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12-31-2014

Obscure Certificates Could Cut Down Recidivism

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When John Orlando was released from prison last year, he wanted to get his life back. He'd worked for decades as a funeral director, and he wanted to keep doing that. He loved the work, he needed the money, and he wanted the dignity of paying back the money he stole.

"I was guilty. I did it. I deserved to be punished," Orlando said recently, sitting in a Long Island diner. "If I could get my license back I could make good."

But he can't. Orlando stole hundreds of thousands of dollars from his sick cousin who entrusted him with his estate. And when Orlando's business failed, he couldn't pay back the people who'd prepaid for their funerals.

He was convicted of three felonies for those crimes, and so he can't yet get that license back. In 2016, three years after his release, he'll be eligible to apply for a Certificate of Good Conduct, and if he gets it he'll be allowed to at least apply to get a new funeral directing license. Until then, Orlando remains barred from the work of dressing bodies, saying prayers, and arranging flowers.

There are two kinds of Certificates -- Certificates of Relief and Certificates of Good Conduct. They're almost identical legally. The difference, put simply, is that people convicted of multiple serious crimes can only get a Certificate of Good Conduct, and they have to wait before they're eligible to apply -- the way John Orlando is waiting now. There's no built-in wait time for Certificates of Relief, which are reserved for people whose crimes were less serious.

They're peculiar documents. They were created to rehabilitate people with criminal histories by striking at the discrimination, both legal and illegal, that they face. But it's often used as a carrot, a thing a person with a conviction gets only after showing they've regained a place in society. But that can be a catch-22. A conviction can bar someone from public housing. It can keep them from getting professional licenses -- the right to direct funerals, or be a security guard or a home health aide, among many others. And employers stigmatize people with convictions, making it hard for them to get jobs. These are the problems Certificates were created to remedy, but also the problems people are often have to surmount before they're deemed worthy of one.

"On the one hand the Certificates are a means to rehabilitation," said Molly Kovel, a lawyer with Bronx Defenders. "On the other, DCCS [the Department of Corrections and Community Supervision], judges -- they see them . . . as a gold star, as a thing you get after you've been rehabilitated."

And so people with convictions are sometimes left to twist in the wind. Even if they have Certificate, people with criminal records tend to be poor and less educated -- things that make it difficult to get things like an apartment or a job. Without a Certificate, advocates say it's even worse.

"It's not serving time that's hard. Living after you've done time is hard," said Richard Langone, a lawyer who's worked on these issues, and who has personal experience -- he was convicted of second degree murder when he was a teenager. "Not many lawyers think beyond the consequences of a sentence."

New York state originally created a single Certificate back in the 1940s, and expanded it in fits and starts over the following decades. In 1976, when Governor Hugh Carey signed off on a law creating the two-Certificate system still in place today, he framed them as a way to stem the “senseless discrimination” against people with convictions.

“Providing a former offender a fair opportunity for a job is a matter of basic human fairness, as well as one of the surest ways to reduce crime,” the former governor wrote.

A conviction stays on a person’s record even if they get a Certificate, and they still have to disclose their convictions on things like job applications. And even if someone has a Certificate for a conviction, people are still allowed to not hire them -- or issue them a license, or rent them an apartment, among other things -- on the basis of that same conviction. Certificates, legally, do no more than “weigh in the applicant’s favor” of the idea that its holder is rehabilitated. And in the cases in which a conviction would automatically disqualify somebody from getting something like a license or a lease, they’re at least allowed to apply.

A Certificate can help a private job applicant show an employer that they’ve changed, and make it more likely that they’ll get the job, said Joanne Page, president and CEO of the Fortune Society, which helps people reintegrate. But a person can only make that argument if they get the interview. And though it’s illegal in New York State to toss out someone’s application solely on the basis of their criminal history, advocates say that private employers often do.

“The biggest issue is the blanket discrimination we see, where the person doesn’t even get a chance to be looked at, let alone present a Certificate,” Page said. “If we can get them in the door, and present themselves on merit, ninety percent of the problem is over.”

Both Certificates are ordinary-looking pieces of paper. They’re filled out by hand and they list the crime the person committed. At the top it says “FOR COURT OR BOARD OF PAROLE.” Depending on the person’s criminal history, they’ll either apply to the Department of Corrections and Community Supervision for a Certificate, or else to the judge who sentenced them. Judges can sometimes issue someone a Certificate at the same time that they’re sentencing them -- before they’ve been punished -- as a way of preempting the barriers they’ll face to rehabilitating themselves.

Certificates used to be a lot less necessary. It used to be rare for employers to ask after a person’s criminal history. And if they did, a person might have gotten away with lying. Checking up on people was tedious and expensive and few employers bothered. But people got a lot more anxious about security after September 11th. Coupled with the rise of the Internet, that anxiety fueled an explosion of background checks. And with it, the need for Certificates, as more people needed evidence that they had changed.

But few people get them. Since 2006, there have been over 200,000 releases from New York State prisons. The Department of Corrections and Community Supervision has issued 6,050 Certificates over that time. They are less rare than they used to be -- the Department of Corrections and Community Supervision issued almost twice as many Certificates last year as it did eight years ago. But that still amounted to barely 1,000.

That's partly because few people know about them. If you google "Certificate of Good Conduct New York," one of the first results is a city government website that links to the NYPD's website for details on getting a Certificate of Conduct, a completely unrelated document.

Roland Acevedo, a lawyer who's sued employers for discriminating against people with criminal histories, said lawyers are often as unaware of Certificates as the people they serve. Some judges, he said, despairing of a defense lawyer's ignorance, will suggest to the lawyer that they apply for a Certificate for their client -- that is, apply to the judge suggesting to them that they apply.

"A lot of lawyers don't know so they don't ask," Acevedo said. "It's amazing how many people don't know this law."

But for those that do, Certificates can be powerful. After getting convicted of tax evasion back in 2010, the Ciprianis were in danger of losing the liquor licenses that made their restaurants possible. But the family, "[whose lawyers are undeniably more talented than their cooks](#)," as The New York Observer put it, got a Certificate of Relief at their sentencing, which ultimately allowed them keep the licenses. But lawyers said that rarely happens for the average person.

For ordinary people, applying for a Certificate from the Department of Corrections, in particular, is "overwhelming," said Sebastian Solomon, a policy associate (CHECK) at the Legal Action Center. Among other things, applicants have to track down everywhere they've lived and worked over the past five years, their marital history, and obscure details of their criminal history -- including some the Department can likely access easily, like the prisons someone's been in.

"It's a seven page form which is full of things, I would argue, that don't make sense," Solomon said. "It's a really slow and unfriendly process."

Certificates have languished in obscurity -- it was only in 2010 that the state legislature fixed what amounted to a typo that had plagued Certificate-holders for years. The two kinds of Certificates established in the '70s have long been meant to run parallel, but over time they diverged slightly as certain laws happened to mention one or the other Certificate and not both. A man with a Certificate of Good Conduct - - the Certificate for people with multiple serious crimes, for which someone has to wait before applying -- was forced to sue in 2009, after he was denied the right to drive a school bus because he didn't have a Certificate of Relief. He wasn't eligible for a Certificate of Relief because of his record, and so he was stuck in legal limbo, despite obtaining a Certificate testifying to his rehabilitation.

The obscurity of the Certificates flows from the obscurity of the laws that discriminate against people with convictions. Scholars call those laws “collateral consequences,” and Certificates were created to help people get around them. But those without a Certificate face nearly 1,300 state laws, according to the American Bar Association’s database, that dog people who’ve already done their “hard time.”

Marc LaCloche, for example, learned to cut hair in a maximum security prison. But when he got out, the state refused to issue him a license to ply the trade the state had taught him, making headlines.

Discriminating against someone with a conviction can be a prudent way to minimize someone’s temptation to do wrong -- no necrophiliacs as funeral directors, say -- and their potential danger to other people. But the laws on collateral consequences are sprawling, and they can seem arbitrary.

That’s partly because collateral consequences are sometimes triggered by any conviction -- anything from a shoplifting to murder; from insider trading to drunk driving -- and aren’t specifically tied to the crime a person committed. For example, people are barred from getting a license to rehabilitate wildlife for three years following any misdemeanor or felony conviction -- and not just one for animal cruelty, for instance. In some cases, the punishment seems to not fit the crime.

And even when there isn’t a bar against people with criminal histories, state agencies sometimes require that people have “good moral character” to get a license. And advocates say that’s just a sneaky way of discriminating against people with convictions.

Despite the stakes, people are often stumbling into these collateral consequences, said Jason Hoge, a law professor at the Syracuse University College of Law. Especially when it comes to lower-level offenses, prosecutors often offer people plea deals that let people avoid jail, or fines -- deals allow them to do little more than plead guilty.

“But that conviction’s going to be on your record for the rest of your life,” Hoge said. “People walk in, walk out with no consequences other than that some bomb is going to go off in five years when they apply for stuff” -- like a license, or public housing, for which they suddenly find themselves ineligible because of that forgotten conviction.

Certificates are designed to help people facing those problems, and so advocates and government agencies -- like New York City’s Department of Probation -- are working to get them into people’s hands. But Hoge argued that if more people had Certificates it could weaken the power they have. The idea that they’re proof that someone is rehabilitated is only credible because they’re hard to get.

But that thwarts their other purpose, which is to help people rehabilitate themselves. That’s why people are technically eligible to get a Certificate at their sentencing, before they’ve even been punished. (There’s no data on how often judges issue Certificates. Anecdotally, it’s rare.) But if more people got them as a matter of course, it could end up undermining the idea that they show that someone is

rehabilitated. Certificates, the thinking goes, only work because virtually no one has one.

“Now everybody is ‘rehabilitated,’” he said, imagining a scenario in which Certificates were widespread. “And then what’s the point of convicting people?”

Certificates help undo the blanketing consequences of getting convicted. But why not repeal the laws that create those blanketing consequences, in order to make them more targeted? Why not let judges or the Department of Corrections craft specific collateral consequences instead of forcing people to opt-out of many, sometimes unrelated consequences through the Certificate system?

But advocates say those laws aren’t likely to ever get repealed. That’s partly because there are so many of them, and it’d be an enormous project. But more than that, anything that seems “soft on crime” remains politically radioactive.

“It’s much more fruitful to talk about relief [through Certificates] than talk about removing all these barriers,” said Margaret Love, a lawyer specializing in the restoration of rights, and sentencing and corrections policy.

The laws surrounding Certificates aren’t likely to change anytime soon, advocates said. But nothing needs to change, legally, for things to be dramatically different for people with convictions -- only that more people need to know about them, Love argued.

“It ought to function better than it does. It’s good on paper.”