

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.