

STATE OF NEW YORK

1553

2021-2022 Regular Sessions

IN SENATE

January 13, 2021

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 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 and subdivision two of section 240.37
9 of the penal law shall be sealed after one year.

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

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

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

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

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

23 (c) Where a conviction is eligible for sealing pursuant to this para-
24 graph before, on, or after the effective date of this section, the divi-
25 sion of criminal justice services shall immediately notify the office of

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

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1 court administration, the court of conviction, and the heads of all
2 appropriate police and sheriff departments that the conviction is
3 sealed.

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) Convictions for violations and traffic infractions, including but
2 not limited to convictions sealed pursuant to section 160.55 of the
3 criminal procedure law, shall be expunged five years after the date of
4 conviction.

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

8 (i) At least five years have passed since the imposition of sentence
9 on the defendant's most recent misdemeanor conviction in this state and
10 at least seven years have passed since the imposition of sentence on the
11 defendant's most recent felony conviction in this state;

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

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

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

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

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

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

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

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

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

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

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

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

26 (a) to the defendant or their attorney;

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

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

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

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

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

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

51 (h) to any prospective employer of a police officer or peace officer
52 as those terms are defined in subdivisions thirty-three and thirty-four
53 of section 1.20 of this chapter, in relation to an application for
54 employment as a police officer; provided, however, that every individual
55 who is an applicant for the position of police officer or peace officer

1 shall be furnished with a copy of all records obtained under this para-
2 graph and afforded an opportunity to make an explanation thereto;

3 (i) for the purposes of civilian investigation or evaluation of a
4 civilian complaint or civil action concerning law enforcement or prose-
5 cution actions, upon ex parte motion in any superior court, or in any
6 district court, city court or the criminal court of the city of New York
7 provided that such court was the court of conviction. The applicant must
8 demonstrate to the satisfaction of the court that the records will be
9 used for the purposes of this subparagraph; and

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

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

18 6. A conviction which is expunged pursuant to this section shall not
19 be included within the definition of a conviction pursuant to section
20 1.20 of this chapter for the purposes of any subsequent criminal
21 proceeding, except as specified under subdivision four of this section.

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

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

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

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

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

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

53 45. [~~"Expunge"~~] "To expunge" means as set forth in criminal procedure
54 law section 160.50 or 160.57, to destroy, or to mark as expunged, seal
55 and not make available to any person or public or private agency, all
56 records, including all official records and papers, of an arrest, prose-

~~cution and/or disposition~~ [~~, where an arrest and any enforcement activity connected with that arrest, including prosecution and any disposition in 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

1 accusation of such individual not then pending against that individual
2 which was followed by a termination of that criminal action or proceed-
3 ing in favor of such individual, as defined in subdivision two of
4 section 160.50 of the criminal procedure law, or by an order adjourning
5 the criminal action in contemplation of dismissal, pursuant to section
6 170.55 or 170.56, 210.46, 210.47 or 215.10 of the criminal procedure
7 law, or by a youthful offender adjudication, as defined in subdivision
8 one of section 720.35 of the criminal procedure law, or by a conviction
9 for a violation sealed pursuant to section 160.55 of the criminal proce-
10 dure law, or by a conviction which is sealed pursuant to section 160.58
11 or 160.59 of the criminal procedure law, or by a conviction which is
12 sealed or expunged pursuant to section 160.57 of the criminal procedure
13 law. An individual required or requested to provide information in
14 violation of this subdivision may respond as if the arrest, criminal
15 accusation, or disposition of such arrest or criminal accusation did not
16 occur. The provisions of this subdivision shall not apply to the licens-
17 ing activities of governmental bodies in relation to the regulation of
18 guns, firearms and other deadly weapons or in relation to an application
19 for employment as a police officer or peace officer as those terms are
20 defined in subdivisions thirty-three and thirty-four of section 1.20 of
21 the criminal procedure law; provided further that the provisions of this
22 subdivision shall not apply to an application for employment or member-
23 ship in any law enforcement agency with respect to any arrest or crimi-
24 nal accusation which was followed by a youthful offender adjudication,
25 as defined in subdivision one of section 720.35 of the criminal proce-
26 dure law, or by a conviction for a violation sealed pursuant to section
27 160.55 of the criminal procedure law, or by a conviction which is sealed
28 pursuant to section 160.58 or 160.59 of the criminal procedure law, or
29 by a conviction which is sealed or expunged pursuant to section 160.57
30 of the criminal procedure law. For purposes of this subdivision, an
31 action which has been adjourned in contemplation of dismissal, pursuant
32 to section 170.55 or 170.56, 210.46, 210.47 or 215.10 of the criminal
33 procedure law, shall not be considered a pending action, unless the
34 order to adjourn in contemplation of dismissal is revoked and the case
35 is restored to the calendar for further prosecution.

36 § 6. This act shall take effect on the one hundred twentieth day after
37 it shall have become a law.