

STATE OF NEW YORK

211--A

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. MYRIE, BAILEY, BRESLIN, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, FERNANDEZ, GIANARIS, GONZALEZ, GOUNARDES, HINCHEY, HOYLMAN-SIGAL, JACKSON, KAVANAGH, KENNEDY, LIU, MAY, MAYER, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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;

10 (iv) the conviction is not defined as a sex offense or sexually
11 violent offense under section one hundred sixty-eight-a of the
12 correction law; and

13 (v) the defendant is a natural person.

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

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

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

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

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

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

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

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

1 by the division of criminal justice services. Provided further, that
2 nothing herein shall prohibit the commissioner of education or the
3 office of school personnel review and accountability from receiving or
4 using convictions sealed pursuant to this section for purposes of subdi-
5 visions seven, seven-a and seven-b of section three hundred five of the
6 education law;

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

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

29 (ix) any federal, state or local officer or agency with responsibility
30 for the issuance of licenses to possess a firearm, rifle or shotgun or
31 with responsibility for conducting background checks before transfer or
32 sale of a firearm or explosive, when the officer or agency is acting
33 pursuant to such responsibility. This includes the criminal justice
34 information services division of the federal bureau of investigation,
35 for the purposes of responding to queries to the national instant back-
36 ground check system regarding attempts to purchase or otherwise take
37 possession of firearms, rifles or shotguns, as defined in 18 U.S.C. §
38 921 (A)(3);

39 (x) for the purposes of civilian investigation or evaluation of a
40 civilian complaint or civil action concerning law enforcement or prose-
41 cution actions, upon ex parte motion in any superior court, or in any
42 district court, city court or the criminal court of the city of New York
43 provided that such court sealed the record; the applicant must demon-
44 strate to the satisfaction of the court that the records will be used
45 for the purposes of this subparagraph;

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

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

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

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

11 (xv) the state education department for the purposes of:

12 (1) investigating professional misconduct as defined in subparagraph
13 (i) of paragraph (a) of subdivision five of section sixty-five hundred
14 nine of the education law, consideration of restoration of a profes-
15 sional license pursuant to section sixty-five hundred eleven of the
16 education law, or determinations for issuing a license to practice a
17 profession or issuing certificates and privileges for which prior licen-
18 sure is required, for the professions of medicine, physician assistant,
19 specialist assistant, chiropractic, dentistry, dental hygiene, regis-
20 tered dental assisting, perfusion, veterinary medicine, veterinary tech-
21 nology, physical therapy, physical therapist assistant, pharmacy, regis-
22 tered pharmacy technician, nursing as a registered professional nurse,
23 licensed practical nurse, nurse practitioner, and clinical nurse
24 specialist, midwifery, podiatry, optometry, ophthalmic dispensing, engi-
25 neering, architecture, public accountancy as a public accountant and
26 certified public accountant, psychology, licensed master social work,
27 licensed clinical social work, massage therapy, occupational therapy,
28 occupational therapy assistant, dietetics and nutrition, speech-language
29 pathology, audiology, acupuncture, athletic training, mental health
30 counseling, marriage and family therapy, creative arts therapy, psycho-
31 analysis, respiratory therapy, respiratory therapy technician, polysom-
32 nographic technology, applied behavior analysis as a licensed behavior
33 analyst and certified behavior analyst assistant as such professions are
34 defined in title eight of the education law, provided that the state
35 education department certifies to the division of criminal justice
36 services that it is investigating an individual licensed to practice a
37 profession pursuant to article one hundred thirty of the education law
38 for professional misconduct as defined in paragraph (a) of subdivision
39 five of section sixty-five hundred nine of the education law, consider-
40 ing restoration of a professional license pursuant to section sixty-five
41 hundred eleven of the education law, or making a determination for issu-
42 ing a license to practice a profession or issuing certificates and priv-
43 ileges for which prior licensure is required as appropriate, and that a
44 person whose criminal history information is retrieved pursuant to this
45 paragraph shall be furnished with a copy of such information, together
46 with a copy of article twenty-three-A of the correction law, and
47 informed of his or her right to seek correction of any incorrect infor-
48 mation contained in such criminal history information pursuant to regu-
49 lations and procedures established by the division of criminal justice
50 services. Provided, further, that the board of regents may consider any
51 prior conviction that formed the basis of a determination of the board
52 of regents in a disciplinary proceeding pursuant to section sixty-five
53 hundred ten of the education law and the rules and regulations promul-
54 gated pursuant thereto in an application for reconsideration, even if
55 such conviction later becomes automatically sealed pursuant to this
56 section.

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

8 2. Where a conviction is eligible for sealing pursuant to this section
9 before, on, or after the effective date of this section, the commission-
10 er of the division of criminal justice services shall immediately notify
11 the office of court administration, the court of conviction and the
12 heads of all appropriate police and sheriff departments, prosecutors'
13 offices and law enforcement agencies that the conviction is sealed. Upon
14 receipt of such notification, records of or relating to such conviction
15 shall be immediately sealed pursuant to this section.

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

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

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

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

45 (i) Every police department, prosecutor's office or law enforcement
46 agency, including the division of criminal justice services, which tran-
47 smitted or otherwise forwarded to any agency of the United States or of
48 any other state or jurisdiction outside of this state copies of any such
49 photographs, photographic plates or proofs, palmprints, fingerprints or
50 retina scans, shall forthwith formally inform such agency in writing
51 that the matter has been sealed and request in writing that all such
52 copies be marked as sealed by conspicuously indicating on the face of
53 the record or at the beginning of the digitized file of the record that
54 the record has been designated as sealed.

55 (ii) Every official record and paper and duplicates and copies there-
56 of, including, but not limited to, judgments and orders of a court but

1 not including published court decisions or opinions or records and
2 briefs on appeal, relating to the conviction, on file with the agency
3 shall be marked as sealed by conspicuously indicating on the face of the
4 record or at the beginning of the digitized file of the record that the
5 record has been designated as sealed.

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

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

18 (c) The division of criminal justice services is authorized to
19 disclose a conviction that is sealed pursuant to this section to enti-
20 ties that are required by federal law, or by rules and regulations
21 promulgated by a self-regulatory organization created under federal law,
22 to consider sealed convictions. Such entities must certify to the divi-
23 sion that they are required by federal law, or by rules and regulations
24 promulgated by a self-regulatory organization that has been created
25 under federal law, to make an inquiry about or consider records sealed
26 pursuant to this section for purposes of employment, licensing, or
27 clearance. To the extent permitted by federal law, a record sealed
28 pursuant to this section may not be considered a conviction that would
29 prohibit the employment, licensing or clearance of the defendant.

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

36 (e) In any civil action, an official record of a conviction that has
37 been sealed pursuant to this section may not be introduced as evidence
38 of negligence against a person or entity that provided employment,
39 contract labor or services, volunteer work, licensing, tenancy, a home
40 purchase, a mortgage, an education, a loan, or insurance if such record
41 was sealed and was not provided to the person or entity by or on behalf
42 of a governmental entity in accordance with this section in response to
43 such person's or entity's authorized and timely request for conviction
44 history information.

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

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

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

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

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

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

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

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

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

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

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

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

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

44 16. It shall be an unlawful discriminatory practice, unless specif-
45 ically required or permitted by statute, for any person, agency, bureau,
46 corporation or association, including the state and any political subdivi-
47 sion thereof, to make any inquiry about, whether in any form of appli-
48 cation or otherwise, or to act upon adversely to the individual
49 involved, any arrest or criminal accusation of such individual not then
50 pending against that individual which was followed by a termination of
51 that criminal action or proceeding in favor of such individual, as
52 defined in subdivision two of section 160.50 of the criminal procedure
53 law, or by an order adjourning the criminal action in contemplation of
54 dismissal, pursuant to section 170.55, 170.56, 210.46, 210.47, or 215.10
55 of the criminal procedure law, or by a youthful offender adjudication,
56 as defined in subdivision one of section 720.35 of the criminal proce-

1 dure law, or by a conviction for a violation sealed pursuant to section
2 160.55 of the criminal procedure law or by a conviction which is sealed
3 pursuant to section 160.59 or 160.58 of the criminal procedure law, or
4 by a conviction which is sealed pursuant to section 160.57 of the crimi-
5 nal procedure law, except where such conviction record is accessed
6 pursuant to subparagraph (vi), (vii), or (xv) of paragraph (d) of subdi-
7 vision one of section 160.57 of the criminal procedure law, in
8 connection with the licensing, housing, employment, including volunteer
9 positions, or providing of credit or insurance to such individual;
10 provided, further, that no person shall be required to divulge informa-
11 tion pertaining to any arrest or criminal accusation of such individual
12 not then pending against that individual which was followed by a termi-
13 nation of that criminal action or proceeding in favor of such individ-
14 ual, as defined in subdivision two of section 160.50 of the criminal
15 procedure law, or by an order adjourning the criminal action in contem-
16 plation of dismissal, pursuant to section 170.55 or 170.56, 210.46,
17 210.47 or 215.10 of the criminal procedure law, or by a youthful offen-
18 der adjudication, as defined in subdivision one of section 720.35 of the
19 criminal procedure law, or by a conviction for a violation sealed pursu-
20 ant to section 160.55 of the criminal procedure law, or by a conviction
21 which is sealed pursuant to section 160.58 or 160.59 of the criminal
22 procedure law, or by a conviction which is sealed pursuant to section
23 160.57 of the criminal procedure law, except where such conviction
24 record is accessed pursuant to subparagraph (vi), (vii), or (xv) of
25 paragraph (d) of subdivision one of section 160.57 of the criminal
26 procedure law. An individual required or requested to provide informa-
27 tion in violation of this subdivision may respond as if the arrest,
28 criminal accusation, or disposition of such arrest or criminal accusa-
29 tion did not occur. The provisions of this subdivision shall not apply
30 to the licensing activities of governmental bodies in relation to the
31 regulation of guns, firearms and other deadly weapons or in relation to
32 an application for employment as a police officer or peace officer as
33 those terms are defined in subdivisions thirty-three and thirty-four of
34 section 1.20 of the criminal procedure law; provided further that the
35 provisions of this subdivision shall not apply to an application for
36 employment or membership in any law enforcement agency with respect to
37 any arrest or criminal accusation which was followed by a youthful
38 offender adjudication, as defined in subdivision one of section 720.35
39 of the criminal procedure law, or by a conviction for a violation sealed
40 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 160.57 of the criminal procedure law. For purposes of this
44 subdivision, an action which has been adjourned in contemplation of
45 dismissal, pursuant to section 170.55 or 170.56, 210.46, 210.47 or
46 215.10 of the criminal procedure law, shall not be considered a pending
47 action, unless the order to adjourn in contemplation of dismissal is
48 revoked and the case is restored to the calendar for further prose-
49 cution.

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

53 § 9. Access to information of incarcerated individuals via the inter-
54 net. Notwithstanding any provision of law to the contrary, any informa-
55 tion relating to the conviction of a person[~~, except for a person~~
56 ~~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, 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.