§ 160.57 Automatic sealing of convictions.

1. Convictions for certain traffic infractions or a crime defined in the laws of this state shall be sealed in accordance with this section 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 shall be sealed upon satisfaction of the following conditions:

(i) for a misdemeanor conviction, at least three years have passed from the defendant's release from incarceration or the imposition of sentence if there was no sentence of incarceration. If the defendant is subsequently convicted of a crime before a prior conviction is sealed pursuant to this section, the calculation of time for such prior conviction shall start upon the same date as the time calculation starts for the subsequent criminal conviction;

(ii) for a felony conviction, at least eight years have passed from the date the defendant was last released from incarceration for the sentence of the conviction eligible for sealing or from the imposition of sentence if there was no sentence of incarceration. A defendant's detention for an alleged violation of parole or post-release supervision shall not interfere with the time calculation prescribed herein unless and until supervision is revoked resulting in the defendant's reincarceration. If the defendant is subsequently convicted of a crime before a prior conviction is sealed pursuant to this section, the calculation of time for such prior conviction shall start upon the same date as the time calculation starts for the subsequent criminal conviction;

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

(iv) the defendant is not currently under the supervision of any probation or parole department for the conviction eligible for sealing;

(v) the conviction is not for an offense defined as a sex offense or sexually violent offense under section one hundred sixty-eight-a of the correction law;

(vi) the conviction is not for a class A felony offense defined in the

penal law, other than class A felony offenses defined in article two hundred twenty of the penal law;

(vii) the defendant is a natural person;

(viii) the defendant does not have a subsequent felony charge pending in another jurisdiction that is not a felony charge related to reproductive or gender affirming care or the possession of cannabis which would not constitute a felony in New York. This subparagraph shall apply if and when appropriate federal authorities grant access to records necessary to query to effectuate the purposes of this subparagraph in an automated manner; and

(ix) the defendant does not have a subsequent felony conviction in another jurisdiction in the preceding eight years that is not a felony conviction related to reproductive or gender affirming care or the possession of cannabis which would not constitute a felony in New York. This subparagraph shall apply if and when appropriate federal authorities grant access to records necessary to query to effectuate the purposes of this subparagraph in an automated manner.

(c) If, after the applicable period of time for the sealing of a conviction has been satisfied, the conviction remains ineligible for sealing pursuant to subparagraphs (iii), (iv), (viii) or (ix) of paragraph (b) of this subdivision, the office of court administration shall subsequently check for eligibility no less than quarterly and upon subsequent checks, or the receipt of a form in accordance with paragraph (dd) of subdivision two of section two hundred twelve of the judiciary law, the conviction shall be sealed if all other conditions for sealing under this section are satisfied.

(d) In accordance with all other applicable laws, rules, and regulations regarding the scope, access, use, disclosure, confidentiality and retention of criminal history information, records of convictions sealed pursuant to this section including photographs, photographic plates or proofs, palmprints, fingerprints or retina scans shall not be accessed by or made available to any person or public or private agency, except for:

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

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

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

(iv) the court, prosecutor, and defense counsel if the defendant becomes a witness in a criminal proceeding;

(v) the court and parties if the defendant becomes a witness or party in a civil proceeding;

(vi) when an individual is a defendant in a criminal proceeding or proceedings brought in a criminal court pursuant to article six-C of the correction law and the sealed records of conviction of a third party are integral to their defense. In such instances, use of sealed records of conviction shall be requested 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 is where the action is pending. The applicant must demonstrate to the satisfaction of the court that the records will be used for the purpose of this subparagraph;

(vii) individuals or entities that are required by a local law in effect one year prior to the chapter of the laws of two thousand twenty-three that added this section, a state law, or a federal law or regulation to request and receive a fingerprint-based check of criminal history information. Nothing herein shall prohibit the commissioner of education or the office of school personnel review and accountability from receiving or using convictions sealed pursuant to this section for purposes of subdivisions seven, seven-a and seven-b of section three hundred five of the education law;

(viii) individuals or entities that are authorized by a local law in effect one year prior to the chapter of the laws of two thousand twenty-three that added this section, a state law, or a federal law or regulation to request and receive a fingerprint-based check of criminal history information in relation to the individual's fitness to have responsibility for the safety and well-being of children or adolescents, elderly individuals, individuals with disabilities, or otherwise vulnerable populations. The division of criminal justice services shall maintain an up to date list of citations of the local, state, and federal statutes or federal regulations authorizing the access described

herein;

(ix) 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 or peace 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;

(x) 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);

(xi) 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;

(xii) 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;

(xiii) 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 otherwise authorized by law or legal process to be disclosed in furtherance of 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 by the chief administrator of the courts pursuant to paragraph (ee) of subdivision

two of section two hundred twelve of the judiciary law;

(xiv) for the purpose of collection of restitution, reparation, fines, surcharges, or fees imposed. 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, town court, village court, or criminal court of the city of New York provided that such court is where the action is pending. The applicant must demonstrate to the satisfaction of the court that the records will be used for the purpose of this subparagraph;

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

(xvi) the state education department for the purposes of investigating professional misconduct as defined in subparagraph (i) of paragraph (a) of subdivision five of section sixty-five hundred nine of the education law, consideration of restoration of a professional license pursuant to section sixty-five hundred eleven of the education law, or determinations for issuing a license to practice a profession or issuing certificates and privileges for which prior licensure is required, for the professions under articles one hundred thirty-one, one hundred thirty-one-b, one hundred thirty-two, one hundred thirty-three, one hundred thirty-four, one hundred thirty-five, one hundred thirty-six, one hundred thirty-seven, one hundred thirty-nine, one hundred forty, one hundred forty-one, one hundred forty-three, one hundred forty-four, one hundred forty-five, one hundred forty-seven, one hundred forty-nine, one hundred fifty-three, one hundred fifty-four, one hundred fifty-five, one hundred fifty-six, one hundred fifty-seven, one hundred fifty-nine, one hundred sixty, one hundred sixty-two, one hundred sixty-three, one hundred sixty-four, and one hundred sixty-seven as such professions are defined in title eight of the education law, provided that the state education department certifies to the division of criminal justice services that it is investigating an individual licensed to practice a profession pursuant to article one hundred thirty of the education law for professional misconduct as defined in paragraph (a) of subdivision five of section sixty-five hundred nine of the education law, considering restoration of a professional license pursuant to section sixty-five hundred eleven of the education law, or making a determination for issuing a license to practice a profession or issuing

certificates and privileges for which prior licensure is required as appropriate. Provided, further, that the board of regents may consider any prior conviction that formed the basis of a determination of the board of regents in a disciplinary proceeding pursuant to section sixty-five hundred ten of the education law and the rules and regulations promulgated pursuant thereto in an application for reconsideration, even if such conviction later becomes sealed pursuant to this section; and

(xvii) the office of mental health and the office for people with developmental disabilities, where such agencies are statutorily authorized to receive such information, provided further, that such information may also be made available for case review under section 10.05 of the mental hygiene law, as well as to providers licensed, funded, designated, certified or otherwise authorized by the office of mental health or the office for people with developmental disabilities, where such information is included in the clinical record of any person under the care of or receiving services from such provider or program.

(e) Where the sealing required by this section has not taken place, including where supporting court records cannot be located or have been destroyed, and a defendant or their attorney submits a valid form in accordance with paragraph (dd) of subdivision two of section two hundred twelve of the judiciary law of such fact to the office of court administration, such conviction shall be sealed as set forth in this subdivision within thirty days of the receipt of such form.

(f) The department of corrections and community supervision, in coordination with the division of criminal justice services, shall provide the office of court administration with the data necessary to determine appropriate records to be sealed pursuant to this section, including but not limited to (i) the date or dates of release from state incarceration of individuals who have a sentence of incarceration for a felony conviction, and (ii) the date or dates of initial parole or post-release supervision and corresponding date or dates of discharge, as applicable.

(g) The chief administrative officer of each local correctional facility shall provide the office of court administration with the data necessary to determine appropriate records to be sealed pursuant to this section, including but not limited to the date or dates of release of

individuals who have satisfied a definite sentence of imprisonment.

2. Upon the sealing of a conviction pursuant to this section the office of court administration shall immediately notify the division of criminal justice services, the court of conviction, county clerks and the heads of all appropriate police and sheriff departments, prosecutors' offices and law enforcement agencies that the conviction is sealed. Upon receipt of such notification, records of or relating to such conviction shall be immediately sealed as follows:

(a) Every photograph of the defendant and photographic plates or proof, and all palmprints, fingerprints and retina scans taken or made of the defendant in regard to the sealed conviction, and all duplicates, reproductions, and copies thereof, except a digital fingerprint that is on file with the division of criminal justice services for a conviction that has not been sealed pursuant to this section, shall be marked as sealed by any entity notified under this subdivision having any such photograph, photographic plate or proof, palmprint, fingerprints or retina scan in its possession or under its control by conspicuously indicating on the face of the record or at the beginning of the digitized file of the record that the record has been designated as sealed.

(b) Every official record and paper and duplicates and copies thereof, including, but not limited to, judgments and orders of a court but not including published court decisions or opinions or records and briefs on appeal, relating to the sealed conviction, on file with the entity notified under this subdivision shall be marked as sealed by conspicuously indicating on the face of the record or at the beginning of the digitized file of the record that the record has been designated as sealed.

(c) Entities subject to the requirements of this subdivision shall not use or access such sealed information unless otherwise authorized pursuant to this section or any other section of law.

(d) Nothing in this section shall be construed to interfere with the applicable laws, rules and regulations requiring the division of criminal justice services to administer and maintain criminal history records as set forth in article thirty-five of the executive law.

3. (a) Nothing in this section requires the sealing or destruction of DNA information maintained in the New York state DNA database, in accordance with article forty-nine-B of the executive law, of an individual whose conviction is sealed under this section.

(b) Nothing in this section requires the sealing or destruction of records maintained by the department of motor vehicles, and nothing in this section shall be construed to contravene the vehicle and traffic law, the federal driver's privacy protection act (18 U.S.C 2721 et. seq.), the REAL ID Act of 2005 (Public Law 109-13; 49 U.S.C. 30301 note), section 7209 of the Intelligence Reform and Terrorism Prevention Act of 1986 (49 U.S.C. 31311), the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 49 U.S.C. 313), the Motor Carrier Safety Improvement Act of 1999 (Public Law 106-159), or regulations promulgated pursuant to any such chapter or act.

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

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

(e) In any civil action, an official record of a conviction that has been sealed pursuant to this section may not be introduced as evidence of negligence against a person or entity that provided employment, contract labor or services, volunteer work, licensing, tenancy, a home

purchase, a mortgage, an education, a loan, or insurance if such record was sealed and was not provided to the person or entity by or on behalf of a governmental entity in accordance with this section in response to such person's or entity's authorized and timely request for conviction history information.

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

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

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

6. The office of court administration shall make diligent efforts to promptly seal all conviction records eligible for sealing under this section where such convictions were entered on or before the effective date of this section and, in any event, shall ensure sealing of such convictions is complete no later than three years after such effective date.

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

8. Nothing in this section shall be construed to permit sealing of a conviction before the expiration or termination of a sentence of incarceration, parole, probation, or post-release supervision for such conviction.

9. Nothing in this section shall be construed to affect or invalidate any active order of protection issued in relation to a conviction sealed under this section.

10. Nothing in this section shall be construed to require or authorize the discharge of the requirement to pay any restitution, reparation, fines, surcharges, or fees imposed for a conviction sealed under this section or the sealing of a criminal or civil proceeding for the collection of any such amount due, unless such proceeding is otherwise eligible for sealing under this section or any other provision of law.