

STATE OF NEW YORK

6399

2021-2022 Regular Sessions

IN ASSEMBLY

March 17, 2021

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

AN ACT to amend the criminal procedure law, the executive law and the correction law, in relation to automatic expungement of certain convictions

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 and expungement of convictions.

4 1. Convictions for certain traffic infractions and violations or any
5 crime defined in the laws of this state shall be sealed in accordance
6 with paragraph (c) of this subdivision as follows:

7 (a) Convictions for subdivision one of section eleven hundred ninety-
8 two of the vehicle and traffic law shall be sealed after one year.

9 (b) Criminal convictions for misdemeanors and felonies shall be sealed
10 upon satisfaction of the following conditions:

11 (i) at least one year has passed from the imposition of sentence on
12 the defendant's most recent misdemeanor conviction in this state and at
13 least three years have passed since the imposition of sentence on the
14 defendant's most recent felony conviction in this state;

15 (ii) the defendant does not have a criminal charge pending in this
16 state;

17 (iii) the defendant is not currently under the supervision of any
18 probation or parole department for the eligible conviction; and

19 (iv) the defendant is not currently required to register as a sex
20 offender pursuant to article six-C of the correction law as a result of
21 this conviction.

22 (c) Where a conviction is eligible for sealing pursuant to this para-
23 graph before, on, or after the effective date of this section, the divi-
24 sion of criminal justice services shall immediately notify the office of
25 court administration, the court of conviction, and the heads of all
26 appropriate police and sheriff departments that the conviction is
27 sealed.

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

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1 (d) Records of convictions sealed pursuant to this paragraph shall not
2 be accessed, made available to any person or public or private agency,
3 or used by any state agency covered by subdivision three of this section
4 except for:

5 (i) the defendant and such defendant's attorney;

6 (ii) any court or prosecutor for the purposes of a pending criminal
7 action;

8 (iii) the court, prosecutor, and defense counsel if the defendant
9 becomes a witness in a criminal proceeding, or the claimant and respond-
10 ent if the defendant becomes a witness in a civil proceeding;

11 (iv) when an individual is a defendant in a criminal action and the
12 sealed records of conviction of a third-party are integral to their
13 defense. In such instances, use of sealed records shall be requested
14 upon ex parte motion in any superior court, or in any district court,
15 city court or the criminal court of the city of New York provided that
16 such court is where the action is pending. The applicant must demon-
17 strate to the satisfaction of the court that the records will be used
18 for the purpose of this subparagraph;

19 (v) entities that are required by law to request a fingerprint-based
20 check of criminal history information;

21 (vi) any prospective employer of a police officer or peace officer as
22 those terms are defined in subdivisions thirty-three and thirty-four of
23 section 1.20 of this chapter, in relation to an application for employ-
24 ment as a police officer, provided, however, that every person who is an
25 applicant shall be furnished with a copy of all records obtained under
26 this paragraph and afforded an opportunity to make an explanation there-
27 to;

28 (vii) any state or local officer or agency with responsibility for the
29 issuance of licenses to possess guns, when the defendant has made appli-
30 cation for such license;

31 (viii) for the purposes of civilian investigation or evaluation of a
32 civilian complaint or civil action concerning law enforcement or prose-
33 cution actions, upon ex parte motion in any superior court, or in any
34 district court, city court or the criminal court of the city of New York
35 provided that such court sealed the record; the applicant must demon-
36 strate to the satisfaction of the court that the records will be used
37 for the purposes of this subparagraph; and

38 (ix) for information provided to an individual or entity pursuant to
39 paragraph (e) of subdivision four of section eight hundred thirty-seven
40 of the executive law or for bona fide research purposes provided all
41 identifying information is removed.

42 (e) Where the sealing required by this paragraph has not taken place,
43 or where supporting court records cannot be located or have been
44 destroyed, and a defendant or their attorney submits notification of
45 such fact to the division of criminal justice services, as prescribed in
46 subdivision twenty-three of section eight hundred thirty-seven of the
47 executive law, within thirty days of such notice to the division, the
48 conviction shall be sealed as set forth in this subdivision.

49 2. A conviction for any violation or traffic infraction, including but
50 not limited to convictions sealed pursuant to section 160.55 of this
51 article, or any crime defined in the laws of this state shall be
52 expunged pursuant to subdivision three of this section as follows:

53 (a) Convictions for violations and traffic infractions, including but
54 not limited to convictions sealed pursuant to section 160.55 of this
55 article, shall be expunged five years after the date of conviction.

1 (b) Criminal convictions for misdemeanors and felonies, including
2 convictions sealed pursuant to section 160.58 or 160.59 of this article,
3 shall be expunged upon satisfaction of the following conditions:

4 (i) At least five years have passed since the imposition of sentence
5 on the defendant's most recent misdemeanor conviction in this state and
6 at least seven years have passed since the imposition of sentence on the
7 defendant's most recent felony conviction in this state;

8 (ii) The defendant does not have a criminal charge pending in this
9 state;

10 (iii) The defendant is not currently under the supervision of any
11 probation or parole department for the eligible conviction; and

12 (iv) The defendant is not currently required to register as a sex
13 offender pursuant to article six-C of the correction law as a result of
14 this conviction.

15 (c) In calculating the time periods under this subdivision, any period
16 of time during which the defendant was incarcerated shall be excluded
17 and such time period shall be extended by a period equal to the time
18 served under such incarceration.

19 3. Where a conviction is eligible for expungement pursuant to subdivi-
20 sion two of this section before, on, or after the effective date of this
21 section, the commissioner of the division of criminal justice services
22 shall immediately notify the office of court administration, the court
23 of conviction and the heads of all appropriate police departments,
24 prosecutors' offices and law enforcement agencies that the conviction is
25 expunged. Upon receipt of such notification, records of or relating to
26 such conviction shall be immediately expunged.

27 (a) Any state agency that possesses biometric information, records,
28 documents or papers related to the eligible conviction shall expunge
29 them as follows:

30 (i) Every photograph of such defendant and photographic plates or
31 proof, and all palmprints, fingerprints and retina scans taken or made
32 of such individual pursuant to the provisions of this article in regard
33 to the eligible conviction, and all duplicates, reproductions, and
34 copies thereof, except a digital fingerprint that is on file with the
35 division of criminal justice services for a conviction that has not been
36 expunged pursuant to this section or section 160.50 of this article,
37 shall forthwith be destroyed by the division of criminal justice
38 services and by any police department, prosecutor's office or law
39 enforcement agency having any such photograph, photographic plate or
40 proof, palmprint, fingerprints or retina scan in its possession or under
41 its control. Where fingerprints subject to the provisions of this
42 section have been received by the division of criminal justice services
43 and have been filed by the division as digital images, such images may
44 be retained, provided that a fingerprint card of the individual is on
45 file with the division which was not destroyed pursuant to this section.

46 (ii) Every official record and paper and duplicates and copies there-
47 of, including, but not limited to, judgments and orders of a court but
48 not including published court decisions or opinions or records and
49 briefs on appeal, relating to the conviction, on file with the agency
50 shall be marked as expunged by conspicuously indicating on the face of
51 the record or at the beginning of the digitized file of the record that
52 the record has been designated as expunged.

53 (b) Third-party agencies shall expunge biometric information and all
54 records, documents and papers relating to the eligible conviction as
55 follows:

1 (i) Every police department, prosecutor's office or law enforcement
2 agency, including the division of criminal justice services, which tran-
3 smitted or otherwise forwarded to any agency of the United States or of
4 any other state or jurisdiction outside of this state copies of any such
5 photographs, photographic plates or proofs, palmprints, fingerprints or
6 retina scans, shall forthwith formally inform such agency in writing
7 that the matter has been expunged and request in writing that all such
8 copies be destroyed.

9 (ii) Every official record and paper and duplicates and copies there-
10 of, including, but not limited to, judgments and orders of a court but
11 not including published court decisions or opinions or records and
12 briefs on appeal, relating to the conviction, on file with the agency
13 shall be marked as expunged by conspicuously indicating on the face of
14 the record or at the beginning of the digitized file of the record that
15 the record has been designated as expunged.

16 4. Except as provided below, all records, documents and papers marked
17 as expunged shall not be accessed or used by any state agency covered by
18 subdivision three of this section. Such agencies shall not make
19 expunged records available to any individual or public or private agency
20 or confirm the existence of such record. This subdivision shall not
21 apply to instances where access to or use of such records is specif-
22 ically authorized by law. Expunged records shall be made available:

23 (a) to the defendant or their attorney;

24 (b) to the court and the prosecutor for charging and sentencing
25 purposes only if the fact of a prior conviction would enhance a penalty
26 or is an element of the offense charged. The prior conviction shall be
27 made available to the prosecution if upon ex parte motion to the court
28 the prosecutor demonstrates that the fact of a prior conviction is an
29 element of the offense charged;

30 (c) to the court and the prosecutor for cases in which an appeal is
31 pending;

32 (d) to the court, prosecutor, and defense counsel if the defendant
33 becomes a witness in a criminal proceeding, or to the claimant and
34 respondent if the defendant becomes a witness in a civil proceeding;

35 (e) when an individual is a defendant in a criminal action and the
36 expunged records of conviction of a third-party are integral to their
37 defense. In such instances, use of expunged records in the criminal
38 action shall be requested upon ex parte motion in any superior court, or
39 in any district court, city court or the criminal court of the city of
40 New York provided that such court is where the matter is pending. The
41 applicant must demonstrate to the satisfaction of the court that the
42 records will be used for the purposes of this subparagraph;

43 (f) to the prosecutor and defense counsel for purposes of meeting the
44 requirements of article two hundred forty-five of this chapter;

45 (g) to any state or local officer or agency with responsibility for
46 the issuance of licenses to possess guns, when the defendant has made
47 application for such a license; or

48 (h) to any prospective employer of a police officer or peace officer
49 as those terms are defined in subdivisions thirty-three and thirty-four
50 of section 1.20 of this chapter, in relation to an application for
51 employment as a police officer; provided, however, that every individual
52 who is an applicant for the position of police officer or peace officer
53 shall be furnished with a copy of all records obtained under this para-
54 graph and afforded an opportunity to make an explanation thereto;

55 (i) for the purposes of civilian investigation or evaluation of a
56 civilian complaint or civil action concerning law enforcement or prose-

1 cution actions, upon ex parte motion in any superior court, or in any
2 district court, city court or the criminal court of the city of New York
3 provided that such court was the court of conviction. The applicant must
4 demonstrate to the satisfaction of the court that the records will be
5 used for the purposes of this subparagraph; and

6 (j) for information provided to an individual or entity pursuant to
7 paragraph (e) of subdivision four of section eight hundred thirty-seven
8 of the executive law or for bona fide research purposes provided all
9 identifying information is removed.

10 5. Records expunged pursuant to this section cannot be used in a crim-
11 inal prosecution against the individual unless they are accessed pursu-
12 ant to and for purposes of paragraphs (a) through (j) of subdivision
13 four of this section.

14 6. A conviction which is expunged pursuant to this section shall not
15 be included within the definition of a conviction pursuant to section
16 1.20 of this chapter for the purposes of any subsequent criminal
17 proceeding, except as specified under subdivision four of this section.

18 7. In situations where expungement and record destruction is required
19 by subdivision three of this section but has not taken place, or where
20 supporting court records cannot be located or have been destroyed, and
21 an individual or their attorney submits notification of such fact to the
22 division of criminal justice services, as prescribed in subdivision
23 twenty-three of section eight hundred thirty-seven of the executive law,
24 within thirty days of such notice to the division, the conviction shall
25 be expunged as set forth in subdivision three of this section.

26 8. No defendant shall be required or permitted to waive eligibility
27 for sealing or expungement pursuant to this section as part of a plea of
28 guilty, sentence or any agreement related to a conviction for a
29 violation of the laws of this state. Any such waiver is void and unen-
30 forceable.

31 9. Expungement as set forth in subdivision three of this section is
32 without prejudice to a defendant or their attorney seeking further
33 relief pursuant to section 440.10 of this chapter. Nothing in this
34 section shall diminish or abrogate any rights or remedies otherwise
35 available to the defendant.

36 10. All records for a conviction subject to sealing or expungement
37 under this section where the conviction was entered on or before the
38 effective date of this section shall receive the appropriate relief
39 promptly and, in any event, no later than one year after such effective
40 date.

41 11. Any defendant claiming to be aggrieved by a violation of this
42 section shall have a cause of action in any court of appropriate juris-
43 isdiction for damages, including punitive damages, and such other remedies
44 as may be appropriate. The provisions of this article shall also be
45 enforceable by the division of human rights pursuant to the powers and
46 procedures set forth in article fifteen of the executive law.

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

49 45. ["Expunge"] "To expunge" means as set forth in criminal procedure
50 law section 160.50 or 160.57, to destroy, or to mark as expunged, seal
51 and not make available to any person or public or private agency, all
52 records, including all official records and papers, of an arrest, prose-
53 cution and/or disposition
54 ~~[, where an arrest and any enforcement activity~~
55 ~~connected with that arrest, including prosecution and any disposition in~~
56 ~~any New York state court, is deemed a nullity and the accused is~~
~~restored, in contemplation of the law, to the status such individual~~

~~occupied before the arrest, prosecution and/or disposition, that records of such arrest, prosecution and/or disposition shall be marked as expunged or shall be destroyed as set forth in section 160.50 of this chapter]. [Neither the arrest nor prosecution and/or disposition, if any, of a matter deemed a nullity shall operate]~~ An expunged conviction shall not operate as a disqualification of any person ~~[so accused]~~ to pursue or engage in any lawful activity, occupation, profession or calling, except for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of this section. Except where specifically required or permitted by statute ~~[or upon specific authorization of a superior court,~~] no such person shall be required to divulge information pertaining to the arrest, prosecution and/or disposition of such a matter.

§ 3. Subdivision 3 of section 845-d of the executive law, as added by section 1 of subpart N of part II of chapter 55 of the laws of 2019, is amended to read as follows:

3. Nothing in this section shall authorize the division to provide criminal history information that is not otherwise authorized by law or that is sealed pursuant to section 160.50, 160.55, 160.57, 160.58 or 160.59 of the criminal procedure law or expunged pursuant to section 160.57 of the criminal procedure law.

§ 4. Section 837 of the executive law is amended by adding a new subdivision 23 to read as follows:

23. Promulgate a standardized form for use by individuals to notify the division of criminal justice services of convictions subject to sealing or expungement under section 160.57 of the criminal procedure law, but for which the division has not taken the requisite action for related records.

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

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by an order adjourning the criminal action in contemplation of dismissal, pursuant to section 170.55, 170.56, 210.46, 210.47, or 215.10 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.59 or 160.58 of the criminal procedure law, or by a conviction which is sealed or expunged pursuant to section 160.57 of the criminal procedure law, in connection with the licensing, housing, employment, including volunteer positions, or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by an order adjourning

1 the criminal action in contemplation of dismissal, pursuant to section
2 170.55 or 170.56, 210.46, 210.47 or 215.10 of the criminal procedure
3 law, or by a youthful offender adjudication, as defined in subdivision
4 one of section 720.35 of the criminal procedure law, or by a conviction
5 for a violation sealed pursuant to section 160.55 of the criminal proce-
6 dure law, or by a conviction which is sealed pursuant to section 160.58
7 or 160.59 of the criminal procedure law, or by a conviction which is
8 sealed or expunged pursuant to section 160.57 of the criminal procedure
9 law. An individual required or requested to provide information in
10 violation of this subdivision may respond as if the arrest, criminal
11 accusation, or disposition of such arrest or criminal accusation did not
12 occur. The provisions of this subdivision shall not apply to the licens-
13 ing activities of governmental bodies in relation to the regulation of
14 guns, firearms and other deadly weapons or in relation to an application
15 for employment as a police officer or peace officer as those terms are
16 defined in subdivisions thirty-three and thirty-four of section 1.20 of
17 the criminal procedure law; provided further that the provisions of this
18 subdivision shall not apply to an application for employment or member-
19 ship in any law enforcement agency with respect to any arrest or crimi-
20 nal accusation which was followed by a youthful offender adjudication,
21 as defined in subdivision one of section 720.35 of the criminal proce-
22 dure law, or by a conviction for a violation sealed pursuant to section
23 160.55 of the criminal procedure law, or by a conviction which is sealed
24 pursuant to section 160.58 or 160.59 of the criminal procedure law, or
25 by a conviction which is sealed or expunged pursuant to section 160.57
26 of the criminal procedure law. For purposes of this subdivision, an
27 action which has been adjourned in contemplation of dismissal, pursuant
28 to section 170.55 or 170.56, 210.46, 210.47 or 215.10 of the criminal
29 procedure law, shall not be considered a pending action, unless the
30 order to adjourn in contemplation of dismissal is revoked and the case
31 is restored to the calendar for further prosecution.

32 § 6. Section 9 of the correction law, as added by section 2 of part 00
33 of chapter 56 of the laws of 2010, is amended to read as follows:

34 § 9. Access to inmate information via the internet. Notwithstanding
35 any provision of law to the contrary, any information relating to the
36 conviction of a person[~~, except for a person convicted of an offense~~
37 ~~that would make such person ineligible for merit time under section~~
38 ~~eight hundred three of this chapter or an offense for which registration~~
39 ~~as a sex offender is required as set forth in subdivision two or three~~
40 ~~of section one hundred sixty-eight a of this chapter,~~] that is posted on
41 a website maintained by or for the department, under article six of the
42 public officers law, may be posted on such website for a period not to
43 exceed [~~five~~] three years after the expiration of such person's sentence
44 of imprisonment and at the conclusion of any period of parole or post-
45 release supervision[~~, provided, however, that in the case of a person~~
46 ~~who has been committed to the department on more than one occasion, the~~
47 ~~department may post conviction information relating to any prior commit-~~
48 ~~ment on such website for a period not to exceed five years after the~~
49 ~~expiration of such person's sentence of imprisonment and any period of~~
50 ~~parole or post-release supervision arising from the most recent commit-~~
51 ~~ment to the department~~].

52 § 7. This act shall take effect on the one hundred twentieth day after
53 it shall have become a law.