

# STATE OF NEW YORK

4343

2017-2018 Regular Sessions

## IN ASSEMBLY

February 2, 2017

Introduced by M. of A. LENTOL -- Multi-Sponsored by -- M. of A. FARRELL, GOTTFRIED, HARRIS, HEVESI, HOOPER, LAVINE, O'DONNELL, ORTIZ, PEOPLES-STOKES, PERRY, PRETLOW, TITUS -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to permitting the sealing of records of certain nonviolent misdemeanor or non-sexual misdemeanor offenses

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

1 Section 1. This act shall be known and may be cited as the "second  
2 chance for ex-offenders act".

3 § 2. The criminal procedure law is amended by adding a new section  
4 160.65 to read as follows:

5 § 160.65 Conditional sealing of certain misdemeanor offenses.

6 1. For the purposes of this section, the term "eligible misdemeanor"  
7 shall be a misdemeanor offense defined in the penal law, provided that  
8 an eligible misdemeanor shall not include any sex offense as defined  
9 under subdivision two of section one hundred sixty-eight-a of the  
10 correction law.

11 2. A person having a conviction for no more than three misdemeanors,  
12 who does not stand convicted of any felony, or who is not required to  
13 maintain registration under article six-C of the correction law, may  
14 petition the court to conditionally seal up to three eligible misdemea-  
15 nors when:

16 (a) at least five years have passed since the completion of a sentence  
17 on an eligible misdemeanor; and

18 (b) such person has not been convicted of a crime during the last five  
19 years and is not the subject of an undisposed arrest.

20 3. The petition authorized by this section shall be filed in the court  
21 of record that last imposed a sentence upon petitioner for an eligible  
22 misdemeanor. On the defendant's motion, the court may order that all

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

LBD03426-01-7

1 official records and papers relating to the arrest, prosecution and  
2 conviction records for no more than three of the defendant's prior  
3 eligible misdemeanors be conditionally sealed. The court may only seal  
4 the records of the defendant's arrests, prosecutions and convictions  
5 when:

6 (a) the sentencing court has requested and received from the division  
7 of criminal justice services or the federal bureau of investigation a  
8 fingerprint based criminal history record of the defendant, including  
9 any sealed or suppressed information. The division of criminal justice  
10 services shall also include a criminal history report, if any, from the  
11 federal bureau of investigation regarding any criminal history informa-  
12 tion that occurred in other jurisdictions. The division is hereby  
13 authorized to receive such information from the federal bureau of inves-  
14 tigation for this purpose. The parties shall be permitted to examine  
15 these records;

16 (b) the defendant or court has identified the misdemeanor conviction  
17 or convictions for which relief may be granted;

18 (c) the court has received documentation that the sentences imposed on  
19 the eligible misdemeanor convictions have been completed, or if no such  
20 documentation is reasonably available, a sworn affidavit that the  
21 sentences imposed on the prior misdemeanors have been completed; and

22 (d) the court has notified the district attorney of each jurisdiction  
23 in which the defendant has been convicted of an offense with respect to  
24 which sealing is sought, and the court or courts of record for such  
25 offenses, that the court is considering sealing the records of the  
26 defendant's eligible misdemeanor convictions. Both the district attorney  
27 and the court shall be given a reasonable opportunity, which shall not  
28 be less than thirty days, in which to comment and submit materials to  
29 aid the court in making such a determination. When the court notifies a  
30 district attorney of a sealing application, the district attorney shall  
31 provide notice to the victim, if any, of the sealing application by  
32 mailing written notice to the victim's last-known address. For purposes  
33 of this section "victim" means any person who has sustained physical or  
34 financial injury to person or to property as a direct result of the  
35 misdemeanor crime or misdemeanor crimes for which sealing is applied.

36 4. At the request of the defendant or the district attorney of a coun-  
37 ty in which the defendant committed a crime that is the subject of the  
38 sealing application, the court may conduct a hearing to consider and  
39 review any relevant evidence offered by either party that would aid the  
40 court in its decision whether to seal the records of the defendant's  
41 arrests, prosecutions and convictions. In making such a determination,  
42 the court shall consider any relevant factors, including but not limited  
43 to:

44 (a) the circumstances and seriousness of the offense or offenses that  
45 resulted in the conviction or convictions;

46 (b) the character of the defendant, including what steps the petition-  
47 er has taken since the time of the offense toward personal rehabili-  
48 tation, including treatment, work, school, or other personal history  
49 that demonstrates rehabilitation;

50 (c) the defendant's criminal history;

51 (d) the impact of sealing the defendant's records upon his or her  
52 rehabilitation and his or her successful and productive reentry and  
53 reintegration into society, and on public safety; and

54 (e) any statements made by the victim of the offense where there is in  
55 fact a victim of the crime.

5. After a court declares its willingness to grant the defendant's request for conditional sealing pursuant to this section, but before the court orders sealing pursuant to this section, the defendant shall pay a mandatory conditional sealing fee. The mandatory conditional sealing fee will be a fee of eighty dollars, however, such filing fee shall be waived in cases of indigence. The mandatory filing fee shall be paid to the clerk of the court or administrative tribunal that rendered the conviction. Within the first ten days of the month following collection of the mandatory filing fee, the collecting authority if it is an administrative tribunal, or a town or village justice court, shall then pay such money to the state comptroller who shall deposit such money in the state treasury pursuant to section one hundred twenty-one of the state finance law to the credit of the indigent legal services fund. If such collecting authority is any other court of the unified court system, it shall, within such period, pay such money attributable to the mandatory filing fee to the state commissioner of taxation and finance to the credit of the indigent legal services fund established by section ninety-eight-b of the state finance law.

6. When a court orders sealing pursuant to this section, all official records and papers relating to the arrests, prosecutions, and convictions, including all duplicates and copies thereof, on file with the division of criminal justice services or any court shall be sealed and not made available to any person or public or private agency; provided, however, the division shall retain any fingerprints, palm-prints, photographs, or digital images of the same.

7. When the court orders sealing pursuant to this section, the clerk of such court shall immediately notify the commissioner of the division of criminal justice services, and any court that sentenced the defendant for an offense which has been conditionally sealed, regarding the records that shall be sealed pursuant to this section.

8. Records sealed pursuant to this subdivision shall be made available to:

- (a) the defendant or the defendant's designated agent;
- (b) qualified agencies, as defined in subdivision nine of section eight hundred thirty-five of the executive law, and federal and state law enforcement agencies, when acting within the scope of their law enforcement duties;
- (c) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the person has made application for such a license; or
- (d) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation there-to.

9. The court shall not seal the defendant's record pursuant to this section while any charged offense is pending.

10. If, subsequent to the sealing of records pursuant to this subdivision, the person who is the subject of such records is arrested for or formally charged with any misdemeanor or felony offense, such records shall be unsealed immediately and remain unsealed; provided, however, that if such new misdemeanor or felony arrest results in a termination in favor of the accused as defined in subdivision three of section

1 160.50 of this article or by conviction for a non-criminal offense as  
2 described in section 160.55 of this article, such unsealed records shall  
3 be conditionally sealed pursuant to this section.

4 11. No defendant shall be required or permitted to waive eligibility  
5 for conditional sealing pursuant to this section as part of a plea of  
6 guilty, sentence or any agreement related to a conviction for an eligi-  
7 ble offense and any such waiver shall be deemed void and wholly unen-  
8 forceable.

9 § 3. Subdivision 16 of section 296 of the executive law, as separately  
10 amended by section 3 of part N and section 14 of part AAA of chapter 56  
11 of the laws of 2009, is amended to read as follows:

12 16. It shall be an unlawful discriminatory practice, unless specif-  
13 ically required or permitted by statute, for any person, agency, bureau,  
14 corporation or association, including the state and any political subdi-  
15 vision thereof, to make any inquiry about, whether in any form of appli-  
16 cation or otherwise, or to act upon adversely to the individual  
17 involved, any arrest or criminal accusation of such individual not then  
18 pending against that individual which was followed by a termination of  
19 that criminal action or proceeding in favor of such individual, as  
20 defined in subdivision two of section 160.50 of the criminal procedure  
21 law, or by a youthful offender adjudication, as defined in subdivision  
22 one of section 720.35 of the criminal procedure law, or by a conviction  
23 for a violation sealed pursuant to section 160.55 of the criminal proce-  
24 dure law or by a conviction which is sealed pursuant to section 160.58  
25 of the criminal procedure law, or by a conviction which is sealed pursu-  
26 ant to section 160.65 of the criminal procedure law, in connection with  
27 the licensing, employment or providing of credit or insurance to such  
28 individual; provided, further, that no person shall be required to  
29 divulge information pertaining to any arrest or criminal accusation of  
30 such individual not then pending against that individual which was  
31 followed by a termination of that criminal action or proceeding in favor  
32 of such individual, as defined in subdivision two of section 160.50 of  
33 the criminal procedure law, or by a youthful offender adjudication, as  
34 defined in subdivision one of section 720.35 of the criminal procedure  
35 law, or by a conviction for a violation sealed pursuant to section  
36 160.55 of the criminal procedure law, or by a conviction which is sealed  
37 pursuant to section 160.58 of the criminal procedure law, or by a  
38 conviction which is sealed pursuant to section 160.65 of the criminal  
39 procedure law. The provisions of this subdivision shall not apply to the  
40 licensing activities of governmental bodies in relation to the regu-  
41 lation of guns, firearms and other deadly weapons or in relation to an  
42 application for employment as a police officer or peace officer as those  
43 terms are defined in subdivisions thirty-three and thirty-four of  
44 section 1.20 of the criminal procedure law; provided further that the  
45 provisions of this subdivision shall not apply to an application for  
46 employment or membership in any law enforcement agency with respect to  
47 any arrest or criminal accusation which was followed by a youthful  
48 offender adjudication, as defined in subdivision one of section 720.35  
49 of the criminal procedure law, or by a conviction for a violation sealed  
50 pursuant to section 160.55 of the criminal procedure law, or by a  
51 conviction which is sealed pursuant to section 160.58 of the criminal  
52 procedure law, or by a conviction which is sealed pursuant to section  
53 160.65 of the criminal procedure law.

54 § 4. This act shall take effect on the one hundred eightieth day after  
55 it shall have become a law and shall apply to all convictions occurring  
56 prior to, on, and after such date.