

# STATE OF NEW YORK

809

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. MONTGOMERY, CARLUCCI, COMRIE, HOYLMAN, PARKER, PERSAUD, RIVERA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law and the executive law, in relation to prohibiting colleges from asking about an applicant's prior arrests or convictions during the pre-admissions process

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The correction law is amended by adding a new article 23-B  
2 to read as follows:

### ARTICLE 23-B

#### COLLEGE ADMISSIONS FOR PERSONS PREVIOUSLY CONVICTED

##### OF ONE OR MORE CRIMINAL OFFENSES

#### Section 770. Definitions.

7 771. Legislative intent.

8 772. Prohibition against inquiries about arrests that did not  
9 result in a criminal conviction and criminal convictions  
10 that have been sealed.

11 773. Pre-acceptance prohibition against inquiry into criminal  
12 history.

13 774. Post-acceptance inquiry about criminal history permitted.

14 775. Inquiries into criminal history not required.

15 776. Enforcement.

16 § 770. Definitions. 1. "College" shall mean colleges, universities,  
17 professional and technical schools and other institutions of higher  
18 education authorized to confer degrees pursuant to subdivisions two,  
19 three and eight of section two of the education law.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 2. "Admissions decision-making process" shall mean submission of the  
2 application and all aspects of the application process through admis-  
3 sion.

4 3. "Direct relationship" means that there is a substantial connection  
5 between the nature of the crime for which the accepted individual was  
6 convicted and the activity or aspect of campus life at issue and such  
7 connection would create an unreasonable risk to the property or to the  
8 safety or welfare of specific individuals or the campus as a whole if  
9 the accepted student is permitted to participate with or without condi-  
10 tions.

11 § 771. Legislative intent. College education plays a critical role in  
12 developing good citizenship, creating economic and social opportunities,  
13 and enhancing public safety by reducing the recidivism of individuals  
14 with a criminal history record. Therefore, it is the public policy of  
15 this state to promote the admission to college of individuals previously  
16 convicted of one or more criminal offenses and to allow such individuals  
17 to fully participate in all aspects of college life.

18 § 772. Prohibition against inquiries about arrests that did not result  
19 in a criminal conviction and criminal convictions that have been sealed.  
20 At no time during the admission decision-making process or while a  
21 student is enrolled shall colleges make any inquiry or consider informa-  
22 tion about any arrest or criminal accusation of an individual who is  
23 applying for admission or has been admitted that was followed by a  
24 termination of that criminal action or proceeding in favor of such indi-  
25 vidual as defined in subdivision two of section 160.50 of the criminal  
26 procedure law and section 375.1 of the family court act, or by a youth-  
27 ful offender adjudication as defined in subdivision one of section  
28 720.35 of the criminal procedure law, or by a juvenile delinquency adju-  
29 dications as defined in subdivision one of section 380.1 of the family  
30 court act, or by a conviction for a violation sealed or sealable pursu-  
31 ant to section 160.55 of the criminal procedure law, or by a conviction  
32 which is sealed pursuant to section 160.58 of the criminal procedure  
33 law.

34 § 773. Pre-acceptance prohibition against inquiry into criminal histo-  
35 ry. Colleges may not make any inquiry or consider information about an  
36 individual's past criminal conviction or convictions at any time during  
37 the application and admissions decision-making process.

38 § 774. Post-acceptance inquiry about criminal history permitted. 1.  
39 After an individual has been admitted as a student, colleges may make  
40 inquiries about and consider information about the individual's past  
41 criminal conviction history for the purpose of offering supportive coun-  
42 seling and services.

43 2. Colleges may also make inquiries about and consider information  
44 about the individual's past criminal conviction history for the purpose  
45 of making decisions about participation in activities and aspects of  
46 campus life associated with the individual's status as a student,  
47 including but not limited to housing. In making such inquiries and  
48 considering such information:

49 (a) Colleges shall not use information about an admitted individual's  
50 criminal conviction history to rescind an offer of admission.

51 (b) Colleges shall not establish outright bars to any activities or  
52 participation in aspects of campus life based on an admitted individ-  
53 ual's criminal conviction history. Instead, colleges must develop an  
54 individualized process for determining whether or not there is a direct  
55 relationship between the accepted individual's criminal conviction  
56 history and the activity or aspect of campus life at issue. This indi-

1 vidualized process must be set forth in writing and must include consid-  
2 eration of:

3 (i) the age of the individual at the time of the behavior underlying  
4 the criminal conviction or convictions;

5 (ii) the time that has elapsed since the behavior underlying the crim-  
6 inal conviction or convictions;

7 (iii) the nature of the conviction or convictions and whether it bears  
8 a direct relationship to the activity or participation in aspects of  
9 campus life at issue; and

10 (iv) any evidence of rehabilitation or good conduct produced by the  
11 accepted individual.

12 (c) This individualized process must further provide an accepted indi-  
13 vidual an opportunity to appeal any denial or limitation of access to  
14 any activity or aspect of campus life. Colleges must further inform  
15 accepted individuals of this process in writing, including their right  
16 to provide evidence of rehabilitation and good conduct and their right  
17 to appeal.

18 § 775. Inquiries into criminal history not required. This article does  
19 not require colleges to make inquiries into or consider an individual's  
20 criminal conviction history for any reason. If colleges elect to do so  
21 for the purpose of determining if there is a direct relationship between  
22 the accepted individual's conviction or convictions and activities or  
23 participation in aspects of campus life, colleges must consider the  
24 state's policy to promote the admission to college of individuals previ-  
25 ously convicted of one or more criminal offenses and of allowing such  
26 individuals full access to all aspects of college life.

27 § 776. Enforcement. Failure to comply with this section shall be an  
28 unlawful discriminatory practice as defined in subdivision twenty-two of  
29 section two hundred ninety-six of the executive law.

30 § 2. Section 296 of the executive law is amended by adding a new  
31 subdivision 22 to read as follows:

32 22. It shall be an unlawful discriminatory practice for any college,  
33 as defined in subdivision one of section seven hundred seventy of the  
34 correction law, to make any inquiry into or consider information about  
35 an individual's past arrest or conviction history at any time during the  
36 application and admissions decision-making process or to rescind an  
37 offer of admission based upon information about an individual's arrest  
38 or conviction that occurred prior to admission.

39 § 3. This act shall take effect immediately.