STATE OF NEW YORK

3415

2023-2024 Regular Sessions

IN SENATE

January 31, 2023

Introduced by Sen. MYRIE -- 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:

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

ARTICLE 23-B

COLLEGE ADMISSIONS FOR PERSONS PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

Section 770. Definitions.

771. Legislative intent.

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

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

774. Post-acceptance inquiry about criminal history permitted.

775. Inquiries into criminal history not required.

776. Enforcement.

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

2. "Admissions decision-making process" shall mean submission of the application and all aspects of the application process through admission.

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

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

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

§ 772. Prohibition against inquiries about arrests that did not result in a criminal conviction and criminal convictions that have been sealed. At no time during the admission decision-making process or while a student is enrolled shall colleges make any inquiry or consider information about any arrest or criminal accusation of an individual who is applying for admission or has been admitted that was followed by a termination of that criminal action or proceeding in favor of such individual as defined in subdivision two of section 160.50 of the criminal procedure law and section 375.1 of the family court act, or by a youthful offender adjudication as defined in subdivision one of section 720.35 of the criminal procedure law, or by a juvenile delinquency adjudication as defined in subdivision one of section 380.1 of the family court act, or by a conviction for a violation sealed or sealable pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law.

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

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

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

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

(b) Colleges shall not establish outright bars to any activities or participation in aspects of campus life based on an admitted individual's criminal conviction history. Instead, colleges must develop an individualized process for determining whether or not there is a direct relationship between the accepted individual's criminal conviction history and the activity or aspect of campus life at issue. This individualized process must be set forth in writing and must include consideration of:

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

(ii) the time that has elapsed since the behavior underlying the criminal conviction or convictions;

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

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

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

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

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

§ 2. Section 296 of the executive law is amended by adding a new subdivision 23 to read as follows:

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

§ 3. This act shall take effect immediately.