

New York Clean Slate Act Will Seal Certain Old Criminal Records, Affecting Employers' Hiring Processes

By Susan M. Corcoran & Robert J. Guidotti

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Meet the Authors



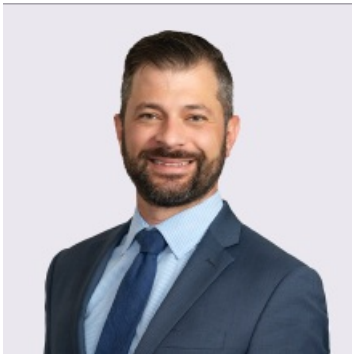
Susan M. Corcoran

(She/Her)

Principal

(914) 872-6871

Susan.Corcoran@jacksonlewis.com



Robert J. Guidotti

Principal

(914) 872-6878

Robert.Guidotti@jacksonlewis.com

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New York has joined the growing number of states that have enacted “clean slate” legislation that will automatically seal certain criminal records. The new law will require employers to review any hiring processes related to an applicant’s criminal history. [The Clean Slate Act](#) will go into effect Nov. 16, 2024, one year from the signing date.

The Act is designed to promote *second chance* hiring and is consistent with New York’s long-standing public policy encouraging employment for persons with past criminal convictions. Under the Act, the conviction records of individuals convicted of certain state crimes will be sealed from public access once the individuals have satisfied their sentence and remain law-abiding citizens for a specified time. This legislation is *not* intended to affect, nor will it change, access to permissible information on *out-of-state* or federal convictions through publicly accessible records. Finally, the Act does not modify employers’ obligations under the federal Fair Credit Reporting Act.

Convictions Eligible

An individual will be given a clean slate (*i.e.*, automatic sealing of misdemeanor and felony criminal convictions) upon meeting the following requirements:

- For a misdemeanor conviction, at least three years have passed since the individual’s release from incarceration or the imposition of sentence if there was no sentence of incarceration.
- For a felony conviction, at least eight years have passed from the date the individual was last released from incarceration, provided:
 - The individual does not have a criminal charge pending; and
 - The individual is not currently under the supervision of any probation or parole department.

Convictions Not Eligible

Not eligible for sealing are Class A felonies for which a maximum sentence of life imprisonment may be imposed (*e.g.*, murder and domestic terror) and convictions requiring registration as a sex offender.

Permissible Access

The following individuals and entities will continue to be eligible to access otherwise sealed records:

- Courts and prosecutors during a new criminal case;
- Law enforcement officers under the scope of an investigation;
- Any entity that is required under state or federal law to conduct a fingerprint-based background check or an entity authorized to conduct a fingerprint-based

background check where a job applicant would be working with children, the elderly, or vulnerable adults (such as public school teachers and police officers); and

- A licensing officer processing a firearm license application.

Additionally, the law will not affect or invalidate any active order of protection, require the destruction of DNA submitted to the statewide DNA database as part of a conviction, or require Department of Motor Vehicles records to be destroyed or sealed.

Next Steps for Employers

As with any new law related to background checks, questions may arise for employers if an individual is confused whether a record is sealed. Employers should expect some candidates might respond, “I thought it was sealed,” when told a potentially disqualifying conviction appears on their background check report.

The state Office of Court Administration will have up to three years to implement the processes appropriate to identify and seal eligible conviction records. Once a record is sealed, unless permitted by statute, an employer typically would not be permitted to inquire about the conviction and an individual will not be required to reveal it in response to a criminal inquiry.

Significantly, the Act does not change an employer’s obligation to conduct a job-related analysis prior to taking an adverse action based on criminal convictions as required by [New York’s Article 23-A](#) (or modify an employer’s obligation to comply with any local requirements, such as [New York City’s Fair Chance Act’s requirements](#)) or prior to denying an employment opportunity based on conviction status. Factors to consider in a job-related analysis include assessing the severity of the crime, nature of the crime, whether the offense affects the applicant’s ability to perform the specific job duties, age at the time of the offense, time elapsed since the offense occurred, rehabilitation efforts, bondability, possession of a certificate of relief from disabilities, New York’s policy to encourage employers to hire applicants with prior convictions, and the interests of the employer to protect its property, staff, and customers.

Employers should consider how to consistently handle potentially disqualifying convictions revealed in background checks, in addition to how to apply the various laws impacting the hiring process, such as any state and local individualized assessment requirements. Employers should review their employment practices with employment counsel for legal compliance and consistency.

If you have any questions about New York’s Clean Slate Act or any related matter, please contact any Jackson Lewis attorney.

(Law clerk Ian Landman contributed to this article.)

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