

2167

2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. PARKER, DIAZ, DILAN, HASSELL-THOMPSON, KRUEGER, MONTGOMERY, ONORATO, SAMPSON, SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to enacting the "Clear Your Good Name Act" to require state and municipal law enforcement agencies to expunge voidable arrest records

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Clear Your Good Name 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 EXPUNGEMENT OF VOIDABLE ARREST REFERENCES AND RECORDS.
6 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE TERM:
7 (A) "ARREST" MEANS ANY STOP, DETENTION OR RESTRICTION OF MOVEMENT OF
8 ANY PERSON MADE BY ANY OFFICER OR EMPLOYEE OF A STATE OR MUNICIPAL LAW
9 ENFORCEMENT AGENCY; OR MADE BY A PRIVATE SECURITY GUARD OR CITIZEN OR
10 OTHER PERSON IF THE PERSON STOPPED OR DETAINED OR WHOSE MOVEMENT IS
11 RESTRICTED IS SUBSEQUENTLY SURRENDERED BY THE PRIVATE SECURITY GUARD,
12 CITIZEN OR OTHER PERSON TO THE CUSTODY OF ANY OFFICER OR EMPLOYEE OR
13 INDEPENDENT CONTRACTOR OF A STATE OR MUNICIPAL LAW ENFORCEMENT AGENCY.
14 (B) "RECORD" SHALL BE CONSTRUED BROADLY AND MEANS ANY FORM OF INFORMA-
15 TION OR EVIDENCE CONTAINED, PRESERVED OR MEMORIALIZED UPON ANY MEDIUM
16 WHATSOEVER, INCLUDING BUT NOT LIMITED TO, ANY FORM OF PAPER OR ELECTRON-
17 IC MEDIUM, OR ANY COMBINATION THEREOF, AND SHALL INCLUDE BUT NOT BE
18 LIMITED TO, FINGERPRINT RECORDS, PHOTOGRAPHS AND ANY OTHER IDENTIFICA-
19 TION RECORDS INCLUDING, BUT NOT LIMITED TO, DNA EVIDENCE.
20 (C) "STATE OR MUNICIPAL LAW ENFORCEMENT AGENCY" MEANS THE DIVISION OF
21 CRIMINAL JUSTICE SERVICES, THE DIVISION OF STATE POLICE, ANY MUNICIPAL
22 POLICE DEPARTMENT IN THE STATE, ANY OTHER BUREAU, DEPARTMENT, DIVISION
23 OR AGENCY OF THE STATE OR OF A MUNICIPALITY OR OF ANY PUBLIC AUTHORITY

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

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1 WHICH BUREAU, DEPARTMENT, DIVISION OR AGENCY IS CHARGED WITH LAW
2 ENFORCEMENT RESPONSIBILITIES ON BEHALF OF THE STATE, MUNICIPALITY OR
3 PUBLIC AUTHORITY, ANY PROSECUTORIAL OFFICE INCLUDING, BUT NOT LIMITED
4 TO, THE OFFICE OF THE ATTORNEY GENERAL (STATE DEPARTMENT OF LAW) AND THE
5 OFFICE OF ANY DISTRICT ATTORNEY, OR ANY COURT AND THE JUSTICES AND JUDG-
6 ES THEREOF.

7 (D) "VOIDABLE ARREST" MEANS ANY ARREST RESULTING IN ANY OF THE FOLLOW-
8 ING:

9 (I) RELEASE OF THE PERSON WITHOUT THE FILING OF FORMAL CHARGES AGAINST
10 THE PERSON.

11 (II) DISMISSAL OF PROCEEDINGS AGAINST THE PERSON.

12 (III) A DETERMINATION THAT THE ARREST WAS WITHOUT PROBABLE CAUSE.

13 2. REFERENCES IN STATE OR MUNICIPAL LAW ENFORCEMENT AGENCY RECORDS TO
14 VOIDABLE ARRESTS.

15 (A) IN GENERAL. ANY REFERENCE IN ANY STATE OR MUNICIPAL LAW ENFORCE-
16 MENT AGENCY RECORD TO AN ARREST OF A PERSON LIVING AFTER THE EFFECTIVE
17 DATE OF THIS SECTION, AND ANY STATE OR MUNICIPAL LAW ENFORCEMENT AGENCY
18 RECORD GENERATED PURSUANT TO THAT ARREST, SHALL BE EXPUNGED:

19 (I) NOT LATER THAN THIRTY DAYS AFTER THE DATE ON WHICH THAT ARREST
20 BECOMES A VOIDABLE ARREST, IF THE ARREST OCCURRED ON OR AFTER THE EFFEC-
21 TIVE DATE OF THIS SECTION; OR

22 (II) TO THE EXTENT PROVIDED IN A COURT EXPUNGEMENT ORDER, IF THE
23 ARREST OCCURRED BEFORE THE EFFECTIVE DATE OF THIS SECTION.

24 (B) COURT EXPUNGEMENT ORDER. ANY PERSON LIVING AFTER THE EFFECTIVE
25 DATE OF THIS SECTION MAY PETITION A COURT HAVING JURISDICTION OVER A
26 STATE OR MUNICIPAL LAW ENFORCEMENT AGENCY OR OVER A CUSTODIAN OF ANY
27 RECORD WHO IS EMPLOYED BY, OR CHARGED WITH RESPONSIBILITY FOR SUCH
28 RECORD BY, SUCH AGENCY FOR A COURT EXPUNGEMENT ORDER REFERRED TO IN
29 SUBPARAGRAPH (II) OF PARAGRAPH (A) OF THIS SUBDIVISION. IF THE COURT
30 FINDS THAT THE ARREST IS A VOIDABLE ARREST, THE COURT SHALL ORDER THE
31 CUSTODIAN OF THE RECORD TO EXPUNGE, NOT LATER THAN THIRTY DAYS AFTER THE
32 RECEIPT OF THE ORDER:

33 (I) ANY REFERENCE TO THAT ARREST; AND

34 (II) ANY RECORD GENERATED PURSUANT TO THAT ARREST.

35 (C) REGULATIONS. THE ATTORNEY GENERAL, IN CONSULTATION WITH THE OFFICE
36 OF COURT ADMINISTRATION, SHALL PROMULGATE REGULATIONS TO ENSURE COMPLI-
37 ANCE WITH THE REQUIREMENTS OF PARAGRAPH (A) OF THIS SUBDIVISION.

38 (D) PENALTIES. A CUSTODIAN OF SUCH RECORDS WHO KNOWINGLY FAILS TO
39 EXPUNGE A REFERENCE OR RECORD REQUIRED TO BE EXPUNGED BY THIS SUBDIVI-
40 SION, OR RELEASES A REFERENCE OR RECORD REQUIRED TO BE EXPUNGED BY THIS
41 SUBDIVISION, SHALL BE DEEMED TO BE ACTING OUTSIDE THE SCOPE OF HIS OR
42 HER EMPLOYMENT AND SHALL BE SUSPENDED FROM EMPLOYMENT FOR THIRTY DAYS
43 AND SUBJECT TO A FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS. ANY SECOND
44 OR SUBSEQUENT VIOLATION OF THIS SECTION BY THE SAME EMPLOYEE SHALL
45 CONSTITUTE GROUNDS FOR DISMISSAL FROM SUCH STATE OR MUNICIPAL LAW
46 ENFORCEMENT AGENCY'S EMPLOYMENT.

47 (E) RIGHT OF INDIVIDUAL WITH VOIDABLE ARREST. IF AN ARREST IS A VOIDA-
48 BLE ARREST, THE PERSON ARRESTED MAY RESPOND TO ANY INQUIRY AS THOUGH THE
49 ARREST DID NOT OCCUR.

50 3. MAINTENANCE AND STATISTICAL REPORTING WITHOUT IDENTIFICATION OF THE
51 PERSON ARRESTED OF THE NUMBER OF VOIDABLE ARRESTS AND THE NUMBER OF
52 VOIDABLE ARREST RECORDS EXPUNGED. EVERY STATE OR MUNICIPAL LAW ENFORCE-
53 MENT AGENCY SHALL MAINTAIN FOR STATISTICAL PURPOSES ONLY AND WITHOUT
54 IDENTIFICATION OF ANY PERSON ARRESTED THE CUMULATIVE NUMBER OF VOIDABLE
55 ARRESTS MADE OR PROCESSED BY AN OFFICER, EMPLOYEE OR INDEPENDENT
56 CONTRACTOR OF SUCH LAW ENFORCEMENT AGENCY, IN ACCORDANCE WITH SUCH DIVI-

1 SIONS OF TIME AS ARE PRESCRIBED BY THE ATTORNEY GENERAL, AND THE CUMULA-
2 TIVE NUMBER OF VOIDABLE ARREST RECORDS EXPUNGED, DIVIDED ACCORDING TO
3 THE SAME TIME PERIODS, AND SHALL REPORT SUCH STATISTICS IN ELECTRONIC
4 FORM TO THE ATTORNEY GENERAL AS OFTEN AS THE ATTORNEY GENERAL REQUIRES.
5 4. REPORTING BY THE ATTORNEY GENERAL TO THE LEGISLATURE. THE ATTORNEY
6 GENERAL SHALL CUMULATE ALL STATISTICS RECEIVED BY THE ATTORNEY GENERAL
7 PURSUANT TO SUBDIVISION THREE OF THIS SECTION AND SHALL FILE A WRITTEN
8 REPORT AT LEAST ANNUALLY TO EACH HOUSE OF THE LEGISLATURE, WHICH REPORT
9 SHALL CONTAIN THE TOTAL NUMBER OF VOIDABLE ARRESTS MADE IN THE STATE
10 DURING THE PRECEDING PERIOD SINCE STATISTICAL RECORDS WERE KEPT PURSUANT
11 TO SUBDIVISION THREE OF THIS SECTION OR SINCE THE LAST REPORT OF THE
12 ATTORNEY GENERAL, AS THE CASE MAY BE, AND THE NUMBER OF VOIDABLE ARREST
13 RECORDS WHICH WERE EXPUNGED IN THE STATE DURING THAT PERIOD OR PERIODS
14 OF TIME.
15 5. APPLICATION OF THE PROVISIONS OF THIS SECTION. THE PROVISIONS OF
16 THIS SECTION SHALL APPLY NOTWITHSTANDING ANY OTHER PROVISION OF LAW.
17 6. SEPARABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, OR SUBDIVISION OF
18 THIS SECTION SHALL BE ADJUDGED BY A COURT OF COMPETENT JURISDICTION TO
19 BE INVALID, SUCH JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE
20 REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE,
21 SENTENCE, PARAGRAPH, SUBDIVISION OF THIS SECTION DIRECTLY INVOLVED IN
22 THE CONTROVERSY IN WHICH SUCH JUDGMENT SHALL HAVE BEEN RENDERED.
23 S 3. This act shall take effect on the first of November next succeed-
24 ing the date on which it shall have become a law.