

To: Commission
From: Laura C. Tharney
**Re: Collateral Consequences of Conviction – proposed revisions to
Rehabilitated Convicted Offenders Act**
Date: November 5, 2012

Introduction

This project began as a result of the Commission’s review of the outcome of *In re D.H.*, 204 *N.J.* 7 (2010), a case that struggled to harmonize the statute addressing the effect of an order of expungement, *N.J.S.* 2C:52-27, with the statute mandating the forfeiture of public office upon a conviction for certain crimes, *N.J.S.* 2C:51-2. In that case, D.H., a detective with the Monmouth County Prosecutor’s Office, performed an unauthorized criminal background check using a restricted law enforcement database; an offense involving or touching on her public office. She later petitioned for an expungement.¹ *D.H.*, 204 *N.J.* at 9-10. *N.J.S.* 2C:51-2d. provides, in pertinent part, that:

any person convicted of an offense involving or touching on his public office, position or employment shall forever be disqualified from holding any office or position of honor, trust, or profit under this State or any of its administrative or political subdivisions.

Both the trial court and the Appellate Division held that the permanent bar to holding public office was, as a collateral consequence of D.H.’s conviction, effectively erased by an order expunging that conviction. *D.H.*, 204 *N.J.* at 13; *See, In re Forfeiture of Public Office of Nunez*, 384 *N.J.Super.* 345, 349 (App. Div. 2006). Those courts reasoned that an expungement operates to make “the arrest, conviction and any proceedings related thereto...deemed not to have occurred”—“[u]nless otherwise provided by law”. *N.J.S.* 2C:52-27.

The New Jersey Supreme Court, however, held in *D.H.* that the phrase, “[u]nless otherwise provided by law”, incorporates all other statutes, including the language of *N.J.S.* 2C:51-2d. *D.H.*, 204 *N.J.* at 24. The result is that a public employee, even if entitled to certain advantages of expungement, shall never again hold public office. Justice Long, dissenting, interpreted the phrase, “[u]nless otherwise provided by law”, as referring only to exceptions stated within the same chapter of Title 2C, including, for instance, the mandatory disclosure of expunged records to a parole board, *N.J.S.* 2C:52-22, or to a judge in conjunction with setting bail or sentencing, *N.J.S.* 2C:52-21. *D.H.* 204 *N.J.* at 29.

This project was expanded after its inception to include, at the Commission’s direction, a review of the collateral consequences of criminal convictions imposed generally by New Jersey law. The review was aided by a compilation of ancillary sanctions prepared by the Criminal Justice Section of the American Bar Association². That compilation identified 1,051 New Jersey statutes and regulations pertaining to ancillary sanctions; statutorily imposed or authorized legal

¹ Had D.H. been convicted of a *crime* touching on her office (rather than a disorderly persons offense, *see N.J.S.* 2C:1-4), the conviction would not have been eligible for expungement. *N.J.S.* 2C:52-2b. D.H., however, was convicted of a disorderly persons offense pursuant to a plea agreement. *D.H.*, 204 *N.J.* at 11.

² <http://isrweb.isr.temple.edu/projects/accproject/pages/GetStateRecords.cfm?State=NJ>

disabilities that are not a part of a criminal sentence. Court Security Improvement Act of 2007, *Pub. L. No. 110-177*, 110th Cong. § 510(d) (2008).

As a part of this project, Staff reviewed New Jersey's Rehabilitated Convicted Offenders Act (RCOA), *N.J.S. 2A:168A-1 to 16*, to determine whether it provides adequate guidance in the cases in which it applies. Despite RCOA's laudable goals, and the revision of the statute in 2007 to create a formalized procedure for obtaining a certificate of rehabilitation (*N.J.S. 2A:168A-7 to 16*), difficulties remain.

The New Jersey Supreme Court, in *Maietta v. N.J. Racing Comm'n*, held that RCOA was applicable to the Racing Commission in the absence of "savings' provisions" in its governing statutes, which would have allowed for the removal of a disqualifying conviction from the commission's licensure considerations. 93 *N.J.* 1, 8 (1983). The statutes controlling the Division of Alcoholic Beverage Control, in contrast, contain a "savings provision" which allows an applicant to apply to the director for the removal of disabilities arising from a "crime involving moral turpitude", a clause that the Court determined "serve[s] the same purpose as the RCOA." *Id.* It is of concern to Staff that an alcoholic beverage licensee presented with the options available under *N.J.S. 33:1-25 and 26* of either obtaining permission to employ an applicant previously convicted of a crime that may constitute "moral turpitude", or simply hiring another bartender, will likely choose the latter. If that is the likely outcome, then the "savings" clause in that statutory scheme does not accomplish the remedial goal of the RCOA.

Also problematic is the predecessor to *Maietta*, *In re Schmidt*, which arguably excluded from the RCOA's purview any statutory scheme that evidences "special treatment" by the Legislature. *See 79 N.J.* 344, 354 (1979). That decision also exempted the Division of Alcoholic Beverage Control on the basis of its status as a "law enforcement agency", under *N.J.S. 2A:168A-6*, despite the Appellate Division's position that the exception applied only to the agency's employment of law enforcement officers, not its licensing function. *See Id.; In re Schmidt*, 158 *N.J. Super.* 595, 602 (App. Div. 1978) ("If we accepted the Division's view that its excepted law enforcement function immunized it from compliance with the act in respect of its licensing function, there would be few, if any, licensing authorities to which the act would remain applicable.").

Difficulties in applying the RCOA also arise from the lack of a statutory standard for weighing whether or not a past offense is relevant to licensure when an applicant presents a certificate of rehabilitation. *See N.J.S. 2A:168A-3. Cf. N.J.S. 2A:168A-2.* Courts determining that an agency appropriately refused to issue a license have been forced to do so based on a holding that undermines the very purpose of a certificate of rehabilitation: only the effect of a conviction is removed by the certificate, while the underlying blemish of inappropriate "conduct" remains. *See Hyland v. Kehayas*, 157 *N.J. Super.* 258, 262 (App. Div. 1978) ("[R]espondent's argument overlooks the fact that the action under review does not involve disqualification or discrimination because of a conviction of crime. The determination by the board consisted of a revocation for misconduct, a standard which does not depend upon a criminal conviction. Hence the provisions of the [RCOA] are inapplicable notwithstanding that the underlying misconduct may have also given rise to a criminal conviction."); *See also Bevacqua v. Renna*, 213 *N.J. Super.* 554, 561-62 (App. Div. 1986) ("A person whose license has

been revoked by a licensing authority for violation of its regulations, whether evidenced by a conviction of an offense or established by other means, is not simply a convicted offender. Rather, such a person has violated the trust reposed in him by the licensing authority and thereby demonstrated a lack of the professional responsibility and moral qualities required for continued licensure.”). *Storcella v. Dep’t of Treasury*, 296 N.J. Super. 238, 243 (App. Div. 1997), on the other hand, held that N.J.S. 2A:168A-3 does not preclude a licensing authority from contemplating a past conviction in the event of an executive pardon; it merely prohibits the entity from automatically “disqualifying or discriminating against” an applicant on that basis. The law still does not provide adequate guidance for a licensing agency’s decision-making process in such a case.

As this project has developed, it now consists of three parts. The first part involves proposed modifications to the language of the RCOA to address the current “bifurcated” nature of the statute, which was enacted in 1968 and then modified in 2007. Although the result is a single statute, the component parts do not interact smoothly and additional revision appears to be warranted to consolidate them and make the interplay between the sections more coherent.

The second part of the project is the identification and classification of situations in which the issuance or denial of a license, employment, or other benefit is based a determination of “moral turpitude” or “good moral character”. It appears that it would be useful to revise the statutory language so that provisions that concern similar situations are interpreted and applied in a consistent manner.

The third part of this project involves an analysis of the statutory language and the cases that concern the forfeiture of public office. That part of the project will require a determination about whether it is appropriate to distinguish between different types of public employees and different types of offenses, and to treat them differently for purposes of forfeiture.

The following language is a preliminary draft of proposed modifications to the RCOA. Proposed deletions are indicated by ~~strikeout~~ and proposed additions by underlining. One goal of the modifications is to begin to address the difficulties posed by the definition of law enforcement. The modifications below propose limiting the exceptions applicable to law enforcement officers, but additional work is needed in this area. The modifications also attempt to address the problem posed by cases that have held that if a provision in another law features a “savings provisions”, then the “savings provision” will apply and the RCOA will not. The language below is modified to state that the RCOA applies regardless of whether there is another route to having a conviction disregarded. Other changes are identified in the comments to the various sections.

Draft

2A:168A-1. Legislative findings

The Legislature finds and declares that it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain

employment or to participate in vocational or educational rehabilitation programs based solely upon the existence of a criminal record.

Therefore, the Legislature finds and declares that notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, a person shall not be disqualified or discriminated against by any licensing authority because of any conviction for a crime, unless N.J.S. 2C:51-2 is applicable or unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought.

COMMENT

This language of this section is identical to the source.

2A:168A-x. Definitions

For purposes of this act:

a. “Criminal conviction” shall mean that an individual was convicted of, including by way of a plea of guilty to, the commission of:

- (1) a crime;
- (2) a disorderly person’s offense;
- (3) a violation of a municipal ordinance.

b. “Licensing authority” shall mean a State, county or municipal ~~department, board,~~ officer or agency, authorized to pass upon the qualifications of any applicant for:

- (1) a license or certificate of authority or qualification to engage in the practice of a profession or business; or
- (2) ~~for~~ admission to an examination to qualify for such a license or certificate.

c. “Public employment” shall mean employment by a State, county, or municipal agency, but shall not include:

- (1) elected office, or
- (2) employment ~~in~~:
 - (A) as a law enforcement officer,
 - (B) as a corrections officer,
 - (C) in the judiciary,
 - (D) in a position related to homeland security or emergency management,or
 - (E) in any position that has access to sensitive information that could threaten the public health, welfare, or safety.

d. “Qualified offender” refers to a person who has one criminal conviction or who has convictions for more than one crime charged in separate counts of one indictment or accusation. Multiple convictions charged in two indictments or two accusations, or one indictment and one

accusation filed in the same court prior to entry of judgment under any of them, shall be deemed to be one conviction. Convictions of crimes entered more than 10 years prior to an application for a certificate under this act shall not be considered in determining whether a person has one criminal conviction. In the case of a person seeking relief at the time of sentencing, qualified offender means a person who will have one conviction, as set forth in this paragraph, upon sentencing and issuance of the judgment of conviction.

e. “Supervising authority” shall mean the court in the case of a person who was subject to probation or who was not required to serve a period of supervision, or the State Parole Board in the case of a person who was under parole supervision.

COMMENT

For ease of review, definitions contained in the Act have been consolidated and subsections have been added. The definition of “licensing authority” was taken from *N.J.S. 2A:168A-2* and the definitions of “public employment”, “qualified offender” and “supervising authority” were moved from *N.J.S. 2A:168A-7*.

Subsection a. of this section is new and it was added for the sake of consistency throughout the Act. Language making reference to the violation of a municipal ordinance has been included in subsection a., but it is not yet clear if that language should remain. Changes to subsection c.(2)(A) and (B) are part of the effort to modify the statutory language to distinguish law enforcement activities from licensing functions of various agencies.

~~2A:168A-2. Granting application for license or certificate or for admission to qualifying examination; grounds for refusal; written statement~~ Application of act

a. ~~Notwithstanding the~~ This act supersedes contrary provisions of any law or rule or regulation issued pursuant to law and is applicable to all licensing authorities.

b. ~~Except as set forth in subsection b. of this section, no State, county or municipal department, board, officer or agency, hereinafter referred to as “licensing authority” authorized to pass upon the qualifications of any applicant for a license or certificate of authority or qualification to engage in the practice of a profession or business or for admission to an examination to qualify for such a license or certificate may disqualify or discriminate against an applicant for a license or certificate or an application for admission to a qualifying examination on the grounds that the applicant has been convicted of a crime, or adjudged a disorderly person a record of a criminal conviction. When this subsection is applicable, the licensing authority also may not disqualify or discriminate against an applicant or application on the basis of any conduct that give rise to the criminal conviction.~~

c. ~~except that~~ A licensing authority may disqualify ~~or discriminate against~~ an applicant for a license or certificate on the basis of a criminal conviction if:

(1) N.J.S. 2C:51-2, relating to the forfeiture of public office, is applicable;

(2) ~~of~~ any disqualifying criminal activity set forth in ~~subsection a. of section 7 of P.L.2009, c. 53(C.17:11C-57),~~ pertaining to mortgage loan originators, is applicable,
~~or~~

(3) the applicant is seeking employment as a law enforcement officer; or

(4) if a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought.

d. In determining that a criminal conviction ~~for a crime~~ relates adversely to the occupation, trade, vocation, profession or business as described in subsection c. of this section, the licensing authority shall explain in writing how the following factors, ~~or any other factors~~, relate to the license or certificate sought:

~~a.~~(1) The nature and duties of the occupation, trade, vocation, profession or business, a ~~license~~ or certificate for which the person is applying;

~~b.~~(2) Nature and seriousness of the crime;

~~c.~~(3) Circumstances under which the crime occurred;

~~d.~~(4) Date of the crime;

~~e.~~(5) Age of the person when the crime was committed;

~~f.~~(6) Whether the crime was an isolated or repeated incident;

~~g.~~(7) Social conditions which may have contributed to the crime;

~~h.~~(8) Any evidence of rehabilitation, including:

(A) A certificate of rehabilitation obtained pursuant to this act,

(B) good conduct in prison or in the community,

(C) counseling or psychiatric treatment received,

(D) acquisition of additional academic or vocational schooling,

(E) successful participation in correctional work-release programs, or

(F) the recommendation of persons who have or have had the applicant under their supervision; and

(9) Any other factors the licensing authority deems relevant.

e. This act shall not ~~be applicable~~ apply to any law enforcement agency with regard to that agency's employment of law enforcement officers, but shall apply to the licensing function of any such agency.; ~~however,~~ Nothing ~~herein in this act~~ shall preclude a law enforcement agency in its discretion from adopting the policies and procedures set forth herein and applying them to the hiring of law enforcement officers.

f. This act ~~{FN1}~~ shall not apply to private employers. A private employer may, in its sole and complete discretion, consider a certificate issued under this statute in making employment decisions. Nothing in this section shall be construed to create any right, privilege, or duty or to change any right, privilege, or duty existing under law.

COMMENT

The definition of “licensing authority” has been moved to the definitions section. Subsections have been added for ease of review.

Subsection a. seeks to correct an issue in the judicial interpretation of the RCOA that first arose in 1979, when the Supreme Court removed from the act’s purview any statutory scheme that evinces “special treatment” by the Legislature. *See In re Schmidt*, 79 N.J. 344, 354 (1979). This holding was later narrowed, exempting only licensing authorities whose governing statutes feature “savings provisions”—clauses that “serve the same purpose as the RCOA” by providing mechanisms to remove “statutory disqualification[s]” to employment. *Maietta v. N.J. Racing Comm’n*, 93 N.J. 1, 8 (1983). However, *Maietta* does not distinguish between “savings provisions” that are equivalent to the RCOA and those that have little remedial effect by virtue of vesting sole discretion in, e.g., the head of the Division of Alcoholic Beverage Control. *See Id.*

Subsection b. attempts to resolve the strange holdings born of the RCOA’s lack of guidance to licensing authorities considering the applications of persons who possess certificates of rehabilitation but whose convictions directly and adversely relate to the occupation, trade, vocation, profession, or business at issue. Specifically, while the other revisions provide a standard that a licensing authority must employ in this instance, subsection d. prevents awkward statutory interpretations, insisting that a certificate of rehabilitation removes the effect of a conviction, but not the underlying blemish of inappropriate “conduct” that gave rise to that conviction. *See, e.g., Hyland v. Kehayas*, 157 N.J. Super. 258, 262 (App. Div. 1978) (“[R]espondent’s argument overlooks the fact that the action under review does not involve disqualification or discrimination because of a conviction of crime. The determination by the board consisted of a revocation for misconduct, a standard which does not depend upon a criminal conviction. Hence the provisions of the [RCOA] are inapplicable notwithstanding that the underlying misconduct may have also given rise to a criminal conviction.”). *See also Bevacqua v. Renna*, 213 N.J. Super. 554, 561-62 (App. Div. 1986) (“A person whose license has been revoked by a licensing authority for violation of its regulations, whether evidenced by a conviction of an offense or established by other means, is not simply a convicted offender. Rather, such a person has violated the trust reposed in him by the licensing authority and thereby demonstrated a lack of the professional responsibility and moral qualities required for continued licensure.”). *See also Storcella v. Dep’t of Treasury*, 296 N.J. Super. 238, 243 (App. Div. 1997) (holding that N.J.S. 2A:168A-3 does not preclude a licensing authority from contemplating a past conviction in the event of an executive pardon; it merely prohibits the entity from automatically “disqualifying or discriminating against” an applicant on that basis).

Subsection e. is the current 2A:168A-6, modified as shown above (italics shows proposed language, strikeouts show proposed deletions). The new wording is an effort to clarify that the law enforcement exemption only extends to an agencies’ employment of law enforcement officers. After reviewing potentially confusing case law in this area, Staff recommends reinstating this aspect of Judge Pressler’s overturned decision, which conceptually separates multi-purpose agencies’ licensing functions from their statutory authority to enforce laws in certain regulated areas. *In re Schmidt*, 158 N.J. Super. 595, 602 (App. Div. 1978) (noting that most licensing authorities are charged with enforcing their governing statutes, which, coupled with the erroneous view that an agency’s “excepted law enforcement function immunize[s] it from compliance with the [RCOA] in respect of its licensing function,” would leave “few, if any, licensing authorities to which the [RCOA] would remain applicable”).

Subsection f. of this section is the current section N.J.S. 2A:168A-12.

2A:168A-7. Certificates of rehabilitation; relief from disabilities, forfeitures or bars; definitions

a. Notwithstanding any law to the contrary, a certificate of rehabilitation may be issued in accordance with the provisions of this act ~~{FN1}~~ that suspends certain disabilities, forfeitures or

bars to employment or professional licensure or certification that apply to persons with a record of a criminal conviction ~~convicted of criminal offenses~~.

b. A certificate of rehabilitation issued pursuant to this act shall have the effect of relieving disabilities, forfeitures or bars, except those established or required by federal law, to:

(1) public employment, as defined in this section;

(2) qualification for a license or certification to engage in the practice of a profession, occupation or business, except the practice of law, or as a mortgage loan originator, or residential mortgage lender or residential mortgage broker as a qualified individual licensee, pursuant to the “New Jersey Residential Mortgage Lending Act,” ~~sections 1 through 39 of P.L.2009, c. 53~~(C.17:11C-51 et seq.); or

(3) admission to an examination to qualify for that license or certification, except for the bar examination, a qualified written test for a mortgage loan originator, or residential mortgage lender or broker as a qualified individual licensee, or an examination for a law enforcement, homeland security, or emergency management position.

c. A certificate issued pursuant to this act may be limited to one or more enumerated disabilities, forfeitures or bars, or may relieve the subject of all disabilities, forfeitures or bars that may be affected by the act.

~~e. For purposes of this act:~~

~~(1) “Public employment” shall mean employment by a State, county, or municipal agency, but shall not include elected office, or employment in law enforcement, corrections, the judiciary, in a position related to homeland security or emergency management, or any position that has access to sensitive information that could threaten the public health, welfare, or safety.~~

~~(2) “Qualified offender” refers to a person who has one criminal conviction or who has convictions for more than one crime charged in separate counts of one indictment or accusation. Multiple convictions charged in two indictments or two accusations, or one indictment and one accusation filed in the same court prior to entry of judgment under any of them, shall be deemed to be one conviction. Convictions of crimes entered more than 10 years prior to an application for a certificate under this act shall not be considered in determining whether a person has one criminal conviction. In the case of a person seeking relief at the time of sentencing, qualified offender means a person who will have one conviction, as set forth in this paragraph, upon sentencing and issuance of the judgment of conviction.~~

~~(3) “Supervising authority” shall mean the court in the case of a person who was subject to probation or who was not required to serve a period of supervision, or the State Parole Board in the case of a person who was under parole supervision.~~

COMMENT

This section has been relocated within the Act. The original subsection c. of this section was relocated to the definitions section of the Act, a new subsection c. was created to avoid an unidentified subsection.

2A:168A-3. Presumption Evidence of rehabilitation

a. A certificate of rehabilitation issued pursuant to this act ~~{FN1}~~ shall be presumptive evidence create a rebuttable presumption of the subject's rehabilitation when considered in regard to public employment as defined in this act, or in conjunction with any licensing, or certification process to which this act applies, which in any particular case may or may not be overcome by other evidence or information. A certificate granted under this act shall not prevent any judicial, administrative, licensing or other body, board, authority or public official from relying on grounds other than the fact of the criminal conviction in exercising any discretionary authority, if any, to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege or to determine eligibility or suitability for employment.

b. The presentation to a licensing authority of evidence of a pardon or of the expungement of a criminal conviction, pursuant to N.J.S. 2A:164-28, or of a certificate of the Federal or State Parole Board, or of the Chief Probation Officer of a United States District Court or a county who has supervised the applicant's probation, that the applicant has achieved a degree of rehabilitation indicating that his engaging in the proposed employment would not be incompatible with the welfare of society shall preclude a licensing authority from disqualifying or discriminating against the applicant.

COMMENT

This section has been relocated within the Act. Subsection a. is the current N.J.S. 2A:168A-9 and subsection b. contains the revised current language of this section.

~~2A:168A-4. Addiction to drugs or intoxicating liquors within four months of application~~

~~A licensing authority may disqualify or discriminate against an applicant for a license or certificate on the grounds that the applicant has within 4 months of the application for admission to a qualifying examination been addicted to the habitual use of drugs or intoxicating liquors.~~

COMMENT

This section is proposed for elimination. More research is needed to determine its continuing viability, the manner in which "addiction" is determined, and the application of the act to prescription drugs taken pursuant to a lawful prescription.

~~2A:168A-6. Inapplicability of act to law enforcement agencies~~

~~This act shall not be applicable to any law enforcement agency; however, nothing herein shall preclude a law enforcement agency in its discretion from adopting the policies and procedures set forth herein.~~

COMMENT

This language was moved to subsection f. of Section 2A:168A-2 and modified.

2A:168A-8. Certificate; issuance and application; eligibility

A certificate may be issued pursuant to this act ~~{FN1}~~ as follows:

a. (1) A court, in its discretion, may issue a certificate at the time of sentencing if the applicant:

(A) is a qualified offender, who is being sentenced to a non-incarcerative sentence for a second, third or fourth degree crime;

(B) has established that a specific licensing or employment disqualification, forfeiture or bar, will apply to him, and may endanger his ability to maintain existing public employment or employment for which he has made application, or to engage in a business enterprise for which a license or certification is required;

(C) has no pending criminal charges, and there is no information presented that such a charge is imminent; and

(D) has established that the relief is consistent with the public interest.

(2) A certificate issued under this subsection shall apply only to the specific disability, forfeiture or bar that is affected, which must be specifically described in the certificate document.

b. (1) A supervising authority may issue a certificate in regard to a qualified offender who is, or had previously been, under supervision by the supervising authority if the supervising authority determines that:

(A) the applicant is convicted of a second, third or fourth degree offense and is eligible for relief under subsection c. of this section;

(B) the applicant has not been convicted of a crime since the conviction for which he is under supervision, has no pending criminal charge, and there is no information presented that such a charge is imminent;

(C) issuing the certificate will not pose a substantial risk to public safety; and

(D) issuing the certificate will assist in the successful reintegration of the offender and is consistent with the public interest.

(2) A certificate issued pursuant to this subsection may suspend disabilities, forfeitures and bars generally within the limits of this act, or only certain disabilities, forfeitures and bars, specifically named in the certificate document.

c. A qualified offender is eligible for relief under subsection b. of this section if the offender has not been convicted of:

(1) a first degree crime;

(2) an offense to which ~~section 2 of P.L.1997, c. 117 (C.2C:43-7.2)~~ applies;

(3) a second degree offense defined in chapters 13, 14, 15, 16, 24, 27, 30, 33, 38 of Title 2C of the New Jersey Statutes;

(4) a violation of subsection a. of N.J.S. 2C:24-4 or paragraph (4) of subsection b. of N.J.S. 2C:24-4;

(5) a crime requiring registration pursuant to ~~section 2 of P.L.1994, c. 133~~(C.2C:7-2);

(6) a crime committed against a public entity or against a public officer;

(7) a crime enumerated in subsection b. of ~~section 2 of P.L.2007, c. 49~~ (C.43:1-3.1) committed by a public employee, which involves or touches upon the employee's office, position or employment, such that the crime was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person;

(8) any crime committed against a person 16 years of age or younger, or a disabled or handicapped person; or

(9) a conspiracy or attempt to commit any of the crimes described in this subsection.

d. (1) A supervising authority may issue a certificate in regard to a qualified offender, when three years have passed since the applicant has completed the incarcerative or supervisory portion of his sentence, whichever is later, and the supervising authority finds that:

(A) the applicant is eligible for such relief as defined in subsection e. of this section;

(B) issuing the certificate does not pose a substantial risk to public safety; and

(C) issuing the certificate will assist in the successful reintegration of the offender and is consistent with the public interest.

(2) The certificate issued pursuant to this subsection may suspend disabilities, forfeitures and bars generally within the limits of this act, or only certain disabilities, forfeitures and bars specifically named in the certificate document.

e. A qualified offender is eligible for relief under subsection d. of this section if he has remained without criminal involvement since his conviction, including that he has not subsequently been convicted of a crime, has no pending charges for any crime, and there is no information presented that such a charge is imminent; and is applying for relief from a conviction other than:

(1) a first degree crime;

(2) any of the offenses to which ~~section 2 of P.L.1997, c. 117~~(C.2C:43-7.2) applies;

(3) a violation of subsection a. of N.J.S. 2C:24-4 or paragraph (4) of subsection b. of N.J.S. 2C:24-4;

(4) a crime requiring registration pursuant to ~~section 2 of P.L.1994, c. 133~~(C.2C:7-2);

(5) a crime enumerated in subsection b. of ~~section 2 of P.L.2007, c. 49~~ (C.43:1-3.1) committed by a public employee, which involves or touches upon the employee's office, position or employment, such that the crime was related directly to the person's

performance in, or circumstances flowing from, the specific public office or employment held by the person;

(6) a crime committed against a person 16 years of age or younger, or a disabled or handicapped person; or

(7) a conspiracy or attempt to commit any offense described in this paragraph.

COMMENT

This section is identical to the original.

~~2A:168A-9. Certificate as presumptive evidence of rehabilitation~~

~~A certificate issued pursuant to this act [FN1] shall be presumptive evidence of the subject's rehabilitation when considered in regard to public employment as defined in this act, or in conjunction with any licensing, or certification process to which this act applies, which in any particular case may or may not be overcome by other evidence or information. A certificate granted under this act shall not prevent any judicial, administrative, licensing or other body, board, authority or public official from relying on grounds other than the fact of the criminal conviction in exercising any discretionary authority, if any, to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege or to determine eligibility or suitability for employment.~~

COMMENT

The language of this Section has been moved to Section 2A:168A-3.

2A:168A-10. Supervising authority; notice to prosecutor of certificate or application for a certificate

In all cases, the applicant or the supervising authority shall provide notice to the prosecutor of either the issuance of a certificate or the pendency of an application for a certificate, or both, pursuant to procedures that shall be developed and published by the supervising authority within thirty days of the effective date of this act. [FN1]

COMMENT

This section is identical to the original.

2A:168A-11. Revocation and reinstatement of certificate; disorderly persons offense

a. A certificate granted pursuant to this act [FN1] shall no longer be valid if the person who is the subject of the certificate is indicted for a first or second degree crime or convicted of a crime.

b. Upon presentation of satisfactory proof that the criminal charges or indictment have been dismissed, or of an acquittal after trial, a certificate revoked under the circumstances described in subsection a. of this section may be reinstated by the issuing entity.

c. A certificate may be revoked at any time upon application of the prosecutor or on the supervising authority's own initiative when information is received that circumstances have materially changed such that the relief would not be authorized under this act or is no longer in the public interest. The supervising authority revoking such a certificate shall notify the subject of the certificate of the revocation.

d. In addition to any other offense that may apply, a person who knowingly uses or attempts to use a revoked certificate, or a certificate that is no longer valid, in order to obtain a benefit or avoid a disqualification shall be guilty of a disorderly persons offense. For the purposes of this subsection, "uses or attempts to use," shall include knowing failure to disclose to an employer or other affected public entity the revocation or invalidity of a certificate.

COMMENT

This section is identical to the original.

~~2A:168A-12. Certificates; application to private employers~~

~~This act [FN1] shall not apply to private employers. A private employer may, in its sole and complete discretion, consider a certificate issued under this statute in making employment decisions. Nothing in this section shall be construed to create any right, privilege, or duty or to change any right, privilege, or duty existing under law.~~

COMMENT

This section has been relocated and is now subsection d. of *N.J.S. 2A:168A-2*.

~~2A:168A-13. Evaluation of effectiveness of implementation; system of recording certificates~~

~~The State Parole Board and the Administrative Office of the Courts shall report to the Governor and the Legislature on or before the first day of the thirteenth month after the effective date of this act [FN1] an evaluation of the effectiveness of the implementation of this act, including the number of applications received, considered and granted under the act. Entities issuing certificates shall develop a system of recording the certificates and provide information to prospective employers regarding whether a certificate has been issued or is valid.~~

COMMENT

This section is proposed for elimination as no longer needed since the time period for reporting has already passed.

~~2A:168A-14. Report; impact of a prior criminal conviction on private employment opportunities~~

~~The Department of Labor and Workforce Development shall prepare a report detailing the impact of a prior criminal conviction on private employment opportunities for ex-offenders. The department shall consult with the State Parole Board, and may consult with and seek the assistance of other executive branch agencies, municipalities, agencies and any interested parties. The report shall include identification of barriers faced by ex-offenders seeking private employment, including those set forth in law, regulation and policies of private employers. The~~

~~report shall analyze the effect of the hiring policies of employers with more than 100 employees on the employment of ex-offenders. In order to encourage cooperation, identities of employers and entities contacted in the course of preparing the report shall remain confidential. The results of this study shall be reported to the Governor and the Legislature within 180 days from the effective date of this act. [FN1]~~

COMMENT

This section is proposed for elimination as no longer needed since the time period for reporting has already passed.

2A:168A-5. Regulated employment pursuant to approved program of vocational or educational rehabilitation

Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, any licensing authority may permit any person subject to correctional supervision in this State to engage in regulated employment pursuant to an approved program of vocational or educational rehabilitation.

COMMENT

This section has been relocated but is otherwise identical to the original.

2A:168A-15. Pardons by governor

Nothing in this act shall be deemed to alter, limit or affect the manner of applying for pardons to the Governor, and a certificate issued under this act [FN1] shall not be deemed or construed to be a pardon.

COMMENT

This section is identical to the original.

2A:168A-16. Promulgation of regulations, rules or guidelines

The State Parole Board shall promulgate any regulations or issue guidelines necessary to effectuate the provisions of this act. The court may publish rules or guidelines to implement this act. [FN1]

COMMENT

This section is identical to the original.