



NEW YORK STATE SENATOR

Frank Padavan

Padavan Calls For Immediate Action On Legislation To Fix Criminal Background Check Problem

Frank Padavan

June 1, 2009

New York State Senator Frank Padavan (Queens) today called immediate action today on his legislation that would fix a dangerous problem with the soon to be enacted, so-called Rockefeller Drug Law reforms. Under a state budget measure which will take effect on June 8th, courts may seal criminal records of certain drug felons at the completion of drug court effectively leaving no criminal record and conviction when they apply for employment.

“This change in our state drug laws defies all common sense because it would effectively wipe the slate clean for criminals who will face necessary criminal background checks for position of confidence and public trust,” Senator Frank Padavan (Queens) sponsor of the bill, said. ‘Through this law adopted in the budget, convicted drug dealers with a lengthy criminal record could be taking care of a parent or grandparent at a nursing home or through home care. They can be placed in a classroom or a day care center with our children and grandchildren.”

Padavan called for Senate Majority Leader Smith and his Senate Majority colleagues to take action this week before the June 8th enactment date. Specifically, the soon to be enacted law empowers the court to seal the current conviction and up to three prior misdemeanors in order to keep them from being disclosed during background checks for sensitive positions. If this law is not stopped from being enacted, a convicted criminal could have a total of four convictions hidden from potential employers. Padavan noted that the provision just doesn't cover drug related offenses. In effect under this provision convictions for burglary, robbery, auto theft, forgery and extortion could be sealed.

Over the years the state has proactively and consistently enacted laws strengthening public safety by requiring criminal background checks for numerous positions of trust. This new record sealing measure will undermine years of hard work and laws designed to give employers full disclosure of a potential employee's full criminal background.

"This measure works against years of legislative initiatives that have strengthened criminal background checks for anyone who seeks employment in a position of trust. It's now up to Majority Leader Smith and his Senate Majority colleagues to do the right thing for New Yorkers and repeal the seal before the so-called Rockefeller Drug Law reforms take effect next week," Padavan said.

"Under the law as it is currently written, a background check would be a futile exercise because judges would be allowed to seal records of as many as four criminal convictions, one of which can be for a felony," said Staten Island District Attorney and President of the District Attorneys' Association of the State of New York, Daniel M. Donovan, Jr. "The proposed legislation will protect the public by ensuring full disclosure of the criminal history of applicants for jobs there people serve in a position of trust."

"Drugs are the economic tools that enable violent gangs to purchase weapons and terrorize communities. The drug trade is not victimless and non-violent. Drug dealers' sole motivation is profit, with no regard for the horrific tragedies their actions cause. Those who possess and sell controlled substances do not qualify nor deserve to be a special class shielded and protected by the law," said Laura Ahearn, Executive Director, Parents for Megan's Law and the Crime Victims Center. "Sealing their records of criminal convictions personally benefits convicted offenders at the significant cost of placing an unsuspecting public at risk. If the concealing provision

of this new law is enacted, someone alone with or teaching your child, or providing day care, health care or home nursing services may not only be a convicted drug dealer, but someone who also engaged in other criminal behavior, including burglary and larceny. Employers have a right to know to protect our most vulnerable. The right to conceal records can never take precedence over the rights and responsibilities the government has to protect the public. We strongly urge the passage of Senator Padavan's legislation which will repeal a significant flaw in the law that places the public at grave risk."

David A. Little, Director of Governmental Relations for the New York State School Boards Association said: "The law to require fingerprinting of all prospective school employees was a monumental step forward in protecting the children of New York State. While everyone deserves a second chance after paying their debt to society, the safety of our children must be of paramount concern. The law requiring criminal background checks on prospective school employees allows for discretion. An applicant will not be summarily rejected because of a prior conviction. But school districts must have a complete history of the adults responsible for our children. Whether driving them to school or alone with them in a school setting, school officials must have the ability to accurately assess the potential risk to children posed by an applicant with a criminal history. As such, NYSSBA supports the effort to repeal a judge's discretion to prevent school access to criminal records."

Crimes That Will be Hidden From Prospective Employers

Crimes listed in 410.91 of the Criminal procedure law subject to be sealed:

1. Burglary in the 3rd degree
2. Criminal mischief in the 3rd degree
3. Criminal mischief in the 2nd degree
4. Grand larceny in the 4th degree
5. Grand larceny in the 3rd degree
6. Unauthorized use of a vehicle in the 2nd degree
7. Criminal possession of stolen property in the 4th degree
8. Criminal possession of stolen property in the 3rd degree

9. Forgery in the 2nd degree
10. Criminal possession of a forged instrument in the 2nd degree
11. Unlawfully using slugs in the 1st degree
12. An attempt to commit any of the foregoing crimes if the attempt constitutes a felony
13. Criminal possession of a controlled substance in the 5th, 4th and 3rd degrees
14. Use of a child to commit a controlled substance offense
15. Criminal sale of a controlled substance in the 5th, 4th, and 3rd degrees
16. Criminal sale of a controlled substance in or near school grounds
17. Criminal injection of a narcotic drug
18. Criminally using drug paraphernalia
19. Criminal possession of precursors of controlled substances
20. Criminal sale of a prescription for a controlled substance.
21. Criminal possession of methamphetamine manufacturing material
22. Criminal possession of precursors of methamphetamine
23. Unlawful manufacture of methamphetamine
24. Unlawful disposal of methamphetamine laboratory material
25. Criminal possession of marihuana
26. Criminal sale of marihuana