• Addresses
• Internet accounts/screen names
• Photo
• Fingerprints
• Name of higher learning institution associated with
• Facts of crime
• Modus operandis
• Place of employment if Risk Level 3

**Failure to Register**  Failure to register or verify information is a violation of probation and parole and could result in immediate revocation of parole. Failure to register is also a crime in and of itself.\textsuperscript{191} The first failure is a Class A misdemeanor. Any subsequent failure to register is a D Felony.\textsuperscript{192}

**Petition for Relief or Modification**  An individual who has been classified as Risk Level 2 with no designation may petition the sentencing court for relief. The individual may only submit such a petition after he has been registered for a minimum of 30 years.\textsuperscript{193} The individual must prove by clear and convincing evidence that his risk of repeat offense and threat to public safety render registration unnecessary.\textsuperscript{194} Any individual required to register may petition the court for an order modifying the level of notification.\textsuperscript{195}

\textsuperscript{191} Id. § 168-t.
\textsuperscript{192} Id.
\textsuperscript{193} Id. § 168-o(1).
\textsuperscript{194} Id. § 168-o(1).
\textsuperscript{195} Id. § 168-o(2) (2006).