

1139

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. LENTOL -- Multi-Sponsored by -- M. of A. FARRELL, GOTTFRIED, HEVESI, HOOPER, JEFFRIES, LAVINE, MAISEL, O'DONNELL, ORTIZ, PEOPLES-STOKES, PERRY, PRETLOW, ROBINSON, SCARBOROUGH, SCHIMEL, TITUS, WRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to permitting the sealing of records of certain nonviolent misdemeanor or non-sexual misdemeanor offenses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "second
2 chance for ex-offenders act".
3 S 2. The criminal procedure law is amended by adding a new section
4 160.65 to read as follows:
5 S 160.65 CONDITIONAL SEALING OF CERTAIN MISDEMEANOR OFFENSES.
6 1. FOR THE PURPOSES OF THIS SECTION, THE TERM "ELIGIBLE MISDEMEANOR"
7 SHALL BE A MISDEMEANOR OFFENSE DEFINED IN THE PENAL LAW, PROVIDED THAT
8 AN ELIGIBLE MISDEMEANOR SHALL NOT MEAN A MISDEMEANOR OFFENSE DEFINED IN
9 ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED THIRTY, ONE HUNDRED THIRTY-FIVE,
10 ONE HUNDRED FIFTY, TWO HUNDRED THIRTY-FIVE, TWO HUNDRED FORTY-FIVE, TWO
11 HUNDRED SIXTY, TWO HUNDRED SIXTY-THREE, TWO HUNDRED SIXTY-FIVE OR ARTI-
12 CLE FOUR HUNDRED OF THE PENAL LAW. AN ELIGIBLE MISDEMEANOR SHALL NOT
13 INCLUDE ANY ONE OR MORE OF THE FOLLOWING: KILLING OR INJURING A POLICE
14 ANIMAL AS DEFINED IN SECTION 195.06, HARMING AN ANIMAL TRAINED TO AID A
15 PERSON WITH A DISABILITY IN THE SECOND DEGREE AS DEFINED IN SECTION
16 195.11, HARMING AN ANIMAL TRAINED TO AID A PERSON WITH A DISABILITY IN
17 THE FIRST DEGREE AS DEFINED IN SECTION 195.12, PROMOTING PROSTITUTION IN
18 THE FOURTH DEGREE AS DEFINED IN SECTION 230.20, RIOT IN THE SECOND
19 DEGREE AS DEFINED IN SECTION 240.05, INCITING TO RIOT AS DEFINED IN
20 SECTION 240.08, AGGRAVATED HARASSMENT IN THE SECOND DEGREE AS DEFINED IN
21 SUBDIVISION THREE OF SECTION 240.30, CRIMINAL INTERFERENCE WITH HEALTH

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 CARE SERVICES OR RELIGIOUS WORSHIP IN THE SECOND DEGREE AS DEFINED IN
2 SECTION 240.70, HARMING A SERVICE ANIMAL IN THE SECOND DEGREE AS DEFINED
3 IN SECTION 242.10, DISSEMINATION OF AN UNLAWFUL SURVEILLANCE IMAGE IN
4 THE SECOND DEGREE AS DEFINED IN SECTION 250.55, OR ANY SPECIFIED OFFENSE
5 SUBJECT TO THE PROVISION RELATING TO HATE CRIMES AS DEFINED IN SECTION
6 485.05 OF THE PENAL LAW. ADDITIONALLY, AN ELIGIBLE MISDEMEANOR SHALL NOT
7 INCLUDE CRIMINAL SOLICITATION, CONSPIRACY, ATTEMPT, OR CRIMINAL FACILI-
8 TATION TO COMMIT ANY VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02
9 OF THE PENAL LAW, OR ANY SEX OFFENSE AS DEFINED UNDER SUBSECTION TWO OF
10 SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW.

11 2. A PERSON HAVING A CONVICTION FOR NO MORE THAN THREE MISDEMEANORS,
12 WHO DOES NOT STAND CONVICTED OF ANY FELONY, OR WHO IS NOT REQUIRED TO
13 MAINTAIN REGISTRATION UNDER ARTICLE SIX-C OF THE CORRECTION LAW, MAY
14 PETITION THE COURT TO CONDITIONALLY SEAL UP TO THREE ELIGIBLE MISDEMEA-
15 NORS WHEN:

16 (A) AT LEAST FIVE YEARS HAVE PAST SINCE THE COMPLETION OF A SENTENCE
17 ON AN ELIGIBLE MISDEMEANOR; AND

18 (B) SUCH PERSON HAS NOT BEEN CONVICTED OF AN OFFENSE DURING THE LAST
19 FIVE YEARS AND IS NOT THE SUBJECT OF AN UNDISPOSED ARREST.

20 3. THE PETITION AUTHORIZED BY THIS SECTION SHALL BE FILED IN THE COURT
21 OF RECORD THAT LAST IMPOSED A SENTENCE UPON PETITIONER FOR AN ELIGIBLE
22 MISDEMEANOR. ON THE DEFENDANT'S MOTION, THE COURT MAY ORDER THAT ALL
23 OFFICIAL RECORDS AND PAPERS RELATING TO THE ARREST, PROSECUTION AND
24 CONVICTION RECORDS FOR NO MORE THAN THREE OF THE DEFENDANT'S PRIOR
25 ELIGIBLE MISDEMEANORS BE CONDITIONALLY SEALED. THE COURT MAY ONLY SEAL
26 THE RECORDS OF THE DEFENDANT'S ARRESTS, PROSECUTIONS AND CONVICTIONS
27 WHEN:

28 (A) THE SENTENCING COURT HAS REQUESTED AND RECEIVED FROM THE DIVISION
29 OF CRIMINAL JUSTICE SERVICES OR THE FEDERAL BUREAU OF INVESTIGATION A
30 FINGERPRINT BASED CRIMINAL HISTORY RECORD OF THE DEFENDANT, INCLUDING
31 ANY SEALED OR SUPPRESSED INFORMATION. THE DIVISION OF CRIMINAL JUSTICE
32 SERVICES SHALL ALSO INCLUDE A CRIMINAL HISTORY REPORT, IF ANY, FROM THE
33 FEDERAL BUREAU OF INVESTIGATION REGARDING ANY CRIMINAL HISTORY INFORMA-
34 TION THAT OCCURRED IN OTHER JURISDICTIONS. THE DIVISION IS HEREBY
35 AUTHORIZED TO RECEIVE SUCH INFORMATION FROM THE FEDERAL BUREAU OF INVE-
36 TIGATION FOR THIS PURPOSE. THE PARTIES SHALL BE PERMITTED TO EXAMINE
37 THESE RECORDS;

38 (B) THE DEFENDANT OR COURT HAS IDENTIFIED THE MISDEMEANOR CONVICTION
39 OR CONVICTIONS FOR WHICH RELIEF MAY BE GRANTED;

40 (C) THE COURT HAS RECEIVED DOCUMENTATION THAT THE SENTENCES IMPOSED ON
41 THE ELIGIBLE MISDEMEANOR CONVICTIONS HAVE BEEN COMPLETED, OR IF NO SUCH
42 DOCUMENTATION IS REASONABLY AVAILABLE, A SWORN AFFIDAVIT THAT THE
43 SENTENCES IMPOSED ON THE PRIOR MISDEMEANORS HAVE BEEN COMPLETED; AND

44 (D) THE COURT HAS NOTIFIED THE DISTRICT ATTORNEY OF EACH JURISDICTION
45 IN WHICH THE DEFENDANT HAS BEEN CONVICTED OF AN OFFENSE WITH RESPECT TO
46 WHICH SEALING IS SOUGHT, AND THE COURT OR COURTS OF RECORD FOR SUCH
47 OFFENSES, THAT THE COURT IS CONSIDERING SEALING THE RECORDS OF THE
48 DEFENDANT'S ELIGIBLE MISDEMEANOR CONVICTIONS. BOTH THE DISTRICT ATTORNEY
49 AND THE COURT SHALL BE GIVEN A REASONABLE OPPORTUNITY, WHICH SHALL NOT
50 BE LESS THAN THIRTY DAYS, IN WHICH TO COMMENT AND SUBMIT MATERIALS TO
51 AID THE COURT IN MAKING SUCH A DETERMINATION. WHEN THE COURT NOTIFIES A
52 DISTRICT ATTORNEY OF A SEALING APPLICATION, THE DISTRICT ATTORNEY SHALL
53 PROVIDE NOTICE TO THE VICTIM, IF ANY, OF THE SEALING APPLICATION BY
54 MAILING WRITTEN NOTICE TO THE VICTIM'S LAST-KNOWN ADDRESS. FOR PURPOSES
55 OF THIS SECTION "VICTIM" MEANS ANY PERSON WHO HAS SUSTAINED PHYSICAL OR

1 FINANCIAL INJURY TO PERSON OR TO PROPERTY AS A DIRECT RESULT OF THE
2 MISDEMEANOR CRIME OR MISDEMEANOR CRIMES FOR WHICH SEALING IS APPLIED.

3 4. AT THE REQUEST OF THE DEFENDANT OR THE DISTRICT ATTORNEY OF A COUN-
4 TY IN WHICH THE DEFENDANT COMMITTED A CRIME THAT IS THE SUBJECT OF THE
5 SEALING APPLICATION, THE COURT MAY CONDUCT A HEARING TO CONSIDER AND
6 REVIEW ANY RELEVANT EVIDENCE OFFERED BY EITHER PARTY THAT WOULD AID THE
7 COURT IN ITS DECISION WHETHER TO SEAL THE RECORDS OF THE DEFENDANT'S
8 ARRESTS, PROSECUTIONS AND CONVICTIONS. IN MAKING SUCH A DETERMINATION,
9 THE COURT SHALL CONSIDER ANY RELEVANT FACTORS, INCLUDING BUT NOT LIMITED
10 TO:

11 (A) THE CIRCUMSTANCES AND SERIOUSNESS OF THE OFFENSE OR OFFENSES THAT
12 RESULTED IN THE CONVICTION OR CONVICTIONS;

13 (B) THE CHARACTER OF THE DEFENDANT, INCLUDING WHAT STEPS THE PETITION-
14 ER HAS TAKEN SINCE THE TIME OF THE OFFENSE TOWARD PERSONAL REHABILI-
15 TATION, INCLUDING TREATMENT, WORK, SCHOOL, OR OTHER PERSONAL HISTORY
16 THAT DEMONSTRATES REHABILITATION;

17 (C) THE DEFENDANT'S CRIMINAL HISTORY;

18 (D) THE IMPACT OF SEALING THE DEFENDANT'S RECORDS UPON HIS OR HER
19 REHABILITATION AND HIS OR HER SUCCESSFUL AND PRODUCTIVE REENTRY AND
20 REINTEGRATION INTO SOCIETY, AND ON PUBLIC SAFETY; AND

21 (E) ANY STATEMENTS MADE BY THE VICTIM OF THE OFFENSE WHERE THERE IS IN
22 FACT A VICTIM OF THE CRIME.

23 5. AFTER A COURT DECLARES ITS WILLINGNESS TO GRANT THE DEFENDANT'S
24 REQUEST FOR CONDITIONAL SEALING PURSUANT TO THIS SECTION, BUT BEFORE THE
25 COURT ORDERS SEALING PURSUANT TO THIS SECTION, THE DEFENDANT SHALL PAY A
26 MANDATORY CONDITIONAL SEALING FEE. THE MANDATORY CONDITIONAL SEALING FEE
27 WILL BE A FEE OF EIGHTY DOLLARS, HOWEVER, SUCH FILING FEE SHALL BE
28 WAIVED IN CASES OF INDIGENCE. THE MANDATORY FILING FEE SHALL BE PAID TO
29 THE CLERK OF THE COURT OR ADMINISTRATIVE TRIBUNAL THAT RENDERED THE
30 CONVICTION. WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION
31 OF THE MANDATORY FILING FEE, THE COLLECTING AUTHORITY IF IT IS AN ADMIN-
32 ISTRATIVE TRIBUNAL, OR A TOWN OR VILLAGE JUSTICE COURT, SHALL THEN PAY
33 SUCH MONEY TO THE STATE COMPTROLLER WHO SHALL DEPOSIT SUCH MONEY IN THE
34 STATE TREASURY PURSUANT TO SECTION ONE HUNDRED TWENTY-ONE OF THE STATE
35 FINANCE LAW TO THE CREDIT OF THE INDIGENT LEGAL SERVICES FUND. IF SUCH
36 COLLECTING AUTHORITY IS ANY OTHER COURT OF THE UNIFIED COURT SYSTEM, IT
37 SHALL, WITHIN SUCH PERIOD, PAY SUCH MONEY ATTRIBUTABLE TO THE MANDATORY
38 FILING FEE TO THE STATE COMMISSIONER OF TAXATION AND FINANCE TO THE
39 CREDIT OF THE INDIGENT LEGAL SERVICES FUND ESTABLISHED BY SECTION NINE-
40 TY-EIGHT-B OF THE STATE FINANCE LAW.

41 6. WHEN A COURT ORDERS SEALING PURSUANT TO THIS SECTION, ALL OFFICIAL
42 RECORDS AND PAPERS RELATING TO THE ARRESTS, PROSECUTIONS, AND
43 CONVICTIONS, INCLUDING ALL DUPLICATES AND COPIES THEREOF, ON FILE WITH
44 THE DIVISION OF CRIMINAL JUSTICE SERVICES OR ANY COURT SHALL BE SEALED
45 AND NOT MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCY;
46 PROVIDED, HOWEVER, THE DIVISION SHALL RETAIN ANY FINGERPRINTS, PALM-
47 PRINTS, PHOTOGRAPHS, OR DIGITAL IMAGES OF THE SAME.

48 7. WHEN THE COURT ORDERS SEALING PURSUANT TO THIS SECTION, THE CLERK
49 OF SUCH COURT SHALL IMMEDIATELY NOTIFY THE COMMISSIONER OF THE DIVISION
50 OF CRIMINAL JUSTICE SERVICES, AND ANY COURT THAT SENTENCED THE DEFENDANT
51 FOR AN OFFENSE WHICH HAS BEEN CONDITIONALLY SEALED, REGARDING THE
52 RECORDS THAT SHALL BE SEALED PURSUANT TO THIS SECTION.

53 8. RECORDS SEALED PURSUANT TO THIS SUBDIVISION SHALL BE MADE AVAILABLE
54 TO:

55 (A) THE DEFENDANT OR THE DEFENDANT'S DESIGNATED AGENT;

(B) QUALIFIED AGENCIES, AS DEFINED IN SUBDIVISION NINE OF SECTION EIGHT HUNDRED THIRTY-FIVE OF THE EXECUTIVE LAW, AND FEDERAL AND STATE LAW ENFORCEMENT AGENCIES, WHEN ACTING WITHIN THE SCOPE OF THEIR LAW ENFORCEMENT DUTIES;

(C) ANY STATE OR LOCAL OFFICER OR AGENCY WITH RESPONSIBILITY FOR THE ISSUANCE OF LICENSES TO POSSESS GUNS, WHEN THE PERSON HAS MADE APPLICATION FOR SUCH A LICENSE; OR

(D) ANY PROSPECTIVE EMPLOYER OF A POLICE OFFICER OR PEACE OFFICER AS THOSE TERMS ARE DEFINED IN SUBDIVISIONS THIRTY-THREE AND THIRTY-FOUR OF SECTION 1.20 OF THIS CHAPTER, IN RELATION TO AN APPLICATION FOR EMPLOYMENT AS A POLICE OFFICER OR PEACE OFFICER; PROVIDED, HOWEVER, THAT EVERY PERSON WHO IS AN APPLICANT FOR THE POSITION OF POLICE OFFICER OR PEACE OFFICER SHALL BE FURNISHED WITH A COPY OF ALL RECORDS OBTAINED UNDER THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION THERE-TO.

9. THE COURT SHALL NOT SEAL THE DEFENDANT'S RECORD PURSUANT TO THIS SECTION WHILE ANY CHARGED OFFENSE IS PENDING.

10. IF, SUBSEQUENT TO THE SEALING OF RECORDS PURSUANT TO THIS SUBDIVISION, THE PERSON WHO IS THE SUBJECT OF SUCH RECORDS IS ARRESTED FOR OR FORMALLY CHARGED WITH ANY MISDEMEANOR OR FELONY OFFENSE, SUCH RECORDS SHALL BE UNSEALED IMMEDIATELY AND REMAIN UNSEALED; PROVIDED, HOWEVER, THAT IF SUCH NEW MISDEMEANOR OR FELONY ARREST RESULTS IN A TERMINATION IN FAVOR OF THE ACCUSED AS DEFINED IN SUBDIVISION THREE OF SECTION 160.50 OF THIS ARTICLE OR BY CONVICTION FOR A NON-CRIMINAL OFFENSE AS DESCRIBED IN SECTION 160.55 OF THIS ARTICLE, SUCH UNSEALED RECORDS SHALL BE CONDITIONALLY SEALED PURSUANT TO THIS SECTION.

S 3. Subdivision 16 of section 296 of the executive law, as separately amended by section 3 of part N and section 14 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law, OR BY A CONVICTION WHICH IS SEALED PURSUANT TO SECTION 160.65 OF THE CRIMINAL PROCEDURE LAW, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law, OR BY A CONVICTION WHICH IS SEALED PURSUANT TO SECTION 160.65 OF THE CRIMINAL

1 PROCEDURE LAW. The provisions of this subdivision shall not apply to the
2 licensing activities of governmental bodies in relation to the regu-
3 lation of guns, firearms and other deadly weapons or in relation to an
4 application for employment as a police officer or peace officer as those
5 terms are defined in subdivisions thirty-three and thirty-four of
6 section 1.20 of the criminal procedure law; provided further that the
7 provisions of this subdivision shall not apply to an application for
8 employment or membership in any law enforcement agency with respect to
9 any arrest or criminal accusation which was followed by a youthful
10 offender adjudication, as defined in subdivision one of section 720.35
11 of the criminal procedure law, or by a conviction for a violation sealed
12 pursuant to section 160.55 of the criminal procedure law, or by a
13 conviction which is sealed pursuant to section 160.58 of the criminal
14 procedure law, OR BY A CONVICTION WHICH IS SEALED PURSUANT TO SECTION
15 160.65 OF THE CRIMINAL PROCEDURE LAW.

16 S 4. This act shall take effect on the one hundred eightieth day after
17 it shall have become a law and shall apply to all convictions occurring
18 prior to, on, and after such date.