NYSBA

Staff Memorandum

HOUSE OF DELEGATES
Agenda Item #11

REQUESTED ACTION: Approval of a resolution offered by the Criminal Justice Section with respect to legislation to permit the sealing of criminal records.

Attached is a report from the Criminal Justice Section which discusses sealing of criminal records. As set forth in the report, a criminal conviction can have a serious effect on the ability of a person to obtain employment, and many New York occupational licenses and certifications are not available to a person with a criminal conviction. The report outlines the findings of the NYSBA Special Committee on Collateral Consequences of Criminal Proceedings, approved by the House of Delegates in 2006, with respect to sealing, and notes that the Special Committee recommended that "[t]he Legislature should create a new sealing provision to seal, automatically or upon application, certain felony and misdemeanor convictions after a certain period."

The report notes that currently, New York does not have a statute governing the sealing of records; however, two bills have been introduced in the State Legislature to address this subject. The report analyzes the two bills and then reviews a sealing statute in effect in New Jersey. The report then outlines elements that should be contained in a New York sealing statute and recommends an amendment to the Criminal Procedure Law to add a new section 160.65 to permit a person to apply to seal a record of conviction. The proposed statute appears at page 27 of the report.

A recent Op-Ed article in the *New York Times* by Alfred Blumstein, a professor at Carnegie-Mellon University, and Kiminori Nakamori, a professor at the University of Maryland, contains a discussion of the effects of criminal convictions after completion of a sentence and recommends the adoption of a sealing statute. The article is available online at
http://www.nytimes.com/2012/01/10/opinion/paying-a-price-long-after-the-crime.html?_r=1&partner=rssnyt&emc=rss.

The report was presented on an informational basis at the November 5 meeting. The section has been modified to provide further analysis and detailed recommendations.

The report will be presented at the January 27 meeting by Richard D. Collins and Jay Shapiro, co-chairs of the Section's Sealing Committee, and Xavier R. Donaldson, the Section's delegate to the House.