

STATE OF NEW YORK

8165

IN SENATE

April 13, 2020

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 and the executive law, in relation to automatic expungement of certain criminal records; and to repeal certain provisions of the criminal procedure law relating thereto

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 Section 160.59 of the criminal procedure law is REPEALED
2 and a new section 160.57 is added to read as follows:

3 § 160.57 Automatic expungement of certain criminal records.

4 1. As used in this section, "eligible conviction" shall mean a
5 violation of subdivision one of section one thousand one hundred nine-
6 ty-two of the vehicle and traffic law or a violation of subdivision two
7 of section 240.37 of the penal law or any crime defined in the laws of
8 this state other than a sex offense defined in article one hundred thir-
9 ty of the penal law, an offense defined in article two hundred sixty-
10 three of the penal law, a felony offense defined in article one hundred
11 twenty-five of the penal law, a violent felony offense defined in
12 section 70.02 of the penal law, a class A felony offense defined in the
13 penal law, a felony offense defined in article one hundred five of the
14 penal law where the underlying offense is not an eligible offense, an
15 attempt to commit an offense that is not an eligible offense if the
16 attempt is a felony, or an offense for which registration as a sex
17 offender is required pursuant to article 6-C of the correction law. For
18 the purposes of this section, where the individual is convicted of more
19 than one eligible offense, committed as part of the same criminal trans-
20 action as defined in subdivision two of section 40.10 of this chapter,
21 those offenses shall be considered one eligible offense.

22 2. For the purposes of subdivision three of this section, an eligible
23 conviction shall be expunged:

24 (a) When at least three years have passed since the imposition of the
25 sentence on the individual's eligible conviction if the eligible

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

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1 conviction is for a violation specified in subdivision one of this
2 section or a misdemeanor offense, and the individual:

3 (i) does not have a criminal charge pending within the state;

4 (ii) is not currently under the supervision of any probation or parole
5 department; and

6 (iii) has not been convicted within the state of either: (A) another
7 misdemeanor offense or a violation of subdivision one of section one
8 thousand one hundred ninety-two of the vehicle and traffic law or subdi-
9 vision two of section 240.37 of the penal law within the preceding three
10 years; or (B) any felony offense within the preceding five years.

11 (b) When at least five years have passed since the imposition of the
12 sentence on the individual's eligible conviction if the eligible
13 conviction is for a felony offense, and the individual:

14 (i) does not have a criminal charge pending within the state;

15 (ii) is not currently under the supervision of any probation or parole
16 department; and

17 (iii) has not been convicted within the state of either: (A) another
18 felony offense within the preceding five years; or (B) any misdemeanor
19 offense or a violation of subdivision one of section one thousand one
20 hundred ninety-two of the vehicle and traffic law or subdivision two of
21 section 240.37 of the penal law within the preceding three years.

22 (c) In calculating the time periods under this subdivision, any period
23 of time during which the individual was incarcerated shall be excluded
24 and such time period shall be extended by a period equal to the time
25 served under such incarceration.

26 3. Where an individual was convicted within the state of an eligible
27 conviction before, on, or after the effective date of this section and
28 the requirements for expungement, as defined in subdivision two of this
29 section, are satisfied, the commissioner of the division of criminal
30 justice services shall immediately notify the clerk of the court where
31 such conviction was rendered and the heads of all appropriate police
32 departments, prosecutors' offices and law enforcement agencies that
33 records of or relating to such action or proceeding be immediately
34 expunged as follows:

35 (a) every photograph of such person and photographic plate or proof,
36 and all palmprints, fingerprints and retina scans taken or made of such
37 person pursuant to the provisions of this article in regard to the
38 eligible conviction, and all duplicates and copies thereof, except a
39 digital fingerprint image where authorized pursuant to paragraph (e) of
40 this subdivision, shall forthwith be destroyed by the division of crimi-
41 nal justice services and by any police department, prosecutor's office
42 or law enforcement agency having any such photograph, photographic plate
43 or proof, palmprint, fingerprints or retina scans in its possession or
44 under its control;

45 (b) every police department, prosecutor's office or law enforcement
46 agency, including the division of criminal justice services, which tran-
47 smitted or otherwise forwarded to any agency of the United States or of
48 any other state or of any other jurisdiction outside the state copies of
49 any such photographs, photographic plates or proofs, palmprints, finger-
50 prints or retina scans shall forthwith formally inform such agency in
51 writing that the matter has been expunged and request in writing that
52 all such copies be destroyed;

53 (c) every official record and paper and duplicates and copies thereof,
54 including, but not limited to, judgments and orders of a court but not
55 including published court decisions or opinions or published records and
56 published briefs on appeal, relating to the conviction, on file with the

1 division of criminal justice services or any court, police department,
2 prosecutor's office or law enforcement agency shall be marked as
3 expunged by conspicuously indicating on the face of the record or at the
4 beginning of the digitized file of the record that the record has been
5 designated as expunged. Except as set forth in paragraph (d) of this
6 subdivision, such records and papers shall be marked as expunged and
7 sealed and not be made available to any person or public or private
8 agency, even if the records were previously obtained by such person or
9 public or private agency. Except as set forth in paragraph (d) of this
10 subdivision, and in such instances specifically authorized by law, such
11 records shall not be used to confirm the existence of an expunged
12 conviction, to create any record thereof, or for any other purpose;

13 (d) records set forth in paragraph (c) of this subdivision shall be
14 made available to the individual or to such individual's attorney, and
15 shall be made available to: (i) the court and the prosecution for charg-
16 ing and sentencing purposes only if the fact of a prior conviction would
17 enhance a penalty or is an element of the offense charged; (ii) the
18 court, the prosecution, and the defense if the individual becomes a
19 witness in a proceeding; (iii) the prosecution and the defense for
20 purposes of meeting the requirements of article two hundred forty-five
21 of this chapter; (iv) any state or local officer or agency with respon-
22 sibility for the issuance of licenses to possess guns, when the individ-
23 ual has made application for such a license; or (v) any prospective
24 employer of a police officer or peace officer as those terms are defined
25 in subdivisions thirty-three and thirty-four of section 1.20 of this
26 chapter, in relation to an application for employment as a police offi-
27 cer or peace officer; provided, however, that every person who is an
28 applicant for the position of police officer or peace officer shall be
29 furnished with a copy of all records obtained under this paragraph and
30 afforded an opportunity to make an explanation thereto; and

31 (e) where fingerprints subject to the provisions of this section have
32 been received by the division of criminal justice services and have been
33 filed by the division of criminal justice services as digital images,
34 such images may be retained, provided that a fingerprint card of the
35 individual is on file with the division of criminal justice services
36 which was not destroyed pursuant to this section.

37 4. A conviction which is expunged pursuant to this section is not
38 included within the definition of a conviction for the purposes of any
39 subsequent criminal proceeding, except as specified under subdivision
40 three of this section.

41 5. In situations where automatic expungement and record destruction is
42 required by subdivisions two and three of this section but has not taken
43 place, or where supporting court records cannot be located or have been
44 destroyed, and an individual or their attorney submits notification of
45 such fact to the division of criminal justice services, as prescribed in
46 subdivision twenty-two of section eight hundred thirty-seven of the
47 executive law, within thirty days of such notice to the division of
48 criminal justice services, the conviction shall be expunged as set forth
49 in subdivision three of this section.

50 6. No person shall be required or permitted to waive eligibility for
51 expungement pursuant to this section as part of a plea of guilty,
52 sentence or any agreement with the prosecution. Any such waiver shall
53 be deemed void and wholly unenforceable.

54 7. Expungement as set forth in subdivision three of this section is
55 without prejudice to an individual or their attorney seeking further
56 relief pursuant to section 440.10 of this part. Nothing in this section

1 shall diminish or abrogate any rights or remedies otherwise available to
2 the individual.

3 8. Notwithstanding any other provision of law, except as provided in
4 paragraph (d) of subdivision three of this section and paragraph (e) of
5 subdivision four of section eight hundred thirty-seven of the executive
6 law, where automatic expungement of a conviction is required by this
7 section but any court record or any record held by the division of crim-
8 inal justice services has not yet been updated to reflect the same, the
9 conviction shall be excluded from any written or electronic report run
10 by the division of criminal justice services or office of court adminis-
11 tration.

12 9. All records for a conviction subject to automatic expungement under
13 this section where the conviction was entered on or before the effective
14 date of this section shall be expunged promptly and, in any event, no
15 later than one year after such effective date.

16 § 2. Subdivision 45 of section 1.20 of the criminal procedure law, as
17 added by chapter 131 of the laws of 2019, is amended to read as follows:

18 45. [~~"Expunge"~~] "To expunge" means, [~~where an arrest and any enforce-~~
19 ~~ment activity connected with that arrest, including prosecution and any~~
20 ~~disposition in any New York state court, is deemed a nullity and the~~
21 ~~accused is restored, in contemplation of the law, to the status such~~
22 ~~individual occupied before the arrest, prosecution and/or disposition,~~
23 ~~that records of such arrest, prosecution and/or disposition shall be~~
24 ~~marked as expunged or shall be destroyed as set forth in section 160.50~~
25 ~~of this chapter. Neither the arrest nor prosecution and/or disposition,~~
26 ~~if any, of a matter deemed a nullity shall operate as a disqualification~~
27 ~~of any person so accused to pursue or engage in any lawful activity,~~
28 ~~occupation, profession or calling] as set forth in section 160.50 or
29 160.57 of this title, to destroy, or to mark as expunged, seal and not
30 make available to any person or public or private agency, all records,
31 including all official records and papers, of such arrest, prose-
32 cution and disposition. An expunged conviction shall not operate as a
33 disqualification of any person so accused to pursue or engage in any
34 lawful activity, occupation, profession or calling. Except where specif-
35 ically required or permitted by statute or upon specific authorization
36 of a superior court, no such person shall be required to divulge infor-
37 mation pertaining to the arrest, prosecution and/or disposition of such
38 a matter.~~

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

41 22. Promulgate a standardized form for use by individuals to notify
42 the division of convictions subject to expungement under section 160.57
43 of the criminal procedure law, but for which the division has not
44 expunged related records.

45 § 4. Subdivision 16 of section 296 of the executive law, as amended by
46 section 2 of subpart O of part II of chapter 55 of the laws of 2019, is
47 amended to read as follows:

48 16. It shall be an unlawful discriminatory practice, unless specif-
49 ically required or permitted by statute, for any person, agency, bureau,
50 corporation or association, including the state and any political subdivi-
51 sion thereof, to make any inquiry about, whether in any form of appli-
52 cation or otherwise, or to act upon adversely to the individual
53 involved, any arrest or criminal accusation of such individual not then
54 pending against that individual which was followed by a termination of
55 that criminal action or proceeding in favor of such individual, as
56 defined in subdivision two of section 160.50 of the criminal procedure

1 law, or by an order adjourning the criminal action in contemplation of
2 dismissal, pursuant to section 170.55, 170.56, 210.46, 210.47, or 215.10
3 of the criminal procedure law, or by a youthful offender adjudication,
4 as defined in subdivision one of section 720.35 of the criminal proce-
5 dure law, or by a conviction for a violation sealed pursuant to section
6 160.55 of the criminal procedure law, or by a conviction which is sealed
7 pursuant to section 160.59 or 160.58 of the criminal procedure law, or
8 by a conviction which is expunged pursuant to section 160.57 of the
9 criminal procedure law, in connection with the licensing, housing,
10 employment, including volunteer positions, or providing of credit or
11 insurance to such individual; provided, further, that no person shall be
12 required to divulge information pertaining to any arrest or criminal
13 accusation of such individual not then pending against that individual
14 which was followed by a termination of that criminal action or proceed-
15 ing in favor of such individual, as defined in subdivision two of
16 section 160.50 of the criminal procedure law, or by an order adjourning
17 the criminal action in contemplation of dismissal, pursuant to section
18 170.55 or 170.56, 210.46, 210.47 or 215.10 of the criminal procedure
19 law, or by a youthful offender adjudication, as defined in subdivision
20 one of section 720.35 of the criminal procedure law, or by a conviction
21 for a violation sealed pursuant to section 160.55 of the criminal proce-
22 dure law, or by a conviction which is sealed pursuant to section 160.58
23 or 160.59 of the criminal procedure law, or by a conviction which is
24 expunged pursuant to section 160.57 of the criminal procedure law. An
25 individual required or requested to provide information in violation of
26 this subdivision may respond as if the arrest, criminal accusation, or
27 disposition of such arrest or criminal accusation did not occur. The
28 provisions of this subdivision shall not apply to the licensing activ-
29 ities of governmental bodies in relation to the regulation of guns,
30 firearms and other deadly weapons or in relation to an application for
31 employment as a police officer or peace officer as those terms are
32 defined in subdivisions thirty-three and thirty-four of section 1.20 of
33 the criminal procedure law; provided further that the provisions of this
34 subdivision shall not apply to an application for employment or member-
35 ship in any law enforcement agency with respect to any arrest or crimi-
36 nal accusation which was followed by a youthful offender adjudication,
37 as defined in subdivision one of section 720.35 of the criminal proce-
38 dure law, or by a conviction for a violation sealed pursuant to section
39 160.55 of the criminal procedure law, or by a conviction which is
40 expunged pursuant to section 160.57 of the criminal procedure law, or by
41 a conviction which is sealed pursuant to section 160.58 or 160.59 of the
42 criminal procedure law. For purposes of this subdivision, an action
43 which has been adjourned in contemplation of dismissal, pursuant to
44 section 170.55 or 170.56, 210.46, 210.47 or 215.10 of the criminal
45 procedure law, shall not be considered a pending action, unless the
46 order to adjourn in contemplation of dismissal is revoked and the case
47 is restored to the calendar for further prosecution.

48 § 5. This act shall take effect on the sixtieth day after it shall
49 have become a law.