

New York Governor Signs Clean Slate Law to Seal Older Criminal Convictions

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On November 16, 2023, New York Governor Kathy Hochul signed a bill into law requiring records of certain past criminal convictions to be sealed. The legislation is intended in part to prevent discrimination in hiring against previously incarcerated individuals who have satisfied their sentences.

Quick Hits

- The Clean Slate Act calls for eligible misdemeanor convictions to be sealed after three years from an individual's satisfaction of a sentence and eligible felony convictions to be sealed after eight years from an individual's satisfaction of a sentence.
- The New York State Human Rights Law has been amended to prohibit discrimination based on a sealed conviction, subject to limited exceptions.
- The law will likely have an impact on employer background checks and hiring practices.

The Clean Slate Act

The signing of the Clean Slate Act, Assembly Bill A01029C and Senate Bill S07551-A, comes months after the bill passed the state legislature in June 2023.

Under A01029C/S07551-A, eligible misdemeanor convictions will be sealed "at least three years" after—or, for felony convictions, "at least eight years" after—an individual's "release from incarceration or the imposition of sentence if there was no sentence of incarceration."

If an individual is convicted of another crime before a prior felony conviction is sealed, the clock for sealing the prior conviction will start from the start of the subsequent conviction. Sealing will not apply to sex offenses or Class A felonies under New York penal law, such as aggravated murder, except for certain bribery offenses. The law also contains exceptions that provide that sealed convictions

may be accessible where “relevant and necessary”—for example, in connection with state and federal laws requiring criminal background checks for licenses and certain employment with responsibility for the safety and well-being of children or adolescents, elderly individuals, individuals with disabilities, or other vulnerable populations.

Further, the law also permits a private right of action by any individual who had a conviction sealed, allowing the individual to collect damages against a person who disclosed the sealed conviction where:

- there was a duty of care owed to the individual with the sealed conviction;
- the person knowingly and willfully breached such duty;
- the disclosure caused injury to the individual; and
- the “breach of that duty was a substantial factor in the events that caused the injury suffered by such person.”
- The law takes effect one year after its signing, after which time the New York State Office of Court Administration will have up to three years to implement processes to identify and seal eligible convictions.

Implications for Employers

The purpose of the law is to prevent discrimination against individuals with certain criminal histories, and it appears to reinforce New York State’s commitment to guarding against such discrimination in employment opportunities.

The law could have an impact on employer background checks and hiring practices, and it could limit the usefulness of background checks. New York is one of as many as a dozen states with similar clean slate laws. The law also could have the effect of expanding the labor pool for employers.

New York City’s Fair Chance Act, or “ban the box law,” which was amended in July 2021, and its regulations already restrict employers from taking adverse employment action against job applicants based on applicants’ arrest or criminal conviction histories.

Next Steps

Employers in New York may want to review their current background check practices and assess the extent to which the new Clean Slate Act will impact their hiring processes.

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