



Special Considerations for Non-citizen Defendants Regarding Implementation of Youthful Offender Redeterminations under New York State Bill S282/A6769

Last updated: January 13, 2022

Summary of New Law

Provides that an individual who was an eligible youth who was not determined to be a youthful offender by the sentencing court may apply to such court for a new determination after at least five years have passed since the imposition of the sentence, or at least five years after the individual's latest release from incarceration, if such individual was sentenced to a period of incarceration.

Takeaway for Noncitizens

Non-citizens who apply for a new determination of Youthful Offender status under this new statute may remain convicted under immigration law.

Analysis

Federal immigration law defines “conviction” differently than state law. Some dispositions that are not convictions under state law are still convictions under federal immigration law.

Under binding federal precedent, standard New York Youthful Offender adjudications are *not* convictions under immigration law. In a 2000 decision, *Matter of Devison*,¹ the immigration agency charged with interpreting federal immigration law, the Board of Immigration Appeals (BIA), compared New York’s Youthful Offender statute to the Federal Juvenile Delinquency Act (FJDA). The BIA reasoned that because New York’s Youthful Offender statute and the FJDA are technically similar, and because delinquency findings under the FJDA are not convictions under immigration law, New York Youthful Offender adjudications were also not convictions under immigration law. The BIA found that each statute defined “juvenile” similarly; treated the ultimate disposition as a status not conviction; required the court to make the finding immediately; used similar criteria on whether to grant juvenile offender status; and made the status finding final.

S282/A6769 modifies the Youthful Offender statute in several ways to make it easier for individuals who were eligible at the time of conviction but did not receive Youthful Offender status to apply for a new Youthful Offender determination five years after an original conviction.

¹ 22 I&N Dec. 1362 (BIA 2000).



But because the resentencing process created under the new state law diverges from the FJDA in several ways, it increases the risk that a new Youthful Offender determination under this statute will still be a conviction under immigration law, even though standard Youthful Offender findings should still not be convictions under immigration law.

For example, S282/A6769 allows the court to consider new criteria unrelated to the offense itself, including post-conviction factors like rehabilitation, the length of time since the offense, and whether the person has any new convictions. None of those factors are considered under the FJDA, but were considered under a different federal law, the Federal Youth Corrections Act (FYCA). In *Matter of Devison*, the BIA specifically distinguished the FYCA from the FJDA because the FYCA only vacated the conviction “*if the offender satisfied the requirements of his sentence.*”² Because the FYCA “was conditioned on the offender’s future good behavior,” the BIA stated, a finding under the FYCA *would* still be a conviction under immigration law.³ Because the process for new Youthful Offender determinations under the new law mirrors the FYCA and not the FJDA, such findings are also at risk of still being convictions under immigration law.

Non-citizens should be aware that a new Youthful Offender determination under this law may not protect them from immigration consequences because immigration authorities may consider a new Youthful Offender determination to still be a conviction. Because certain convictions can trigger immigration consequences, even long-time permanent residents can still be at risk of detention and deportation from things like international travel or filing an application (like citizenship or green card renewal) with immigration even though their new Youthful Offender determination is not a conviction under state law.

Best Practice For Noncitizens Seeking Youthful Offender Status Post-Sentencing

440 motions. There is a safer pathway to a Youthful Offender adjudication on old convictions that will be honored by immigration, which is to first file a motion to vacate under NYCPL § 440 and then receive a standard Youthful Offender adjudication. Such 440 motions are based legal defects and are effective for immigration purposes, including ineffective assistance of counsel for failing to advocate effectively for Youthful Offender adjudication. You can access IDP’s resource library for post-conviction relief attorneys [here](#).

² *Matter of Devison*, 22 I&N Dec. 1362, 1376 (BIA 2000).

³ *Matter of Devison*, 22 I&N Dec. 1362, 1376-77 (BIA 2000).



Note that a new Youthful Offender redetermination under the new law may foreclose the option to later file a 440 motion. It is not clear whether 440 motions can be filed on Youthful Offender adjudications, whether standard or a redetermination. In other words, if a non-citizen applies for and receives a new Youthful Offender adjudication under the new law, they may still face immigration consequences based on that adjudication *and* they may not be eligible to pursue a 440 motion. While a Youthful Offender redetermination under the new law may appear easier and more straightforward than a 440 motion, non-citizens should continue to pursue 440 motions instead and avoid new Youthful Offender redeterminations.