

STATE OF NEW YORK

211

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IN SENATE

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Introduced by Sens. MYRIE, BAILEY, BRESLIN, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, GIANARIS, GOUNARDES, HINCHEY, HOYLMAN, JACKSON, KAVANAGH, KENNEDY, LIU, MAY, MAYER, RAMOS, SALAZAR, SANDERS, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed 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:

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 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 three years.

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

11 (i) at least three years have passed from the imposition of sentence
12 on the defendant's most recent misdemeanor conviction in this state and
13 at least seven years have passed since the imposition of sentence on the
14 defendant's most recent felony conviction in this state; in calculating
15 the time periods under this section, any period of time during which the
16 defendant was incarcerated on a determinate or indeterminate sentence
17 for a period of at least one year shall be excluded and such time period
18 shall be extended by a period equal to the time served under such incar-
19 ceration with such period being calculated from the original sentencing
20 date, notwithstanding any modification or vacatur of the original judg-

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

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1 ment, conviction, or sentence and the entry of the new judgment,
2 conviction, or sentence;

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

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

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

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

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

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

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

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

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

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

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

53 (vii) pursuant to applicable regulations promulgated by the commis-
54 sioner of the division of criminal justice services, specified entities
55 that are authorized by state or federal law to request and receive a
56 fingerprint-based check of criminal history information in relation to

1 the provision of care or services to children, as defined in subdivision
2 one of section three hundred seventy-one of the social services law, and
3 vulnerable persons, as defined in subdivision fifteen of section four
4 hundred eighty-eight of the social services law, provided, however, that
5 a person whose criminal history information is retrieved pursuant to
6 this paragraph shall be provided with a copy of such criminal history
7 information, together with a copy of article twenty-three-A of the
8 correction law, and informed of his or her right to seek correction of
9 any incorrect information contained in such criminal history information
10 pursuant to regulations and procedures established by the division of
11 criminal justice services;

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

19 (ix) any federal, state or local officer or agency with responsibility
20 for the issuance of licenses to possess a firearm, rifle or shotgun or
21 with responsibility for conducting background checks before transfer or
22 sale of a firearm or explosive, when the officer or agency is acting
23 pursuant to such responsibility. This includes the criminal justice
24 information services division of the federal bureau of investigation,
25 for the purposes of responding to queries to the national instant back-
26 ground check system regarding attempts to purchase or otherwise take
27 possession of firearms, rifles or shotguns, as defined in 18 U.S.C. §
28 921 (A)(3);

29 (x) for the purposes of civilian investigation or evaluation of a
30 civilian complaint or civil action concerning law enforcement or prose-
31 cution actions, upon ex parte motion in any superior court, or in any
32 district court, city court or the criminal court of the city of New York
33 provided that such court sealed the record; the applicant must demon-
34 strate to the satisfaction of the court that the records will be used
35 for the purposes of this subparagraph;

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

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

47 (xiii) for the purpose of collection of restitution ordered pursuant
48 to section 60.27 of the penal law. In such instances, use of sealed
49 records shall be requested upon ex parte motion in any superior court,
50 or in any district court, city court or criminal court of the city of
51 New York provided that such court is where the action is pending. The
52 applicant must demonstrate to the satisfaction of the court that the
53 records will be used for the purpose of this subparagraph;

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

1 (xv) the state education department office of the professions, for the
2 purposes of:

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

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

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

47 2. Where a conviction is eligible for sealing pursuant to this section
48 before, on, or after the effective date of this section, the commission-
49 er of the division of criminal justice services shall immediately notify
50 the office of court administration, the court of conviction and the
51 heads of all appropriate police departments, prosecutors' offices and
52 law enforcement agencies that the conviction is sealed. Upon receipt of
53 such notification, records of or relating to such conviction shall be
54 immediately sealed pursuant to this section.

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

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

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

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

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

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

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

49 (b) Nothing in this section requires the sealing or destruction of
50 records maintained by the department of motor vehicles, and nothing in
51 this section shall be construed to contravene the vehicle and traffic
52 law, the federal driver's privacy protection act (18 U.S.C 2721 et.
53 seq.), the REAL ID Act of 2005 (Public Law 109-13; 49 U.S.C. 30301
54 note), section 7209 of the Intelligence Reform and Terrorism Prevention
55 Act of 1986 (49 U.S.C. 31311), or regulations promulgated pursuant to
56 any such chapter or act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 § 4. Subdivision 16 of section 296 of the executive law, as amended by
26 section 2 of subpart O of part II of chapter 55 of the laws of 2019, is
27 amended to read as follows:

28 16. It shall be an unlawful discriminatory practice, unless specif-
29 ically required or permitted by statute, for any person, agency, bureau,
30 corporation or association, including the state and any political subdi-
31 vision thereof, to make any inquiry about, whether in any form of appli-
32 cation or otherwise, or to act upon adversely to the individual
33 involved, any arrest or criminal accusation of such individual not then
34 pending against that individual which was followed by a termination of
35 that criminal action or proceeding in favor of such individual, as
36 defined in subdivision two of section 160.50 of the criminal procedure
37 law, or by an order adjourning the criminal action in contemplation of
38 dismissal, pursuant to section 170.55, 170.56, 210.46, 210.47, or 215.10
39 of the criminal procedure law, or by a youthful offender adjudication,
40 as defined in subdivision one of section 720.35 of the criminal proce-
41 dure law, or by a conviction for a violation sealed pursuant to section
42 160.55 of the criminal procedure law or by a conviction which is sealed
43 pursuant to section 160.59 or 160.58 of the criminal procedure law, or
44 by a conviction which is sealed pursuant to section 160.57 of the crimi-
45 nal procedure law, except where such conviction record is accessed
46 pursuant to subparagraph (vi), (vii), or (xv) of paragraph (d) of subdi-
47 vision one of section 160.57 of the criminal procedure law, in
48 connection with the licensing, housing, employment, including volunteer
49 positions, or providing of credit or insurance to such individual;
50 provided, further, that no person shall be required to divulge informa-
51 tion pertaining to any arrest or criminal accusation of such individual
52 not then pending against that individual which was followed by a termi-
53 nation of that criminal action or proceeding in favor of such individ-
54 ual, as defined in subdivision two of section 160.50 of the criminal
55 procedure law, or by an order adjourning the criminal action in contem-
56 plation of dismissal, pursuant to section 170.55 or 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 160.58 or 160.59 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. An individual required or requested to provide information in violation of this subdivision may respond as if the arrest, criminal accusation, or disposition of such arrest or criminal accusation did not occur. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed 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 160.58 or 160.59 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.57 of the criminal procedure law. For purposes of this subdivision, an action which has been adjourned in contemplation of dismissal, pursuant to section 170.55 or 170.56, 210.46, 210.47 or 215.10 of the criminal procedure law, shall not be considered a pending action, unless the order to adjourn in contemplation of dismissal is revoked and the case is restored to the calendar for further prosecution.

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

§ 9. Access to information of incarcerated individuals via the internet. Notwithstanding any provision of law to the contrary, any information relating to the conviction of a person ~~[, except for a person convicted of an offense that would make such person ineligible for merit time under section eight hundred three of this chapter or an offense for which registration as a sex offender is required as set forth in subdivision two or three of section one hundred sixty-eight-a of this chapter,~~ that is posted on a website maintained by or for the department, under article six of the public officers law, may be posted on such website for a period not to exceed ~~[five]~~ three years after the expiration of such person's sentence of imprisonment and at the conclusion of any period of parole or post-release supervision ~~[, provided, however, that in the case of a person who has been committed to the department on more than one occasion, the department may post conviction information relating to any prior commitment on such website for a period not to 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,

1 such invalidity shall not affect other provisions or applications of the
2 act which can be given effect without the invalid provision or applica-
3 tion, and to this end the provisions of this act are declared to be
4 severable.

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