



NEW YORK
CITY BAR

**REPORT ON LEGISLATION BY THE
MASS INCARCERATION TASK FORCE,
CIVIL RIGHTS COMMITTEE,
CORRECTIONS AND COMMUNITY REENTRY COMMITTEE,
AND CRIMINAL JUSTICE OPERATIONS COMMITTEE**

**A.1029-A
S.211-A**

**M. of A. Cruz
Sen. Myrie**

AN ACT to amend the criminal procedure law, the executive law and the correction law, in relation to automatic sealing of certain convictions

The Clean Slate Act

THIS BILL IS APPROVED

The New York City Bar Association (the City Bar), founded in 1870, is an organization of 23,000 members dedicated to improving the administration of justice. We include among our membership lawyers in virtually every area of law practice, including those representing defendants in criminal and civil courts; lawyers in government service, human and civil rights organizations, and public defender offices; as well as judges, attorneys in large firms, small firms, solo practice, and in-house counsel at corporations.

The City Bar’s Mass Incarceration Task Force, Civil Rights Committee, Corrections and Community Reentry and Criminal Justice Operations Committees, call upon the New York State legislature to pass the Clean Slate Act, A.1029-A/S.211-A, legislation that will automatically seal criminal conviction records for civil purposes after reasonable waiting periods.¹ Under Clean Slate, misdemeanor conviction records will be automatically sealed three years after sentencing and felony records seven years after sentencing. The timetable clock continues to tick during any time an individual is serving a sentence in the community, i.e., during parole, probation, or post-release supervision, but sealing will not take effect until community supervision is complete. The sealing

¹ See also “A Pathway Out of Mass Incarceration And Towards a New Criminal Justice System: Recommendations for the New York State Legislature,” New York City Bar Association, May 13, 2021, at 34, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/a-pathway-out-of-mass-incarceration> (all websites last visited Feb. 17, 2023).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

is for civil purposes only: records will remain available for criminal justice purposes, and for gun licensing.

The Clean Slate Act will allow individuals with conviction histories to move forward, achieve financial and housing security for themselves and their families, and become vital participants in New York's recovering economy. For this reason, Clean Slate enjoys broad support from businesses, law firms, faith leaders, organized labor, survivor advocacy groups, and many other sectors.² Championed by Senator Zellnor Myrie and Assemblymember Catalina Cruz and a host of co-sponsors,³ Clean Slate is supported by Governor Hochul⁴ and by New York City Mayor Eric Adams.⁵

New York State needs Clean Slate legislation now more than ever, and it is essential that it pass this term. An astonishing one in seven New Yorkers – more than 2.3 million people – have conviction histories,⁶ because of our state's history of discriminatory policing, prosecution, and mass incarceration, most are Black or brown. Having a conviction history can mean a lifetime of perpetual punishment that continues long after any criminal systems involvement has ended. And it can result in a lifetime of lost opportunities not only for an individual but for their families and communities. A recent Brennan Center study showed, for example, that imprisonment cuts a person's future earnings in half, and that the national economy loses approximately \$55.2 billion each year as a result.⁷

Enacting broad-based, *automatic* records sealing is necessary for real change. Since 1991 New York has automatically sealed both records of arrests terminated favorably to the accused and records of arrests that terminated in a violation-level conviction (C.P.L. §§160.50 and 160.55), but no automatic relief exists for criminal convictions (except where certain criminal charges have

² A full list of supporters is available at <https://static1.squarespace.com/static/5ddd73a9e6903359f16ed36f/t/63ebd37611ea4b0dfd1fabbc/1676399479549/Clean+Slate+021423+Supporters.pdf>. See also, Zach Williams, "Why corporate America is betting on getting Clean Slate into the state budget," City & State, March 30, 2022, <https://www.cityandstateny.com/policy/2022/03/why-corporate-america-betting-getting-clean-slate-state-budget/363847/>.

³ A list of Assembly cosponsors is available at https://assembly.state.ny.us/leg/?default_fld=%0D%0A&leg_video=&bn=a1029&term=0&Summary=Y; a list of Senate cosponsors is available at <https://www.nysenate.gov/legislation/bills/2023/s211>.

⁴ Governor Hochul included key Clean Slate principles in her proposed Executive Budget in 2022, evidencing the broad, statewide support for the values that underpin the Clean Slate Act: strengthened communities, increased economic growth, and enhanced public safety. However, the language proposed in the Executive Budget included timelines and other changes that significantly weakened the bill, and the language was ultimately dropped from the budget. See Nick Reisman, "Bill sealing criminal records in New York fails in budget talks," Spectrum News 1, April 8, 2022, <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/04/08/bill-sealing-criminal-records-in-new-york-fails-in-budget-talks>.

⁵ Nick Reisman, "Advocates for 'clean slate' bill hope for momentum," Spectrum News 1, Feb. 10, 2022, <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/02/10/advocates-for-clean-slate-bill-hope-for-momentum->.

⁶ See Press Release: Governor Cuomo Announces First in the Nation Regulation to Prohibit Insurance Companies from Denying Coverage to Businesses Seeking to Hire Formerly Incarcerated New Yorkers," NYS Dept. of Financial Services, Dec. 21, 2016, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1612212.

⁷ Available at <https://www.brennancenter.org/media/6666/download>.

been decriminalized, such as low-level possession or sale of marijuana through the Marijuana Regulation and Taxation Act). Clearing past criminal conviction records is an extremely limited proposition in New York, requiring an application be filed in court and granted by a judge. And avenues for relief are quite limited: New York’s current application-based sealing law, C.P.L. § 160.59, has strict eligibility criteria (including that an applicant not have been convicted of more than two crimes in their lifetime) that exclude hundreds of thousands of people who need sealing relief. And it is inefficient: too complex for most individuals to navigate without counsel, petition-based sealing spends down legal, judicial and court personnel resources. It is unsurprising that since its 2017 passage to date, fewer than 6% of those eligible to apply have managed to get through the C.P.L. 160.59 process.⁸ By contrast, Clean Slate would provide relief automatically, ending the cascade of civil consequences that many experience as a civil life sentence.

The Clean Slate Act represents a careful balancing of concerns and interests. While the bill limits the use of sealed convictions for most civil purposes, it does not impact access to or consideration of sealed convictions by criminal legal system actors, including criminal courts, prosecutors, and law enforcement. In addition, it provides access to conviction records to federal and state agencies in connection with applications for gun licensing, and to government agencies when state or federal law requires fingerprint screening for licensure or clearance to work in a specific field – e.g., providing services to disabled individuals, senior citizens, and children. This employment-related exception gives deference to the Legislature’s determination that fingerprint-based background checks are mandated for people working in these positions. For fields where state or federal legislators have determined that fingerprinting is not necessary, applicants must be able to access sealing relief.

In addition, the Clean Slate Act addresses employer liability in negligence claims. Not only are sealed convictions inadmissible as evidence in a civil negligence action under Clean Slate, but the bill does not impose any burden on employers to investigate the fact of a prior sealed conviction. Under subdivision 3(f) of proposed C.P.L. § 160.57, an employer “acting reasonably and in good faith, may not have a duty to investigate the fact of a prior conviction that has been sealed...” And while the legislation allows access to sealed records if a party becomes a witness in a civil proceeding to account for evidentiary rules, like witness impeachment, the conviction record cannot otherwise be accessed or introduced by parties in a civil proceeding.⁹

The New York City Bar Association firmly supports the Clean Slate Act and advocates for its swift enactment.

Mass Incarceration Task Force
Sarah J. Berger and Jullian D. Harris-Calvin, Co-Chairs

Civil Rights Committee
Kevin Jason and Kathleen Rubenstein, Co-Chairs

⁸ Source: New York State Division of Criminal Justice Services, <https://www.criminaljustice.ny.gov/crimnet/ojsa/Raise-the-Age-Provision-Sealing-Report.pdf>.

⁹ See A.1029/S.211 C.P.L. § 160.57(1)(d)(iv).

Corrections and Community Reentry Committee
Alexis Flyer and Stephanie A. Holmes, Co-Chairs

Criminal Justice Operations Committee
Ben Wiener, Chair

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Contact

Maria Cilenti, Senior Policy Counsel | 212.382.6655 | mcilenti@nycbar.org
Elizabeth Kocienda, Director of Advocacy | 212.382.4788 | ekocienda@nycbar.org

* This report was first issued in May 2022 during the terms of the following committee chairs: Gregory D. Morril, Chair, Corrections and Community Reentry Committee; and Tess M. Cohen, Chair, Criminal Justice Operations Committee.