

# STATE OF NEW YORK

3319

2021-2022 Regular Sessions

## IN SENATE

January 28, 2021

Introduced by Sens. BAILEY, KRUEGER, PARKER, SANDERS -- 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 permitting the sealing of records of certain nonviolent misdemeanor or non-sexual misdemeanor offenses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "second  
2 chance for ex-offenders act".

3 § 2. The criminal procedure law is amended by adding a new section  
4 160.65 to read as follows:

5 § 160.65 Conditional sealing of certain misdemeanor offenses.

6 1. For the purposes of this section, the term "eligible misdemeanor"  
7 shall be a misdemeanor offense defined in the penal law, provided that  
8 an eligible misdemeanor shall not include any sex offense as defined  
9 under subdivision two of section one hundred sixty-eight-a of the  
10 correction law.

11 2. A person having a conviction for no more than three misdemeanors,  
12 who does not stand convicted of any felony, or who is not required to  
13 maintain registration under article six-C of the correction law, may  
14 petition the court to conditionally seal up to three eligible misdemea-  
15 nors when:

16 (a) at least five years have passed since the completion of a sentence  
17 on an eligible misdemeanor; and

18 (b) such person has not been convicted of a crime during the last five  
19 years and is not the subject of an undisposed arrest.

20 3. The petition authorized by this section shall be filed in the court  
21 of record that last imposed a sentence upon petitioner for an eligible  
22 misdemeanor. On the defendant's motion, the court may order that all  
23 official records and papers relating to the arrest, prosecution and

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

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1 conviction records for no more than three of the defendant's prior  
2 eligible misdemeanors be conditionally sealed. The court may only seal  
3 the records of the defendant's arrests, prosecutions and convictions  
4 when:

5 (a) the sentencing court has requested and received from the division  
6 of criminal justice services or the federal bureau of investigation a  
7 fingerprint based criminal history record of the defendant, including  
8 any sealed or suppressed information. The division of criminal justice  
9 services shall also include a criminal history report, if any, from the  
10 federal bureau of investigation regarding any criminal history informa-  
11 tion that occurred in other jurisdictions. The division is hereby  
12 authorized to receive such information from the federal bureau of inves-  
13 tigation for this purpose. The parties shall be permitted to examine  
14 these records;

15 (b) the defendant or court has identified the misdemeanor conviction  
16 or convictions for which relief may be granted;

17 (c) the court has received documentation that the sentences imposed on  
18 the eligible misdemeanor convictions have been completed, or if no such  
19 documentation is reasonably available, a sworn affidavit that the  
20 sentences imposed on the prior misdemeanors have been completed; and

21 (d) the court has notified the district attorney of each jurisdiction  
22 in which the defendant has been convicted of an offense with respect to  
23 which sealing is sought, and the court or courts of record for such  
24 offenses, that the court is considering sealing the records of the  
25 defendant's eligible misdemeanor convictions. Both the district attorney  
26 and the court shall be given a reasonable opportunity, which shall not  
27 be less than thirty days, in which to comment and submit materials to  
28 aid the court in making such a determination. When the court notifies a  
29 district attorney of a sealing application, the district attorney shall  
30 provide notice to the victim, if any, of the sealing application by  
31 mailing written notice to the victim's last-known address. For purposes  
32 of this section "victim" means any person who has sustained physical or  
33 financial injury to person or to property as a direct result of the  
34 misdemeanor crime or misdemeanor crimes for which sealing is applied.

35 4. At the request of the defendant or the district attorney of a coun-  
36 ty in which the defendant committed a crime that is the subject of the  
37 sealing application, the court may conduct a hearing to consider and  
38 review any relevant evidence offered by either party that would aid the  
39 court in its decision whether to seal the records of the defendant's  
40 arrests, prosecutions and convictions. In making such a determination,  
41 the court shall consider any relevant factors, including but not limited  
42 to:

43 (a) the circumstances and seriousness of the offense or offenses that  
44 resulted in the conviction or convictions;

45 (b) the character of the defendant, including what steps the petition-  
46 er has taken since the time of the offense toward personal rehabili-  
47 tation, including treatment, work, school, or other personal history  
48 that demonstrates rehabilitation;

49 (c) the defendant's criminal history;

50 (d) the impact of sealing the defendant's records upon his or her  
51 rehabilitation and his or her successful and productive reentry and  
52 reintegration into society, and on public safety; and

53 (e) any statements made by the victim of the offense where there is in  
54 fact a victim of the crime.

55 5. After a court declares its willingness to grant the defendant's  
56 request for conditional sealing pursuant to this section, but before the

1 court orders sealing pursuant to this section, the defendant shall pay a  
2 mandatory conditional sealing fee. The mandatory conditional sealing fee  
3 will be a fee of eighty dollars, however, such filing fee shall be  
4 waived in cases of indigence. The mandatory filing fee shall be paid to  
5 the clerk of the court or administrative tribunal that rendered the  
6 conviction. Within the first ten days of the month following collection  
7 of the mandatory filing fee, the collecting authority if it is an admin-  
8 istrative tribunal, or a town or village justice court, shall then pay  
9 such money to the state comptroller who shall deposit such money in the  
10 state treasury pursuant to section one hundred twenty-one of the state  
11 finance law to the credit of the indigent legal services fund. If such  
12 collecting authority is any other court of the unified court system, it  
13 shall, within such period, pay such money attributable to the mandatory  
14 filing fee to the state commissioner of taxation and finance to the  
15 credit of the indigent legal services fund established by section nine-  
16 ty-eight-b of the state finance law.

17 6. When a court orders sealing pursuant to this section, all official  
18 records and papers relating to the arrests, prosecutions, and  
19 convictions, including all duplicates and copies thereof, on file with  
20 the division of criminal justice services or any court shall be sealed  
21 and not made available to any person or public or private agency;  
22 provided, however, the division shall retain any fingerprints, palm-  
23 prints, photographs, or digital images of the same.

24 7. When the court orders sealing pursuant to this section, the clerk  
25 of such court shall immediately notify the commissioner of the division  
26 of criminal justice services, and any court that sentenced the defendant  
27 for an offense which has been conditionally sealed, regarding the  
28 records that shall be sealed pursuant to this section.

29 8. Records sealed pursuant to this subdivision shall be made available  
30 to:

31 (a) the defendant or the defendant's designated agent;  
32 (b) qualified agencies, as defined in subdivision nine of section  
33 eight hundred thirty-five of the executive law, and federal and state  
34 law enforcement agencies, when acting within the scope of their law  
35 enforcement duties;

36 (c) any state or local officer or agency with responsibility for the  
37 issuance of licenses to possess guns, when the person has made applica-  
38 tion for such a license; or

39 (d) any prospective employer of a police officer or peace officer as  
40 those terms are defined in subdivisions thirty-three and thirty-four of  
41 section 1.20 of this chapter, in relation to an application for employ-  
42 ment as a police officer or peace officer; provided, however, that every  
43 person who is an applicant for the position of police officer or peace  
44 officer shall be furnished with a copy of all records obtained under  
45 this paragraph and afforded an opportunity to make an explanation there-  
46 to.

47 9. The court shall not seal the defendant's record pursuant to this  
48 section while any charged offense is pending.

49 10. If, subsequent to the sealing of records pursuant to this subdivi-  
50 sion, the person who is the subject of such records is arrested for or  
51 formally charged with any misdemeanor or felony offense, such records  
52 shall be unsealed immediately and remain unsealed; provided, however,  
53 that if such new misdemeanor or felony arrest results in a termination  
54 in favor of the accused as defined in subdivision three of section  
55 160.50 of this article or by conviction for a non-criminal offense as

1 described in section 160.55 of this article, such unsealed records shall  
2 be conditionally sealed pursuant to this section.

3 11. No defendant shall be required or permitted to waive eligibility  
4 for conditional sealing pursuant to this section as part of a plea of  
5 guilty, sentence or any agreement related to a conviction for an eligi-  
6 ble offense and any such waiver shall be deemed void and wholly unen-  
7 forceable.

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

11 16. It shall be an unlawful discriminatory practice, unless specif-  
12 ically required or permitted by statute, for any person, agency, bureau,  
13 corporation or association, including the state and any political subdivi-  
14 sion thereof, to make any inquiry about, whether in any form of appli-  
15 cation or otherwise, or to act upon adversely to the individual  
16 involved, any arrest or criminal accusation of such individual not then  
17 pending against that individual which was followed by a termination of  
18 that criminal action or proceeding in favor of such individual, as  
19 defined in subdivision two of section 160.50 of the criminal procedure  
20 law, or by an order adjourning the criminal action in contemplation of  
21 dismissal, pursuant to section 170.55, 170.56, 210.46, 210.47, or 215.10  
22 of the criminal procedure law, or by a youthful offender adjudication,  
23 as defined in subdivision one of section 720.35 of the criminal proce-  
24 dure law, or by a conviction for a violation sealed pursuant to section  
25 160.55 of the criminal procedure law or by a conviction which is sealed  
26 pursuant to section 160.59 or 160.58 of the criminal procedure law, or  
27 by a conviction which is sealed pursuant to section 160.65 of the crimi-  
28 nal procedure law, in connection with the licensing, housing, employ-  
29 ment, including volunteer positions, or providing of credit or insurance  
30 to such individual; provided, further, that no person shall be required  
31 to divulge information pertaining to any arrest or criminal accusation  
32 of such individual not then pending against that individual which was  
33 followed by a termination of that criminal action or proceeding in favor  
34 of such individual, as defined in subdivision two of section 160.50 of  
35 the criminal procedure law, or by an order adjourning the criminal  
36 action in contemplation of dismissal, pursuant to section 170.55 or  
37 170.56, 210.46, 210.47 or 215.10 of the criminal procedure law, or by a  
38 youthful offender adjudication, as defined in subdivision one of section  
39 720.35 of the criminal procedure law, or by a conviction for a violation  
40 sealed pursuant to section 160.55 of the criminal procedure law, or by a  
41 conviction which is sealed pursuant to section 160.58 or 160.59 of the  
42 criminal procedure law, or by a conviction which is sealed pursuant to  
43 section 160.65 of the criminal procedure law. An individual required or  
44 requested to provide information in violation of this subdivision may  
45 respond as if the arrest, criminal accusation, or disposition of such  
46 arrest or criminal accusation did not occur. The provisions of this  
47 subdivision shall not apply to the licensing activities of governmental  
48 bodies in relation to the regulation of guns, firearms and other deadly  
49 weapons or in relation to an application for employment as a police  
50 officer or peace officer as those terms are defined in subdivisions  
51 thirty-three and thirty-four of section 1.20 of the criminal procedure  
52 law; provided further that the provisions of this subdivision shall not  
53 apply to an application for employment or membership in any law enforce-  
54 ment agency with respect to any arrest or criminal accusation which was  
55 followed by a youthful offender adjudication, as defined in subdivision  
56 one of section 720.35 of the criminal procedure law, or by a conviction

1 for a violation sealed pursuant to section 160.55 of the criminal proce-  
2 dure law, or by a conviction which is sealed pursuant to section 160.58  
3 or 160.59 of the criminal procedure law, or by a conviction which is  
4 sealed pursuant to section 160.65 of the criminal procedure law. For  
5 purposes of this subdivision, an action which has been adjourned in  
6 contemplation of dismissal, pursuant to section 170.55 or 170.56,  
7 210.46, 210.47 or 215.10 of the criminal procedure law, shall not be  
8 considered a pending action, unless the order to adjourn in contem-  
9 plation of dismissal is revoked and the case is restored to the calendar  
10 for further prosecution.

11 § 4. This act shall take effect on the one hundred eightieth day after  
12 it shall have become a law and shall apply to all convictions occurring  
13 prior to, on, and after such date.