

**Proposed Amendment to Criminal Procedure Law § 160.60
To Correct Unforeseen Gaps in Sealing Law Protections**

Proposed amendment

To correct unintended oversights in sealing laws enacted to prevent the inappropriate disclosure or use by employers of sealed criminal history information about records of arrests that did not result in a criminal conviction, amend section 160.60 of the Criminal Procedure Law as follows:

§ 160.60 Effect of termination of criminal actions in favor of the accused, or by youthful offender adjudication or conviction for non criminal offense.

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this chapter, or by a youthful offender adjudication, as defined in section 720.35 of this chapter, or by a conviction for a traffic infraction or violation sealed pursuant to section 160.55 of the criminal procedure law, the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he or she occupied before the arrest and prosecution. The arrest or prosecution shall not operate as a disqualification of any person so adjudicated to pursue or engage in any lawful activity, occupation profession or calling. Except where specifically required or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or prosecution.

Need for amendment

Sealing laws, contained in the Criminal Procedure Law (CPL) and intended to work in tandem with the laws protecting individuals from unfair discrimination based on past arrest or conviction records, are the cornerstones of New York State’s multiple legislative initiatives to secure fair employment and occupational licensing opportunities for qualified individuals with histories of criminal justice system involvement.

The sealing laws are intended to prevent the inappropriate disclosure and use of three categories of stigmatizing criminal history information, all concerning cases involving arrests not leading to a criminal conviction, that the state has determined should not be accessible to or used by most employers in making hiring and other employment decisions. Current laws provide for sealing of records of arrests leading to (1) a termination in the individual’s favor, C.P.L §§ 160.50, 160.60; (2) a youthful offender adjudication, which is “not a judgement of conviction”, C.P.L § 720.35; and (3) a non-criminal conviction, for a violation or traffic infraction, C.P.L § 160.55.¹

As a result of drafting oversights and unforeseen developments that are giving increasing numbers of employers access to sealed criminal history records from sources that simply did not exist when they

¹ New York defines a criminal offense (“crime”) as a misdemeanor or felony, P.L. §§10.00(6). Violations and traffic violations are non-criminal offenses, P.L. §§ 10.00(1), (2), (3), and also defined as “petty offenses” in C.P.L. § 1.20(39).

were originally enacted, however, the current laws sealing youthful offender (YO) adjudications and non-criminal convictions are not affording these records the complete, effective protection they were designed to provide, and are no longer achieving the purposes for which they were enacted. Unlike the sealing provisions covering arrests terminated in an individual's favor, the parallel Criminal Procedure Law provisions sealing records of YO adjudications, and of non-criminal violations and traffic infractions, do not explicitly explain the legal effect of those dispositions, as C.P.L. § 160.60 does. Thus, for YO and non-criminal cases, the law lacks explicit provisions:

- (1) restoring the individual to the legal status he or she had before the arrest occurred. (Section 160.60 accomplishes this by providing that, upon termination of a criminal action in an individual's favor, "the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest and prosecution."); and
- (2) allowing the individual to respond to inquiries eliciting information about the sealed case without being forced to disclose – or being subjected to legal penalty for not disclosing – the information that has been sealed by law. (Section § 160.60 accomplishes this by providing that, "Except where specifically required or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or conviction.")

These omissions in existing statutory protections for YO and non-criminal dispositions have left thousands of the sealing laws intended beneficiaries without important protections the legislature has afforded to others who, like them, also have records of arrests never resulting in a criminal conviction. The problems created by this omission are greatly exacerbated by the fact that neither of New York's two laws specifically protecting individuals with past arrest or conviction records from unfair employment discrimination applies or provides any protection to individuals whose records consist only of YO adjudications or convictions for non-criminal offenses. (See Exec. L. §§ 296(15) and (16); Article 23-A of the Correction Law, Corr. L. §§ 750-755; and proposed amendment to correct this gap in coverage).

To make matters worse, these individuals vulnerability to stigma and discrimination stemming from exposure of their sealed records to employers who see them, even though they have no legal right to do so, is even greater today than when the sealing laws were enacted to prevent precisely those harmful consequences. The sources of, and employers' access to and misuse of sealed criminal history information they have no legal right to see, have expanded exponentially in recent years. Records pertaining to sealed cases involving non-criminal convictions, not yet sealed at the court level, are still freely available on the Office of Court Administration's new electronic criminal history information database (although pending amendments would resolve that problem). Hugely increasing numbers of employers are also using consumer credit agencies to conduct background checks on job applicants and employees – and are being given reports containing sealed criminal history information even though that is a flagrant violation of the state Fair Credit Reporting Act provisions prohibiting any disclosure of information about any arrest or criminal charge unless it resulted in conviction for a criminal offense. (G.B.L. §380-j(a)(1).)

Amending C.P.L. § 160.60 will remedy the problems outlined above, by bringing statutory protections for sealed YO adjudications and non-criminal convictions into line with § 160.60, thus ensuring that the same fundamental protections are afforded by the sealing laws to records of individuals in all three categories of cases where arrests do not end in a criminal conviction.