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## Getting the RAP Down:

Legal Protections and Employment Strategies  
for Applicants with Criminal Records

2010 NYCETC Workforce Development Summit & Expo  
May 14, 2010

[www.reentry.net](http://www.reentry.net)

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## New York State Legal System Quiz

- Individuals with felony convictions are automatically barred from becoming which of the following in New York State: a) **licensed bingo operators**; b) **attorneys**; c) **junk dealers in New York City**?

ANSWER: **licensed bingo operators** and **New York City junk dealers**. In fact, there are over 100 occupations that require a license in New York State.

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## New York State Legal System Quiz

- Most Violation convictions are sealed automatically in New York State?

ANSWER: **TRUE**. Sealing of violations is automatic at the end of a sentence, with four exceptions:

- Driving while ability impaired
- Loitering in a sexually deviant manner or for the purpose of prostitution.
- Possession of less than 7/8 of an ounce of marijuana will only be sealed three years after the offense occurred, and if you have no further drug convictions during that three-year waiting period
- The judge orders that your violation not be sealed.

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### New York State Legal System Quiz

3. Felony convictions can be sealed after 10 years, and Misdemeanor convictions after 7 years?

ANSWER: **False.** Most Felonies and Misdemeanors do not seal in NY State after any period of time. The 2009 Rockefeller Drug Law reforms, however, introduced *conditional* sealing of certain Misdemeanors and Felonies for the first time.

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### New York State Legal System Quiz

4. Three misdemeanor convictions equal one felony?

ANSWER: **False.** There is no “plus plus equals” situation for the purpose of criminal records under New York State law.

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### New York State Legal System Quiz

5. Every individual who has been arrested has one official rap sheet where all information about his/her criminal history is compiled, and that is the source employers use to learn about criminal involvement?

ANSWER: **False.** Individuals have two official rap sheets (DCJS & FBI), and employers obtain criminal history information from a number of other official and non-official sources, including court records, records of incarceration, and internet searches.

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New York State Legal System Quiz

6. Rap sheets are usually accurate?

ANSWER: **False.** DCJS and FBI rap sheets often include incomplete or erroneous information, while commercial background checks are especially prone to errors since they are based solely on name and date of birth.

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New York State Legal System Quiz

7. A person with a felony conviction cannot work as a nurse or private security guard, no matter what?

ANSWER: **False.**

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New York State Legal System Quiz

8. Employers may legally ask a job applicant if she has ever been arrested?

ANSWER: **False.** Most employers can ask only about convictions, not arrests. Only law enforcement may ask about arrests that did not lead to convictions.

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New York State Legal System Quiz

9. An employer may legally ask a job applicant if she has ever been convicted of a violation or adjudicated as a youthful offender?

ANSWER: **False.** Employers can ask only about *criminal* convictions. Violations and YO adjudications are not considered criminal convictions.

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New York State Legal System Quiz

10. Employers may ask about criminal convictions from more than 10 years ago?

ANSWER: **True.** There is no time limit on how far back an employer can ask about convictions under state law. (The former 7 year limit on criminal conviction information for certain jobs under the federal Fair Credit Reporting Act was repealed in recent years, although a number of states and many employers continue to use the 7 year window.)

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New York State Legal System Quiz

11. Employers may have a blanket policy of refusing to hire anyone who has a criminal record, or who has a certain type of criminal record?

ANSWER: **False.**

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## New York State Legal System Quiz

12. If an individual receives a Certificate of Relief from Disability for a conviction, employers will still be able to see that conviction on a background check?

ANSWER: **True.** Certificates serve a number of purposes, but they do not seal convictions.

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# EMPLOYMENT RIGHTS

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## Anti-Discrimination Laws: Arrests

- New York State and New York City Human Rights Laws prohibit public or private employers from denying an individual a job because of an arrest that did not result in a conviction.
  - NYS Executive Law §296(16)
  - NYC Admin. Code § 8-107(11)

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## Anti-Discrimination Laws: Arrests

- State Human Rights Law specifies that employers **may not even ask about arrests** that did not lead to conviction and that applicants **don't have to disclose information about these arrests**, even if asked.
- "Sample Letters to Employers" on Reentry Net/NY

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## Anti-Discrimination Laws: Convictions

- New York State and City Human Rights and Correction Laws prohibit an employer from having a blanket policy against hiring anyone with a criminal record.  
(Executive Law §296 (15) & (16); NYC Admin. Code § 8-107(11)) and Correction Law §§750-755)
- It is illegal to deny someone a job or license because of his or her conviction *unless*:
  - ↳ Conviction "directly related" to job in question and / or
  - ↳ Hiring the person would create an "unreasonable risk" to safety of people or property.

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## Eight-Factor Test

Employers **must** consider:

- a) The public policy of New York State to encourage the licensure and employment of persons previously convicted of one or more criminal offenses
- b) The specific duties of the job or license
- c) The bearing, if any, of the conviction on those specific duties
- d) The length of time since the conviction
- e) Job-seekers age at the time of conviction
- f) The seriousness of the offense
- g) Any evidence of rehabilitation
- h) The legitimate interest of the employer in protecting the safety of its property, clients, and employees

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## Enforcement

- Right to know why you were denied a job (Corr. L. Section 753)
- Human Rights Law permits a private right of action (lawsuit) if denied based on an arrest with favorable disposition
- Corrections Law Article 23-A is more limited:
  - Private employer: file a complaint
  - Public Employer: Article 78

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## Alcohol and Drug Dependence

- Covered by Americans with Disabilities Act (ADA) – Federal Law
  - Prohibits discrimination by public or private employers (with 15 or more employees) against persons with a past or current disability
  - DOES NOT cover those who “currently engage in the illegal use of drugs”
  - DOES cover those in treatment, including methadone

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## Alcohol and Drug Dependence

- Covered by New York State Human Rights Law
  - Broader reach – covers employers with four or more employees
  - Protects those currently using illegal drugs if they can perform job duties

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### Employers May NOT Ask

- Have you ever been arrested?
- Have you ever been convicted of a non-criminal offense?
- Have you ever been adjudicated as a youthful offender?
- Are you currently, or have you ever been, in a substance abuse treatment program?

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### Employers May Ask

- Have you ever been convicted of a crime? / Do you have any convictions?
  - They may ask for some details about your convictions
- Do you have a current physical or mental condition that might prevent you from doing the job?

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### Bottom Line

- Every jobseeker **must**:
- Be truthful and thorough when discussing criminal history
  - Have read her own rap sheet and reviewed it for errors
  - Know what rights she has when seeking employment

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# Criminal History Basics

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## Types of Convictions

- **Felony** – serious crime; carries one year or more in prison, no maximum sentence. Class A-E
- **Misdemeanor** – Less serious crime; carries up to 1 year in jail or 3 years probation; Class A, B, Unclassified
- **Violation** – *Non-criminal* offense, maximum 15 days in jail, *sealed for civil purposes*

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## Youth & Criminal Records

- Juvenile Delinquent
  - Family court (youths under 16)
  - NOT a conviction
    - Sealed for civil purposes; can sometimes be sealed for criminal justice purposes
- Youthful Offender Adjudications
  - Adult criminal court (Age 16-19)
  - NOT a conviction; sealed for civil purposes
- Juvenile Offender
  - Criminal Court (youth aged 13-15 charged with very serious crimes)
  - Considered a conviction; Not sealed

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## Fingerprint-Based Rap Sheets

- Managed by the Division of Criminal Justice Services (DCJS) in Albany
- Who has access?
  - Criminal justice agencies
  - Public employers and licensing agencies (e.g., home health care, childcare agencies, schools, hospitals, museums, school bus drivers, etc.)
  - Individuals entitled to own copy, *including sealed records*

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## How to Get a Copy of Your Fingerprint-Based Rap Sheet

- If incarcerated for more than 45 days or on public assistance, fee is waived.
  - Legal Action Center – (212) 243-1313
  - Community Service Society – (212) 614-5441Both groups will take fingerprints and help prepare record review request
- Otherwise, must visit “Live Scan” site; total fee = \$61.75. See <http://criminaljustice.state.ny.us/ojs/recordreview.htm>.
- DCJS sends a copy of rap sheet along with “Statement of Challenge” form

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## Private Background Checks

- Private employers purchase criminal history information directly from the Office of Court Administration (OCA) for \$55, or from private “consumer reporting agencies.”
- Private employers may not access DCJS rap sheets.
- There are over 600 different consumer reporting agencies, each with different formats and potential errors.

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## How to Get a Copy of Your Private Criminal History Report

- Consumer reporting agencies are covered by the Fair Credit Reporting Act
- Job-seekers should request a FREE background report from one of the large companies
  - Hire Right <http://www.hireright.com/Consumers-Applicants.aspx>
  - Choice Point and others

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## Certificates that Demonstrate Rehabilitation

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## Importance

- Can prevent evictions and preserve employment
- Remove statutory bars to employment, licensing (including healthcare and security guard licensing), and public housing residency imposed because of a criminal conviction
- Provide a “presumption of rehabilitation” for employment purposes
- Do not seal or expunge but appear on rap sheet beside conviction

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### What Certificates CAN'T Do

- Do not completely protect against denial of a job or license because of a criminal record
- Not a pardon
- Do not erase or seal the conviction record
- Convictions must still be disclosed on job applications
- Do not remove restrictions for certain government benefits or educational benefits
- Jury Service – still left to Jury Commissioner's discretion

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### Certificates of Relief from Disabilities (CRD)

- Eligible: Individuals with one felony or fewer
- Apply for one CRD for each conviction
- Apply at Sentencing Court
  - At time of sentencing
  - Any time after sentencing
- Federal or out of state convictions – apply through Division of Parole in Albany (same application as CGC)

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### Certificates Good Conduct (CGC)

- Eligible: Individuals with multiple felony convictions
- Waiting period (based on most serious conviction); starts upon release from prison
  - A & B Felonies: 5 years from completion of sentence
  - C, D, & E Felonies: 3 years
  - Misdemeanors: 1 year
- Apply through Division of Parole in Albany
  - process time 12-22 months

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## Resources

- Reentry Net – [www.reentry.net/ny](http://www.reentry.net/ny)
  - ↳ Overviews
  - ↳ Applications and forms
- Legal Action Center – [www.lac.org](http://www.lac.org)
- LawHelp/NY – [www.lawhelp.org/ny](http://www.lawhelp.org/ny)

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## Scenarios

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### Scenario #1

Alex R. has several convictions, but all are for violations, and one from a family court case when he was very young. He was arrested last year for a minor offense, but the case ended in February and his lawyer told him it would be dismissed.

He applies for a job at Cablevision and gets it. Then he receives a letter saying they can't hire him based on his open criminal case and prior criminal history.

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### Scenario #2

Diane T. has several misdemeanor and felony convictions, but has not been arrested since her 7-year-old daughter was born. Since then, she earned a college degree, made dean's list, and supported her daughter.

She applies for a slightly better-paying job, and is told they don't hire people with multiple felony convictions.

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### Scenario #3

Jonathan A. has three misdemeanor drug possession convictions from 1998, 2003, and 2004.

He began working at a security guard company, and applied for his license through the employer. He received a letter saying his license was denied, and his employer terminated him.

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**Answering the Dreaded “Have you been convicted of a crime?” Question on an Application or Interview**

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### How Would You Answer the Conviction Question? (cont.)

- How do people typically answer the question?
  - Lie
  - Say too little: “Yes” (then silence)
  - Say too much: “Sure, and let me tell you all the details about my drug dealing days”
  - Blame someone else
  - Insist on innocence
- All of these responses are likely to backfire

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### Four Strategies to Answering the Conviction Question

1. Defy Stereotypes
2. Master the Four-Step Response
3. Create a Statement of Criminal History
4. Develop a Conviction Information table

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### Defy Stereotypes

Q: Employers typically hire people who they like and feel comfortable with. How long does it actually take for an employer to decide whether he or she likes an applicant?

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## Defy Stereotypes (cont.)

A: Between 100 milliseconds – 500 milliseconds.

According to studies by Princeton U. psychologists, “all it takes is a tenth of a second to form an impression of a stranger from their face, and . . . longer exposures don’t significantly alter those impressions (although they might boost your confidence in your judgments.)” This includes traits such as attractiveness, likeability, competence, trustworthiness, and aggressiveness – precisely what employers hire on.

Eric Wargo, “How Many Seconds to a First Impression?” *APS Observer* 19 #7 (July 2006): [http://www.psychologicalscience.org/observer/19/7/first\\_impression](http://www.psychologicalscience.org/observer/19/7/first_impression)

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## Defy Stereotypes (cont.)

- At first, people judge others based primarily on physical attributes like race, gender, height, weight, etc.
- We can’t change most of those characteristics, but we can control three of them:
  - 1) What we put on the outside of our bodies (clothes, tattoos, piercings)
  - 2) Hygiene
  - 3) Body Language

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## Defy Stereotypes (cont.)

Since applicants are **only required to disclose what an employer directly asks** about their criminal record (either in person or on an application form), not looking like an employer’s stereotypes of a criminal reduces the likelihood of being asked.

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## Master the Four-Step Response

1. State **the year when the conviction occurred**, whether it was a **felony or misdemeanor**, and add **“non-violent”** or **“non-theft”** if possible. Do not name the actual charge. (For example, a 2003 conviction for felony drug sales would be “Yes, I was convicted of a non-violent, non-theft related felony in 2003.”)
2. Express **remorse**
3. State **that you’ve changed** since the conviction
4. Show **how you’ve changed** since the conviction

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## Master the Four-Step Response

(cont.)

- Few people can improvise a convincing response to the conviction question under the pressure of an interview.
- To ensure that your participants sound genuine, have them write out and practice, practice, practice (and then practice some more) a statement in their own words using the four-step response.

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## Example Statement of Criminal History

I was convicted of a non-violent, non-theft felony in 2003. During that time, I reached a low point in my life and became involved in activities I knew were wrong. I made a mistake and paid the price. I deeply regret my mistake for many reasons, but most of all because it does not reflect who I really am today.

Over the past seven years, I have completely turned myself around and am determined to remain a positive member of society. I have had no contact with the police since my conviction and am not on probation or parole. In 2006, the State of New York awarded me an official Certificate of Relief from Disabilities to show that I have been rehabilitated. I have worked in customer service, food service and warehouse operations since then, including handling up to \$1200 a day at McDonalds and supervising three workers at Fresh Direct. I volunteer at a homeless shelter twice a month, am currently working toward my Associates Degree at Bronx Community College at night, and am enrolled in a program to develop my computer skills — Microsoft Word, Excel, PowerPoint, Access and the Internet — and general office service skills like customer service, telephone etiquette, filing, faxing and copying so I can be a better worker once I graduate. I can promise that you will not find anyone willing to work harder than me. Given the chance, I can become a real asset to your company.

I would greatly appreciate the opportunity to discuss any questions or concerns you may have about my past.

Thank you for your consideration,

Joe B. Seeker

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## Writing a Compelling Resume for an Applicant with a Criminal History

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### Keys to a Successful Resume

- Always remember that employers go into business to **make \$\$**, and hire those they believe will **help them make the most \$\$**.
- They look for evidence of three positive factors called the **Employment ARC** to decide who will help them make the most money, and also watch for evidence of three negative behaviors called the **Three D's**.

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### Keys to a Successful Resume (cont.)

#### The Employment ARC:

- Abilities (can you do the job)
- Reliability (will you show up, have a good work ethic)
- Compatibility (will you fit in, get along with others)

#### The Three D's:

- Dishonesty
- Drinking
- Drug use

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## Keys to a Successful Resume (cont.)

### Resume Dos:

1. **Look professional** (consistent, neat, no typos, good balance of text and white space)
2. Include any type of **non-work activity that shows the Employment ARC**
3. Incorporate **Names & Numbers** wherever possible
4. Use **years instead of months** to cover spotty work history
5. For time in jail, use **names of individual buildings instead of "Rikers Island."** For time in prison, omit the word "Correctional" and list as "XX Facility" with the town. (ie: Cayuga Facility, Moravia, NY)

### Resume Don'ts:

1. **Look sloppy**
2. **Write brief descriptions** that don't give the employer a good idea of what you did
3. Include anything that **suggests one of the Three Ds or is irrelevant to the employer**
4. Use **negative language** like "dropped out"

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## Final Thoughts

Remember, criminal history should not define your job seekers – it is merely one obstacle to manage in their job search.

Confidence is key. Focus on the positives, minimize the negatives, and above all make it your mantra that they *will* find a job if they're persistent.

### Questions for us?

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