

To: New Jersey Law Revision Commission
From: Alex Fineberg
Date: July 9, 2012
Re: Collateral consequences of a conviction

MEMORANDUM

Introduction

At the Commission's direction, Staff has been engaged in a thorough review of the collateral consequences of criminal convictions that are imposed by state law. This comprehensive survey has been aided by the Criminal Justice Section of the American Bar Association, which, in fulfilling the terms of a Congressional grant, compiled 1,051 New Jersey statutes or regulations pertaining to such ancillary sanctions¹—statutorily imposed or authorized legal 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 has reviewed New Jersey's Rehabilitated Convicted Offenders Act.

Staff's goal was to investigate whether the Rehabilitated Convicted Offenders Act (RCOA), *N.J.S.* 2A:168A-1 to 16, provides adequate guidance in the cases in which it applies. Section 2 of the Act establishes a procedure for the denial of an application for licensure based on a prior conviction, which is disallowed altogether if the offense does not "relate adversely to the occupation, trade, vocation, profession, or business for which the license or certificate is sought." Among other points, a licensing authority denying an application must consider, in writing, the following factors: the nature and seriousness of the crime, the remoteness of the crime, the age of the applicant at the time of commission, and any evidence of rehabilitation. *Id.* Section 3 "preclude[s] a licensing authority from disqualifying or discriminating against [an] applicant" who produces evidence of a pardon or expungement, or presents a certificate of rehabilitation from the authority overseeing the applicant's probation.

Despite RCOA's laudable goals, and the Legislature's subsequent 2007 articulation of a formalized procedure for obtaining a certificate of rehabilitation (*N.J.S.* 2A:168A-7 to 16), case law has revealed (and created) numerous problems with the 1968 act. When last construed by the Supreme Court in *Maietta v. N.J. Racing Comm'n*, the resultant four to two per curiam opinion held that RCOA was applicable to that agency due to 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, allow an applicant to apply to the director for the removal of disabilities arising from a "crime involving moral turpitude"—a clause that "serve[s] the same purpose as the RCOA." *Id.* Of course, for practical purposes, an alcoholic beverage licensee presented with the options available under *N.J.S.* 33:1-25 and 26, *supra*—of either obtaining permission to employ an applicant previously convicted of a

¹ <http://isrweb.isr.temple.edu/projects/accproject/pages/GetStateRecords.cfm?State=NJ>

crime that possibly constitutes “moral turpitude”, or simply hiring another bartender—will likely choose the latter. As such, the “savings” clauses in that statutory scheme do not approach the remedial effect of RCOA.

Although the decision appeared to be restrictive, *Maietta* actually preserved far more of RCOA’s applicable scope than its predecessor, *In re Schmidt*, which arguably excluded from the act’s purview any statutory scheme (alongside the alcoholic beverage control laws) 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, articulated by Judge Pressler, 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.”).

Other difficulties in applying RCOA arise from the lack of a statutory standard for weighing a past offense that is immediately relevant to licensure where an applicant presents a certificate of rehabilitation. *See N.J.S.* 2A:168A-3. *Cf. N.J.S.* 2A:168A-2. As a result, courts appropriately wishing to uphold agencies’ refusals to issue licenses 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.”). At least one case provides a more commonsense reading of the statute. *See 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). However, as construed, the law still provides no guidelines for a licensing agency’s decision-making process in such an event.

The following language is a first, rough draft of amendments to the RCOA. Proposed deletions are indicated by ~~strikeout~~ and proposed additions by underlining.

These amendments are intended to solve a number of problems. One problem has been the definition of law enforcement. The RCOA does not apply to the hiring of persons involved in law enforcement, and that exception has resulted in inconsistent court

decisions. The amendments below limit the exceptions applicable to law enforcement officers. In addition, the language below attempts to address the problem posed by cases that have held that if a provision in another law features a “savings provisions”—a clause that “serve the same purpose as the RCOA” by providing mechanisms to remove “statutory disqualification[s]” to employment – then the “savings provision” would apply and the RCOA would not. The amendments below clarify that the RCOA applies to all agencies whether or not there is another route to having a conviction disregarded. Other changes are highlighted in the comments to amended 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

As the second paragraph of this section is an affirmative statement of law and not, properly, a Legislative finding, its substance has been relocated to N.J.S. 2A:168A-3. Scope.

2A:168A-2. Definitions

“Conviction” includes a conviction for a crime, disorderly persons offense, or violation of a municipal ordinance that has not been pardoned or expunged.

“Licensing authority” means a department, board, officer, agency, or authority of either the State of New Jersey or any of its political subdivisions that is authorized to judge a person’s eligibility to:

- a. Receive a license or certificate;
- b. Be admitted to an examination to qualify for a license or certificate; or
- c. Engage in the practice of a profession or business.

COMMENT

This new section incorporates definitions previously scattered throughout chapter 168A.

2A:168A-3. Scope

- a. This chapter supersedes the contrary provisions of any law, rule, or regulation.

b. This chapter is applicable to all licensing authorities, despite the availability of alternate means of removing an obstacle to employment that is imposed attendant a conviction.

c. A person shall not be disqualified or discriminated against by any licensing authority because of a conviction, unless:

(1) The conviction relates adversely to the occupation, trade, vocation, profession, or business for which the license or certificate is sought;

(2) The person is seeking employment as a law enforcement officer;

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

or

(4) N.J.S. 17:11C-57a, relating to mortgage loan originators, is applicable.

d. The prohibition in subsection c. extends to disqualifying or discriminating against a person on the basis of any conduct that gave rise to a criminal conviction.

COMMENT

Subsections a. and b. seek to correct a pervasive problem 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 c(2) is a modification of former section N.J.S. 2A:168A-6, below. The new wording clarifies that the law enforcement exemption only extends to an agencies' employment of law enforcement officers. Staff recommends reinstating this element 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 d., in conjunction with the proposed revisions to N.J.S. 2A:168A-4 and -5, below, 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).

2A:168A-24. Granting application for license or certificate or for admission to qualifying examination; grounds for refusal; written statement

~~Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, 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, except that a licensing authority may disqualify or discriminate against an applicant for a license or certificate if N.J.S.2C:51-2 or any disqualifying criminal activity set forth in subsection a. of section 7 of P.L.2009, c. 53 (C.17:11C-57) is applicable, or if a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought. In determining, If a licensing authority determines that a conviction for a crime relates adversely to the an occupation, trade, vocation, profession, or business, the licensing authority it shall explain its reasoning, in writing how evaluating the following factors, or any other factors, relate to the license or certificate sought in writing:~~

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

b. ~~The Nature nature and seriousness of the crime offense;~~

c. ~~The Circumstances circumstances under which the crime offense occurred;~~

d. ~~The Date date of the crime offense;~~

e. ~~The Age age of the person when the crime offense was committed;~~

f. ~~Whether the crime offense was an isolated or repeated incident;~~

g. ~~Any Social social conditions which may have contributed to the crime offense;~~

h. ~~Any evidence of rehabilitation, including:~~

~~(1) good Good~~ Good conduct in prison or in the community;

~~(2) counseling Counseling~~ Counseling or psychiatric treatment received;

~~(3) acquisition Acquisition~~ Acquisition of additional academic or vocational schooling;

~~(4) successful Successful~~ Successful participation in correctional work-release programs, or;

~~(5) the The~~ The recommendation of persons who have or have had the applicant under their supervision; and

(6) The presence of a certificate of rehabilitation, obtained pursuant to N.J.S. 2A:168A-9; and

i. Any other factors the licensing authority deems relevant.

COMMENT

The substance of the first part of this section has been relocated to *N.J.S. 2A:168A-2* and *-3*. The addition of subsection h(6), along with *N.J.S. 2A:168A-5*, below, clarifies the procedure for considering an applicant who has been convicted of a crime that adversely relates to the license sought, but who has obtained a certificate of rehabilitation.

2A:168A-35. Evidence Presumptions of rehabilitation

~~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.~~

a. The presentation of a certificate of rehabilitation, obtained pursuant to N.J.S. 2A:168A-9, shall create a rebuttable presumption of a person's rehabilitation.

b. The issuance of a written statement of denial by a licensing authority pursuant to N.J.S. 2A:168A-4h(6), shall provide a justification for overcoming the presumption.

c. The pardon or expungement of a conviction shall create a conclusive presumption of a person's rehabilitation.

COMMENT

The revisions to this section, along with *N.J.S. 2A:168-3* and *-4*, create guidelines for the consideration of an applicant who has been convicted of a crime that adversely relates to the license sought, but who has obtained a certificate of rehabilitation. Although these changes allow licensing authorities a degree of deference, they avoid the problems presented by the existing line of cases, which undermine the very purpose of a certificate of rehabilitation. See the comment concerning *N.J.S. 2A:168-3d*, above.

2A:168A-46. 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.

2A:168A-57. 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.

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

The substance of this section, with modifications, has been moved to N.J.S. 2A:168A-3. Scope.

2A:168A-78. Certificates; relief from disabilities, forfeitures or bars; definitions

a. Notwithstanding any law to the contrary, a certificate may be issued in accordance with the provisions of this act that suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses.

b. A certificate 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.

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.

c. 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.

2A:168A-89. Certificate; issuance and application; eligibility

A certificate may be issued pursuant to this act 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.

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

~~A certificate issued pursuant to this act 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 substance of this section has been relocated to *N.J.S. 2A:168A-5*. Presumptions of rehabilitation.

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.

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

a. A certificate granted pursuant to this act 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.

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

This act 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.

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 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.

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.

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 shall not be deemed or construed to be a pardon.

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.