

STATE OF NEW YORK

1029

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. CRUZ, PRETLOW, GONZALEZ-ROJAS, MEEKS, BURGOS, MAMDANI, WALKER, JACKSON, SEAWRIGHT, SIMON, DICKENS, HYNDMAN, EPSTEIN, ANDERSON, KELLES, BURDICK, GALLAGHER, CARROLL, SEPTIMO, L. ROSENTHAL, ZINERMAN, REYES, HEVESI, DARLING, AUBRY, MITAYNES, WEPRIN, LAVINE, JOYNER, BICHOTTE HERMELYN, JEAN-PIERRE, KIM, HUNTER, CLARK, RIVERA, BRONSON, GIBBS, THIELE, DE LOS SANTOS, DAVILA, TAYLOR, COOK, VANEL, FAHY, TAPIA, CUNNINGHAM, GLICK, LUCAS, CHANDLER-WATERMAN, DINOWITZ, OTIS -- Multi-Sponsored by -- M. of A. RAMOS -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, the executive law and the correction law, in relation to automatic sealing of certain convictions

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

Section 1. The criminal procedure law is amended by adding a new section 160.57 to read as follows:

§ 160.57 Automatic sealing of convictions.

1. Convictions for certain traffic infractions and violations or any crime defined in the laws of this state shall be sealed in accordance with paragraph (c) of this subdivision as follows:

(a) Convictions for subdivision one of section eleven hundred ninety-two of the vehicle and traffic law shall be sealed after three years.

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

(i) at least three years have passed from the imposition of sentence on the defendant's most recent misdemeanor conviction in this state and at least seven years have passed since the imposition of sentence on the defendant's most recent felony conviction in this state; in calculating the time periods under this section, any period of time during which the defendant was incarcerated on a determinate or indeterminate sentence for a period of at least one year shall be excluded and such time period

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

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1 shall be extended by a period equal to the time served under such incar-
2 ceration with such period being calculated from the original sentencing
3 date, notwithstanding any modification or vacatur of the original judg-
4 ment, conviction, or sentence and the entry of the new judgment,
5 conviction, or sentence;

6 (ii) the defendant does not have a subsequent criminal charge pending
7 in this state;

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

10 (iv) the conviction is not defined as a sex offense under section one
11 hundred sixty-eight-a of the correction law.

12 (c) Where a conviction is eligible for sealing pursuant to this
13 section before, on, or after the effective date of this section, the
14 division of criminal justice services shall immediately notify the
15 office of court administration, the court of conviction, and the heads
16 of all appropriate police and sheriff departments that the conviction is
17 sealed.

18 (d) Records of convictions sealed pursuant to this section including
19 photographs, photographic plates or proofs, palmprints, fingerprints or
20 retina scans shall not be accessed by or made available to any person or
21 public or private agency, or used by any entity covered by subdivision
22 three of this section except for:

23 (i) the defendant and such defendant's counsel;

24 (ii) any court, defense counsel or prosecutor for the purposes of a
25 pending criminal proceeding or proceedings brought in a criminal court
26 pursuant to article six-C of the correction law;

27 (iii) qualified agencies, as defined in subdivision nine of section
28 eight hundred thirty-five of the executive law, federal and state law
29 enforcement agencies, and interstate and international authorities as
30 defined in subdivision three of section two of the public authorities
31 law, when acting within the scope of their law enforcement duties;

32 (iv) the court, prosecutor, and defense counsel if the defendant
33 becomes a witness in a criminal proceeding, or the claimant and respond-
34 ent if the defendant becomes a witness in a civil proceeding;

35 (v) when an individual is a defendant in a criminal proceeding or
36 proceedings brought in a criminal court pursuant to article six-C of the
37 corrections law and the sealed records of conviction of a third party
38 are integral to their defense. In such instances, use of sealed records
39 of conviction shall be requested upon ex parte motion in any superior
40 court, or in any district court, city court or the criminal court of the
41 city of New York provided that such court is where the action is pend-
42 ing. The applicant must demonstrate to the satisfaction of the court
43 that the records will be used for the purpose of this subparagraph;

44 (vi) entities that are required by state or federal law to request and
45 receive a fingerprint-based check of criminal history information,
46 including the state education department office of school personnel
47 review and accountability for the purposes of sections three thousand
48 four-b, three thousand one-b, and three thousand thirty-five of the
49 education law, provided, however, that a person whose criminal history
50 information is retrieved pursuant to this paragraph shall be furnished
51 with a copy of such information, together with a copy of article twen-
52 ty-three-A of the correction law, and informed of his or her right to
53 seek correction of any incorrect information contained in such criminal
54 history information pursuant to regulations and procedures established
55 by the division of criminal justice services;

(vii) pursuant to applicable regulations promulgated by the commissioner of the division of criminal justice services, specified entities that are authorized by state or federal law to request and receive a fingerprint-based check of criminal history information in relation to the provision of care or services to children, as defined in subdivision one of section three hundred seventy-one of the social services law, and vulnerable persons, as defined in subdivision fifteen of section four hundred eighty-eight of the social services law, provided, however, that a person whose criminal history information is retrieved pursuant to this paragraph shall be provided with a copy of such criminal history information, together with a copy of article twenty-three-A of the correction law, and informed of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to regulations and procedures established by the division of criminal justice services;

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

(ix) any federal, state or local officer or agency with responsibility for the issuance of licenses to possess a firearm, rifle or shotgun or with responsibility for conducting background checks before transfer or sale of a firearm or explosive, when the officer or agency is acting pursuant to such responsibility. This includes the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant background check system regarding attempts to purchase or otherwise take possession of firearms, rifles or shotguns, as defined in 18 U.S.C. § 921 (A)(3);

(x) for the purposes of civilian investigation or evaluation of a civilian complaint or civil action concerning law enforcement or prosecution actions, upon ex parte motion in any superior court, or in any district court, city court or the criminal court of the city of New York provided that such court sealed the record; the applicant must demonstrate to the satisfaction of the court that the records will be used for the purposes of this subparagraph;

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

(xii) when an individual seeks to avail themselves of a public program or benefit, including but not limited to an immigration benefit, for which the sealed records of conviction of a third party are integral to their application for such program or benefit. In such instances, the individual or their attorney shall request the use of sealed records pursuant to a form as prescribed in subdivision twenty-three of section eight hundred thirty-seven of the executive law;

(xiii) for the purpose of collection of restitution ordered pursuant to section 60.27 of the penal law. In such instances, use of sealed records shall be requested upon ex parte motion in any superior court, or in any district court, city court or criminal court of the city of New York provided that such court is where the action is pending. The

1 applicant must demonstrate to the satisfaction of the court that the
2 records will be used for the purpose of this subparagraph;

3 (xiv) transportation network companies that are required or authorized
4 by state law to request criminal history information pursuant to section
5 sixteen hundred ninety-nine of the vehicle and traffic law; and

6 (xv) the state education department office of the professions, for the
7 purposes of:

8 (1) investigating professional misconduct as defined by subparagraph
9 (i) of paragraph (a) of subdivision five of section sixty-five hundred
10 nine of the education law or for consideration of restoration of a
11 professional license pursuant to section sixty-five hundred eleven of
12 the education law, provided that the office of the professions certifies
13 to the division of criminal justice services that it is investigating an
14 individual licensed to practice a profession pursuant to article one
15 hundred thirty of the education law for professional misconduct as
16 defined by paragraph (a) of subdivision five of section sixty-five
17 hundred nine of the education law or considering restoration of a
18 professional license pursuant to section sixty-five hundred eleven of
19 the education law, as appropriate, and that a person whose criminal
20 history information is retrieved pursuant to this paragraph shall be
21 furnished with a copy of such information, together with a copy of arti-
22 cle twenty-three-A of the correction law, and informed of his or her
23 right to seek correction of any incorrect information contained in such
24 criminal history information pursuant to regulations and procedures
25 established by the division of criminal justice services;

26 (2) issuing licenses for admission to practice specific professions
27 defined in sections sixty-five hundred thirty, sixty-five hundred
28 fifty-four, sixty-six hundred four, sixty-six hundred thirty-two,
29 sixty-seven hundred thirty-four, sixty-eight hundred five, sixty-nine
30 hundred five, sixty-nine hundred fifty-five, seven thousand four, seven-
31 ty-one hundred four, seventy-four hundred four, seventy-six hundred
32 three, seventy-eight hundred four, seventy-nine hundred four, eighty-two
33 hundred six, eighty-two hundred fourteen, eighty-four hundred two,
34 eighty-five hundred four, eighty-five hundred five, and eighty-eight
35 hundred four of the education law, provided that the office of the
36 professions certifies to the division of criminal justice services that
37 it is evaluating an individual for a license to practice one of the
38 enumerated professions and that a person whose criminal history informa-
39 tion is retrieved pursuant to this paragraph shall be furnished with a
40 copy of such information, together with a copy of article twenty-three-A
41 of the correction law, and informed of his or her right to seek
42 correction of any incorrect information contained in such criminal
43 history information pursuant to regulations and procedures established
44 by the division of criminal justice services.

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. Where a conviction is eligible for sealing pursuant to this section
53 before, on, or after the effective date of this section, the commission-
54 er of the division of criminal justice services shall immediately notify
55 the office of court administration, the court of conviction and the
56 heads of all appropriate police departments, prosecutors' offices and

1 law enforcement agencies that the conviction is sealed. Upon receipt of
2 such notification, records of or relating to such conviction shall be
3 immediately sealed pursuant to this section.

4 (a) Any such entity that possesses information, records, documents or
5 papers related to the eligible conviction shall seal them as follows:

6 (i) Every photograph of such defendant and photographic plates or
7 proof, and all palmprints, fingerprints and retina scans taken or made
8 of such individual pursuant to the provisions of this article in regard
9 to the eligible conviction, and all duplicates, reproductions, and
10 copies thereof, except a digital fingerprint that is on file with the
11 division of criminal justice services for a conviction that has not been
12 sealed pursuant to this section shall be marked as sealed by the divi-
13 sion of criminal justice services and by any police department,
14 prosecutor's office or law enforcement agency having any such photo-
15 graph, photographic plate or proof, palmprint, fingerprints or retina
16 scan in its possession or under its control by conspicuously indicating
17 on the face of the record or at the beginning of the digitized file of
18 the record that the record has been designated as sealed. Where finger-
19 prints subject to the provisions of this section have been received by
20 the division of criminal justice services and have been filed by the
21 division as digital images, such images may remain unsealed, provided
22 that a fingerprint card of the individual is on file with the division
23 which was not sealed pursuant to this section.

24 (ii) Every official record and paper and duplicates and copies there-
25 of, including, but not limited to, judgments and orders of a court but
26 not including published court decisions or opinions or records and
27 briefs on appeal, relating to the conviction, on file with the agency
28 shall be marked as sealed by conspicuously indicating on the face of the
29 record or at the beginning of the digitized file of the record that the
30 record has been designated as sealed.

31 (b) Third-party agencies shall seal information and all records, docu-
32 ments and papers relating to the eligible conviction as follows:

33 (i) Every police department, prosecutor's office or law enforcement
34 agency, including the division of criminal justice services, which tran-
35 smitted or otherwise forwarded to any agency of the United States or of
36 any other state or jurisdiction outside of this state copies of any such
37 photographs, photographic plates or proofs, palmprints, fingerprints or
38 retina scans, shall forthwith formally inform such agency in writing
39 that the matter has been sealed and request in writing that all such
40 copies be marked as sealed by conspicuously indicating on the face of
41 the record or at the beginning of the digitized file of the record that
42 the record has been designated as sealed.

43 (ii) Every official record and paper and duplicates and copies there-
44 of, including, but not limited to, judgments and orders of a court but
45 not including published court decisions or opinions or records and
46 briefs on appeal, relating to the conviction, on file with the agency
47 shall be marked as sealed by conspicuously indicating on the face of the
48 record or at the beginning of the digitized file of the record that the
49 record has been designated as sealed.

50 3. (a) Nothing in this section requires the sealing or destruction of
51 DNA information maintained in the New York state DNA database of such
52 individual pursuant to the provisions of the executive law in regard to
53 the eligible conviction.

54 (b) Nothing in this section requires the sealing or destruction of
55 records maintained by the department of motor vehicles, and nothing in
56 this section shall be construed to contravene the vehicle and traffic

1 law, the federal driver's privacy protection act (18 U.S.C 2721 et.
2 seq.), the REAL ID Act of 2005 (Public Law 109-13; 49 U.S.C. 30301
3 note), section 7209 of the Intelligence Reform and Terrorism Prevention
4 Act of 1986 (49 U.S.C. 31311), or regulations promulgated pursuant to
5 any such chapter or act.

6 (c) The division of criminal justice services is authorized to
7 disclose a conviction that is sealed pursuant to this section to enti-
8 ties that are required by federal law, or by rules and regulations
9 promulgated by a self-regulatory organization created under federal law,
10 to consider sealed convictions. Such entities must certify to the divi-
11 sion that they are required by federal law, or by rules and regulations
12 promulgated by a self-regulatory organization that has been created
13 under federal law, to make an inquiry about or consider records sealed
14 pursuant to this section for purposes of employment, licensing, or
15 clearance. To the extent permitted by federal law, a record sealed
16 pursuant to this section may not be considered a conviction that would
17 prohibit the employment, licensing or clearance of the defendant.

18 (d) Nothing in this section shall prohibit entities required by feder-
19 al law, or by rules and regulations promulgated by a self-regulatory
20 organization that has been created under federal law, from making an
21 inquiry about or considering an applicant's criminal history for
22 purposes of employment, licensing, or clearance from inquiring into
23 convictions sealed pursuant to this section.

24 (e) In any civil action, an official record of a conviction that has
25 been sealed pursuant to this section may not be introduced as evidence
26 of negligence against a person or entity that provided employment,
27 contract labor or services, volunteer work, licensing, tenancy, a home
28 purchase, a mortgage, an education, a loan, or insurance if such record
29 was sealed and was not provided to the person or entity by or on behalf
30 of a governmental entity in accordance with this section in response to
31 such person's or entity's authorized and timely request for conviction
32 history information.

33 (f) A person or entity described in this subdivision, acting reason-
34 ably and in good faith, may not have a duty to investigate the fact of a
35 prior conviction that has been sealed pursuant to this section.

36 4. No defendant shall be required or permitted to waive eligibility
37 for sealing pursuant to this section as part of a plea of guilty,
38 sentence or any agreement related to a conviction for a violation of the
39 laws of this state. Any such waiver is void and unenforceable.

40 5. Sealing as set forth in subdivision two of this section is without
41 prejudice to a defendant or their attorney seeking further relief pursu-
42 ant to article four hundred forty of this chapter. Nothing in this
43 section is intended or shall be interpreted to diminish or abrogate any
44 rights or remedies otherwise available to the defendant.

45 6. All records for a conviction subject to sealing under this section
46 where the conviction was entered on or before the effective date of this
47 section shall receive the appropriate relief promptly and, in any event,
48 no later than two years after such effective date.

49 7. A conviction which is sealed pursuant to this section is included
50 within the definition of a conviction for the purposes of any criminal
51 proceeding in which the fact of a prior conviction would enhance a
52 penalty or is an element of the offense charged.

53 8. Any defendant claiming to be aggrieved by a violation of this
54 section shall have a cause of action in any court of appropriate juris-
55 isdiction for damages, including punitive damages, and such other remedies
56 as may be appropriate. The provisions of this article shall also be

enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law.

§ 2. Section 845-d of the executive law is amended by adding a new subdivision 4 to read as follows:

4. Nothing in this section shall authorize the division to provide criminal history information that is sealed pursuant to section 160.57 of the criminal procedure law to any entity other than those explicitly authorized by that section to receive or access such information.

§ 3. Section 837 of the executive law is amended by adding three new subdivisions 24, 25 and 26 to read as follows:

24. Promulgate a standardized form for use by individuals to notify the division of criminal justice services of convictions subject to sealing under section 160.57 of the criminal procedure law, but for which the division has not taken the requisite action for related records.

25. Promulgate a certification process whereby individuals seeking use of sealed records pursuant to subparagraph (xii) of paragraph (d) of subdivision one of section 160.57 of the criminal procedure law may request and access records.

26. Adopt, amend and rescind such regulations as may be necessary to effectuate the provisions of subparagraph (vii) of paragraph (d) of subdivision one of section 160.57 of the criminal procedure law to determine entities authorized to receive sealed records for purposes of occupations that involve regular and substantial unsupervised or unrestricted physical contact with children as defined in subdivision one of section three hundred seventy-one of the social services law, and vulnerable persons, as defined in subdivision fifteen of section four hundred eighty-eight of the social services law.

§ 4. Subdivision 16 of section 296 of the executive law, as amended by section 2 of subpart 0 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 pursuant to section 160.57 of the criminal procedure law, except where such conviction record is accessed pursuant to subparagraph (vi), (vii), or (xv) of paragraph (d) of subdivision one of 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 accusation of such individual not then pending against that individual which was followed by a termi-

1 nation of that criminal action or proceeding in favor of such individ-
2 ual, as defined in subdivision two of section 160.50 of the criminal
3 procedure law, or by an order adjourning the criminal action in contem-
4 plation of dismissal, pursuant to section 170.55 or 170.56, 210.46,
5 210.47 or 215.10 of the criminal procedure law, or by a youthful offen-
6 der adjudication, as defined in subdivision one of section 720.35 of the
7 criminal procedure law, or by a conviction for a violation sealed pursu-
8 ant to section 160.55 of the criminal procedure law, or by a conviction
9 which is sealed pursuant to section 160.58 or 160.59 of the criminal
10 procedure law, or by a conviction which is sealed pursuant to section
11 160.57 of the criminal procedure law, except where such conviction
12 record is accessed pursuant to subparagraph (vi), (vii), or (xv) of
13 paragraph (d) of subdivision one of section 160.57 of the criminal
14 procedure law. An individual required or requested to provide informa-
15 tion in violation of this subdivision may respond as if the arrest,
16 criminal accusation, or disposition of such arrest or criminal accusa-
17 tion did not occur. The provisions of this subdivision shall not apply
18 to the licensing activities of governmental bodies in relation to the
19 regulation of guns, firearms and other deadly weapons or in relation to
20 an application for employment as a police officer or peace officer as
21 those terms are defined in subdivisions thirty-three and thirty-four of
22 section 1.20 of the criminal procedure law; provided further that the
23 provisions of this subdivision shall not apply to an application for
24 employment or membership in any law enforcement agency with respect to
25 any arrest or criminal accusation which was followed by a youthful
26 offender adjudication, as defined in subdivision one of section 720.35
27 of the criminal procedure law, or by a conviction for a violation sealed
28 pursuant to section 160.55 of the criminal procedure law, or by a
29 conviction which is sealed pursuant to section 160.58 or 160.59 of the
30 criminal procedure law, or by a conviction which is sealed pursuant to
31 section 160.57 of the criminal procedure law. For purposes of this
32 subdivision, an action which has been adjourned in contemplation of
33 dismissal, pursuant to section 170.55 or 170.56, 210.46, 210.47 or
34 215.10 of the criminal procedure law, shall not be considered a pending
35 action, unless the order to adjourn in contemplation of dismissal is
36 revoked and the case is restored to the calendar for further prose-
37 cution.

38 § 5. Section 9 of the correction law, as added by section 2 of part 00
39 of chapter 56 of the laws of 2010, the section heading as amended by
40 chapter 322 of the laws of 2021, is amended to read as follows:

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

~~imprisonment and any period of parole or post-release supervision arising from the most recent commitment to the department]~~.

§ 6. Severability. If any provision of this act or the application thereof to any person, corporation or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

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