

STATE OF NEW YORK

1553--A

2021-2022 Regular Sessions

IN SENATE

January 13, 2021

Introduced by Sens. MYRIE, BAILEY, BIAGGI, HOYLMAN -- 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, 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.

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

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1 (c) Where a conviction is eligible for sealing pursuant to this para-
2 graph before, on, or after the effective date of this section, the divi-
3 sion of criminal justice services shall immediately notify the office of
4 court administration, the court of conviction, and the heads of all
5 appropriate police and sheriff departments that the conviction is
6 sealed.

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

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

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

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

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

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

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

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

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

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

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

55 2. A conviction for any violation or traffic infraction, including but
56 not limited to convictions sealed pursuant to section 160.55 of this

1 article, or any crime defined in the laws of this state shall be
2 expunged pursuant to subdivision three of this section as follows:

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

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

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

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

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

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

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

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

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

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

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

1 the record or at the beginning of the digitized file of the record that
2 the record has been designated as expunged.

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

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

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

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

28 (a) to the defendant or their attorney;

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

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

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

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

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

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

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

1 who is an applicant for the position of police officer or peace officer
2 shall be furnished with a copy of all records obtained under this para-
3 graph and afforded an opportunity to make an explanation thereto;

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

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

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

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

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

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

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

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

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

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

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

1 records, including all official records and papers, of an arrest, prose-
2 cution and/or disposition [~~, where an arrest and any enforcement activity~~
3 ~~connected with that arrest, including prosecution and any disposition in~~
4 ~~any New York state court, is deemed a nullity and the accused is~~
5 ~~restored, in contemplation of the law, to the status such individual~~
6 ~~occupied before the arrest, prosecution and/or disposition; that records~~
7 ~~of such arrest, prosecution and/or disposition shall be marked as~~
8 ~~expunged or shall be destroyed as set forth in section 160.50 of this~~
9 ~~chapter~~]. [~~Neither the arrest nor prosecution and/or disposition, if~~
10 ~~any, of a matter deemed a nullity shall operate~~] An expunged conviction
11 shall not operate as a disqualification of any person [~~so accused~~] to
12 pursue or engage in any lawful activity, occupation, profession or call-
13 ing, except for employment as a police officer or peace officer as those
14 terms are defined in subdivisions thirty-three and thirty-four of this
15 section. Except where specifically required or permitted by statute [~~or~~
16 ~~upon specific authorization of a superior court,~~] no such person shall
17 be required to divulge information pertaining to the arrest, prosecution
18 and/or disposition of such a matter.

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

22 3. Nothing in this section shall authorize the division to provide
23 criminal history information that is not otherwise authorized by law or
24 that is sealed pursuant to section 160.50, 160.55, 160.57, 160.58 or
25 160.59 of the criminal procedure law or expunged pursuant to section
26 160.57 of the criminal procedure law.

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

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

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

37 16. It shall be an unlawful discriminatory practice, unless specif-
38 ically required or permitted by statute, for any person, agency, bureau,
39 corporation or association, including the state and any political subdi-
40 vision thereof, to make any inquiry about, whether in any form of appli-
41 cation or otherwise, or to act upon adversely to the individual
42 involved, any arrest or criminal accusation of such individual not then
43 pending against that individual which was followed by a termination of
44 that criminal action or proceeding in favor of such individual, as
45 defined in subdivision two of section 160.50 of the criminal procedure
46 law, or by an order adjourning the criminal action in contemplation of
47 dismissal, pursuant to section 170.55, 170.56, 210.46, 210.47, or 215.10
48 of the criminal procedure law, or by a youthful offender adjudication,
49 as defined in subdivision one of section 720.35 of the criminal proce-
50 dure law, or by a conviction for a violation sealed pursuant to section
51 160.55 of the criminal procedure law or by a conviction which is sealed
52 pursuant to section 160.59 or 160.58 of the criminal procedure law, or
53 by a conviction which is sealed or expunged pursuant to section 160.57
54 of the criminal procedure law, in connection with the licensing, hous-
55 ing, employment, including volunteer positions, or providing of credit
56 or insurance to such individual; provided, further, that no person shall

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

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

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

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