

## Memorandum in Support of Sealing Criminal Convictions

NYSBA #9

March 10, 2017

S. 2006-A, Part J §§48, 48-A

By: BUDGET

A. 3006-A Part J §§48, 48-A

By: BUDGET

Senate Committee: Finance

Assembly Committee: Ways and Means

Effective Date: 180 days after it shall have become  
a law

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

### THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

#### Background

Recognizing that to err is human, the New York State Bar Association in January 2012 approved a report prepared by its Criminal Justice Section regarding the sealing of certain criminal convictions.

All of us from time to time make mistakes. Those involving the violation of a criminal statute can have life-changing consequences, not merely upon the offender, but the offender's family and the community at large, including the tax-payers. Sealing the record of conviction is a legal mechanism that prevents public access, thereby eliminating the public taint of a conviction that makes it harder to find employment, education, housing, etc.

Sealing a person's criminal record requires balancing competing interests. On the one hand, a person with a criminal record has, after a suitable period of lawful living and rehabilitation, an interest in pursuing employment, licensing, housing, education, and other benefits without the often insurmountable obstacle of a prior conviction – in other words, a "second chance." New York State tax-payers also have an interest in ex-offenders finding optimal employment, rather than requiring financial public assistance to make ends meet. Of course, law enforcement authorities may have an interest in knowing an individual's past criminal conduct; nothing in this bill would impede the interests of law enforcement in any way.

Currently, New York State has no general sealing law applicable to adults who are convicted of felonies or misdemeanors. Defendants convicted of a drug offense or a specified offense defined in subdivision five of CPL 410.91 are eligible for a conditional sealing of up to three prior drug misdemeanor convictions (CPL 160.58) provided that they have completed a

judicial diversion program, DTAP program, or other judicially-sanctioned drug-treatment programs of similar duration. However, other than these exceptions for certain qualifying ex-offenders with past serious drug problems, a conviction follows a person to the grave.

Part J §§48, 48-A (the bill) strives to create a balance between the interests of the person seeking a second chance and the interests of law enforcement and the general public.

### **Analysis**

This bill would establish a procedure by which certain low-level, non-violent offenses can be sealed. The bill carves out from eligibility a list of crimes, such as those involving violence or sexual conduct. An individual will not be eligible for sealing an eligible offense if he or she has been convicted of more than two crimes, only one of which may be a felony. The bill also sets forth a ten year waiting period before an application can be made.

Under the bill, the original sentencing court would have jurisdiction to order sealing, which would be sought by a petition submitted by the convicted individual. A copy of the application would be served upon the District Attorney, who has the right to object. Upon request, the court may conduct a hearing to determine if the record should be sealed. The court would consider the circumstances surrounding the offense, the character of the defendant, the defendant's criminal history and civic service record, and the impact of sealing on the defendant's rehabilitation and on any victim of the original crime. The bill includes numerous safeguards to help ensure that only individuals who have earned the right to a second chance are granted one.

A criminal conviction follows a person for the rest of his or her life. This bill intends to give individuals who have been convicted of an eligible offense, but have since proven to have abided by the law, a second chance.

### **Conclusion**

The bill is consistent with the report approved by the New York State Bar Association, which advocates making eligible for sealing a larger number of misdemeanor convictions and some felony convictions. We believe that sealing a wider array of convictions would create life changing circumstances for individuals who have made mistakes in life, paid for those mistakes, and gone on to live positive lives without subsequent incidences of criminal behavior.

Further, the impact of providing a second chance will be a strong incentive for a person to be a productive member of his or her community, and will also offer relief to the tax-payers by helping ex-offenders get back on their feet.

The Association's ultimate goal is to implement the recommendations in its Sealing Report. However, we recognize the need to start with a bill that, while not identical to our proposal, would provide significant benefit to possibly thousands of individuals.

Based on the foregoing, the New York State Bar Association strongly **SUPPORTS** the passage of the subject provisions in this legislation.