



**BROOKLYN
DEFENDER
SERVICES**

BDS Response to the Governor's Proposed Elimination of Parole Fees and Changes to Conviction-Related Barriers to Employment and Participation in Education Councils in the FY19 Executive Budget

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Brooklyn Defender Services (BDS) is a public defender office located in Brooklyn. BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, in 35,000 cases in Brooklyn every year. Our education and employment unit of our civil justice practice advocates on behalf of our clients who are seeking professional licenses.

BDS commends Governor Cuomo's administration for proposing to eliminate parole fees and working to remove the unfair barriers our clients face in obtaining jobs and engaging in civic participation. BDS believes that removing these and other barriers is an important step towards improving outcomes for people with criminal records and reducing the disparate racial impact of contact with the criminal legal system. **People leaving prison often struggle to re-enter society and eliminating the monthly parole fees will put money in the pockets of the people who need it most, when they need it most, helping to cover rent, food, medicine and other necessities.** The other proposed changes have the ability to make occupational licenses and engagement in the education of their children more accessible to some people with criminal convictions. **However, the proposal would leave in place most statutory obstacles to employment and may in fact create new ones in certain cases.**

The following provisions will help some returning citizens:

- The removal of the blanket ban on felony or sexual offense convictions for appointment to the NYC Community School District council and employees of drivers' schools (Subpart B and I).
- The addition of the article 23-A language requiring an analysis as to whether there is a direct relationship between the offense and the occupational duties performed (Subpart B and I).

In one instance, it also appears that the changes may create a new obstacle to employment for individuals who have obtained a CRD:

- *Licensed Cashier of Checks.* Under existing law, Subpart A suggests that a corresponding CRD will essentially nullify an individual's past conviction. The Governor's bill removes such language, effectively substituting 23-A protections. These protections contain CRD protections, but do not specify that that the CRD nullifies the past conviction with respect to licensing as the current law does.

However, a majority of the changes will have no impact on the employment prospects for individuals with criminal records. Many of the licensing agencies—such as the Division of Licensing, which grant notary and real estate broker licenses—report that they already apply a 23-A analysis for each applicant, regardless of whether the applicant received a Certificate of Relief from Disabilities (CRD) for their offense(s).

Recommendations

BDS believes that the licensing provisions should include explicit language that licensing agencies cannot consider offenses for which individuals received a CRD. As currently written, some of the provisions already imply that CRDs will prevent licensing agencies from considering the conviction, for example for cashier of checks, notaries, and bingo licenses, but it is unclear how agencies are implementing that language. The Article 23-A analysis, while incorporating CRDs into the factors for consideration, dilutes the strength of a CRD from a determining to a mitigating factor. Further, an Article 23-A analysis will result in more discretion for regulators and less clarity for applicants.

Additionally, in furtherance of making occupational licenses obtainable to more people with criminal convictions and to provide more clarity to applicants with criminal records, we recommend the following:

- Specify convictions or categories of convictions that should not be considered by a licensing agency.
- Prohibit the consideration of older offenses. For example, specify that convictions seven years or older should not be considered. We meet with clients who have old convictions that are unrelated to the duties to be performed and are still denied licenses. For example, one current client's record contained a DWI misdemeanor which caused him to be denied a security guard license.
- Explicitly prohibit all license applications from asking about an individual's criminal record. Currently, some license applications ask whether the individual has been convicted of a crime.
- Make the aforementioned modifications not only to the proposed licenses, but for all occupational licenses including security guards and home health aides.
- Remove the word 'violations' in Subpart H, as this could suggest that non-criminal dispositions could be considered.
- Clarify whether Subpart F, referring to adjusters, has been deleted or replaced.

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