

New York Correction Law  
Effective February 1, 2009

Dear Customer,

As you may be aware, the State of New York has amended its laws relating to investigative consumer reports and those reports containing criminal records. New York's ex-convicts have a high unemployment rate of approximately 60% after one year from release. To help them find employment, New York is working to make it very clear to the users of criminal reports that they cannot discriminate against these people simply because they have a criminal record.

On February 1, 2009, two changes to the New York consumer reporting laws will become effective:

§380-c, General Business Law. If a user requests an investigative consumer report for employment purposes, the user must, in the notice to the consumer state that a report will be sought and indicate that it is providing a copy of Article 23-A of the New York Correction Law to the consumer which sets for the anti-discrimination provision relating to those with criminal records. It matters not whether the investigative consumer report will contain any criminal record information.

§380-g, General Business Law. This amendment added sub-section (d) which provides that if a consumer report contains a criminal record then the user shall provide a copy of Article 23-A of the Correction Law to the consumer.

While the law does not specifically state which hiring situations are controlled by these new laws, past research suggests that New York discrimination laws will apply to those working in the State of New York. Thus it will apply to a New York company employing an applicant to work in New York. It appears that it will not apply to a New York company employing a person in New Jersey unless they hire that person in New York. It will apply to a New Jersey employing someone in New York.

It's also your responsibility under New York law to evaluate the relationship of any conviction for the position sought. Under New York statutory law §296(15) Executive Law; such an analysis is also a defense to a negligent hiring/retention claim. If a §752, Article 23-A, Correction Law review of past convictions is conducted then the employer can have past offenses excluded from evidence.

In evaluating the criminal record with the position sought, the category of the offense may or may not relate to the job in question. For example, a recent misdemeanor theft may be relevant to a job where the employee is entrusted with the company's or customer's money/property, but an old felony conviction for the possession of a controlled substance may not be relevant at all. A drunk driving conviction may be relevant to a driving job, but it is probably not relevant to a secretarial position. It is our understanding that the law requires that the employers judge each applicant with each position individually.

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New Forms Available on the NCS Website

To help keep you in compliance with these new laws, NCS has uploaded the following documents to the NCS website.

- **New York Disclosure & Authorization**  
Use this form as your new authorization form to perform background checks.
- **Article 23-A of New York Correction Law**  
Give each applicant a copy of this with the new authorization form mentioned above.
- **Criminal Record Review**  
This is a suggested form for you to use when criminal records are found.

Each of these forms can be found under the “Forms & Downloads” page on the NCS site.

**The providing of these forms and information is not providing legal advice to you, and we suggest that you contact your legal counsel in regard to your responsibilities in this area.**

If you have any questions, please contact National Crime Search, Inc. at [support@nationalcrimesearch.com](mailto:support@nationalcrimesearch.com) or 888-527-3282.

Thank you once again for your business.

Sincerely,

Travis Fink  
National Crime Search, Inc.