

HOW TO BECOME A FIDUCIARY IN NEW YORK SURROGATE'S COURT WITH A FELONY CONVICTION

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Can I be appointed the fiduciary of an estate in New York Surrogate's Court if I have a felony conviction?

The short answer is: *maybe*.

Until 2021, New York State barred people with past felony convictions from serving as executors, administrators, guardians, or trustees for a deceased person's estate. With a growing awareness that bans on allowing people with convictions to move forward and participate in society do not improve public safety, family connections, or the economy, legislators recognized that change was needed. In January 2021, a bill was introduced to allow courts to consider appointing people with felony convictions as fiduciaries of an estate. A fiduciary is someone who manages money or property for someone else. The [bill's sponsor noted](#) that “[i]t is detrimental to grieving families when an individual is prohibited from acting as an executor due to his or her conviction after paying their debt to society.”¹The bill, which amended New York's Surrogate's Court Procedure Act, was [signed into law](#) later that year.

Unfortunately, not everyone with a felony conviction history is eligible to serve as a fiduciary under SCPA 707(2)(b). The court still has discretion in whether or not to make an appointment: it can choose not to approve someone whose felony conviction(s) could be “adverse to the welfare of the estate,” including but not limited to convictions for embezzlement or any crime “where there was a misappropriation of money or a breach of fiduciary duty.” Although convictions for financial crimes are clearly concerning, the amended law does not define which crimes would be “adverse to the welfare of the estate.”

If you would like to be appointed as a fiduciary and have a felony conviction history, the New York State Office of Court Administration requires you to submit a **Certificate of Relief from Disabilities** or a **Certificate of Good Conduct** along with your [administration petition](#). [Note: You should also consider submitting “proof of positive change” with the petition. For more information, see below.]

What are Certificates of Relief from Disabilities and Certificates of Good Conduct?

Certificates of Relief from Disabilities (CRDs) and Certificates of Good Conduct (CGCs) are documents issued by New York State that demonstrate that you have made positive changes since your conviction and can be used to further that positive change.

CRDs and CGCs generally cover New York State convictions, but you can also apply for and receive these documents if you have federal or out-of-state convictions.

CRDs and CGCs can be helpful when applying for jobs, state or local government work clearance, and licenses to practice trades. By law, they remove automatic barriers that stand in the way of obtaining these life essentials. In other words, where the law imposes a flat ban on obtaining jobs, licenses or work clearance based on a person's conviction history, CRDs and CGC act to lift that ban. A CRD or CGC can remove automatic disqualification to serve on a jury for a person with a felony conviction; a CGC can remove automatic disqualifications from holding public office. The CRD or CGC application form will ask you why you are seeking a certificate and will include boxes to check and space for information to be added. Unfortunately, holding a CRD or CGC does not guarantee that you will get the job, license, or clearance you seek: your application will still be evaluated on an individual basis, and you'll need to qualify based on your merits and experience.

- You can seek a CRD or CGC for general purposes, which is usually sufficient for employment, licensing, and work clearance situations.
- If you have a conviction history and would like to hold public office, you must apply for a CGC and state this reason in your application. Only a CGC is valid for this purpose.

By law, prospective employers in New York State (including public agencies and private companies) must consider your CRD or CGC in a positive light: it creates a presumption that you have been “rehabilitated” from your crime of conviction. (NY Correction Law §753(2)). For additional information on conviction history-based employment discrimination protections in New York State:

- “Barriers to Reentry: Your Rights After Rehabilitation,” by the Office of the NYS Attorney General, available [here](#).
- A Worker’s Guide to Criminal History Protections Under the New York City Human Rights Law, by the NYC Commission on Human Rights, available [here](#).

Who is eligible to apply for a CRD or CGC?

The type of certificate you can apply for depends on your conviction history.

CRD: If you were convicted of **any number of misdemeanors and/or no more than one felony** (all convictions count towards the total, including federal and out-of-state convictions), you are eligible to apply for a CRD. A CRD covers one conviction only – you must apply for a separate CRD for each of your convictions. [Note: two or more felony convictions in the same court on the same day are counted as one felony for determining your eligibility.]

CGC: You are eligible to apply for a CGC if you were convicted of **more than one felony and any number of misdemeanors**. A CGC will cover all your convictions. Depending on your conviction history, there are waiting periods for applying. [Note: if you want to hold public office, apply for a CGC regardless of your conviction history. Only a CGC works for this purpose.]

When you apply for either a CRD or CGC (see below for information on how to apply), you should consider submitting “**proof of positive change**,” also called “**evidence of rehabilitation**,” – documents that show you have committed to positive change since your conviction. These can include diplomas; certificates and accreditations; letters of reference from past employers, clergy, teachers; character references from people who know you well; and evidence of volunteer work or activities that give back to the community. Always submit copies, not originals.

How do I apply for a CRD?

A. At sentencing: You can apply for a CRD at sentencing by asking the court to grant one. While it is rare for courts to issue a CRD at sentencing, if they do, the CRD will not only provide the relief described above but will also allow you to keep any existing licenses to practice trades.

B. After sentencing: If your conviction did not result in a state prison sentence, you can apply for a CRD to the court that sentenced you, any time after sentencing. You can even apply while on probation if you first get permission from your probation officer. [A CRD issued while a person is on probation is considered temporary during the probation period and becomes permanent when that period ends.]

You will need to know the offense you were convicted of; the date you were arrested; and the date you were sentenced. Different courts use different procedures for CRD applications, so you will need to call the courts clerk’s office where you were sentenced to learn what you need to do. Regardless of the court, you will need to fill out an application form. While the application form does not ask you to submit proof of positive change or evidence of rehabilitation (see above), it is a good idea to attach copies of any evidence that you have because it may improve your chance of getting your application granted.

If your conviction resulted in a state prison sentence, you can submit an application to the New York State Department of Corrections and Community Supervision (DOCCS) after you are released.

- You can find more information on the [DOCCS website](#).
- You can also access the application form [here](#).

How do I apply for a CGC?

You submit your application for a CGC to DOCCS. Eligibility involves waiting periods, calculated from your most recent release from prison, or if you did not serve time in prison, from the date of your last conviction. You must wait five years if your most serious conviction was for an A or B felony; three years if your most serious conviction was for a C, D or E felony; or one year if you only have misdemeanor convictions. You can apply for a CGC while you are on parole or post-release supervision with permission from your parole officer. The CGC is considered temporary while you are under supervision and becomes permanent once you complete it.

Submit your application to DOCCS using the [Certificate Application](#).

For additional information on CRDs/CGCs, see the guide issued by the New York State DOCCS “Certificate of Relief / Good Conduct & Restoration of Rights,” available [here](#).

How do I get a copy of my conviction history records?

Even if you know the details of your conviction history, you should consider requesting a copy of your official records so that you can see what they contain, make sure they are accurate, and request changes if necessary. These records are called “records of arrest and prosecution,” or “RAP sheets,” and require your fingerprints to obtain. Searches done by private companies over the internet are a poor substitute and may not include correct information.

Several nonprofit groups across the state assist low-income individuals with obtaining, understanding, and correcting mistakes on their RAP sheets. They assist you with fingerprinting and process fee waivers so you do not need to pay for the RAP sheet.

These organizations include:

- Next Door Project at the [Community Service Society of New York](#)
 - (212) 614-5441
 - Works with New York City residents.
- [Youth Represent](#).
 - (646) 759-8080 or by email at info@youthrepresent.org
 - Works with individuals 26 years old or younger, statewide.
- [Legal Action Center](#)
 - (212) 243-1313
 - Works with people statewide.

If you are not a person with limited income or if you would like to order RAP sheets on your own:

- You can obtain your New York State RAP Sheet on the New York State Division of Criminal Justice Services (DCJS) website [here](#).
 - Cost: \$13.50 fingerprint processing fee (in-state applicants)
 - Note: DCJS uses a company called IdentoGo for fingerprinting. They have locations across the state and in other states. You cannot submit fingerprints obtained from any other source.
- You can obtain your FBI RAP Sheet [here](#).
 - Cost: \$18.00
 - Note: FBI rap sheets are compiled from information provided by states where you have records; each state may use a different reporting format and sometimes these records are incomplete.

NEED LEGAL HELP?

The Planning and Estates Law Project (PELP) of the City Bar Justice Center offers free legal assistance with end-of-life planning, probate, and estates matters to New York City residents with limited resources. PELP aims to combat poverty by helping clients who cannot afford to hire a private attorney claim the inheritances to which they are entitled and protect the assets that they have worked hard to accumulate. Our goal is to empower clients to claim and maintain these assets so that wealth, rather than poverty, is inherited between generations.



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<https://www.citybarjusticecenter.org/projects/planning-and-estates-law-project/>

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