

STATE OF NEW YORK

8392

2019-2020 Regular Sessions

IN ASSEMBLY

June 15, 2019

Introduced by M. of A. MOSLEY -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to automatic sealing of certain misdemeanor records

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

1 Section 1. The criminal procedure law is amended by adding a new
2 section 160.57 to read as follows:

3 § 160.57 Automatic sealing of certain misdemeanor records.

4 1. As used in this section, "eligible offense" shall mean any misde-
5 meanor crime defined in the laws of this state other than a sex offense
6 defined in article one hundred thirty of the penal law, or an offense
7 for which registration as a sex offender is required pursuant to article
8 six-C of the correction law. For the purposes of this section, where an
9 individual is convicted of more than one eligible offense committed as
10 part of the same criminal transaction as defined in subdivision two of
11 section 40.10 of this chapter, such offenses shall be considered one
12 eligible offense.

13 2. Where an individual has been convicted in New York state of no more
14 than two eligible offenses and ten years have passed since the imposi-
15 tion of the sentence on an individual's latest criminal conviction in
16 New York state, or where such individual was sentenced to a period of
17 incarceration for such offense, including a period of incarceration
18 imposed in conjunction with a sentence of probation, upon such individ-
19 ual's latest release from incarceration, all official records and
20 papers relating to the arrests, prosecutions, and convictions of such
21 offenses, including all duplicates and copies thereof on file with the
22 division of criminal justice services or any court, shall be sealed and
23 not made available to any person or public or private agency except as
24 provided in subdivision four of this section; provided, however, the
25 division shall retain any fingerprints, palmprints and photographs, or

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

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1 digital images of the same. The commissioner of the division of criminal
2 justice services shall immediately notify the office of court adminis-
3 tration, the clerk of such court where the individual was convicted, and
4 the heads of all appropriate police departments and other law enforce-
5 ment agencies regarding the records that shall be sealed pursuant to
6 this section.

7 3. Sealing of records pursuant to subdivision two of this section
8 shall not apply to the records of any individual where such individual:

9 (a) is required to register as a sex offender pursuant to article
10 six-C of the correction law;

11 (b) has previously obtained sealing of the maximum number of
12 convictions allowable under section 160.58 of this article;

13 (c) has previously obtained sealing of the maximum number of
14 convictions allowable under subdivision two of this section;

15 (d) has an undisposed arrest or charge pending in New York state;

16 (e) was convicted of any crime in New York state after the date of the
17 entry of judgment of the last conviction for which sealing is sought;

18 (f) has been convicted of any crime in New York state that is not an
19 eligible offense; or

20 (g) has been convicted of more than two crimes in New York state.

21 4. Notwithstanding any other provisions of this section, an individ-
22 ual's records which have been sealed pursuant to this section shall be
23 made available to:

24 (a) such individual or such individual's designated agent;

25 (b) qualified agencies, as defined in subdivision nine of section
26 eight hundred thirty-five of the executive law, and federal and state
27 law enforcement agencies, when acting within the scope of their law
28 enforcement duties;

29 (c) any state or local officer or agency responsible for the issuance
30 of licenses to possess guns, when such individual has made an applica-
31 tion for such a license;

32 (d) any prospective employer of a police officer or peace officer, as
33 those terms are defined in subdivisions thirty-three and thirty-four of
34 section 1.20 of this chapter, in relation to such individual's applica-
35 tion for employment as a police officer or peace officer; provided,
36 however, that every such applicant for the position of police officer or
37 peace officer shall be furnished with a copy of all records obtained
38 under this paragraph and shall be afforded an opportunity to make an
39 explanation thereto; and

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

45 5. In situations where sealing of an individual's records is required
46 under subdivision two of this section, but has not taken place, and such
47 individual or such individual's attorney presents to the office of
48 court administration fingerprint records from the division of criminal
49 justice services or a court disposition indicating that the period for
50 eligibility has been satisfied for an eligible conviction, within thirty
51 days of notice to the office of court administration, such individual's
52 records shall be sealed as set forth in subdivision two of this section.

53 6. No person shall be required or permitted to waive eligibility for
54 sealing pursuant to this section as part of a plea of guilty, sentence,
55 or any agreement related to a conviction for an eligible offense and
56 any such waiver shall be deemed void and wholly unenforceable.

1 § 2. This act shall take effect immediately.