

4026--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 30, 2013

Introduced by M. of A. LENTOL -- Multi-Sponsored by -- M. of A. FARRELL, GOTTFRIED, HEVESI, HOOPER, LAVINE, MAISEL, O'DONNELL, ORTIZ, PEOPLES-STOKES, PERRY, PRETLOW, ROBINSON, SCARBOROUGH, SCHIMEL, TITUS -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 INCLUDE ANY SEX OFFENSE AS DEFINED
9 UNDER SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE
10 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 PASSED 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.

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

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1 3. THE PETITION AUTHORIZED BY THIS SECTION SHALL BE FILED IN THE COURT
2 OF RECORD THAT LAST IMPOSED A SENTENCE UPON PETITIONER FOR AN ELIGIBLE
3 MISDEMEANOR. ON THE DEFENDANT'S MOTION, THE COURT MAY ORDER THAT ALL
4 OFFICIAL RECORDS AND PAPERS RELATING TO THE ARREST, PROSECUTION AND
5 CONVICTION RECORDS FOR NO MORE THAN THREE OF THE DEFENDANT'S PRIOR
6 ELIGIBLE MISDEMEANORS BE CONDITIONALLY SEALED. THE COURT MAY ONLY SEAL
7 THE RECORDS OF THE DEFENDANT'S ARRESTS, PROSECUTIONS AND CONVICTIONS
8 WHEN:

9 (A) THE SENTENCING COURT HAS REQUESTED AND RECEIVED FROM THE DIVISION
10 OF CRIMINAL JUSTICE SERVICES OR THE FEDERAL BUREAU OF INVESTIGATION A
11 FINGERPRINT BASED CRIMINAL HISTORY RECORD OF THE DEFENDANT, INCLUDING
12 ANY SEALED OR SUPPRESSED INFORMATION. THE DIVISION OF CRIMINAL JUSTICE
13 SERVICES SHALL ALSO INCLUDE A CRIMINAL HISTORY REPORT, IF ANY, FROM THE
14 FEDERAL BUREAU OF INVESTIGATION REGARDING ANY CRIMINAL HISTORY INFORMA-
15 TION THAT OCCURRED IN OTHER JURISDICTIONS. THE DIVISION IS HEREBY
16 AUTHORIZED TO RECEIVE SUCH INFORMATION FROM THE FEDERAL BUREAU OF INVE-
17 TIGATION FOR THIS PURPOSE. THE PARTIES SHALL BE PERMITTED TO EXAMINE
18 THESE RECORDS;

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

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

25 (D) THE COURT HAS NOTIFIED THE DISTRICT ATTORNEY OF EACH JURISDICTION
26 IN WHICH THE DEFENDANT HAS BEEN CONVICTED OF AN OFFENSE WITH RESPECT TO
27 WHICH SEALING IS SOUGHT, AND THE COURT OR COURTS OF RECORD FOR SUCH
28 OFFENSES, THAT THE COURT IS CONSIDERING SEALING THE RECORDS OF THE
29 DEFENDANT'S ELIGIBLE MISDEMEANOR CONVICTIONS. BOTH THE DISTRICT ATTORNEY
30 AND THE COURT SHALL BE GIVEN A REASONABLE OPPORTUNITY, WHICH SHALL NOT
31 BE LESS THAN THIRTY DAYS, IN WHICH TO COMMENT AND SUBMIT MATERIALS TO
32 AID THE COURT IN MAKING SUCH A DETERMINATION. WHEN THE COURT NOTIFIES A
33 DISTRICT ATTORNEY OF A SEALING APPLICATION, THE DISTRICT ATTORNEY SHALL
34 PROVIDE NOTICE TO THE VICTIM, IF ANY, OF THE SEALING APPLICATION BY
35 MAILING WRITTEN NOTICE TO THE VICTIM'S LAST-KNOWN ADDRESS. FOR PURPOSES
36 OF THIS SECTION "VICTIM" MEANS ANY PERSON WHO HAS SUSTAINED PHYSICAL OR
37 FINANCIAL INJURY TO PERSON OR TO PROPERTY AS A DIRECT RESULT OF THE
38 MISDEMEANOR CRIME OR MISDEMEANOR CRIMES FOR WHICH SEALING IS APPLIED.

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

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

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

53 (C) THE DEFENDANT'S CRIMINAL HISTORY;

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

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

3 5. AFTER A COURT DECLARES ITS WILLINGNESS TO GRANT THE DEFENDANT'S
4 REQUEST FOR CONDITIONAL SEALING PURSUANT TO THIS SECTION, BUT BEFORE THE
5 COURT ORDERS SEALING PURSUANT TO THIS SECTION, THE DEFENDANT SHALL PAY A
6 MANDATORY CONDITIONAL SEALING FEE. THE MANDATORY CONDITIONAL SEALING FEE
7 WILL BE A FEE OF EIGHTY DOLLARS, HOWEVER, SUCH FILING FEE SHALL BE
8 WAIVED IN CASES OF INDIGENCE. THE MANDATORY FILING FEE SHALL BE PAID TO
9 THE CLERK OF THE COURT OR ADMINISTRATIVE TRIBUNAL THAT RENDERED THE
10 CONVICTION. WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION
11 OF THE MANDATORY FILING FEE, THE COLLECTING AUTHORITY IF IT IS AN ADMIN-
12 ISTRATIVE TRIBUNAL, OR A TOWN OR VILLAGE JUSTICE COURT, SHALL THEN PAY
13 SUCH MONEY TO THE STATE COMPTROLLER WHO SHALL DEPOSIT SUCH MONEY IN THE
14 STATE TREASURY PURSUANT TO SECTION ONE HUNDRED TWENTY-ONE OF THE STATE
15 FINANCE LAW TO THE CREDIT OF THE INDIGENT LEGAL SERVICES FUND. IF SUCH
16 COLLECTING AUTHORITY IS ANY OTHER COURT OF THE UNIFIED COURT SYSTEM, IT
17 SHALL, WITHIN SUCH PERIOD, PAY SUCH MONEY ATTRIBUTABLE TO THE MANDATORY
18 FILING FEE TO THE STATE COMMISSIONER OF TAXATION AND FINANCE TO THE
19 CREDIT OF THE INDIGENT LEGAL SERVICES FUND ESTABLISHED BY SECTION NINE-
20 TY-EIGHT-B OF THE STATE FINANCE LAW.

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

28 7. WHEN THE COURT ORDERS SEALING PURSUANT TO THIS SECTION, THE CLERK
29 OF SUCH COURT SHALL IMMEDIATELY NOTIFY THE COMMISSIONER OF THE DIVISION
30 OF CRIMINAL JUSTICE SERVICES, AND ANY COURT THAT SENTENCED THE DEFENDANT
31 FOR AN OFFENSE WHICH HAS BEEN CONDITIONALLY SEALED, REGARDING THE
32 RECORDS THAT SHALL BE SEALED PURSUANT TO THIS SECTION.

33 8. RECORDS SEALED PURSUANT TO THIS SUBDIVISION SHALL BE MADE AVAILABLE
34 TO:

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

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

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

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

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

53 10. IF, SUBSEQUENT TO THE SEALING OF RECORDS PURSUANT TO THIS SUBDIVI-
54 SION, THE PERSON WHO IS THE SUBJECT OF SUCH RECORDS IS ARRESTED FOR OR
55 FORMALLY CHARGED WITH ANY MISDEMEANOR OR FELONY OFFENSE, SUCH RECORDS
56 SHALL BE UNSEALED IMMEDIATELY AND REMAIN UNSEALED; PROVIDED, HOWEVER,

1 THAT IF SUCH NEW MISDEMEANOR OR FELONY ARREST RESULTS IN A TERMINATION
2 IN FAVOR OF THE ACCUSED AS DEFINED IN SUBDIVISION THREE OF SECTION
3 160.50 OF THIS ARTICLE OR BY CONVICTION FOR A NON-CRIMINAL OFFENSE AS
4 DESCRIBED IN SECTION 160.55 OF THIS ARTICLE, SUCH UNSEALED RECORDS SHALL
5 BE CONDITIONALLY SEALED PURSUANT TO THIS SECTION.

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

9 16. It shall be an unlawful discriminatory practice, unless specif-
10 ically required or permitted by statute, for any person, agency, bureau,
11 corporation or association, including the state and any political subdi-
12 vision thereof, to make any inquiry about, whether in any form of appli-
13 cation or otherwise, or to act upon adversely to the individual
14 involved, any arrest or criminal accusation of such individual not then
15 pending against that individual which was followed by a termination of
16 that criminal action or proceeding in favor of such individual, as
17 defined in subdivision two of section 160.50 of the criminal procedure
18 law, or by a youthful offender adjudication, as defined in subdivision
19 one of section 720.35 of the criminal procedure law, or by a conviction
20 for a violation sealed pursuant to section 160.55 of the criminal proce-
21 dure law or by a conviction which is sealed pursuant to section 160.58
22 of the criminal procedure law, OR BY A CONVICTION WHICH IS SEALED PURSU-
23 ANT TO SECTION 160.65 OF THE CRIMINAL PROCEDURE LAW, in connection with
24 the licensing, employment or providing of credit or insurance to such
25 individual; provided, further, that no person shall be required to
26 divulge information pertaining to any arrest or criminal accusation of
27 such individual not then pending against that individual which was
28 followed by a termination of that criminal action or proceeding in favor
29 of such individual, as defined in subdivision two of section 160.50 of
30 the criminal procedure law, or by a youthful offender adjudication, as
31 defined in subdivision one of section 720.35 of the criminal procedure
32 law, or by a conviction for a violation sealed pursuant to section
33 160.55 of the criminal procedure law, or by a conviction which is sealed
34 pursuant to section 160.58 of the criminal procedure law, OR BY A
35 CONVICTION WHICH IS SEALED PURSUANT TO SECTION 160.65 OF THE CRIMINAL
36 PROCEDURE LAW. The provisions of this subdivision shall not apply to the
37 licensing activities of governmental bodies in relation to the regu-
38 lation of guns, firearms and other deadly weapons or in relation to an
39 application for employment as a police officer or peace officer as those
40 terms are defined in subdivisions thirty-three and thirty-four of
41 section 1.20 of the criminal procedure law; provided further that the
42 provisions of this subdivision shall not apply to an application for
43 employment or membership in any law enforcement agency with respect to
44 any arrest or criminal accusation which was followed by a youthful
45 offender adjudication, as defined in subdivision one of section 720.35
46 of the criminal procedure law, or by a conviction for a violation sealed
47 pursuant to section 160.55 of the criminal procedure law, or by a
48 conviction which is sealed pursuant to section 160.58 of the criminal
49 procedure law, OR BY A CONVICTION WHICH IS SEALED PURSUANT TO SECTION
50 160.65 OF THE CRIMINAL PROCEDURE LAW.

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