

# 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.