S T A T E O F N E W Y O R K

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I N A S S E M B L Y

June 4, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Aubry) -- (at request of the Division of Criminal Justice Services) -- read once and referred to the Committee on Codes

AN ACT to amend the executive law and the judiciary law, in relation to undisposed cases

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

Section 1. The executive law is amended by adding a new section 845-c to read as follows:

S 845-C. CRIMINAL HISTORY RECORD SEARCHES; UNDISPOSED CASES. 1. WHEN, PURSUANT TO STATUTE OR THE REGULATIONS OF THE DIVISION, THE DIVISION CONDUCTS A SEARCH OF ITS CRIMINAL HISTORY RECORDS AND RETURNS A REPORT THEREON, ALL REFERENCES TO UNDISPOSED CASES CONTAINED IN SUCH CRIMINAL HISTORY RECORD SHALL BE EXCLUDED FROM SUCH REPORT.

2. FOR PURPOSES OF THIS SECTION, "UNDISPOSED CASE" SHALL MEAN A CRIMINAL ACTION OR PROCEEDING, OTHER THAN A CRIMINAL ACTION OR PROCEEDING FOR A CLASS A-I FELONY, A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THE PENAL LAW, A SEX OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, OR AN OFFENSE DEFINED IN SECTION 255.25, 255.26 OR 255.27 OR ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW FOR WHICH:

(A) NO FINAL DISPOSITION OR IMPOSITION OF SENTENCE HAS BEEN RECORDED; AND

(B) NO ENTRY HAS BEEN MADE IN THE DIVISION'S CRIMINAL HISTORY RECORDS FOR A PERIOD OF AT LEAST THIRTY-SIX MONTHS PRECEDING THE ISSUANCE OF SUCH REPORT; AND

(C) NO WARRANT IS OUTSTANDING.

3. THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL NOT APPLY TO CRIMINAL HISTORY RECORD INFORMATION:

(A) PROVIDED BY THE DIVISION TO QUALIFIED AGENCIES PURSUANT TO SUBDIVISION SIX OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THIS ARTICLE, OR TO FEDERAL OR STATE LAW ENFORCEMENT AGENCIES, FOR CRIMINAL JUSTICE PURPOSES; OR

(B) PREPARED SOLELY FOR A BONA FIDE RESEARCH PURPOSE; OR

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

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(C) PREPARED FOR A RECORD REVIEW OR THE INTERNAL RECORD KEEPING OR CASE MANAGEMENT PURPOSES OF THE DIVISION.

4. PROVIDED THAT THE DIVISION REASONABLY AND IN GOOD FAITH COMPLIES WITH THE PROVISIONS OF THIS SECTION, THERE SHALL BE NO CRIMINAL OR CIVIL LIABILITY ON THE PART OF, AND NO CAUSE OF ACTION FOR DAMAGES SHALL ACCRUE AGAINST, THE DIVISION OR ANY DIVISION EMPLOYEE ON ACCOUNT OF, ARISING OUT OF OR RELATING TO CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION, OR ANY ACT OR OMISSION RELATING TO CRIMINAL HISTORY RECORD INFORMATION PURSUANT TO THIS SECTION.

S 2. Subdivision 2 of section 212 of the judiciary law is amended by adding two new paragraphs (s) and (t) to read as follows:

(S) TAKE SUCH ACTIONS AND ADOPT SUCH MEASURES AS MAY BE NECESSARY TO ENSURE THAT NO WRITTEN OR ELECTRONIC REPORT OF A CRIMINAL HISTORY RECORD SEARCH CONDUCTED BY THE OFFICE OF COURT ADMINISTRATION, OTHER THAN A SEARCH CONDUCTED SOLELY FOR THE INTERNAL RECORD KEEPING OR CASE MANAGEMENT PURPOSES OF THE JUDICIARY OR FOR A BONA FIDE RESEARCH PURPOSE, CONTAINS INFORMATION RELATING TO AN UNDISPOSED CASE. FOR PURPOSES OF THIS PARAGRAPH, "UNDISPOSED CASE" SHALL MEAN A CRIMINAL ACTION OR PROCEEDING APPEARING IN THE CRIMINAL HISTORY RECORDS OF THE OFFICE OF COURT ADMINISTRATION, OTHER THAN A CRIMINAL ACTION OR PROCEEDING FOR A CLASS A-I FELONY, A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THE PENAL LAW, A SEX OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, OR AN OFFENSE DEFINED IN SECTION 255.25, 255.26 OR 255.27 OR ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW FOR WHICH:

(I) NO FINAL DISPOSITION HAS BEEN RECORDED; AND

(II) NO ENTRY HAS BEEN MADE IN THE DIVISION'S CRIMINAL HISTORY RECORDS FOR A PERIOD OF AT LEAST THIRTY-SIX MONTHS PRECEDING THE ISSUANCE OF SUCH REPORT; AND

(III) NO WARRANT IS OUTSTANDING.

NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE DEEMED TO PERMIT OR REQUIRE THE RELEASE, DISCLOSURE OR OTHER DISSEMINATION BY THE OFFICE OF COURT ADMINISTRATION OF CRIMINAL HISTORY RECORD INFORMATION THAT HAS BEEN SEALED IN ACCORDANCE WITH LAW.

(T) PROVIDED THAT THE OFFICE OF COURT ADMINISTRATION REASONABLY AND IN GOOD FAITH COMPLIES WITH THE PROVISIONS OF THIS SECTION, THERE SHALL BE NO CRIMINAL OR CIVIL LIABILITY ON THE PART OF, AND NO CAUSE OF ACTION FOR DAMAGES SHALL ACCRUE AGAINST, THE OFFICE OF COURT ADMINISTRATION OR ANY OFFICE OF COURT ADMINISTRATION EMPLOYEE ON ACCOUNT OF, ARISING OUT OF OR RELATING TO CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION, OR ANY ACT OR OMISSION RELATING TO CRIMINAL HISTORY RECORD INFORMATION PURSUANT TO THIS SECTION.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to searches of criminal history records conducted on or after such date; provided, however, that prior to such effective date, the division of criminal justice services, in consultation with the state administrator of the unified court system as well as any other public or private agency, shall undertake such measures as may be necessary and appropriate to update its criminal history records with respect to criminal cases and arrest incidents for which no final disposition has been reported.