

# ONR FW 2016-1 / License Issuing Officer Application Review for Applicants Previously Convicted of a Criminal Offense

New York State Department of Environmental Conservation

## DEC Program Policy

**Issuing Authority: Kathleen Moser**

**Title: Deputy Commissioner, Office of Natural Resources**

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**Latest Date Revised:**

**I. Summary:** This policy standardizes the review of applications for License Issuing Officers (LIOs) to determine whether an applicant was previously convicted of one or more misdemeanor or felony level criminal offenses, and if the prior conviction(s) should preclude the applicant, who is otherwise qualified, from being appointed as an LIO by the Department of Environmental Conservation (DEC). The review is based on criteria established by regulation for LIOs in Title 6 of the Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 183. The review complies with New York Correction Law Article 23-A § 750 et seq.

**II. Policy:** In accordance with the public policy of this state to encourage employment and licensure of people with criminal convictions, as set forth in New York Correction Law Article 23-A, DEC will appoint an otherwise qualified applicant with a prior criminal conviction or convictions as a License Issuing Officer unless (1) there is a direct relationship between one or more of the previous convictions and the duties required of an LIO; or (2) appointing the individual as an LIO would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

### III. Purpose and Background:

Environmental Conservation Law § 11-0713 authorizes LIOs to issue sporting licenses and privileges for hunting, fishing and trapping. LIOs are entrusted with the licensees' personal and financial information, monetary transactions, accounting, reporting, and customer service.

Therefore, New York State has a responsibility to ensure that LIOs exhibit a high level of integrity in the exercise of their duties. This responsibility must be balanced with laws prohibiting discrimination against persons previously convicted of one or more criminal offenses. See New York Correction Law Article 23-A § 750 et seq.

N.Y. Correct. Law Article 23-A § 753 establishes a presumption in favor of issuing employment related licenses to people with prior convictions, "except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct." N.Y. Correct. Law Article 23-A defines "license" as any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

In order to overcome the presumption and deem an individual with a prior conviction ineligible to appoint as an LIO, DEC must find that (1) there is a direct relationship between one or more of the previous convictions and the duties required of an LIO; or (2) appointing the individual as an LIO would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. To make this finding, DEC must consider eight statutory factors and articulate any bar to appointment as an LIO.

The statutory factors include:

1. The public policy of New York State to encourage the licensure and employment of persons previously convicted of one or more criminal offenses;
2. The specific duties and responsibilities necessarily related to the license or employment sought or held by the person;
3. The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his or her fitness or ability to perform one or more such duties or responsibilities;
4. The time which has elapsed since the occurrence of the criminal offense or offenses;
5. The age of the person at the time of occurrence of the criminal offense or offenses;
6. The seriousness of the offense or offenses;
7. Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct; and
8. The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

Based on the foregoing, DEC will use the procedure listed below to review applications for LIOs and Assistant LIOs.

**IV. Responsibility:** The DEC Office of General Counsel (OGC) will work with the Division of Fish and Wildlife (DFW) to implement the procedure listed below. OGC will be responsible for maintaining and updating this procedure.

#### **V. Procedure:**

1. **Identify applicants with prior conviction(s).** The application will inquire whether the applicant has ever been convicted of a misdemeanor or felony level criminal offense. The application will further indicate that an affirmative response is not an absolute bar to appointment as an LIO. To help verify if the applicant has any prior conviction(s) not indicated on the application, DEC may check records of conviction maintained by the New York State Office of Court Administration; prison sentence and parole records maintained by the New York State Department of Corrections and Community Supervision; and the New York State Sex Offender Registry. DEC may also reach out to the New York State Office of Court Administration, the New York State Department of Corrections and Community Supervision, and the New York State Division of Criminal Justice Services for assistance in verifying information submitted by an applicant. If DEC discovers a false statement in the application, the DEC Division of Law Enforcement, at its discretion, may request a copy of the applicant's criminal history record from the Division of Criminal Justice Services to the extent permitted by law.
  - a. The application will be reviewed pursuant to the Qualifications for Appointment as a License Issuing Officer set forth at 6 NYCRR 183.2 (a)-(e).
  - b. If the applicant indicates that he or she has been convicted of one or more misdemeanor or felony level criminal offenses, the application will request that the applicant submit the

following:

- i. Certificate of Disposition or similar document if the conviction occurred in another state;
- ii. A signed and dated statement from the applicant describing his or her conviction(s), including sufficient detail of events leading up to the conviction and any post-conviction rehabilitation and good conduct;
- iii. One or more letters of recommendation from someone other than a relative and any additional documentation relevant to review of the application, such as a certificate of relief from disability and documentation showing personal accomplishments since their conviction(s), including professional licenses, rehabilitation documents, courses or degrees.

If DEC independently has reason to believe that the applicant has been convicted of one or more misdemeanor or felony level criminal offenses through the verification process described above, DEC will send the applicant a written request for the above listed documentation.

2. **Review documentation for completeness.** DFW will review submitted documentation for completeness. If the documentation is incomplete or has otherwise not been provided, DFW will notify the applicant in writing and request outstanding documentation within 30 days. If the applicant fails to provide the requested information within 30 days, DEC will make its decision based solely on the application and any additional information obtained through the verification process described in Section V.1.
3. **Refer application review to OGC.** Completed applications will be referred to OGC.
  - a. OGC will review the information submitted by the applicant and consider:
    - i. The specific duties and responsibilities of an LIO;
    - ii. Any bearing the criminal offense(s) for which the person was previously convicted will have on his or her fitness or ability to perform one or more the duties or responsibilities;
    - iii. The time that has elapsed since the occurrence of the criminal offense(s);
    - iv. The age of the person at the time of the criminal offense(s);
    - v. The seriousness of the offense(s); and
    - vi. The state's legitimate interest in protecting the safety, welfare and property of sporting licensees and the general public.
  - b. If OGC requires additional information related to the above factors, the reviewing attorney will conduct an investigation to determine relevant facts.
  - c. Examples of convictions that may cause an LIO application to be denied because of their relationship to the duties of the office include violent crimes, such as murder, manslaughter and rape and those involving fire arms or dangerous weapons, and financial crimes, such as theft, embezzlement, credit card fraud, identity theft and information security.
4. **Issue a finding of eligibility.** OGC will determine whether an applicant with a prior conviction is deemed eligible for appointment as an LIO. The determination will be communicated to DFW in writing. A determination denying an application will articulate the reasoning with specificity.

**5. Notify the applicant.**

- a. If the applicant is eligible for appointment as an LIO, DFW will notify the applicant in writing and advise him or her of subsequent training requirements, if any.
- b. If the applicant is ineligible for appointment as an LIO, DFW will notify the applicant in writing and communicate the reason(s) for the denial.