



Memorandum in Support of Legislation to Establish Meaningful Enforcement of the Correction Law's Anti-Discrimination Provisions

Proposed Amendment

Section 1. Section 755 of the correction law, as added by chapter 931 of the laws of 1976, is amended to read as follows:

S 755. Enforcement. [1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.

2. In relation to actions by private employers, the] THE provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York city commission on human rights; PROVIDED, HOWEVER, THAT NOTHING HEREIN SHALL BE CONSTRUED TO LIMIT THE RIGHT OF A PERSON TO PURSUE ANY LEGAL REMEDY AVAILABLE UNDER ARTICLE FIFTEEN OF THE EXECUTIVE LAW OR ANY OTHER APPLICABLE PROVISION OF LAW.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.

Need for Amendment

The Coalition of Reentry Advocates urges the Legislature to enact legislation that would establish meaningful enforcement of the Correction Law's anti-discrimination provisions. Under New York State Human Rights Law §296(15), criminal-records based employment discrimination in violation of Correction Law Art. 23-A is prohibited, and "[a]ny person (emphasis added) claiming to be aggrieved by an unlawful discriminatory practice may, by himself or herself... make, sign and file with the division a verified complaint...." (N.Y.S. H.R.L. §297). Yet inexplicably one class of victims – job applicants discriminated against by public agencies on the basis of their criminal record – have their remedies limited to an Article 78 proceeding in state court, whereas individuals wrongfully denied employment by a private employer for the same reason may either file a complaint with the Division of Human Rights or an action in state court. Processing and adjudicating Article 78 petitions, which must be filed within four months of the alleged discrimination, takes valuable state court system resources, and remedies granted the successful litigant are limited. By contrast, the Division of Human Rights has streamlined, cost-effective procedures and mechanisms in place as well as expertise in evaluating discrimination claims.

By equalizing the remedies available to individuals wrongfully denied jobs on the basis of their conviction histories – so that the remedies are the same no matter whether the employer is a private company or a public agency – this bill levels the playing field. In eliminating this discrepancy, the Legislature will save New York State money: processing criminal-records based discrimination claims administratively at the Division of Human Rights, which many individuals choose to do because it does not require them to obtain legal counsel, will achieve speedy results at less cost to everyone.

Eliminating this discrepancy in legal remedies not only makes good sense from an economic and policy standpoint, but may also help New York State better comply with federal law. The Equal Employment Opportunity Commission (EEOC) has ruled that employment policies (which could include statutes that provide legal remedies) that exclude individuals based upon their criminal history may violate the Civil Rights Act because such policies disproportionately impact minorities, who are arrested and convicted at a significantly higher rate than their percentage in the population. Singling out a protected class of discrimination victims and limiting legal remedies available to them may well violate Title VII of the Civil Rights Act of 1964 and the New

York State Human Rights Law, which prohibits private employers and state and local governments from discriminating in employment based upon race, color, gender, national origin, or religion.

In sum, this bill will provide individuals who are discriminated against by a public agency as a result of their criminal record real relief by extending to them the same remedies afforded to people discriminated against by private employers, and in the process will save New York State valuable resources at this critical time.