

STATE OF NEW YORK

3281

2025-2026 Regular Sessions

IN SENATE

January 24, 2025

Introduced by Sens. MYRIE, BRISPORT -- read twice and ordered printed,
and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to eligibility
for conviction sealing for certain applicants

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

1 Section 1. Section 160.59 of the criminal procedure law, as added by
2 section 48 of part WWW of chapter 59 of the laws of 2017 and paragraph
3 (a) of subdivision 2 and subdivision 11 as amended by chapter 60 of the
4 laws of 2017, is amended to read as follows:

5 § 160.59 Sealing of certain convictions.

6 1. Definitions: As used in this section, the following terms shall
7 have the following meanings:

8 (a) "Eligible offense" shall mean a violation of subdivision one of
9 section eleven hundred ninety-two of the vehicle and traffic law or any
10 crime defined in the laws of this state other than a sex offense defined
11 in article one hundred thirty of the penal law, an offense defined in
12 article two hundred sixty-three of the penal law, a felony offense
13 defined in article one hundred twenty-five of the penal law, a violent
14 felony offense defined in section 70.02 of the penal law, a class A
15 felony offense defined in the penal law, a felony offense defined in
16 article one hundred five of the penal law where the underlying offense
17 is not an eligible offense, an attempt to commit an offense that is not
18 an eligible offense if the attempt is a felony, or an offense for which
19 registration as a sex offender is required pursuant to article six-C of
20 the correction law. For the purposes of this section, where the
21 [~~defendant~~] applicant is convicted of more than one eligible offense,
22 [~~committed as part of the same criminal transaction as defined in subdi-~~
23 ~~vision two of section 40.10 of this chapter, those offenses shall be~~
24 ~~considered one eligible offense~~] charged in more than one count in the
25 same indictment, information or complaint, or where the applicant was

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

LBD07724-01-5

1 convicted of more than one eligible offense charged in multiple indict-
2 ments, informations or complaints filed in the same court prior to the
3 entry of judgment on any of such indictments, informations or
4 complaints, all such offenses shall be considered one eligible offense.

5 (b) "Sentencing judge" shall mean the judge who pronounced sentence
6 upon the conviction under consideration, or if that judge is no longer
7 sitting in a court in the jurisdiction in which the conviction was
8 obtained, any other judge who is sitting in the criminal court where the
9 judgment of conviction was entered.

10 (c) "Prosecutor" shall mean the prosecutor's office that prosecuted
11 the eligible offense.

12 1-a. The chief administrator of the courts shall, pursuant to section
13 10.40 of this chapter, prescribe a form application which may be used by
14 a defendant to apply for sealing pursuant to this section. Such form
15 application shall include all the essential elements required by this
16 section to be included in an application for sealing. Nothing in this
17 subdivision shall be read to require a defendant to use such form appli-
18 cation to apply for sealing.

19 2. (a) [~~A defendant~~] An individual who has been convicted of up to
20 [~~two~~] five eligible criminal offenses but not more than [~~one~~] two felony
21 [~~offense~~] offenses may apply to the court in which [~~he or she~~] such
22 individual was convicted of the most serious eligible offense to have
23 such conviction or convictions sealed. If all offenses are offenses with
24 the same classification, the application shall be made to the court in
25 which the [~~defendant~~] applicant was last convicted.

26 (b) An application shall contain (i) a copy of a certificate of dispo-
27 sition or other similar documentation for any offense for which the
28 [~~defendant~~] applicant has been convicted, or an explanation of why such
29 certificate or other documentation is not available; (ii) a sworn state-
30 ment of the [~~defendant~~] applicant as to whether [~~he or she~~] such appli-
31 cant has filed, or then intends to file, any application for sealing of
32 any other eligible offense; (iii) a copy of any other such application
33 that has been filed; and (iv) a sworn statement as to the conviction or
34 convictions for which relief is being sought[~~, and (v)~~]. Applicants may
35 submit a sworn statement of the reason or reasons why the court should,
36 in its discretion, grant such sealing, along with any supporting
37 documentation.

38 (c) A copy of any application for such sealing shall be served upon
39 the [~~district attorney of the county in which the conviction, or, if~~
40 ~~more than one, the convictions, was or were obtained~~] prosecutor that
41 prosecuted the eligible offense for which a conviction was obtained.
42 The [~~district attorney~~] prosecutor shall notify the court within forty-
43 five days if [~~he or she~~] such prosecutor objects to the application for
44 sealing. Failure to object within this period shall indicate consent to
45 the application.

46 (d) When such application is filed with the court, it shall be
47 assigned to the sentencing judge unless more than one application is
48 filed in which case the application shall be assigned to the local
49 court, county court or the supreme court of the county in which the
50 criminal court is located, who shall request and receive from the divi-
51 sion of criminal justice services a fingerprint based criminal history
52 record of the [~~defendant~~] applicant, including any sealed or suppressed
53 records. The division of criminal justice services also shall include a
54 criminal history report, if any, from the federal bureau of investi-
55 gation regarding any criminal history information that occurred in other
56 jurisdictions. The division is hereby authorized to receive such infor-

1 mation from the federal bureau of investigation for this purpose, and to
2 make such information available to the court, which may make this infor-
3 mation available to the district attorney and the ~~[defendant]~~ applicant.

4 3. The sentencing judge, or local, county or supreme court shall
5 summarily deny the ~~[defendant's]~~ applicant's application when:

6 (a) the ~~[defendant]~~ applicant is required to register as a sex offen-
7 der pursuant to article six-C of the correction law; or

8 (b) the ~~[defendant]~~ applicant has previously obtained sealing of the
9 maximum number of convictions allowable under section 160.58 of ~~[the~~
10 ~~criminal procedure law]~~ this article; or

11 (c) the ~~[defendant]~~ applicant has previously obtained sealing of the
12 maximum number of convictions allowable under subdivision four of this
13 section; or

14 (d) the time period specified in subdivision five of this section has
15 not yet been satisfied; or

16 (e) the ~~[defendant]~~ applicant has an undisposed arrest or charge pend-
17 ing; or

18 (f) the ~~[defendant]~~ applicant was convicted of any crime that is not
19 eligible for sealing under this section after the date of the entry of
20 ~~[judgement]~~ judgment of the last conviction for which sealing is sought;
21 or

22 (g) ~~[the defendant has failed to provide the court with the required~~
23 ~~sworn statement of the reasons why the court should grant the relief~~
24 ~~requested; or~~

25 ~~(h)~~ the ~~[defendant]~~ applicant has been convicted of ~~[two]~~ three or
26 more felonies or more than ~~[two]~~ five crimes.

27 4. Provided that the application is not summarily denied for the
28 reasons set forth in subdivision three of this section, ~~[a defendant]~~ an
29 applicant who stands convicted of up to ~~[two]~~ five eligible criminal
30 offenses~~,~~ may obtain sealing of a violation of subdivision one of
31 section eleven hundred ninety-two of the vehicle and traffic law and no
32 more than ~~[two]~~ five eligible offenses but not more than ~~[one]~~ two felo-
33 ny ~~[offense]~~ offenses.

34 5. Any eligible offense may be sealed only after ~~[at least ten years~~
35 ~~have passed since the imposition of the sentence on the defendant's~~
36 ~~latest conviction or, if the defendant was sentenced to a period of~~
37 ~~incarceration, including a period of incarceration imposed in conjunc-~~
38 ~~tion with a sentence of probation, the defendant's latest release from~~
39 ~~incarceration. In calculating the ten year period under this subdivi-~~
40 ~~sion, any period of time the defendant spent incarcerated after the~~
41 ~~conviction for which the application for sealing is sought, shall be~~
42 ~~excluded and such ten year period shall be extended by a period or peri-~~
43 ~~ods equal to the time served under such incarceration.]:~~

44 (a) at least one year has passed since the date of applicant's latest
45 conviction if the applicant was last convicted of a misdemeanor or
46 violation offense. In calculating this period, any period of time the
47 applicant spent incarcerated for this conviction, including a period of
48 incarceration imposed in conjunction with a sentence of probation, shall
49 be excluded and such one year period shall be extended by a period equal
50 to the time served under such incarceration; or

51 (b) at least three years have passed since the date of applicant's
52 latest conviction if the applicant was last convicted of a felony
53 offense. In calculating this period, any period of time the applicant
54 spent incarcerated for this conviction, including a period of carcera-
55 tion imposed in conjunction with a sentence of probation, shall be

1 excluded and such three year period shall be extended by a period equal
2 to the time served under such incarceration.

3 6. Upon determining that the application is not subject to mandatory
4 denial pursuant to subdivision three of this section and that the appli-
5 cation is opposed by the [~~district attorney~~] prosecutor, the sentencing
6 judge or local, county or supreme court shall [~~conduct a hearing on the~~
7 ~~application in order to consider any evidence offered by either party~~
8 ~~that would aid the sentencing judge in his or her decision whether to~~
9 ~~seal the records of the defendant's convictions. No hearing is required~~
10 ~~if the district attorney does not oppose the application] inform the
11 applicant of such applicant's right to supplement their application with
12 additional materials that would aid the sentencing judge in such judge's
13 decision or to a hearing on the application in order to consider argu-
14 ments by either party that would aid the sentencing judge in such
15 judge's decision. Once the applicant indicates whether such applicant
16 intends to proceed with or without supplementation or a hearing, the
17 sentencing judge or local, county or supreme court, may proceed.~~

18 7. [~~In considering any such application, the sentencing judge or coun-~~
19 ~~ty or supreme court shall consider any relevant factors, including but~~
20 ~~not limited to:~~

21 ~~(a) the amount of time that has elapsed since the defendant's last~~
22 ~~conviction;~~

23 ~~(b) the circumstances and seriousness of the offense for which the~~
24 ~~defendant is seeking relief, including whether the arrest charge was not~~
25 ~~an eligible offense;~~

26 ~~(c) the circumstances and seriousness of any other offenses for which~~
27 ~~the defendant stands convicted;~~

28 ~~(d) the character of the defendant, including any measures that the~~
29 ~~defendant has taken toward rehabilitation, such as participating in~~
30 ~~treatment programs, work, or schooling, and participating in community~~
31 ~~service or other volunteer programs;~~

32 ~~(e) any statements made by the victim of the offense for which the~~
33 ~~defendant is seeking relief;~~

34 ~~(f) the impact of sealing the defendant's record upon his or her reha-~~
35 ~~ilitation and upon his or her successful and productive reentry and~~
36 ~~reintegration into society; and~~

37 ~~(g) the impact of sealing the defendant's record on public safety and~~
38 ~~upon the public's confidence in and respect for the law] Upon determin-
39 ing that the application is not subject to mandatory denial pursuant to
40 subdivision three of this section, the sentencing judge or local, county
41 or supreme court shall order sealing, unless the prosecutor shows by
42 clear and convincing evidence that exceptional circumstances weigh
43 against such relief. In determining whether exceptional circumstances
44 exist the court shall consider if the sealing would create an unreason-
45 able risk to public safety, balanced against the benefit of sealing the
46 record upon the applicant's successful and productive reentry and rein-
47 tegration into society.~~

48 8. When a sentencing judge or local, county or supreme court orders
49 sealing pursuant to this section, all official records and papers,
50 including judgments and orders of a court but not including published
51 court decisions or opinions or records and briefs on appeal, relating to
52 the arrests, prosecutions, and convictions, including all duplicates and
53 copies thereof, on file with the division of criminal justice services
54 or any court, police agency or prosecutor's office shall be sealed and
55 not made available to any person or public or private agency except as
56 provided for in subdivision nine of this section; provided, however, the

1 division shall retain any fingerprints, palmprints and photographs, or
2 digital images of the same. The clerk of such court shall immediately
3 notify the commissioner of the division of criminal justice services,
4 the heads of all appropriate police departments and other law enforce-
5 ment agencies, regarding the records that shall be sealed pursuant to
6 this section. The clerk also shall notify any court in which the
7 [~~defendant~~] applicant has stated, pursuant to paragraph (b) of subdivi-
8 sion two of this section, that [~~he or she~~] such applicant has filed or
9 intends to file an application for sealing of any other eligible
10 offense.

11 9. Records sealed pursuant to this section shall be made available to:

12 (a) the [~~defendant~~] applicant or the [~~defendant's~~] applicant's desig-
13 nated agent;

14 (b) qualified agencies, as defined in subdivision nine of section
15 eight hundred thirty-five of the executive law, and federal and state
16 law enforcement agencies, when acting within the scope of their law
17 enforcement duties; or

18 (c) any state or local officer or agency with responsibility for the
19 issuance of licenses to possess guns, when the person has made applica-
20 tion for such a license; or

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

29 (e) the criminal justice information services division of the federal
30 bureau of investigation, for the purposes of responding to queries to
31 the national instant criminal background check system regarding attempts
32 to purchase or otherwise take possession of firearms, as defined in 18
33 USC 921 (a) (3).

34 10. [~~A conviction which is sealed pursuant to this section is included~~
35 ~~within the definition of a conviction for the purposes of any criminal~~
36 ~~proceeding in which the fact of a prior conviction would enhance a~~
37 ~~penalty or is an element of the offense charged.~~

38 ~~11.~~ No [~~defendant~~] applicant shall be required or permitted to waive
39 eligibility for sealing pursuant to this section as part of a plea of
40 guilty, sentence or any agreement related to a conviction for an eligi-
41 ble offense and any such waiver shall be deemed void and wholly unen-
42 forceable.

43 11. Denial under this section is without prejudice to subsequent
44 relief under this section.

45 12. An application under this section, and all pertinent papers and
46 documents, shall be confidential and may not be made available to any
47 person or public or private agency except where specifically authorized
48 by the court.

49 § 2. This act shall take effect immediately.