



NEW YORK
CITY BAR

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**REPORT ON LEGISLATION BY THE
CORRECTIONS AND COMMUNITY REENTRY COMMITTEE**

**A.4887
S.3357**

**M. of A. Sepulveda
Sen. Hassell-Thompson**

AN ACT to amend the correction law, in relation to the definition of "direct relationship" under Correction Law Article 23-A regarding the licensure and employment of persons previously convicted of one or more criminal offenses.

THIS BILL IS APPROVED

The Corrections and Community Reentry Committee of the New York City Bar Association supports A.4887/S.3357, which strengthens the standard under which employers and licensing agencies consider applicants and employees with criminal records.

Under Article 23-A, adverse employment actions can only be based upon a criminal conviction if a direct relationship exists between the conviction and the prospective job or if employment would pose an unreasonable risk to persons or property. Employers and licensing agencies cannot presume a direct relationship or an unreasonable risk exists; instead, they must first evaluate the eight factors set forth in Correction Law 753. *Bonacorsa v. Van Lindt*, 71 N.Y.2d 605, 613–14 (N.Y. 1988).

Despite this protection, employers and state agencies often find a direct relationship or project an unreasonable risk under tenuous circumstances, using these broad exceptions to justify adverse employment decisions that may instead have a discriminatory basis. A.4887/S.3357 combines both exceptions, requiring employers and state agencies to articulate a “substantial connection” between the criminal conviction and the proposed (or current) employment that *also* creates an unreasonable risk to persons or property. This bill will not only ensure employers and state agencies properly make the individualized determinations required by the eight factors of Correction Law Article 23-A, but it will also protect individuals with conviction histories from blanket discrimination, which hinders successful reentry into work and society.

Numerous examples exist of individuals wrongly denied employment under either the unreasonable risk exception or both exceptions who later prevailed after lengthy Article 78 and appellate proceedings. See, e.g., *Gallo v. N.Y. State Office of Mental Retardation & Developmental Disabilities*, 830 N.Y.S.2d 796, 798 (3d App. Div. 2007) (petitioner improperly denied employment as a bus driver for developmentally disabled adults because of a nineteen-

year-old assault conviction); *Acosta v. N.Y. City Dept. of Educ.*, 878 N.Y.S.2d 337, 338 (1st Dep't 2009) (thirty-one-year-old working professional denied a secretarial position based on a fourteen-year-old robbery conviction); *Meth v. Manhattan & Bronx Surface Transit Operating Auth.*, 134 A.D.2d 431, 431 (2d Dep't 1987) (petitioner denied employment as city bus driver because of two-year-old conviction for bribe receiving). Many similar cases exist, not to mention the countless ones that go unaddressed when applicants, unaware of their rights, do not pursue them.

Besides requiring employers to deal equitably with people who are clearly rehabilitated, this amendment helps employers by clarifying what constitutes illegal criminal record-based employment discrimination. This is important because, if the employer evaluates the Article 23-A factors in good faith, evidence of the employee's prior incarceration and conviction will be presumed excluded in any subsequent negligent hiring or retention lawsuits. N.Y. Exec. Law § 296(15).

When people with criminal records choose to live a law-abiding life, New York rewards that choice by prohibiting adverse employment actions based upon old convictions. Because this bill furthers Article 23-A's original intent, the Corrections and Community Reentry Committee recommends its enactment.

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