

STATE OF NEW YORK

6176--A

2019-2020 Regular Sessions

IN SENATE

May 21, 2019

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the executive 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, all official records and papers relating to the arrests,
17 prosecutions, and convictions of such offenses, including all duplicates
18 and copies thereof on file with the division of criminal justice
19 services or any court, shall be sealed and not made available to any
20 person or public or private agency except as provided in subdivision
21 four of this section; provided, however, the division shall retain any
22 fingerprints, palmprints and photographs, or digital images of the
23 same. The commissioner of the division of criminal justice services

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

LBD11923-03-9

1 shall immediately notify the office of court administration, the clerk
2 of such court where the individual was convicted, and the heads of all
3 appropriate police departments and other law enforcement agencies
4 regarding the records that shall be sealed pursuant to this section. In
5 calculating the ten year period under this subdivision, any period of
6 time during which the person was incarcerated shall be excluded and such
7 ten year period shall be extended by a period equal to the time served
8 under such incarceration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 6. No person shall be required or permitted to waive eligibility for
56 sealing pursuant to this section as part of a plea of guilty, sentence,

1 or any agreement related to a conviction for an eligible offense and
2 any such waiver shall be deemed void and wholly unenforceable.

3 § 2. Section 837 of the executive law is amended by adding a new
4 subdivision 22 to read as follows:

5 22. Annually publish on the division's website statistics regarding
6 the total number of convictions automatically sealed pursuant to section
7 160.57 of the criminal procedure law.

8 § 3. This act shall take effect immediately.