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New York State Enacts Comprehensive Criminal Conviction Sealing Law

By [Susan Gross Sholinsky](#), [Nancy Gunzenhauser Popper](#), and [Travis Wong](#)*

Enacted through the 2017-2018 New York [State Budget](#), and effective October 7, 2017, a new law in New York State makes it possible for individuals convicted of certain criminal offenses to have up to two convictions sealed.

The New York Criminal Procedure Law (“CPL”) §160.59 (“Law”), allows an individual to file a motion in New York Criminal Court to seal no more than two criminal convictions, one of which may be a felony. In order for an individual to apply for sealing of a conviction under the Law, a period of ten years must have passed between the later of (i) the imposition of the sentence on the defendant's latest conviction or, (ii) if the defendant was sentenced to a period of incarceration, the defendant's latest release from incarceration.¹ Furthermore, the person filing the motion must have not committed any crimes during the ten years since his or her conviction. Individuals who have been convicted of two or more felonies, or more than two crimes, are ineligible to apply for sealing under the Law. Excluded from the convictions that may be sealed are those that are statutorily designated as “violent” felony offenses and sex offenses. Sealing a criminal record neither deletes nor erases it, but rather permanently hides it from most persons and entities, including private and most public employers.

In considering an application to seal convictions, New York courts will consider the following factors:²

- the amount of time that has elapsed since the defendant's last conviction;
- the circumstances and seriousness of the offense for which the defendant is seeking relief;

¹ In calculating the ten year period under this subdivision, any period of time the defendant spent incarcerated after the conviction for which the application for sealing is sought, shall be excluded and such ten year period shall be extended by a period or periods equal to the time served under such incarceration.

² These factors are similar to the eight-factor balancing test that must be considered by employers when reviewing an applicant or employee's criminal conviction history in connection with an employment-related decision, such as a decision whether or not to hire an applicant.

- the circumstances and seriousness of any other offenses for which the defendant stands convicted;
- the character of the defendant, including any measures that the defendant has taken toward rehabilitation, such as participating in treatment programs, work, or schooling, and participating in community service or other volunteer programs;
- any statements made by the victim of the offense for which the defendant is seeking relief;
- the impact of sealing the defendant's record upon his or her rehabilitation and upon his or her successful and productive reentry and reintegration into society; and
- the impact of sealing the defendant's record on public safety and upon the public's confidence in and respect for the law.

The New York State Human Rights Law already makes it an unlawful discriminatory practice for a New York employer to inquire about a sealed conviction on any form of application or otherwise, or to act adversely against the applicant or employee. The Law expands on this prohibition, and makes it unlawful for a job applicant to be required to divulge information pertaining to a conviction that has been sealed pursuant to Section 160.59.

Taken together with previous New York law, New York employers are now prohibited from inquiring about or discriminating against applicants based upon a criminal action, not currently pending, that was concluded in one of the following ways:

- Any arrest or detention that did not end in conviction, or that was terminated in favor of the individual, as defined by CPL § 160.50 (even if not sealed);
- Adjudication as a youthful offender, as defined by CPL § 720.35 (even if not sealed);
- Conviction of a non-criminal violation that has been sealed under CPL § 160.55;
- Convictions that have been sealed under CPL § 160.58; or
- Convictions that have been sealed under CPL § 160.59.

What New York Employers Should Do Now

In light of the Law, New York employers should do the following to ensure compliance:

- Review the updated Law with Human Resources and any managers who will review criminal conviction history as a part of the hiring process.
- Remove questions from applications or criminal conviction questionnaire forms that may relate to convictions that are sealed pursuant to the Law—New York City employers are reminded that questions about criminal conviction history are prohibited prior to a conditional offer of employment.

- Refrain from asking job applicants and current employees questions about convictions that are sealed under the Law.
- Confirm with any background-checking vendors (e.g., consumer reporting agencies) that background check reports received will not contain records that have been sealed pursuant to the Law.
- Carefully document decision-making processes when reviewing background check reports that contain criminal convictions in order to ensure that hiring and/or discharge decisions are not influenced by the presence of a sealed conviction.

For more information about this Advisory, please contact:

Susan Gross Sholinsky
New York
212-351-4789
sgross@ebglaw.com

Nancy Gunzenhauser Popper
New York
212-351-3758
npopper@ebglaw.com

****Travis Wong**, a Law Clerk (not admitted to the practice of law) in the firm's New York office, contributed significantly to the preparation of this Advisory.*

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