

STATE OF NEW YORK

4925

2017-2018 Regular Sessions

IN ASSEMBLY

February 6, 2017

Introduced by M. of A. O'DONNELL, WEPRIN -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the use of sealed records

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs (c) and (d) of subdivision 1 of section 160.50
2 of the criminal procedure law, paragraph (c) as amended by chapter 169
3 of the laws of 1994, paragraph (d) as amended by chapter 449 of the laws
4 of 2015, are amended to read as follows:

5 (c) all official records and papers, including judgments and orders of
6 a court but not including published court decisions or opinions or
7 records and briefs on appeal, relating to the arrest or prosecution,
8 including all duplicates and copies thereof, on file with the division
9 of criminal justice services, any court, police agency, or prosecutor's
10 office shall be sealed and not made available to, or used for any
11 purpose not specifically authorized by law by any person or public or
12 private agency, even if the records were previously obtained by such
13 person or public or private agency;

14 (d) [~~such~~] the records referred to in paragraph (c) of this subdivi-
15 sion shall only be made available to, and may only be used by, the
16 person accused or to such person's designated agent, and shall only be
17 made available to, and may only be used by: (i) a prosecutor in any
18 proceeding in which the accused has moved for an order pursuant to
19 section 170.56 or 210.46 of this chapter, or (ii) a law enforcement
20 agency upon ex parte motion in any superior court, or in any district
21 court, city court or the criminal court of the city of New York provided
22 that such court sealed the record, if such agency demonstrates to the
23 satisfaction of the court that justice requires that such records be
24 made available to it, or (iii) any state or local officer or agency with
25 responsibility for the issuance of licenses to possess guns, when the

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

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1 accused has made application for such a license, or (iv) the New York
2 state department of corrections and community supervision when the
3 accused is on parole supervision as a result of conditional release or a
4 parole release granted by the New York state board of parole, and the
5 arrest which is the subject of the inquiry is one which occurred while
6 the accused was under such supervision, or (v) any prospective employer
7 of a police officer or peace officer as those terms are defined in
8 subdivisions thirty-three and thirty-four of section 1.20 of this chap-
9 ter, in relation to an application for employment as a police officer or
10 peace officer; provided, however, that every person who is an applicant
11 for the position of police officer or peace officer shall be furnished
12 with a copy of all records obtained under this paragraph and afforded an
13 opportunity to make an explanation thereto, or (vi) the probation
14 department responsible for supervision of the accused when the arrest
15 which is the subject of the inquiry is one which occurred while the
16 accused was under such supervision; and

17 § 2. Paragraphs (c) and (d) of subdivision 1 of section 160.55 of the
18 criminal procedure law, paragraph (c) as amended by chapter 169 of the
19 laws of 1994, paragraph (d) as amended by chapter 449 of the laws of
20 2015, are amended to read as follows:

21 (c) all official records and papers relating to the arrest or prose-
22 cution, including all duplicates and copies thereof, on file with the
23 division of criminal justice services, police agency, or prosecutor's
24 office shall be sealed and not made available to, or used for any
25 purpose not specifically authorized by law by any person or public or
26 private agency, even if the records were previously obtained by such
27 person or public or private agency;

28 (d) the records referred to in paragraph (c) of this subdivision shall
29 be made available to, and may only be used by, the person accused or to
30 such person's designated agent, and shall only be made available to, and
31 may only be used by: (i) a prosecutor in any proceeding in which the
32 accused has moved for an order pursuant to section 170.56 or 210.46 of
33 this chapter, or (ii) a law enforcement agency upon ex parte motion in
34 any superior court, or in any district court, city court or the criminal
35 court of the city of New York provided that such court sealed the
36 record, if such agency demonstrates to the satisfaction of the court
37 that justice requires that such records be made available to it, or
38 (iii) any state or local officer or agency with responsibility for the
39 issuance of licenses to possess guns, when the accused has made applica-
40 tion for such a license, or (iv) the New York state department of
41 corrections and community supervision when the accused is under parole
42 supervision as a result of conditional release or parole release granted
43 by the New York state board of parole and the arrest which is the
44 subject of the inquiry is one which occurred while the accused was under
45 such supervision, or (v) the probation department responsible for super-
46 vision of the accused when the arrest which is the subject of the
47 inquiry is one which occurred while the accused was under such super-
48 vision, or (vi) a police agency, probation department, sheriff's office,
49 district attorney's office, department of correction of any municipality
50 and parole department, for law enforcement purposes, upon arrest in
51 instances in which the individual stands convicted of harassment in the
52 second degree, as defined in section 240.26 of the penal law, committed
53 against a member of the same family or household as the defendant, as
54 defined in subdivision one of section 530.11 of this chapter, and deter-
55 mined pursuant to subdivision eight-a of section 170.10 of this title;
56 and

§ 3. Subdivision 4 of section 160.58 of the criminal procedure law, as added by section 3 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

4. When a court orders sealing pursuant to this section, all official records and papers relating to the arrests, prosecutions, and convictions, including all duplicates and copies thereof, on file with the division of criminal justice services or any court shall be sealed and not made available to, or used for any purpose not specifically authorized by law by, any person or public or private agency, even if the records were previously obtained by such person or public or private agency; provided, however, the division shall retain any fingerprints, palmprints and photographs, or digital images of the same.

§ 4. Subdivision 6 of section 160.58 of the criminal procedure law, as added by section 3 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

6. Records sealed pursuant to this subdivision shall only be made available to, and may only be used by:

- (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; or
- (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.

§ 5. Subdivision 2 of section 720.35 of the criminal procedure law, as amended by section 87 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

2. Except where specifically required or permitted by statute or upon specific authorization of the court, all official records and papers, whether on file with the court, a police agency or the division of criminal justice services, relating to a case involving a youth who has been adjudicated a youthful offender, are confidential and may not be made available to, or used for any purpose not specifically authorized by law by, any person or public or private agency, even if the records were previously obtained by such person or public or private agency, other than the designated educational official of the public or private elementary or secondary school in which the youth is enrolled as a student provided that such local educational official shall only have made available a notice of such adjudication and shall not have access to any other official records and papers, such youth or such youth's designated agent (but only where the official records and papers sought are on file with a court and request therefor is made to that court or to a clerk thereof), an institution to which such youth has been committed, the department of corrections and community supervision and a probation department of this state that requires such official records and papers for the purpose of carrying out duties specifically authorized by law; provided, however, that information regarding an order of

1 protection or temporary order of protection issued pursuant to section
2 530.12 of this chapter or a warrant issued in connection therewith may
3 be maintained on the statewide automated order of protection and warrant
4 registry established pursuant to section two hundred twenty-one-a of the
5 executive law during the period that such order of protection or tempo-
6 rary order of protection is in full force and effect or during which
7 such warrant may be executed. Such confidential information may be made
8 available pursuant to law only for purposes of adjudicating or enforcing
9 such order of protection or temporary order of protection and, where
10 provided to a designated educational official, as defined in section
11 380.90 of this chapter, for purposes related to the execution of the
12 student's educational plan, where applicable, successful school adjust-
13 ment and reentry into the community. Such notification shall be kept
14 separate and apart from such student's school records and shall be
15 accessible only by the designated educational official. Such notifica-
16 tion shall not be part of such student's permanent school record and
17 shall not be appended to or included in any documentation regarding such
18 student and shall be destroyed at such time as such student is no longer
19 enrolled in the school district. At no time shall such notification be
20 used for any purpose other than those specified in this subdivision.

21 § 6. This act shall take effect on the ninetieth day after it shall
22 have become a law.