

# Rights Restoration and the Entanglement of US Criminal and Civil Law: A Study of New York’s “Certificates of Relief”

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*Despite burgeoning interest in prisoner re-entry and the “collateral consequences” of criminal convictions, we know little about the practical operation of policies governing the rights and privileges of people with criminal convictions. This study examines New York’s Certificates of Relief from Civil Disabilities to explore the workings of the US carceral state at the intersection of criminal and civil law. These certificates remove some legal restrictions accompanying convictions, particularly licensure barriers, and are easier to achieve than pardons; other states have used New York’s policy as a model. Interviews with judges and probation officers reveal deep variations in how they understand and award certificates. In some cases, differences stem from informal local agreements, particularly concerning firearms in rural communities; in others, from discretionary judgments in a context of legal ambiguity. These practices demonstrate how specific legal, organizational, and cultural factors contribute to complexity and variation in the US carceral state.*

## I. INTRODUCTION

“Collateral consequences” policies are legal rules restricting the rights and privileges of people with criminal convictions.<sup>1</sup> As these policies appear to have increased over the last thirty years in state and federal law, and as the use of background checks has expanded, there has been growing awareness among scholars, advocates, and lawmakers of the importance of such restrictions within the US

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1. Collateral sanctions can be triggered by criminal justice contact that does not result in a conviction—such as an arrest, the filing of criminal charges, or issuance of an order of protection—or by noncriminal dispositions such as violations and youthful offender adjudications. The legal instrument being examined here addresses the civil disabilities arising from a conviction.

“carceral state” (Gottschalk 2006, xi) and of the need for a better understanding of the practices by which collateral sanctions are imposed, interpreted, and, in some cases, relieved.

This article gauges such practices by focusing on a rights-restoration measure available to New Yorkers with criminal convictions. The Certificate of Relief from Civil Disabilities, or COR, is one of two certificates established under New York law to offer a measure of rights restoration. (The other, the Certificate of Good Conduct, differs in important respects and is not a focus of this article.<sup>2</sup>) State statutes and administrative documents establish the legal framework by which CORs operate; these legal texts and the history of certificate law have been exhaustively analyzed by Radice (2012). However, text and legislative history alone deliver a picture that is not only incomplete, but is also in some ways at odds with the practices of key legal interpreters. That is among the conclusions of this study, which draws from interviews with twenty-one New York county and city court judges and with probation officials in twenty-three counties, chosen from regions across the state, with further context provided by interviews with numerous people working in various state and nongovernmental positions related to criminal justice practices in New York.

These interviews reveal a legal landscape of diversity and disagreement. These differences arise, most fundamentally, from the entanglement of criminal and civil law in the collateral consequences ecosystem;<sup>3</sup> in that setting, specific legal, organizational, and cultural factors lead to significant variation in how probation officers and judges implement certificates law. CORs were enacted to address barriers located outside the criminal law field proper—but with implementation led by criminal justice actors, particularly judges. Today, in responding to COR requests, those legal interpreters often employ approaches and tools drawn from their criminal law practices. Probation officers emerge as a critical intermediary, playing essential roles in many jurisdictions in constructing the meaning of the certificates policy.

The decisions of probation officers and judges are also influenced by their judgments about the importance of the rights and privileges certificate applicants seek to restore. Such judgments, meanwhile, take place in a setting of ambiguity and uncertainty about the specific consequences of a COR grant. In particular, legal interpreters employ dramatically different understandings of two core questions: first, whether the certificate is properly granted to precede and enable rehabilitation, or to follow and reward rehabilitation; and second, whether a COR actually restores a person’s legal ability to own firearms. Indeed, the restriction on firearms for hunting emerges as perhaps the single most prominent collateral consequence in many localities, and surfaces in virtually every aspect of certificates practice in rural

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2. People with more than one felony conviction who seek relief from civil disabilities must apply for a Certificate of Good Conduct. Unlike the COR, the Good Conduct certificate requires a waiting period after the completion of the sentence—three years from the completion of sentence for some felonies, five years for others.

3. This metaphor was articulated by Shanahan, who focuses on the “significant entanglements” of criminal and civil sanctions in US law (Shanahan 2012). Shanahan offers this concept as a doctrinal lens capable of guiding courts in their consideration of direct and indirect consequences.

counties, from how people with criminal convictions learn about certificates to how judges frame the concept of rehabilitation and decide whether to award the document. Judicially conferred certificates are usually awarded only after the local probation department has conducted an investigation and made a recommendation to the county judge, and both county probation officers and county court judges understand certificates policy through the lens of their social setting, their own understandings of relevant legal texts and the character of their offender population. New York's COR illuminates the deep, complex interweaving of penal and regulatory law in the United States.

## II. THE US CARCERAL STATE AND CERTIFICATES OF RELIEF

The term collateral consequences, as used here, refers to policies limiting rights and privileges, accompanying a sentence but not formally part of it, and imposed not only on former prisoners but also on the millions of people disciplined by the criminal justice system without being sentenced to incarceration. Varying widely, scattered across state and federal civil statutes and regulations, and often subject to discretionary enforcement, such restrictions can influence whether a person with a conviction may vote, serve on juries, or hold public office; join the military, and own firearms; work in licensed professions; live in public housing; and receive public benefits, from food stamps to college tuition loans, among other rights and privileges.<sup>4</sup> People with histories of criminal justice contact can face barriers well beyond these formal, *de jure* restrictions, meanwhile; private employers and landlords in most of the United States may reject applicants based on virtually anything a background check turns up.<sup>5</sup> Since some 65 million Americans have criminal records of some kind (Rodriguez and Emsellem 2011), and more than 11 million have been convicted of felonies (Uggen, Manza, and Thompson 2006), the potential impact of these policies is very broad.

Of particular interest both to scholars and policymakers is the nexus between collateral penalties and desistance from crime. About 650,000 people are released from prison each year in the United States; their successful reintegration into society is critical not only to their own life course and the well-being of their families, but also to public safety. Re-entry has become a focus of national policy in the last decade: President George W. Bush signed into law the Second Chance Act of 2007, providing funding for a variety of re-entry measures and policy evaluation, and President Obama formed a cabinet-level Federal Interagency Re-Entry Council

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4. The American Bar Association has recently compiled a national inventory of collateral consequences, searchable by jurisdiction, type of restriction, and level of offense. See <http://www.abacollateralconsequences.org/>.

5. Note, however, that the federal Equal Employment Opportunity Commission (EEOC) published in 2012 legal guidance calling for the elimination of any blanket disqualification of people with criminal records from a position, and indicating that if hiring restrictions have disproportionate effects on African Americans and Hispanics, they run afoul of Title VII of the Civil Rights Act of 1964. This 2012 guidance also sets forth best practices for employers, including individual assessment of applicants with criminal records and narrow tailoring of any criminal-record-based screening. For discussion of the role of Title VII and the EEOC in contemporary policies, see Jacobs (2015), particularly Chapter 14, and Lageson, Vuolo, and Uggen (2015).

in 2011. Leading conservative Republicans in Congress have joined Democrats in voicing concern about the impact on individuals and communities of the enduring restrictions accompanying a criminal conviction (Peters 2014). US Attorney General Eric Holder has encouraged state attorneys general to consider whether those collateral consequences “that impose burdens on individuals convicted of crimes without increasing public safety should be eliminated” (“Dear Attorney General” letter, Office of the Attorney General, Washington, DC, April 18, 2011; copy on file with the author). The American Bar Association has concluded that “[i]f not administered in an appropriately deliberate manner, a regime of collateral consequences may frustrate the reentry and rehabilitation of this population, and encourage recidivism” (Love 2003, 102).

State laws formally bar people with convictions from scores or even hundreds of certified or licensed professions (Klinge, Roberts, and Colgate Love 2013), and many employers are reluctant to hire people with criminal records or refuse to do so altogether (Holzer, Raphael, and Stoll 2007; Society for Human Resource Management 2012). These employment restrictions and their effects have drawn close attention (Bushway, Nieuwebeerta, and Blokland 2011; Jacobs 2015).<sup>6</sup> As several studies have concluded, “a lack of employment opportunities can increase the economic incentives to commit crime” (von Hirsch and Wasik 1997, 605); together with a stable family and housing, steady employment is a key predictor of desistance from crime (Uggen 2000; Western 2006).

Partly for this reason, many US states offer different types of rights-restoration procedures. However, the presence of these laws on the books does not mean large numbers of offenders are able to avail themselves of their benefits. Pardons have become rare, as elected executives fear popular backlash (Love 2003, 116). Expungement and record sealing, often opposed by media organizations, law enforcement, and employers, do not exist at all in some states and are obscure and inaccessible in others; even when attained, they often extend only limited relief (Jacobs 2015). Both the American Bar Association and the National Association of Criminal Defense Lawyers (NACDL) have called for the expansion of policies enabling rights restoration; the NACDL convened a series of hearings across the United States in 2012 and 2013, and in 2014 released a major report calling for reductions in collateral sanctions and increased opportunities to clear records and regain lost rights and privileges (American Bar Association, Criminal Justice Standards Committee 2004; National Association of Criminal Defense Lawyers 2014).

In this setting, a discretionary rights-restoration mechanism that is more widely available than a pardon, leaves in place a recorded conviction, but facilitates reentry by offering some improvement in legal opportunities appears attractive to a variety of actors. New York’s COR is one such measure. A degree of policy diffusion appears to be under way: Illinois’ 2003 certificates law (first introduced by then-State Senator Barack Obama) was, in part, “modeled after New York’s,” a detailed study noted (Coalition of Advocates to Reduce Recidivism Through Employment,

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6. Some 100 localities, and sixteen states, have adopted “ban the box” measures, prohibiting some employers from asking about criminal records on their initial hiring questionnaire (Pinard 2014; Rodriguez 2015). In most cases, these laws govern the hiring practices only of public employers.

the Safer Foundation 2006, 5), and certificate laws enacted in Ohio and North Carolina in 2011 and 2012 appear to have been as well.<sup>7</sup> All told, at least half a dozen states have considered adopting rights-restoration certificate laws since 2010, often with an eye to New York (Radice 2012). Most recently, both Vermont and Connecticut enacted legislation featuring rights-restoring certificates in summer of 2014.<sup>8</sup>

In the burgeoning literature on US punishment, a particularly rich vein emphasizes the importance of locally patterned practices (Bach 2009; Natapoff 2012; Kohler-Hausmann 2013). Collateral consequences scholarship, meanwhile, has tended to focus on the formal law: developing doctrinal critiques (e.g., Karlan 2004; Roberts 2008), gauging restrictions' impact on citizenship (Uggen, Manza, and Thompson 2006; Lerman and Weaver 2010), or tallying different state laws (Legal Action Center 2004; Ewald 2012; Owens and Smith 2012; Vallas and Dietrich 2014). Some research has offered more fine-grained analysis, examining how lawyers with criminal convictions fare before licensing boards (Pinaire, Heumann, and Lerman 2006); scrutinizing the significant challenges collateral sanctions pose for defense counsel (Pinard 2004); gauging how state and local election officials restore (or fail to restore) those disqualified from the franchise (Allen 2012; Meredith and Morse forthcoming); inquiring after state court judges' experiences with collateral consequences (Ewald and Smith 2008); analyzing how much social workers know about the collateral restrictions facing their clients (Burton et al. 2014); and studying how employers use information provided by private-vendor background checks (Lageson, Vuolo, and Uggen 2015), for example. These studies demonstrate the complexity and importance of collateral consequences law, yet also make clear the need for more qualitative, empirical assessments of the factors shaping decision making and variation in the discretionary, sometimes ambiguous legal realms such policies create.

### III. THE CERTIFICATE OF RELIEF: HISTORY AND LEGAL FRAMEWORK

New York put in place its first rights-restoration certificate, the Certificate of Good Conduct, in 1945.<sup>9</sup> Awarded by the Parole Board, this certificate removed only specific disabilities identified by the Board and, under a 1951 amendment, required a showing of deserving conduct and a five-year waiting period. In 1966, recognizing the problems posed by widespread licensure restrictions and the need for more readily available relief, the New York legislature enacted a second measure: the Certificate of Relief from Disabilities. Initially available only to first offenders, this certificate could be granted at any time. Applicants had to meet a lower threshold than for the good conduct certificate, as judges were directed to

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7. On Ohio's "Certificate of Qualification for Employment," see <http://www.drc.ohio.gov/web/cqe.htm>; on North Carolina's COR, see <http://www.sog.unc.edu/node/2672>.

8. See Vermont Uniform Collateral Consequences of Conviction Act (2014); Connecticut Public Law 14-2n7 (2014). The Vermont statute provides for two different types of restoration: the "Order of Limited Relief" and the "Certificate of Restoration of Rights."

9. This discussion relies heavily on Radice (2012), particularly pp. 734–39.

grant the COR whenever they determined that doing so was “consistent with the rehabilitation of the offender,” and also “with the public interest.” This is the same standard New York’s Correctional Law directs judges to employ today (NY Correctional Law §§ 702(2), 703(3), 703-b(1)).

In 1972, the legislature further expanded COR eligibility by removing the first offenders restriction. As one legislative supporter explained: “Since our experience with the certificate of relief from disabilities has thus far been satisfactory, it is prudent that we take a step forward by expanding those qualified to receive the certificate” (State Senator John Dunne, quoted in Radice 2012, 737). Endorsing certificates during a 1976 revision of the law, Governor Hugh Carey referred to “senseless discrimination” faced by offenders returning to society, and argued that “[p]roviding 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” (New York Governor Hugh Carey, quoted in Radice 2012, 722). Carey’s statement captures legislators’ sense that the COR was an effective way to address civil law barriers that damaged both individual lives and public safety. Meanwhile, as Radice demonstrates, legislators saw the COR “as a *means* to rehabilitation,” and not solely “for those who were *already* rehabilitated” (Radice 2012, 736).<sup>10</sup>

Notably, a certificate may be granted “at the time sentence is pronounced, in which case it may grant relief from forfeitures, as well as disabilities” (NY Correctional Law § 702(1)). Several legislative provisions make clear the possibility of sentencing grants. Indeed, New York law states that a judge will either issue a COR at sentencing, or “shall advise the defendant of his or her eligibility” for a certificate (22 NY Comp. Codes R. & Regs. § 200.9(b)). The certificate application form includes three grades of certificate—A, B, and C—and the form states that an “A” certificate is “issued at the time of sentence.” The “B” type certificate, like the “A,” relieves “the holder of all disabilities and bars to employment,” and differs primarily in that it is not issued at sentencing; the “C” type relieves the holder of those “forfeitures, disabilities or bars hereinafter enumerated,” and includes space for the issuing authority to identify which restrictions the COR is meant to remove. A person with any number of misdemeanors, and up to one felony, is eligible to apply for the COR; however, each certificate removes disabilities attached only to a single, specified conviction, so some individuals find they must apply for more than one COR in order to achieve full relief.

Certificates also appear in New York’s employment antidiscrimination statute, which prohibits refusal to hire solely because of a criminal conviction unless there is a “direct relationship” between the infraction and the potential job, or public safety would be directly endangered. The law requires employers to “consider” evidence of the offender’s rehabilitation, and states that a COR (or a Certificate of Good Conduct) “shall create a presumption of rehabilitation in regard to the offense or offenses specified therein” (NY Correctional Law § 753(2)). Both the

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10. Emphasis in original. As Radice explains, this conclusion is supported by statutory text, legislative history, and the governor’s report on the law. See Radice (2012, 736).

Certificate of Good Conduct and the COR also restore the right to vote of a person on parole.<sup>11</sup> (New Yorkers sentenced to probation do not lose the right to vote.)

As a formal matter, the certificate grants a person relief from "any forfeiture or disability, or . . . bar to his employment, automatically imposed by law" (NY Correctional Law §701(1)).<sup>12</sup> New York professional licensure law contains several such automatic restrictions excluding people with criminal convictions, and possession of the COR restores their eligibility. However, the COR certainly does not guarantee receipt of an occupational license or certification: individualized review by the licensing authority is still authorized and, indeed, expected. As a 1998 New York administrative law decision put it:

An applicant for a real estate broker's license who is disqualified because of a criminal conviction, and who obtains a certificate of relief from disabilities, is *not entitled to be licensed unless found qualified upon a review of fitness for licensure* pursuant to Article 23-A of the Correction Law. (*State of New York, Department of State Division of Licensing Services v. Kaye*, 95 DOS 98 (1998) [emphasis added])

The author's interviews with New York licensure authorities confirmed that while the COR enables a person to be considered for professional licensure or certification, state authorities still engage in careful scrutiny of such applicants' records, including their criminal history. Licensure practices are extremely complex, well beyond what this article can address. However, it is important to note that much New York licensure may be characterized not by automatic exclusion of those convicted of crime, but by individualized, discretionary review, and that licensing authorities treat the certificate in varying ways. An official at the New York Department of State (DOS), which licenses thirty-two occupations, said flatly, "[t]hey have to have a Certificate": without a COR, an applicant with a conviction was certain to be denied DOS licensure (author's telephone interview, licensing official, Division of Licensing Services, New York Department of State, February 13, 2013).<sup>13</sup> The New York State Education Department (NYSED), meanwhile, employs not an automatic conviction bar but instead a "good moral character" requirement. As a NYSED official explained, that requirement entails individualized review of each applicant, and while a COR may help, it is neither necessary nor dispositive: "it's the same one way or the other, with or without a Certificate," this official maintained (author's telephone interview, NYSED official, March 6, 2013).<sup>14</sup> The New York Department of Health (DOH) provides professional certification to a range of professions in the health care field—including a large and

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11. See <https://www.parole.ny.gov/certrelief.html>.

12. The certificate does not remove driver's license suspensions, and state law specifies that for a few professions, the COR does not restore eligibility. See Radice (2012, 728–29).

13. Notably, the DOS's main licensure home page links to information about the Certificate of Relief, at <http://www.dos.ny.gov/licensing/cert-relief-good-conduct.html>.

14. This official emphasized that even people convicted of serious crimes sometimes receive NYSED licenses, while minor offenses that are more recent or have a closer link to the profession in question may prove disqualifying.

growing number of home health aides. (Several judges and probation officers interviewed referred to home health aide licensure as among the most common motivators of certificate applications.) State health licensure law does not contain an automatic exclusion standard, but instead mandates that certain health employers gather criminal background information, consider that information, and reject those convicted of certain offenses unless the licensing authority determines, “in its discretion, that approval of the application . . . will not in any way jeopardize the health, safety or welfare of the beneficiaries of such services” (see Laws of New York, Art. 35 [Executive] § 845-b).<sup>15</sup> While a DOH official stated that there was no automatic bar for people with criminal records, probation officers and other interview subjects involved in re-entry work explained that, in practice, anyone with a criminal conviction seeking DOH licensure must have a certificate.

There are three paths to a COR: first, by grant of the court, at initial sentencing; second (for those sentenced to probation rather than incarceration), from the court in their county of conviction; and third (only for those sentenced to any term of incarceration), by grant of the state Department of Corrections and Community Supervision (DOCCS) upon release from confinement or later. Though we lack hard data on this point, the postconviction, county court route has appeared to be the most common path to a COR, and is the focus of this article.<sup>16</sup>

A copy of every COR issued is to be sent to the New York Division of Criminal Justice Services (DCJS). The DCJS manages state criminal justice data, including compiling the individual criminal history record (or “rapsheet”) on which any COR awarded should be recorded. Once issuance of a particular COR has been

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15. Notably, as part of defining “criminal history information,” the statute includes “certificates filed pursuant to subdivision two of section seven hundred five of the correction law and which the division of criminal justice services is required to maintain”—a reference to CORs and Certificates of Good Conduct. See Laws of New York, NY Public Law § 2899.

16. There is suggestive evidence of another level of variation (i.e., beyond intercounty differences) in the issuance of certificates: between the courts and DOCCS. Because of recent change in administrative practice within DOCCS, that department is now issuing far more certificates than it did just a few years ago—as many as 3,000 in a year (Radice 2012). Indeed, there is a real possibility that DOCCS is now systematically more likely to issue a COR than is a local court. For those applying to DOCCS for a COR after leaving supervision, DOCCS appears to be guided by a philosophy strongly in favor of issuing certificates. DOCCS now issues CORs, at its own initiative, for those completing sentences of incarceration. Such issuance is not automatic or universal—those confined in Special Housing Units during confinement and those convicted of a specified list of sexual offenses will have any certificate deferred, rather than granted at release. Under a DOCCS policy directive issued in late 2012, it became department policy for prerelease staff in DOCCS facilities to prepare a certificate application “for each eligible offender approved for release” (see New York Department of Corrections and Community Supervision 2012). In 2012, DOCCS issued 610 CORs to people no longer incarcerated, and 3,872 “facilities” grants—that is, to those leaving prison. (DOCCS issued 446 Certificates of Good Conduct in 2012 [e-mail to the author, senior official, New York Department of Corrections and Community Supervision, April 29, 2013]). This creates the intriguing possibility that a person sentenced to prison in New York is now more likely to eventually receive a COR—eventually—than a person sentenced to probation. Certificates may also be issued by New York’s local “justice courts.” New York’s localized system, comprised of town courts in rural and suburban areas and city courts in urban areas, places most misdemeanor cases outside the county courts in much of the state. Arraignment in many felony cases also occurs in town courts before the case is passed to a county court. As of 2006, there were 1,277 such courts, hearing about 2 million cases a year. See New York Unified Court System (2006). Under New York law, a local justice court has the same power to issue or deny a COR as does a county court. Some probation officers and judges interviewed in rural counties did mention that CORs are occasionally granted by justice courts; a study of those practices lies outside the scope of the current project.



noted on a person's rapsheet, however, the DCJS does not currently compile centralized records of all CORs (e-mail to the author, senior DCJS official, March 7, 2013; author's telephone interview, DCJS staff, June 24, 2013; author's telephone interview, DCJS staff, July 29, 2013). Most county courts, meanwhile, place a copy of the COR only in the individual file, and neither maintain a centralized record of CORs granted nor keep copies of the full application, though some clerks choose to keep such records informally for a limited time.

This lack of data is a serious obstacle for scholars and practitioners. Without an official file, it is not possible to say systematically how many CORs are issued in a given year; how many come through county, city, and town courts, and through DOCCS; what offense levels are most common among applicants; and what applicants' most commonly stated objectives are, for example. Researchers seeking answers to questions about this important rights-restoration policy must turn to alternative methods. Yet here a silver lining emerges, as interviews with practitioners reveal complexities that a centralized data file might well obscure.

#### IV. STUDY METHODOLOGY

This article focuses on the process by which certificates are awarded, reporting the results of structured interviews with twenty-three county probation officers and twenty-one county court and city court judges, conducted by the author across much of New York between June 2012 and July 2013. As explained below, probation officers and judges are the two most important actors (though not the only ones) in determining whether a certificate application submitted to a county court will be granted. Among probation officers interviewed, two were from New York City boroughs; two from suburban New York City area counties; one from a suburban county in the Hudson Valley; two from largely urban northeastern counties; eight from rural or mixed rural-suburban counties in the broad northeastern section of the state; four from rural or mixed rural-suburban counties in central New York; one from an urban central New York county; and three from mostly rural counties in western New York. Among judges, six were interviewed in criminal courts in two New York City boroughs; seven in rural or mixed rural-suburban northeastern New York county courts; one in a northeastern urban county court; two in rural central New York county courts; two in urban central New York county courts; and one in a northeastern New York city court. All but one of the judicial interviews were conducted in person; about half the probation interviews were conducted in person, and about half via telephone. Most interviews lasted between thirty and sixty minutes. Subjects were promised confidentiality in order to enable them to speak frankly about their work and their experiences.<sup>17</sup>

If judges' importance to the certificate-granting process is obvious (aside from DOCCS, judges are the only legal awarding authority), probation's role may require

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17. Many emphasized the importance of not being publicly quoted in a way that might suggest they were prejudging future applicants, criticizing the judgment of colleagues with whom they work each day and might disagree, or revealing uncertainty about the legal environment in which they work—particularly given that for many, certificates law surfaces infrequently and presents unique challenges.

explanation. Though probation is best known as a form of postconviction supervision, in many states supervision may comprise only about half a typical probation department's workload. The balance is investigation before the sentence: in New York, as in much of the United States, probation officers are responsible for completing a presentencing investigation (PSI, or presentencing report, PSR—the two terms appear to be used interchangeably), upon which a judge will rely at final sentencing.<sup>18</sup> In New York, after entry of a preliminary plea or “promise plea” in felony and serious misdemeanor cases, the judge will order a PSR. The report typically includes a careful review of the defendant's criminal background, from all available criminal record databases, as well as a portrait of the person's living situation, employment history, family arrangements, and any drug and alcohol problems, and may involve multiple in-person and telephone conversations with the defendant, as well as interviews with others in their lives.

In New York, the PSR face sheet includes check boxes in which the investigating officer is asked whether the person is eligible for a COR, and whether probation recommends that a certificate be granted immediately—at sentencing—deferred, or denied.<sup>19</sup> As explained below, in most New York courts, sentencing grants appear to be extremely rare. Most CORs are awarded months or years later to applicants sentenced to probation and returning to the sentencing court to seek a certificate. State law specifies that the court may request a probation investigation prior to awarding a certificate in this situation, but it is not required (NY Correction Law § 702 [3]). Yet almost all judges do in fact ask probation for an investigation and recommendation when a person returns to their court, years after a sentence, to seek a COR; judges say they usually follow those recommendations. In a practical way, then, because of their pretrial and postsupervision investigative work related to certificates, probation officers are critical to certificates practices in New York.

As one county probation supervisor explained her departmental mission: “We do rehabilitation—with a primary focus on community safety.” Probation officers must fulfill this “dual role” (or, less optimistically, face “role conflict” or “mission conflict”): protect public safety, while also helping those they supervise find a place to live, a job, social services, and, often, substance abuse treatment and mental health counseling.<sup>20</sup> The fact that certificates aim to protect public safety by restoring rights means they map closely onto probation's dual roles—a fact that is not lost on probation staff.

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18. Half of US states require a presentence investigation in all felony cases; the PSI is discretionary in sixteen more states (Petersilia 2002, 25; Alarid and Carmen 2012, 72).

19. In busy city misdemeanor courts, however, arraignment, bargaining (if any) and sentencing frequently occurs at the same appearance. That simultaneity makes it much less likely that certificates are requested or granted in such cases. The author's limited courtroom observations and those of attorneys consulted suggest that this is in fact true. Thus some misdemeanants incur collateral sanctions, including employment restrictions and housing exclusions, in proceedings that are very unlikely to feature certificates discussion or their availability.

20. Many described these two jobs as complementary. As another supervisor said, “I don't know how you can do the social work without doing the law enforcement, nor vice versa. You have to do both.”

## V. RESULTS

### A. Frequency and Applicant Motivations

Some attorneys and advocates have called certificates underutilized (see Radice 2012, 777) and said that most people eligible for certificates do not seek them, a view confirmed by interviews with judges and probation officers. In the overwhelming majority of counties, probation officers and judges report that a very small portion of the eligible population seeks certificates—usually just a few people a month, in small and midsize counties. For example, in a typical rural county that saw about 700 felony and misdemeanor sentences in 2012, probation staff estimated that each month “two or three” certificate applications were received. In a New York City county that saw about 11,000 felony and misdemeanor dispositions in 2012, the probation official in charge of processing certificate applications (and who kept careful records) reported receiving “thirty-five to forty-five” in a typical month. Similarly, most judges explained that they usually receive only a handful of applications each month; some recalled processing fewer than ten a year. There were exceptions: a county court judge in one upstate city said that lawyers ask for certificates during the plea-bargaining process “maybe a third of the time,” and another small county judge estimated he signs “fifteen a month, or more.” (Neither judge was sure how certificates had come to have such a relatively prominent place in their court practice.)

It appears that in most counties, fewer than 5 percent of people sentenced in a typical year are seeking certificates. Of course, even that would be only a fraction of those under supervision (probation typically lasts three years for a misdemeanor, five for a felony), and a still smaller portion of those *ever* sentenced in the county, which is the population for whom certificates might be worth having. These low figures suggest knowledge of certificates is not extensive among the populations who stand to gain from them.

People seek CORs for a range of purposes, including some that the document does not deliver.<sup>21</sup> “A lot of people want it because they think it’ll wipe their record clean,” explained a probation official in a large suburban county. “It’s ‘a friend told me this would clear my record,’” said a New York City county probation officer. Interestingly, probation officers in four counties mentioned the right to vote as a regular motivation, with one estimating that almost a third of COR seekers are trying to restore their voting rights—despite the fact that New York law does not bar people on probation from the polls. Others mentioned that they had occasionally heard COR applicants talk about college and military applications and efforts to gain citizenship, despite the apparent absence of a legal reason to think the COR would help with these pursuits.

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21. The state’s main COR application form itself does not require applicants to state a purpose, but most probation officers and many judges explain that they always ask why a person is seeking a COR. Indeed, several probation departments have developed information forms used for their COR background investigations that include space for the applicant to explain his or her reasons for seeking the COR.

Most interviewees were quick to explain the most common reason people with convictions apply for the COR—though they differed on what that reason was. In urban locations, judges and probation officers agreed that expanded access to jobs is the most common goal. “Employment—it’s the only thing that *should* be motivating it,” said one New York City court judge emphatically. Two other New York City judges also emphasized the prominence of employment-based applications, as did six of their counterparts interviewed in three upstate counties’ city and county courts. Meanwhile, six probation officers interviewed in two New York City counties, two urban upstate counties, and two heavily populated suburban counties in the suburban New York City area and the Hudson Valley all stated that employment purposes—usually seeking professional licensure through a New York state agency, or looking for a boost in the general job search—was the most common motivator. Housing surfaced only rarely outside New York City, but probation officials interviewed in two city boroughs both said that after employment, access to public housing was the second most common COR application motivator. Both knew that NYCHA, the city housing authority, considered CORs as evidence of rehabilitation when hearing appeals from denied applicants with convictions.<sup>22</sup>

Rural certificate seekers have a different goal. “It’s hunting—almost all of them,” answered one upstate county court judge, capturing the dominant COR applicant profile across rural northern and western New York. In almost every rural county probation office and county court chamber, criminal justice officials told the same tale: “If there are twenty-seven of them in the last year, twenty-five of them relate to guns,” one rural county probation officer explained. In predominantly rural counties, six of eight county court judges put guns first, while twelve of fifteen rural county probation officers did so (the other three said employment and guns were about even). “Ninety-five percent of the time, they want them for firearms,” said one northern judge. Probation officials told the same story. “Obviously, this is hunting country up here, and they want a rifle or shotgun to go hunting with. Those are really the only ones I’ve dealt with,” explained one rural county probation official. “It’s ‘I want to hunt again, and I heard there’s some form I can fill out,’” as another probation official characterized the typical applicant. “Around here, a lot of people hunt for the freezer,” not just for sport, explained a third rural county probation officer. When asked how many COR applications per month his office received, another probation officer replied: “We could get three or four a day, during hunting season.”

In more than a dozen lengthy interviews conducted in New York City related to collateral consequences and CORs—with judges, probation officials, defense counsel, prosecutors, and staff of re-entry organizations—firearms rights were almost

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22. Under NYCHA rules, most offenders will be barred from NYCHA facilities for one to two years for a violation, three for a misdemeanor, and five for a felony. See generally NYCHA (2009, Ch. V). Denials can be challenged in administrative law hearings; in those hearings, the Authority considers a published list of items that demonstrate “[e]vidence of the offender’s rehabilitation since the offense,” among which is “a letter from the prosecutor’s office or the sentencing judge indicating that the offender has been fully rehabilitated.” See NYCHA (2009, Ch. IX, 19). Document provided to the author by NYCHA staff, June 2012. Advocates explain that a certificate is understood to qualify as one such “letter.” See also Legal Action Center (2006, 14).

completely unmentioned. In predominantly rural parts of northern and western New York, however, gun rights so permeate the certificates process that firearms surfaced not only in response to questions about applicants' motivations, but throughout the interview. For example, in response to an open-ended question about how they thought people with convictions learned about CORs, most probation officers gave the same answers: from an attorney, from a potential employer, or from their probation officer. Five rural county probation officers, however, immediately mentioned firearms. Two said a typical COR applicant learned of the COR only when he had tried to purchase firearms and was rejected; another said applicants learned of the COR when they heard that the loss of firearms rights was a standard probation condition; and another mentioned applicants asking their hunter friends how they could hunt again. A fifth said CORs sometimes came to the attention of probationers when officers conducting routine home visits saw firearms in the home, and explained to the offender that such possession was unlawful unless they were granted a COR. As discussed below, firearms rights were also critical to probation officers' and judges' decision making related whether to recommend and award CORs.

## **B. Deciding to Recommend or Grant a Certificate of Relief: Collaborative Processes**

Most CORs issued by county and city courts emerge from a collaborative process. In practice, almost all judges send every COR application to their probation department for an investigation and recommendation, and probation officers and judges describe widespread agreement about which types of applicants should be awarded CORs. Probation officers often explain that they anticipate local judicial standards in doing their work, and judges, in turn, appear to accept the overwhelming majority of probation recommendations. Meanwhile, as explained below, local conditions influence how these interpreters understand CORs—in particular, the importance of firearms for hunting in predominantly rural areas.

In explaining certificate practices, every probation officer referred to judges—in many cases, anticipating, describing, and even praising judicial standards, not merely specifying judicial referral as the path by which COR applications arrive on their desk. "Imagine you're the judge, saying 'why should I approve this?'" one rural county probation officer advises his clients. "Our local judge has adopted an unwritten policy: for the most part they want people to complete their supervision and be off for a while" before a COR can be granted, explained a Hudson Valley probation officer. "We're pretty much parallel in our thinking," said a northern county probation officer. "We all have different philosophical views, and I like the judge's view: earning it back, through showing compliance with probation," as another upstate probation official articulated local COR standards. Probation officers overwhelmingly said judges accept their COR granting recommendations. "He'll almost never refuse," said a typical officer. Others responded "99% of the time"; "98% of the time"; "He hasn't turned me down yet, for one"; and "We have a good

relationship.” “We’ve worked a long time to develop a reputation with our court—they trust our work,” explained a rural probation officer.

Some probation officers mentioned other legal interpreters as having shaped their understanding of CORs, if not individual decisions. In one New York City borough, one urban upstate county, and one rural upstate county, probation officers described in positive terms their collaboration with public defender and reform advocacy organizations working on certificates. Others mentioned included the New York DCJS (four counties); New York City Probation, which has advocated increased use of certificates as a boon to re-entry (five counties); local prosecutors (three counties); and the sheriff, when dealing with applicants seeking pistol permits (one county).

### C. Granting CORs at Initial Sentencing

Probation officers and judges in different counties employ varying standards for recommending and awarding CORs. Particularly deep differences emerge over the wisdom of granting CORs at sentencing: with a few exceptions, most jurisdictions appear to award extremely few certificates at sentencing, and many judges and probation officers object outright to such grants. Officials’ differing responses to the possibility of sentencing grants are influenced by community norms, by their considered judgments about the nature of criminal supervision and public safety, and by their own evaluations of the merits of the individual applications before them.

As explained above, New York law has long enabled CORs to be granted at sentencing, and legal texts appear to obligate both judges and probation officers to apprise defendants and those under supervision of the COR’s existence. Under a change to certificates law enacted in 2011 and meant to encourage sentencing grants, courts sentencing people to any nonprison sentence are directed, “upon application,” to “determine the fitness of an eligible offender for such Certificate prior to or at the time sentence is pronounced.”<sup>23</sup> Meanwhile, New York City Probation in recent years has been engaged in what more than one interview subject described as a “push” to get certificates granted at sentencing (see, e.g., Schiraldi 2012). Some upstate judges and probation officials are aware of this effort; very few, however, routinely recommend sentencing grants, and many oppose them. Meanwhile, interviews indicate that across New York, judges neither frequently award certificates at sentencing nor automatically advise defendants of their eligibility. In one New York City county, a senior probation official explained that their department was working to encourage judges to award CORs broadly at sentencing—a campaign of “explanation and persuasion,” with probation emphasizing the rehabilitative and public safety benefits of greater access to employment. And in one upstate county, both the probation officer and the county court judge interviewed

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23. As one lawmaker observed in supporting the measure, certificates were meant “to be granted soon after a conviction in order to assist with the rehabilitation of first-time felons and misdemeanants” (An Act to Amend the Correction Law, in Relation to the Issuance of Certificates of Relief from Disabilities 2011).

agreed that sentencing grants are usually worked out between the prosecutor and the public defender, as part of a plea bargain.

However, these are the exceptions that prove the rule—the only two probation offices contacted where it was standard practice to recommend CORs at sentencing for most eligible offenders. Two other small county officers explained that they commonly recommended certificates for people who had done well enough to be granted early termination of probation; one large upstate county probation office was considering a policy of recommending the COR for everyone completing supervision, but had not yet adopted such a practice. Sixteen others, however, have no practice of recommending COR grants on the basis of eligibility alone—at sentencing, during supervision, or at its successful completion—or of apprising those they supervise of their eligibility. This is notable because New York state law requires that individuals not granted the COR at sentencing be informed of the COR's existence and their potential eligibility while under supervision.<sup>24</sup> No probation officers interviewed referred to this legal provision, in response either to this question or to a query about how typical applicants learned about the COR. "We'll take the application, but there's no handout while they're under supervision. If it comes up, we'll respond," said a typical probation director. "Unless it's a special circumstance, we usually don't address it" during the presentence process or supervision, said another.

Many probation officers made clear their opposition to sentencing grants. "It's kind of like our unwritten policy: if a person's gonna get convicted of a felony, there should be a period of good behavior," said a typical upstate probation officer. "They're hardly ever given at the time of sentence—it's something you notice, it's so rare," said a probation officer in a large downstate suburban county. This was the case across the state: "Judges don't want to grant them at sentencing," said a probation officer in one New York City county, while his counterpart in a rural county explained, "the day of sentencing, we don't want to say 'let 'em hunt.'" Another also explained resistance to early grants in terms of firearms—but this time emphasizing the motivational value of a potential COR grant. "For a lot of people around here, firearms rights are a big deal," said this rural county probation officer, and the possibility of gun-rights restoration "gets people over the hump" in terms of completing a term of probation.

Among this large group of respondents, it was most common to indicate that early COR recommendations did occur, but only in response to those who *already* held licenses they stood to lose. As a central New York probation officer explained: "If the person had a professional license, and [the offense] was something that's not typical of his or her behavior, that might allow us to do that." We'd do it "to save

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24. See Uniform Rules for New York State Trial Courts, Part 200, § 200.9, "Certificate of relief from disabilities; notification of eligibility," which reads, in relevant part:

Whenever a defendant has been sentenced to a period of probation, and has not received such discretionary relief, and if such defendant is apparently eligible for consideration of such discretionary relief, the probation officer supervising such defendant, prior to the termination of the probation period, shall inform the defendant of his right to make application to the court for a certificate of relief from disabilities, and shall provide such defendant with the required forms in order to enable him or her to make application to the court if he or she should wish to do so.

that person's job," or "if you know someone needs it to retain employment," as two others explained. Several probation officers volunteered that health care licensure is the most common objective in such situations, with home health aides the most frequent single occupation; one traced an increase in COR applications to a state Department of Health policy change requiring certified nurse's assistants to secure CORs even for misdemeanor convictions.

Among judges, six indicated that they routinely granted CORs at sentencing. Three of those six were in New York City courts, and these jurists made clear that their purposes were directly linked to employment. "If I can help someone get a job, in this economy, I'm gonna do it," explained one city judge.<sup>25</sup> "The automatic bars are stupid," said another city judge bluntly of state licensure restrictions. Seven other judges said CORs were occasionally awarded at sentence, but only as needed to maintain employment, while six said sentencing grants were rare or never occurred—and some disparaged the idea. "No, I'm doing the *sentence*, and that's separate," laughed one New York City judge when asked if he regularly awards CORs at sentence. "It's more like, 'let me know in a year, how you're doing,'" explained an upstate counterpart. "I can count on one hand the times I've issued it at the sentence," said another veteran upstate rural county court judge.

#### D. Postsupervision COR Applications

The typical COR applicant has completed supervision and returns to court months or years later to seek relief from disabilities. Core practices for these candidates are broadly similar: the court refers the application to probation, at which point a probation officer makes certain the applicant is eligible for a judicially awarded COR (i.e., was not sentenced to incarceration and has no more than one felony conviction), then conducts what many called a "mini-PSR" investigation, including either meeting with the applicant in person or at least talking with him or her on the phone. Many probation offices have developed their own unique practices within this sequence. The probation office in a large suburban county, for example, directs applicants to supply stand-alone letters to the judge, articulating their purposes; an upstate county requires them to submit three reference letters, both to demonstrate their own commitment to the process and to increase their chances. In one large downstate suburban county, probation charges candidates \$350 to process COR applications. No other office charges such a fee.

Beyond common procedures, however, significant variation emerges. As with sentencing grants, considerations of public safety figure prominently in many probation offices and judicial chambers, but with differing results: some conclude a COR grant serves the public by facilitating desistance, while others focus on risks of issuing the certificate, particularly where firearms are concerned. Many weigh the specific civil law effects of a COR grant, as when certain objectives are viewed more favorably than others—yet simultaneously, uncertainty about those effects is

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25. This judge went on to explain that at sentencing, "I'll hint sometimes, and try to get defense counsel to ask" for a certificate.



widespread. And as explained below, these officials reach very different conclusions about the relationship between the COR and individual rehabilitation, sometimes drawing on contrasting readings of the law, sometimes on their judgments of individual applicant merit.

Probation officers' approaches to COR recommendations fell into three groups. The first, and the smallest, consisted of the two county probation offices (one in New York City, the other upstate) who explained that eligibility alone is the threshold: they recommend CORs for virtually all eligible offenders, and do so at sentencing as often as possible. Meanwhile, nine county probation officers' responses articulated different versions of what we might call the *supportive review* approach: if an eligible person had completed supervision and wanted a certificate, and an investigation did not raise any obvious red flags, they would support the grant. This was particularly true of applications for employment purposes: "we look more positively on those," as a typical upstate probation director explained. As long as there is no "safety issue in the community," a large suburban county probation officer said, "if it would aid in their rehabilitation, we tend to recommend granting them."

In twelve probation offices, meanwhile, COR applications are met with what we might call *skeptical review*. Here, eligibility, desire, completion of supervision, and a clean postprobation record may not be enough, as probation officers are likely to look carefully at the conviction record, to ask if the applicant has "a good reason," and to look at whether "there has been a significant period of time where they have not been in trouble," and built "ties to the community," as a Hudson Valley probation officer explained. "It's a privilege, and you've got to earn it," said a rural central New York probation director. "I tell people, 'the judges don't give these out like candy. You're asking them to go out on a limb by granting this,'" said another. "I mean, you have to *do* something," explained a probation officer in a large downstate suburban county. "You can't just say 'I'm a different person'—you have to show something. They have to convince me—and I'm not that easy to convince!"

Notably, several members of this group made clear that they were wary of recommending CORs specifically *because* so many applicants were seeking firearms rights. A few rural county officers explicitly contrasted their typical offender profile with that encountered by the New York City probation officials who were promoting sentencing grants. "We're living in different worlds," said one, after speaking admiringly of the work of New York City Probation Commissioner Vincent Schiraldi, a certificates supporter. Referring to upstate colleagues, this probation director described "a little pushback" against sentencing grants "because of the fact that we dealt primarily with the firearms issue." Another made the same point: "we're dealing with very different populations" than New York City probation staff, particularly "the hunter population" in the upstate counties. "The only [applications] we get are from felony DWI guys" who want to hunt, said another rural probation director. And when asked whether housing restrictions motivated COR applications, another replied: "No, because the type of offenders we have—the DWI cases, the drunk drivers—they actually *have* jobs and housing."

Judges' COR signing standards were similarly diverse. Nine judges (four of them in New York City) explained that if an applicant was eligible and had a PSR or postsupervision probation report recommending a COR grant, they would rarely refuse. "I don't require a purpose," said one jurist in a mixed upstate county. "If they're eligible, I'll give it to them. If they're employed, they're less likely to get in hot water again."<sup>26</sup> Asked how he decides which applications to grant, a New York City judge pointed directly to the probation recommendation: "It's Probation. These are government officials; they're going to be careful." An upstate counterpart agreed, though he also routinely involves the county prosecutor: "The key is Probation, and the District Attorney. If he has a problem, he expresses it. But generally, I follow Probation." Some judges in this group might award a COR even to an applicant with a subsequent arrest or misdemeanor: as one urban upstate county court judge explained, that person might be "trying to get their act together" and a COR could help him or her "gain some self-worth" and "encourage them to go forward." "If the person has remained relatively arrest-free, I would be inclined to grant it," explained an urban upstate county court judge.

Eleven other judges, however, explained that they engaged in careful, case-by-case scrutiny of individual files. "It's not automatic," said a New York City judge. "I look at the recommendation from Probation, the person's background, the trial folder." An upstate city court judge explained, "I handle these very carefully." Someone seeking eligibility to work as a nurse's aide, this judge explained, "might be caring for vulnerable old people. I like to see people employed, but I also like to see the public protected." The standard, explained an upstate county court judge, is: "Is there something *compelling*, such that I should lift the onus of a criminal conviction from this person?" "I don't grant them as a matter of right," said another upstate city court judge, explaining that he considers the record, the age of the conviction, any treatment or education the person has done, and why he or she wants the COR. "It helps if they make a good pitch," this judge explained. One veteran rural county court judge explained that he will usually "check with the DA, to see if they have any objections," but he does not send most applications to probation for investigation—because of his long service on the bench, "chances are I know the guy."

Firearms surfaced often in these explanations, but in quite diverse ways. Some judges made clear that their reluctance to sign CORs generally was closely linked to the fact that CORs restored gun rights. Others explained that they distinguished carefully between employment-motivated applications (which they were likely to grant) and gun-motivated petitions (which they were not). "Ninety-five percent of the time, they want them for firearms," explained one rural county judge. "And I say no. Because as you know, it says right there in the statute that it's for rehabilitation. And I have yet to have anyone explain to me how firearms help with that." But not all shared this approach. "I'll generally grant those," said one urban upstate county court judge of gun-motivated applications. "I do believe there's a constitutional right to bear arms—though that's a minority view around here." A rural county court judge explained that before signing a firearms-motivated COR

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26. Of sentencing grants, this judge explained, "it's got to be a pretty lousy PSR for me to say no."

application, she would want to know, from Probation, that the motivation was genuine—"that this is somebody that's hunted before." (Probation officials in two other counties made similar comments about confirming the veracity of a hunting-motivated application. As one explained, we'd look at "the culture of that family," with regard to hunting's importance, and ask, "have you ever had a hunting license? Where do you hunt?"<sup>27</sup>)

## E. The Certificate of Relief and Individual Rehabilitation

Varying social and cultural settings, then, interact with diverse considerations of public safety and discretionary judgments of individual applicant merit to shape probation officers' and judges' COR practices. Another significant cause of variation is interpreters' differing views of the proper relationship between individual rehabilitation and the certificate. As explained above, the concept of rehabilitation is central to New York's certificates law: state correctional law says a COR shall be awarded if doing so is "*consistent with the rehabilitation of the offender*" (and also "with the public interest") (NY Correctional Law §§ 702(2), 703(3), 703-b(1); emphasis added). On its face, this "consistent with" can be read to mean that a certificate should serve as an aid to rehabilitation—or, conversely, that a certificate should be awarded only after rehabilitation has occurred. Meanwhile, recall that New York's employment antidiscrimination law instructs employers to consider evidence of the offender's rehabilitation, and states that a COR (or a Certificate of Good Conduct) "shall create a *presumption of rehabilitation* in regard to the offense or offenses specified therein" (NY Correctional Law § 753(2); emphasis added).

In her careful study of the development of New York's certificates law, Radice concluded that CORs were originally intended to enable rehabilitation, particularly by making it easier for people with convictions to find lawful employment. But ambiguous statutory language, Radice noted, may "open the door to different evaluation standards" by issuing authorities (2012, 759).<sup>28</sup> Indeed, both probation officials and judges differed over whether a COR is meant to precede and enable rehabilitation, or intended to follow and reward rehabilitation. Though guns alone do not explain these differing views, firearms appear to play an important role in shaping how some decision makers understand the relationship between rehabilitation and certificates.

As quotations above indicate, rehabilitative ideas surfaced in numerous places in many interviews. Toward the close of each session, the interviewer quoted the "consistent with the rehabilitation" passage of New York law, and asked whether the probation officer or judge understood certificates properly to precede and enable the offender's rehabilitation, or to follow and reward it. Among probation officers, just three firmly adopted the former position. Not surprisingly, two of these three

27. In a second county, a probation officer explained that once when a COR applicant sought the right to own a pistol, the probation officer had confirmed to the judge, "Yeah, there's a firing range nearby, and he and a few of his buddies go there."

28. Radice also suggested that the "supervisory and punitive priorities of administering authorities," particularly probation, could conflict with the certificates' original rehabilitative goals (Radice 2012, 725).

were the New York City county and the upstate county where CORs were routinely awarded at sentencing. As one said, “they can give them out at sentencing—so it *can’t* be required that you be rehabilitated first.” Ten chose the latter option, typically describing the COR as “a reward for showing you’ve done the work,” “like the carrot out there,” or “something that should be earned,” as probation officials in three rural counties explained. Importantly, in six of these ten counties, firearms had earlier been called the leading COR application motivator, and three of these ten probation officers explicitly mentioned firearms in explaining why CORs should only be awarded after an extended period of good behavior. “We’re going to encourage people to act better—by giving them a gun? I don’t see that as a good idea,” said a typical rural probation officer in this group. However, several officers in the postrehabilitation camp did so without referring to gun rights. “It’s presumptive evidence of the offender’s rehabilitation,” said a downstate suburban county officer, referring to the state employment law and disparaging sentencing grants, “and how can one say at the point of sentencing that the person has been rehabilitated?” Similarly, a rural western county probation officer said, “the document is to tell a potential educational institution or employer that any issues have been addressed and they are, quote, ‘rehabilitated,’ unquote.” “It just indicates that the judge acknowledged some degree of rehabilitation,” said a Hudson Valley officer—“it’s not a given, it’s not ‘stay out of trouble for eight or ten years and expect it.’”

Nine probation officers, meanwhile, demurred, stating that certificates practice was too case dependent to fit a before-or-after-rehabilitation framework. “I have seen it used in both ways,” explained a typical respondent. Another emphasized the importance of the individual’s situation, saying that usually the COR should signal “that rehabilitation has happened,” but if “the person has taken concrete steps toward rehabilitation and there’s a good reason for it,” the COR could come earlier. And several distinguished between job-motivated applicants and those seeking firearms: “It doesn’t make sense to make them ‘earn’ one for employment,” as a rural upstate county officer explained.

Three probation officers mused that for some of their charges, firearms *can* be conducive to rehabilitation. One rural official explained that “sometimes the guy wants to be a security guard, and has to be armed,” and in that case the COR would directly help with employment. Two others pointed to social and cultural dimensions of rehabilitation. “I guess this sounds bleeding-heart,” apologized one veteran rural county probation director, “but around here, recreation, hunting—it’s a stress reliever.” “I know it sounds weird, if you’re not from that culture, to talk about the importance of hunting in a healthy lifestyle,” another upstate probation director explained:

But opening day of hunting season—it’s a tradition, and a ritual, like Thanksgiving. And if you can’t participate in that, you’re going to be excluded from some healthy relationships, some positive connections, with family and friends.

Judges were similarly divided on rehabilitation’s relationship to a COR grant. Nine declined to offer a definitive answer, often saying decisions were case by

case, and that they did not frame certificates decision making that way. "It's both: 'consistent with' doesn't mean one or the other, to me," said an urban upstate county court judge. "It's fact-driven as far as the individual person is concerned," explained a rural upstate county court judge. Some rejected firearms-based applicants without ample evidence of sustained good conduct, while granting them earlier "for employment, or so they can apply to college, and get federal aid."<sup>29</sup>

Six judges, however, from urban and rural courts alike, endorsed the "precede" understanding. One upstate judge pointed out that he awards most of his CORs at sentencing, as the law allows—when it is not possible to say a person is rehabilitated. Another rural county upstate judge noted that by final sentencing, some people have been on interim probation for several weeks, perhaps engaged in substance abuse treatment and job training; while it is not the "crystal ball" he would like to have, it does give the court some information about the person's suitability for a COR. Others were more emphatic. "[I]f I can help someone rebuild their life, I'm going to do it," said one urban upstate county court judge, while another urban upstate county court judge pointed to the COR's anti-recidivism objective: "it's affording them greater opportunities to avoid criminal conduct in the future." Four judges, meanwhile—one in New York City, three upstate—firmly articulated the latter standard. "No—it tends to be the *result* of rehabilitation, the reward," said one rural central New York county judge. "It's the carrot at the end of the stick!" Another rural county court judge explained that he likes to see "that they have demonstrated the ability to live in society in an appropriate manner."

One authority has suggested that ideal rights-restoration procedures are those that provide an "individualized assessment of genuine rehabilitation" (Love 2003, 115). Some New York probation officers and judges believe CORs should be issued only after such an assessment, and insist that successful reintegration occur before a COR is granted. Others, however, read the law and their professional experiences differently, and conclude that in the interest of re-entry, employment, and public safety, CORs should be awarded as soon as possible. Still others tackle this question anew in each case, weighing the applicant's purposes and profile. These contrasting, complex understandings of rehabilitation are an important consideration for other states considering rights-restoration measures.

## F. The COR's Effect: Employment

Despite the certificate's almost fifty-year history, and despite judges and probation officers having carefully developed procedures and interpretive frameworks with which to consider applicants, interview subjects reported considerable

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29. This judge was making an apparent reference to the federal law restricting student loan eligibility for some drug offenders. The student loan law does not refer to state rights-restoration measures, and the judge did not explain his view that a COR would alleviate the restriction.

uncertainty about the certificate's actual effects. A full assessment of the actual impact of COR possession lies beyond the scope of this article, and judges and probation officers usually lack direct evidence of the certificate's effects. However, two notable themes emerged in interview subjects' views of the changes in status the COR confers upon recipients—one related to employment, and the other related to firearms.

Many judges and probation officers frankly acknowledged their uncertainty about how civil law interpreters in licensure agencies and private employers alike would look at the COR. When asked whether they thought certificates actually help people obtain licenses and jobs, almost all judges gave responses like that of a veteran upstate urban county judge: "I don't know—I have no after-the-fact sense of them." A New York City judge said, "I don't know—my sense is they're not particularly effective." "What effect they have is so subjective—the employer, the [college] admissions department, the Alcoholic Beverage Commission—I'm not sure how much they know about [CORs]," said an urban upstate county judge, whose connection to a local drug court had engaged him in significant postsentence work. A few had a more positive sense: referring to what he had heard from his local probation counterparts, an upstate county court judge answered, "I'm under the assumption that it has worked." Another distinguished among professions: "It tends to be health-related licensed professions where [employers] know about it," explained a rural upstate county court judge, telling the story of a local hospital worker whose employer had encouraged him to apply for a certificate so he could advance within the company.<sup>30</sup> Notably, judges' understanding of the COR's impact showed no connection to their disposition toward CORs generally: judges who were favorably disposed toward granting CORs and those who were more reluctant to do so were just as likely to say that they did not know how much difference the certificate made on the job market.

As might be expected given their sustained postsentence interactions with defendants, probation officers' responses to this question were richer and more varied; space allows only a brief summary here. Of twenty-three probation officers interviewed, nine said they did not know enough about the COR's effects in the employment field to venture an answer. Often, their responses were skeptical, as with the rural officer who said, "I don't know that it helps actually get jobs—again, it just restores the right to have it." Seven others, however, offered some kind of tentative positive answer, such as, "I believe it does ... but it's not the panacea people think." Seven others, meanwhile, gave strong positive answers, sometimes including illustrative anecdotes from their work. A New York City probation officer who handled most COR applications in his borough quickly answered in the affirmative when asked if CORs help people obtain jobs: "Yes they do. I get calls and cards ... 'I'm working, thanks to you,' they'll say." A Hudson Valley probation officer described successful placements at a national retailer and a home care agency, both, in the officer's view, assisted by the COR. And an urban upstate county supervisor described in great detail where the COR

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30. A second judge described this phenomenon more generally, saying: "Sometimes a prospective employer says, 'Go get this.'"

figures in the complicated state Department of Health sequence for applicants with criminal backgrounds.<sup>31</sup>

Among respondents giving positive answers, however, at least three went out of their way to note that private employers "have no idea" what the COR is, as one urban upstate probation officer specializing in offender workforce development put it. Private employers "typically don't know what they are," said another veteran urban upstate probation director. "Employers don't understand Certificates," said a small rural county probation officer bluntly. Meanwhile, three probation officers volunteered varied opinions about whether applicants should tell potential employers about the COR. "I would very much encourage them to talk about it [with employers]," said one rural officer, "because they would still have to answer 'yes' to the question [about having been convicted of a crime]. So we would say yes, explain that to them, show that to them—and tell them if they wanted to, the employer could give us a call." But two other rural probation officers disagreed. "It doesn't help—it just causes attention [to the conviction]," said one. "I think it goes the other way," replied another, when asked if displaying the COR to a potential employer would help someone land a job. "You show the employer the Certificate, and they show you the door."

### G. The COR's Effect: Firearms

As we have seen, applicants' desires to own firearms for hunting permeate certificates practice in rural counties, and affect how probation officers and judges respond to COR applications generally. That the prospect of an offender carrying a gun should influence discretionary understandings of COR applicant merit is understandable. Beyond those judgments, however, interviews revealed unexpected disagreement on the question of whether the COR *actually restores* a person's legal right to bear arms, as a matter of law. Among thirteen upstate judges to whom this question was posed directly, ten said the COR does restore gun rights (at least to bear "long guns," such as shotguns and rifles for hunting), two said no, and one gave an ambivalent answer. Of twenty probation officers asked directly, seven offered a clear yes and three a clear no; ten gave positive responses, but displayed acute awareness of ongoing disagreement over the COR's legal impact. Intriguingly, many interviewees revealed explicitly the importance of the local legal community in interpreting this federal constitutional right.

In part, this uncertainty rests on the nature of federal firearms law. While national statutory law *removes* gun rights from people convicted of felonies, state laws *restore* those rights: if a person "has had civil rights restored" under state law,

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31. Interestingly, despite understanding that state licensure authorities would still conduct a discretionary review of any COR holding applicants, a few probation officers appear to be incorporating New York law's "direct relationship" test into their *own* consideration of COR applications. Under this standard, an employer or licensing authority cannot reject someone solely because of a criminal conviction unless there is a direct relationship between the prior conviction and the job sought, or a risk to safety and property (see NY Correctional Law, Art. 23A). For example, one probation officer in a large suburban county explained that he or she would not recommend a COR for a person who was seeking home health aide certification if that person had a theft conviction "because safety of the community is a primary concern."

whether through a pardon, a rights-restoration action specific to firearms, or another legal procedure, his or her felony conviction is no longer disqualifying, for federal purposes. (Some misdemeanors—particularly crimes of domestic violence—also bring gun rights revocation under federal law: see 18 U.S.C. § 922[g].) This hybrid revocation-restoration legal system is reflected in federal statutes, recent US Supreme Court decisions, and regulatory practices at the Bureau of Alcohol, Tobacco, and Firearms (ATF) and the FBI's National Crime Information System (NICS).<sup>32</sup> Although the ATF has statutory authority to conduct its own rights-restoration investigations, Congress has not appropriated funds for any such operations since 1992, effectively making it illegal for ATF staff to engage in them.<sup>33</sup> The result is that the federal bureaucrats implementing background check law must engage in ongoing evaluation of any rights-restoration procedures offered by each individual state (author's telephone interview, FBI NICS official [name withheld], August 2, 2013).<sup>34</sup> Meanwhile, many states mirror the federal ban in their own criminal codes. Ignorance of how federal and state laws interact to define the firearms rights of people with criminal convictions is widespread, and reaches the highest levels of the US legal system.<sup>35</sup>

Only three probation officers essentially shared the New York DOCCS position, which is that while the Certificate of Good Conduct *does* restore firearms rights, a COR does *not* do so (author's interview, New York DOCCS official, September 25, 2012). "You got the state and the federal—the state grants [the certificate], but you still got the federal ban," explained one rural upstate probation officer. "No—you'd have to apply to the federal government," said an urban upstate county officer. A third also said no, but acknowledged "a lot of debate right now" over this question, and explained frankly the ultimate importance of local interpretation:

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32. 18 U.S.C. § 921(a)(20) states, in relevant part, that a "conviction that has been expunged" or for which a person "has had civil rights restored shall not be considered a conviction, for purposes of this chapter." See *United States v. Caron* (1998); *Logan v. United States* (2008).

33. See <https://www.atf.gov/firearms/faq/general.html#firearms-relief>.

34. As this official explained: "We have to actually go into the case law of every state, go to each state's attorney general's office and ask, 'what do you do, is there a form, do you distinguish between felonies and misdemeanors,' and so on." For a detailed listing of each state's rights-restoration law related to firearms rights, see Klingele, Roberts, and Love (2013, App. 1, Chart #2, pp. App. A-16-28). As that text cautions, however, the law is so complex that even this detailed listing "is intended to offer only a starting point."

35. It is certainly not unusual for appellate judges to lack detailed command of every corner of the law, but it is remarkable for Supreme Court Justices to acknowledge ignorance of the basic legal structure shaping the possession and exercise of such an important right (albeit one that had not yet been declared a fundamental individual right by the Court). During oral argument in the 1998 *Caron* case, Justice Breyer acknowledged that he had not understood the law prior to considering this case:

I'd always thought that a felon in possession of a gun was committing a Federal crime. Then when I read this statute, the words "civil rights restored," I discovered that twenty-four States restore civil rights virtually automatically, so in half the country it isn't a crime, unless, of course, in those States, and they are a random set thereof, that have some other gun law of their own for their own felons. (See transcript, oral argument, *United States v. Caron*.)



We have some people walking around with just CORs, for guns. I got talking to the public defender about that, and they said, "you know what, that's going to be hassled out in court"—but they didn't think the judge is going to take a bite out of them [for having a firearm with a COR].

Indeed, the largest group of probation officers—ten of those responding to this question—said that while they believed the COR does restore firearms rights, they were aware of legal ambiguity and uncertainty on this question. "There's a lot of banter going back and forth" among probation directors, said a rural county probation officer. "I think there's actually some discrepancy or disagreement—the ATF gets involved, somehow," said another. "We believe so," said another. "Some judges say it does, but others are not sure a Certificate gets weapons rights back. Our view is, 'Get a Certificate and hope for the best.'" "We'll tell them to have the Certificate on them, when they're hunting," explained this rural upstate county probation officer. "We'll say, 'This is good for New York—don't go anywhere else. And best stay in the county!'"

"The feds say, 'If you get a Certificate, you're good with us,'" explained one rural probation director, referring to ATF procedures. Those offering emphatic "yes" answers were just as likely to describe local interpretation of a blended federal-state legal regime. "It works—you can hunt, and get a pistol permit, if you have the right language for the sheriff," said one rural upstate probation director, explaining that his office had learned that he needs to put "some specific language in there" on the COR application. "I asked the sheriff, 'where'd they hear that, from ATF?' 'Yes,' he says." Another, after noting ambiguity in the law, said this:

My view is, if our judge issues a Certificate of Relief, I don't think a D.A. is going to go down that road [to prosecute for criminal possession], knowing the judge said it was OK.

Here, the legality of firearms possession—that is, the status of an individual's federal constitutional right—is effectively defined by the county *probation* officer's sense of the county *prosecutor*'s understanding of what the county *judge* believes the law means.

Some judges explained that they usually reject COR applications because they do not think people with criminal convictions should have guns and they believe the certificate would restore firearms eligibility. One upstate county court judge explained carefully that CORs do restore firearms rights under federal law—but only to own long guns (i.e., not pistols, which are licensed separately under state law), and only as long as no limitations or restrictions are written onto the COR granting form. "I trust the judgment of my probation department on this," explained the judge. Several emphasized uncertainty. "There's lack of—let's say, lack of universal agreement on the Certificate of Relief for purposes of state and federal firearms law," said one urban upstate county court judge. "I don't think I've ever issued a COR that a person requested to go hunting without telling them that if they

have a firearm, it's still a federal crime."<sup>36</sup> Another urban upstate county judge was even more explicit, saying of hunters applying for the COR: "I'll give it to them, but I'll tell them there's no guarantee it'll enable them to hunt."

Documents some respondents offered as their interpretive guides deepened the complexity. These included a New York DCJS document that describes the interaction of federal and state rights-restoration law in considerable detail, and concludes that a person with a COR "would qualify for an exemption" from the federal ban.<sup>37</sup> One probation officer shared a copy of the document distributed to offenders in his county, describing the necessity of securing a New York COR *and* a federal "Relief from Disabilities" for firearms rights, and providing them the ATF address to write to. (This is the inoperative ATF procedure noted above.) Two probation officers referred to a 2012 memorandum from the State Probation Director's office, interpreting a 2000 state appellate court decision as ruling that only a Certificate of Good Conduct restores firearms rights in New York (Robert Maccarone, DCJS Office of Probation and Correctional Alternatives, State Director's Memorandum #2012-3, February 7, 2012; copy on file with the author). Another provided a memo written in 2002 by an Assistant US Attorney for the Western District of New York, which concludes that an "A" type COR restores the "full right to possess firearms" in New York (see Maignet 2002). And one judge displayed a pamphlet on collateral consequences and rights restoration in New York written by Federal District Judge Harold Baer, Jr. (2011), which concludes that a COR does *not* restore gun rights: only those convicted of "lower level, nonviolent felonies" (Baer 2011, 7) can have their rights restored via the Certificate of Good Conduct, while violent offenders have *no* rights-restoration options.

Ultimately, it is not clear that there is a "black-letter law" answer to the question of whether a COR restores firearms rights. In this context of blended but ambiguous federal and state authority, the law consists of the practices and shared understandings of local legal interpreters, all the way down. Academics and reformers scrutinizing collateral penalties that disadvantage people with criminal justice records have rarely focused on gun restrictions. This study suggests that has been a mistake: in New York, and likely in rural areas across the country, many people with criminal convictions experience the loss of firearms rights as the most serious collateral sanction of all. With the US Supreme Court defining the ability to bear arms as a fundamental right, federal statutes withdrawing gun rights and state laws restoring them, some states dividing long-gun and handgun rights, and local probation officers, judges, and sheriffs collaborating in deciding whose rights to restore, this is a field rich for study.

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36. This judge elaborated: "I make it clear to them that there may still be a federal ban—otherwise, I'm misleading them, federally—and they're gonna call me as a witness if they get into trouble!"

37. See New York State Division of Criminal Justice Services (n.d.). The document explains that under *federal* law, a person only has his or her firearms rights restored when the person has the ability to vote, hold public office, and serve on a jury restored, under *state* law. That means federal firearms rights restoration formally depends on the specifics of jury service and public office rights restoration in each state.

## CONCLUSION

The legislative history of CORs' enactment and expansion evinces an intention to make CORs available to very broad classes of offenders—or, at a minimum, to make eligible people aware of this remedy for some of their civil law disabilities. Access to the certificate was placed within the criminal justice system, however, and criminal justice actors employ the logics and tools of their routine practices in interpreting relevant texts and carrying out this duty. Meanwhile, different COR practices often stem from informal understandings among system actors attuned to local conditions—chief among them the status of firearms ownership and the importance of hunting in a given place. This interpretive range extends well beyond differences over apprising defendants of the COR's availability, and disagreements over which applicants should be awarded CORs: it effectively *constructs* the certificate holder's legal status. In some locales, possession of a certificate is encouraged as a way to facilitate rehabilitation, while in others it rewards rehabilitation's achievement; in some places, legal interpreters conclude that a person bearing a certificate has regained firearms rights, while others maintain that the COR does not restore them.

Scholars have documented differences between rural and urban courts, particularly in sentencing (Hagan 1977; Austin 1981; Myers and Talarico 1986). Such research usually builds on Weberian theories predicated on the assumption that urbanization leads to bureaucratization and, in turn, to diminished discretionary decision making and greater reliance on formal legal considerations. Fragmentary evidence of rural-urban variation in COR awarding standards has emerged in this study. For example, some urban interpreters were more likely to be disposed toward recommending and granting CORs, but this was by no means universally true. Strong support for early COR grants by the leadership of New York City Probation, together with the extensive involvement of nongovernmental organizations in supporting COR applications in New York City and some upstate cities, suggests a kind of Weberian bureaucracy development sequence. But overall, this behavior seemed less influenced by bureaucratization than by the types of rights and privileges urban and rural COR applicants were seeking, and how judges understood the importance of those rights and the effects on public safety of their exercise.

Such variation creates interpretive challenges. An official's understandings of the legal efficacy of a certificate will often play a role in how that official understands the COR's relationship to a person's rehabilitation, and may affect whether a probation officer, for example, will inform a person under his or her supervision about the client's eligibility to apply. While useful, a quantitative tally of applications, grants, and denials might not by itself be revealing: an upstate judge who rejects a certificate application five years after a sentence because he knows granting it would enable the person before him to purchase a firearm does something very different than a New York City judge who rejects a COR petition aimed at helping a person appeal a public housing eviction. And a "yes" at sentencing—in a court where it is virtually automatic for everyone eligible—differs from a "yes" where such grants occur only after individualized deliberation on demonstrated need and successful rehabilitation.

To borrow from an insightful recent analysis of employment restrictions facing people with criminal convictions, this study's objective is not to focus on a "compliance/non-compliance dichotomy," but to examine how legal actors "interpret and construct meanings of law" (Lageson, Vuolo, and Uggen 2015, 4). However, it is noteworthy that many New York judges appear to be ignoring the statutory requirement that they "shall advise" all defendants of their eligibility for certificates; many probation officers do not heed the law's directive that they "shall inform" each eligible probationer of the possibility of receiving a COR and provide them the necessary forms while under supervision; and many judges and probation officials firmly believe a certificate grant should follow demonstrated rehabilitation, despite apparent legislative history to the contrary.

A statutory or regulatory shift aimed at making COR grants more frequent, either at sentencing or later, might have little chance of succeeding in the face of these embedded practices and philosophical views. Practitioner norms can make an attempted reform effective or subvert it;<sup>38</sup> specific statutory requirements work best "when the politics and culture of the community are aligned with the intent of the law" (Harris 2007, 424). New York is not alone in confronting burgeoning collateral restrictions, large ex-offender populations, and persistent recidivism. As other states consider, adopt, and implement individualized, discretionary rights-restoration measures, this study suggests that attending to norms among the interpretive community will be an important part of effective reform.

More research on various elements of rights-restoration practice is sorely needed, particularly on the actual effects of the certificate and similar policies. In New York, organizations working closely with affected populations have concluded that CORs are one effective way to help people with criminal justice backgrounds restore their civic and legal standing: groups such as the Bronx Defenders, the Legal Action Center, the Fortune Society, and the Center for Community Alternatives devote considerable time, resources, and expertise to helping New Yorkers apply for and receive the certificate, sometimes working in partnership with local and state officials. However, most criminal justice officials interviewed made clear that they did not know much about how the COR influenced the decisions of their civil law counterparts in state licensure offices, nor how much difference the COR makes in peoples' lives. Research on state licensing practices related to applicants with criminal backgrounds would be particularly valuable, as would studies of what private employers and public and private landlords know about rights-restoration law in states with relevant legal mechanisms. Certainly, interview- or survey-based studies of the experiences of people receiving rights-restoring certificates (and pardons, expungements, and other forms of conviction set-asides) would enrich our understanding of the interaction of criminal and civil law in the US carceral state.

The complicated nature of New York's certificate practice supports a broader inference that US collateral consequences rules—both restrictions and rights-restoration measures—are likely to be imposed in a highly context-dependent

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38. As Tonry (2008) writes, where criminal laws are "routinely circumvented by officials," we can surmise that those laws are "out of step with prevailing norms." On the immense power of local norms in criminal procedure generally, see Bach (2009).

fashion, rather than consistently across legal jurisdictions, geographic regions, or classes of offenders. This complexity was revealed not only by what interview subjects said about CORs, but also by the numerous errors judges and probation officers made in describing collateral consequences laws as they responded to open-ended questions and told stories of their work and the lives of those they sentence and supervise. Judges and probation officers must master the layered intricacies of the criminal law. Collateral sanctions policies, however, usually dwell in the civil law—in jury service rules, housing authority policies, voter qualification descriptions, college admission regulations, and professional licensure requirements, for example—and may be in federal law, state codes, administrative regulations, or a hybrid thereof. Criminal justice officials may encounter civil penalties only rarely, and even then, they will very rarely bear ultimate responsibility for interpreting and enforcing them. From that perspective, it is not surprising that their comprehension of collateral consequences laws was not entirely accurate.

Yet these errors can have significant consequences for people considering a plea, navigating supervision, or seeking community reintegration. Four interview subjects, for example, said flatly that there were no collateral consequences attached to misdemeanors; at least three mischaracterized New York's voting rights rules, and others described driver's license restrictions and housing eligibility rules inaccurately. One striking example concerned employment. Four interview subjects (one county court judge and three probation officers) explained that under New York law, no one with a felony record may work in any establishment that serves alcohol, even as a cook, unless they have been issued a COR. In fact, that law was changed in 2010, exempting restaurants, sports facilities, hotels, and most other foodservice establishments from the restriction (NY Alcoholic Beverage Control Law, Art. 8, § 102, Subdivision 2; author's interview, New York State Liquor Authority official, July 16, 2013).<sup>39</sup>

Many accounts of US collateral sanctions employ what we might call an *implied formalist* conception, in which references to constitutional and statutory provisions alone represent the law, and in which the category of people subject to collateral sanctions is clearly defined. Instead, the reality may be that ambiguity, discretion, and even error are central characteristics of the US collateral sanctions regime. That fact has not been sufficiently addressed, and it presents genuine challenges not only for those affected by such policies, but for public officials involved in their implementation. Researchers, meanwhile, ought not to assume that such restrictions apply to sharply enumerated classes of offenders (e.g., "felons" or "ex-felons"), or that implementation is consistent within jurisdictions. Scholars should choose depth over breadth, or risk mischaracterizing both the nature of US law and the actual conditions facing those with criminal justice backgrounds.

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39. NY Alcoholic Beverage Control Law, Art. 8, § 102, Subdivision 2, exempts from the hiring ban any "catering establishment, hotel, restaurant, club, or recreational facility." Bars and taverns remain subject to the restriction, and may hire those with felony records (or conviction for any of a list of specified misdemeanor offenses) only with a COR, Certificate of Good Conduct, pardon, or special written approval of the full state board.

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