

# Second chance

## A new law enables some with criminal convictions to clear their records

By ADINA GENN

A new measure adopted by the state legislature in the 2017-18 budget gives New Yorkers with criminal records an opportunity to clear their names.

The provision – the sealing of select criminal records – could give those who qualify the ability to move forward without the stigma of a criminal conviction.

“In a nutshell, the New York State law has now been changed to allow tens of thousands of New Yorkers with limited, non-violent criminal convictions to clear their records and become fully productive members of society again,” said Rick Collins, a founding partner at Collins Gann McCloskey & Barry, a law firm in Mineola.

Collins said he spent more than five years as “one of many people working hard for a long time to get this done. It was a team effort by members of the New York State Bar Association criminal justice section. We worked together for many years and never gave up.”

The measure allows individuals who have sustained a clean record for 10 years to apply to a court to have their record sealed. The state’s bar association also lobbied for additional provisions that made headlines, including raising the age of criminal responsibility from 16 to 18. But the criminal record setting is more wide reaching, experts said.

Experts say the law is overdue.

“For years, criminal defense practitioners have been fighting for a sealing-expungement statute,” said Mark Gann, a past president of the Nassau County Bar Association and a founding partner at Collins Gann. “Too often, a single non-violent criminal conviction causes irreparable damage to an individual’s career opportunities. New

York is one of the last states to recognize that people can redeem themselves, and go on, without having a criminal record follow them forever.”

Claire Gutekunst, president of the New York Bar Association, said the opportunity “gives individuals a second chance and an incentive to turn around their lives.”

With the new measure, the law has been changed so that it is illegal for most employers, banks and others to ask if a person has been convicted of a crime that has been sealed under this criminal procedure law, Collins said

Most misdemeanor and felony convictions are eligible for record sealing under the law, according to Collins. When a record is sealed, it means a conviction cannot be made available to the public and would not appear as part of a civil background check. A driving while intoxicated conviction is the kind of record that is eligible for sealing. Sex offenses, homicides, and other violent felonies, however, are among the crimes that are ineligible for sealing.

Under the new law, two eligible offenses can be sealed, but not more than one eligible felony offense. A person with two or more felony convictions is not eligible to apply for record sealing. To qualify, 10 years must have passed since the imposition of the sentence on the most recent conviction. And there are certain exceptions. For example, law enforcement agencies, including those responsible for issuing gun permits, would have access to those records.

But for many individuals, the provision will be a game-changer, experts said. That’s especially true for those with convictions from more than a decade ago who still find their records



Photo by Judy Walker

**RICK COLLINS: The new law could benefit tens of thousands of New Yorkers.**

are stumbling blocks when applying for employment, housing, education, loans and adoption, Collins said.

Previously, “there’s a box they’ve had to check” on the application, he said. And if the conviction shows up in a background search the person may not get the job and wind up underemployed or unemployed. “Taxpayers foot the bill for social services for people closed out of productive society.”

Those who want their records sealed must apply to the judge who sentenced them, and demonstrate why they deserve this opportunity. The district attorney has the right to oppose the application, especially if there are any aggravating factors. The judge can hold a hearing, and can deny or grant the motion. It’s a process with no guarantees.

Those safeguards help protect the community, said Robert Altchiler, of counsel to Wolf Haldenstein, a New York-based law firm. He said the measure is “incredibly courageous” and applauded the state for taking “this kind of bold action” at a time when “no high ranking government official gets elected by being kind to people” with felonies.

“Up until now, someone who was

convicted for a felony really could not completely pay their debt to society. They’d have a scarlet letter for the rest of their lives. Even if they did something when they were 18, when they were 30 and a completely different person, they were still a convicted felon.”

The law takes effect in about six months, as the fine points still must be implemented, Collins said. And there was no word on whether there would be funds for organizations such as Legal Aid to help the indigent pursue this opportunity.

“The economics of it could play a major role,” Altchiler said.

And he added those who could afford hiring a lawyer to put together an application together might want to “forget it ever happened” and not pursue the opportunity.

But Collins said he’s already received calls from those who want their records sealed.

For some, it’s psychological.

That includes a man who was convicted in the late 1970s.

“He’s never been in trouble all these years and felt it was a burden on his life,” Collins said. “He needed redemption for clearing his name.”