

STATE OF NEW YORK

3417

2023-2024 Regular Sessions

IN SENATE

January 31, 2023

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to eligibility for conviction sealing for certain applicants

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 160.59 of the criminal procedure law, as added by
2 section 48 of part WWW of chapter 59 of the laws of 2017 and paragraph
3 (a) of subdivision 2 and subdivision 11 as amended by chapter 60 of the
4 laws of 2017, is amended to read as follows:

5 § 160.59 Sealing of certain convictions.

6 1. Definitions: As used in this section, the following terms shall
7 have the following meanings:

8 (a) "Eligible offense" shall mean a violation of subdivision one of
9 section eleven hundred ninety-two of the vehicle and traffic law or any
10 crime defined in the laws of this state other than a sex offense defined
11 in article one hundred thirty of the penal law, an offense defined in
12 article two hundred sixty-three of the penal law, a felony offense
13 defined in article one hundred twenty-five of the penal law, a violent
14 felony offense defined in section 70.02 of the penal law, a class A
15 felony offense defined in the penal law, a felony offense defined in
16 article one hundred five of the penal law where the underlying offense
17 is not an eligible offense, an attempt to commit an offense that is not
18 an eligible offense if the attempt is a felony, or an offense for which
19 registration as a sex offender is required pursuant to article six-C of
20 the correction law. For the purposes of this section, where the
21 [~~defendant~~] applicant is convicted of more than one eligible offense,
22 [~~committed as part of the same criminal transaction as defined in subdivi-~~
23 ~~vision two of section 40.10 of this chapter, those offenses shall be~~
24 ~~considered one eligible offense~~] for which they were charged in separate
25 counts of one indictment, information or complaint, or for which they

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 were charged in two or more indictments, informations or complaints,
2 filed in the same court prior to entry of judgment under any of them,
3 those offenses shall be considered one eligible offense.

4 (b) "Sentencing judge" shall mean the judge who pronounced sentence
5 upon the conviction under consideration, or if that judge is no longer
6 sitting in a court in the jurisdiction in which the conviction was
7 obtained, any other judge who is sitting in the criminal court where the
8 judgment of conviction was entered.

9 (c) "Prosecutor" shall mean the prosecutor's office that prosecuted
10 the eligible offense.

11 1-a. The chief administrator of the courts shall, pursuant to section
12 10.40 of this chapter, prescribe a form application which may be used by
13 a defendant to apply for sealing pursuant to this section. Such form
14 application shall include all the essential elements required by this
15 section to be included in an application for sealing. Nothing in this
16 subdivision shall be read to require a defendant to use such form appli-
17 cation to apply for sealing.

18 2. (a) [~~A defendant~~] An individual who has been convicted of up to
19 [~~two~~] four eligible criminal offenses but not more than one felony
20 offense may apply to the court in which [~~he or she was~~] they were
21 convicted of [~~the~~] their most serious eligible offense to have such
22 conviction or convictions sealed. If all offenses are offenses with the
23 same classification, the application shall be made to the court in which
24 the [~~defendant~~] applicant was last convicted.

25 (b) An application shall contain (i) a copy of a certificate of dispo-
26 sition or other similar documentation for any offense for which the
27 [~~defendant~~] applicant has been convicted, or an explanation of why such
28 certificate or other documentation is not available; (ii) a sworn state-
29 ment of the [~~defendant~~] applicant as to whether [~~he or she has~~] they
30 have filed, or then intends to file, any application for sealing of any
31 other eligible offense; (iii) a copy of any other such application that
32 has been filed; and (iv) a sworn statement as to the conviction or
33 convictions for which relief is being sought[~~, and (v)~~]. Applicants may
34 submit a sworn statement of the reason or reasons why the court should,
35 in its discretion, grant such sealing, along with any supporting
36 documentation.

37 (c) A copy of any application for such sealing shall be served upon
38 the [~~district attorney of the county in which the conviction, or, if~~
39 ~~more than one, the convictions, was or were obtained~~] prosecutor which
40 prosecuted the eligible offense for which a conviction was obtained.
41 The [~~district attorney~~] prosecutor shall notify the court within forty-
42 five days if [~~he or she objects~~] they object to the application for
43 sealing. If the prosecutor has not notified the court within forty-five
44 days of their objection to the application for sealing, the court shall
45 proceed with decision on the application.

46 (d) When such application is filed with the court, it shall be
47 assigned to the sentencing judge unless more than one application is
48 filed in which case the application shall be assigned to the local
49 court, county court or the supreme court of the county in which the
50 criminal court is located, who shall request and receive from the divi-
51 sion of criminal justice services a fingerprint based criminal history
52 record of the [~~defendant~~] applicant, including any sealed or suppressed
53 records. The division of criminal justice services also shall include a
54 criminal history report, if any, from the federal bureau of investi-
55 gation regarding any criminal history information that occurred in other
56 jurisdictions. The division is hereby authorized to receive such infor-

1 mation from the federal bureau of investigation for this purpose, and to
2 make such information available to the court, which may make this infor-
3 mation available to the district attorney and the ~~[defendant]~~ applicant.

4 3. The sentencing judge, or local, county or supreme court shall
5 summarily deny the ~~[defendant's]~~ applicant's application when:

6 (a) the ~~[defendant]~~ applicant is required to register as a sex offen-
7 der pursuant to article six-C of the correction law; or

8 (b) the ~~[defendant]~~ applicant has previously obtained sealing of the
9 maximum number of convictions allowable under section 160.58 of ~~[the~~
10 ~~criminal procedure law]~~ this article; or

11 (c) the ~~[defendant]~~ applicant has previously obtained sealing of the
12 maximum number of convictions allowable under subdivision four of this
13 section; or

14 (d) the time period specified in subdivision five of this section has
15 not yet been satisfied; or

16 (e) the ~~[defendant]~~ applicant has an undisposed arrest or charge pend-
17 ing; or

18 (f) the ~~[defendant]~~ applicant was convicted of any crime that is not
19 eligible for sealing under this section after the date of the entry of
20 ~~[judgement]~~ judgment of the last conviction for which sealing is sought;
21 or

22 (g) ~~[the defendant has failed to provide the court with the required~~
23 ~~sworn statement of the reasons why the court should grant the relief~~
24 ~~requested; or~~

25 ~~(h)~~ the ~~[defendant]~~ applicant has been convicted of two or more felo-
26 nies or more than ~~[two]~~ four crimes.

27 4. Provided that the application is not summarily denied for the
28 reasons set forth in subdivision three of this section, ~~[a defendant]~~ an
29 applicant who stands convicted of up to ~~[two]~~ four eligible criminal
30 offenses~~[,]~~ may obtain sealing of a violation of subdivision one of
31 section eleven hundred ninety-two of the vehicle and traffic law and no
32 more than ~~[two]~~ four eligible offenses but not more than one felony
33 offense.

34 5. Any eligible offense may be sealed only after at least ten years
35 have passed since the imposition of the sentence on the defendant's
36 latest conviction or, if the defendant was sentenced to a period of
37 incarceration, including a period of incarceration imposed in conjunc-
38 tion with a sentence of probation, the defendant's latest release from
39 incarceration. In calculating the ten year period under this subdivi-
40 sion, any period of time the defendant spent incarcerated after the
41 conviction for which the application for sealing is sought, shall be
42 excluded and such ten year period shall be extended by a period or peri-
43 ods equal to the time served under such incarceration.

44 6. Upon determining that the application is not subject to mandatory
45 denial pursuant to subdivision three of this section and that the appli-
46 cation is opposed by the ~~[district attorney]~~ prosecutor, the sentencing
47 judge or local, county or supreme court shall ~~[conduct a hearing on the~~
48 ~~application in order to consider any evidence offered by either party~~
49 ~~that would aid the sentencing judge in his or her decision whether to~~
50 ~~seal the records of the defendant's convictions. No hearing is required~~
51 ~~if the district attorney does not oppose the application]~~ inform the
52 applicant of their right to supplement their application with additional
53 materials that would aid the sentencing judge in their decision or to a
54 hearing on the application in order to consider arguments by either
55 party that would aid the sentencing judge in their decision. Once the
56 applicant indicates whether they intend to proceed with or without

1 supplementation or a hearing, the sentencing judge or local, county or
2 supreme court, may proceed. The court may hold a hearing upon request
3 of the prosecutor.

4 7. ~~[In considering any such application, the sentencing judge or coun-~~
5 ~~ty or supreme court shall consider any relevant factors, including but~~
6 ~~not limited to:~~

7 ~~(a) the amount of time that has elapsed since the defendant's last~~
8 ~~conviction;~~

9 ~~(b) the circumstances and seriousness of the offense for which the~~
10 ~~defendant is seeking relief, including whether the arrest charge was not~~
11 ~~an eligible offense;~~

12 ~~(c) the circumstances and seriousness of any other offenses for which~~
13 ~~the defendant stands convicted;~~

14 ~~(d) the character of the defendant, including any measures that the~~
15 ~~defendant has taken toward rehabilitation, such as participating in~~
16 ~~treatment programs, work, or schooling, and participating in community~~
17 ~~service or other volunteer programs;~~

18 ~~(e) any statements made by the victim of the offense for which the~~
19 ~~defendant is seeking relief;~~

20 ~~(f) the impact of sealing the defendant's record upon his or her reha-~~
21 ~~bilitation and upon his or her successful and productive reentry and~~
22 ~~reintegration into society; and~~

23 ~~(g) the impact of sealing the defendant's record on public safety and~~
24 ~~upon the public's confidence in and respect for the law] Upon determin-~~
25 ing that the application is not subject to mandatory denial pursuant to
26 subdivision three of this section, the sentencing judge or local, county
27 or supreme court shall order sealing, unless the prosecutor shows that
28 exceptional circumstances weigh against such relief. In determining
29 whether exceptional circumstances exist the court shall consider if the
30 sealing would create an unreasonable risk to public safety, balanced
31 against the benefit of sealing the record upon the applicant's success-
32 ful and productive reentry and reintegration into society.

33 8. When a sentencing judge or local, county or supreme court orders
34 sealing pursuant to this section, all official records and papers,
35 including judgments and orders of a court but not including published
36 court decisions or opinions or records and briefs on appeal, relating to
37 the arrests, prosecutions, and convictions, including all duplicates and
38 copies thereof, on file with the division of criminal justice services
39 or any court, police agency or prosecutor's office shall be sealed and
40 not made available to any person or public or private agency except as
41 provided for in subdivision nine of this section; provided, however, the
42 division shall retain any fingerprints, palmprints and photographs, or
43 digital images of the same. The clerk of such court shall immediately
44 notify the commissioner of the division of criminal justice services,
45 the heads of all appropriate police departments and other law enforce-
46 ment agencies, regarding the records that shall be sealed pursuant to
47 this section. The clerk also shall notify any court in which the
48 ~~[defendant]~~ applicant has stated, pursuant to paragraph (b) of subdivi-
49 sion two of this section, that ~~[he or she has]~~ they have filed or
50 ~~[intends]~~ intend to file an application for sealing of any other eligi-
51 ble offense.

52 9. Records sealed pursuant to this section shall be made available to:

53 (a) the ~~[defendant]~~ applicant or the ~~[defendant's]~~ applicant's desig-
54 nated agent;

55 (b) qualified agencies, as defined in subdivision nine of section
56 eight hundred thirty-five of the executive law, and federal and state

1 law enforcement agencies, when acting within the scope of their law
2 enforcement duties; or

3 (c) any state or local officer or agency with responsibility for the
4 issuance of licenses to possess guns, when the person has made applica-
5 tion for such a license; or

6 (d) any prospective employer of a police officer or peace officer as
7 those terms are defined in subdivisions thirty-three and thirty-four of
8 section 1.20 of this chapter, in relation to an application for employ-
9 ment as a police officer or peace officer; provided, however, that every
10 person who is an applicant for the position of police officer or peace
11 officer shall be furnished with a copy of all records obtained under
12 this paragraph and afforded an opportunity to make an explanation there-
13 to; or

14 (e) the criminal justice information services division of the federal
15 bureau of investigation, for the purposes of responding to queries to
16 the national instant criminal background check system regarding attempts
17 to purchase or otherwise take possession of firearms, as defined in 18
18 USC 921 (a) (3).

19 10. A conviction which is sealed pursuant to this section is included
20 within the definition of a conviction for the purposes of any criminal
21 proceeding in which the fact of a prior conviction would enhance a
22 penalty or is an element of the offense charged.

23 11. No [~~defendant~~] person shall be required or permitted to waive
24 eligibility for sealing pursuant to this section as part of a plea of
25 guilty, sentence or any agreement related to a conviction for an eligi-
26 ble offense and any such waiver shall be deemed void and wholly unen-
27 forceable.

28 12. Denial under this section is without prejudice to subsequent
29 relief under this section.

30 13. An application under this section, and all pertinent papers and
31 documents, shall be confidential and may not be made available to any
32 person or public or private agency except where specifically authorized
33 by the court.

34 § 2. This act shall take effect on the ninetieth day after it shall
35 have become a law and shall apply to all offenses committed prior to,
36 on, or after such date.