

2244

2009-2010 Regular Sessions

I N S E N A T E

February 13, 2009

Introduced by Sen. VOLKER -- 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 the sealing of certain criminal records

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

1 Section 1. The criminal procedure law is amended by adding a new
2 section 160.65 to read as follows:

3 S 160.65 ORDER UPON TERMINATION OF CRIMINAL ACTION BY THE CONVICTION FOR
4 APPLICABLE NON-VIOLENT CRIMINAL OFFENSES.

5 1. AS USED IN THIS SECTION THE FOLLOWING WORDS SHALL HAVE THE FOLLOW-
6 ING MEANINGS:

7 (A) AN "ELIGIBLE PERSON" MEANS A PERSON WHO HAS BEEN CONVICTED OF AN
8 ELIGIBLE FELONY OR AN ELIGIBLE MISDEMEANOR, PROVIDED HOWEVER, THAT NO
9 PERSON SHALL BE AN ELIGIBLE PERSON WHERE SUCH PERSON HAS BEEN CONVICTED
10 OF MORE THAN TWO ELIGIBLE FELONIES OR MORE THAN TWO ELIGIBLE MISDEMEA-
11 NORS OR SUCH PERSON HAS BEEN CONVICTED OF A SPECIFIED OFFENSE. A PERSON
12 IS NOT AN ELIGIBLE PERSON FOR PURPOSES OF THIS SECTION IF SUCH PERSON
13 HAS BEEN CONVICTED IN ANY OTHER JURISDICTION OF AN OFFENSE WHICH
14 INCLUDES ALL OF THE ESSENTIAL ELEMENTS OF ANY SPECIFIED OFFENSE;

15 (B) "PROGRAM" MEANS THE SECOND CHANCE PROGRAM;

16 (C) "COMMISSION" MEANS THE SECOND CHANCE COMMISSION. SUCH COMMISSION
17 SHALL AWARD RELIEF PROVIDED IN THIS SECTION AND, SHALL CONSIST OF FIVE
18 MEMBERS TO BE APPOINTED FOR TERMS OF THREE YEARS. THE GOVERNOR, THE
19 TEMPORARY PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY SHALL
20 EACH APPOINT ONE MEMBER OF THE COMMISSION. TWO APPOINTMENTS SHALL BE
21 MADE BY THE NEW YORK STATE DISTRICT ATTORNEYS ASSOCIATION, ONE OF WHOM
22 SHALL SERVE AS A GEOGRAPHIC REPRESENTATIVE OF NEW YORK CITY AND ONE OF
23 WHOM SHALL SERVE AS A GEOGRAPHIC REPRESENTATIVE OF OTHER COUNTIES;

24 (D) "ELIGIBLE FELONIES" MEANS CRIMINAL POSSESSION OF A CONTROLLED
25 SUBSTANCE IN THE FIFTH DEGREE AS DEFINED IN SECTION 220.06 OF THE PENAL

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

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1 LAW, CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE
2 AS DEFINED IN SECTION 220.09 OF THE PENAL LAW, CRIMINAL POSSESSION OF A
3 CONTROLLED SUBSTANCE IN THE THIRD DEGREE AS DEFINED IN SECTION 220.16 OF
4 THE PENAL LAW, CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE
5 SECOND DEGREE AS DEFINED IN SECTION 220.18 OF THE PENAL LAW, CRIMINAL
6 POSSESSION OF A CONTROLLED SUBSTANCE IN THE FIRST DEGREE AS DEFINED IN
7 SECTION 220.21 OF THE PENAL LAW, CRIMINAL POSSESSION OF PRECURSORS OF
8 CONTROLLED SUBSTANCES AS DEFINED IN SECTION 220.60 OF THE PENAL LAW,
9 CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE FIFTH DEGREE AS DEFINED
10 IN SECTION 220.31 OF THE PENAL LAW, CRIMINAL SALE OF A CONTROLLED
11 SUBSTANCE IN THE FOURTH DEGREE AS DEFINED IN SECTION 220.34 OF THE PENAL
12 LAW, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE AS
13 DEFINED IN SECTION 220.39 OF THE PENAL LAW, CRIMINAL SALE OF A
14 CONTROLLED SUBSTANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 220.41
15 OF THE PENAL LAW, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE FIRST
16 DEGREE AS DEFINED IN SECTION 220.43 OF THE PENAL LAW, CRIMINAL
17 POSSESSION OF MARIHUANA IN THE THIRD DEGREE AS DEFINED IN SECTION 221.20
18 OF THE PENAL LAW, CRIMINAL POSSESSION OF MARIHUANA IN THE SECOND DEGREE
19 AS DEFINED IN SECTION 221.25 OF THE PENAL LAW, CRIMINAL POSSESSION OF
20 MARIHUANA IN THE FIRST DEGREE AS DEFINED IN SECTION 221.30 OF THE PENAL
21 LAW, CRIMINAL SALE OF MARIHUANA IN THE THIRD DEGREE AS DEFINED IN
22 SECTION 221.45 OF THE PENAL LAW, CRIMINAL SALE OF MARIHUANA IN THE
23 SECOND DEGREE AS DEFINED IN SECTION 221.50 OF THE PENAL LAW, CRIMINAL
24 SALE OF MARIHUANA IN THE FIRST DEGREE AS DEFINED IN SECTION 221.55 OF
25 THE PENAL LAW, CRIMINAL INJECTION OF A NARCOTIC DRUG AS DEFINED IN
26 SECTION 220.46 OF THE PENAL LAW, CRIMINALLY USING DRUG PARAPHERNALIA IN
27 THE FIRST DEGREE AS DEFINED IN SECTION 220.55 OF THE PENAL LAW, AND
28 CRIMINAL SALE OF A PRESCRIPTION FOR A CONTROLLED SUBSTANCE AS DEFINED IN
29 SECTION 220.65 OF THE PENAL LAW, PROVIDED HOWEVER, THAT "ELIGIBLE FELO-
30 NIES" SHALL NOT INCLUDE ANY OF THE ENUMERATED CRIMES IN THIS PARAGRAPH
31 WHERE THE CRIME INVOLVED THE SALE OF A CONTROLLED SUBSTANCE OR MARIHUANA
32 TO A PERSON UNDER THE AGE OF SIXTEEN.

33 (E) "ELIGIBLE MISDEMEANORS" MEANS CRIMINAL POSSESSION OF A CONTROLLED
34 SUBSTANCE IN THE SEVENTH DEGREE AS DEFINED IN SECTION 220.03 OF THE
35 PENAL LAW, CRIMINAL POSSESSION OF MARIHUANA IN THE FIFTH DEGREE AS
36 DEFINED IN SECTION 221.10 OF THE PENAL LAW, CRIMINAL POSSESSION OF MARI-
37 HUANA IN THE FOURTH DEGREE AS DEFINED IN SECTION 221.15 OF THE PENAL
38 LAW, CRIMINAL SALE OF MARIHUANA IN THE FIFTH DEGREE AS DEFINED IN
39 SECTION 221.35 OF THE PENAL LAW, CRIMINAL SALE OF MARIHUANA IN THE
40 FOURTH DEGREE AS DEFINED IN SECTION 221.40 OF THE PENAL LAW, CRIMINALLY
41 USING DRUG PARAPHERNALIA IN THE SECOND DEGREE AS DEFINED IN SECTION
42 220.50 OF THE PENAL LAW, AND CRIMINALLY POSSESSING A HYPODERMIC INSTRU-
43 MENT AS DEFINED IN SECTION 220.45 OF THE PENAL LAW, PROVIDED HOWEVER,
44 THAT "ELIGIBLE MISDEMEANOR" SHALL NOT INCLUDE ANY OF THE ENUMERATED
45 CRIMES IN THIS PARAGRAPH WHERE THE CRIME INVOLVED THE SALE OF A
46 CONTROLLED SUBSTANCE OR MARIHUANA TO A PERSON UNDER THE AGE OF SIXTEEN;
47 AND

48 (F) "SPECIFIED OFFENSE" MEANS AN A-1 FELONY OFFENSE OTHER THAN AN
49 OFFENSE CONTAINED IN ARTICLE 220 OF THE PENAL LAW, A VIOLENT FELONY
50 OFFENSE AS DEFINED IN SECTION 70.02 OF THE PENAL LAW, MANSLAUGHTER IN
51 THE SECOND DEGREE, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE, CRIMI-
52 NALLY NEGLIGENT HOMICIDE, AN OFFENSE DEFINED IN ARTICLE 130 OF THE PENAL
53 LAW, INCEST, OR AN OFFENSE DEFINED IN ARTICLE 263 OF THE PENAL LAW.

54 2. AN ELIGIBLE PERSON MAY HAVE ALL OFFICIAL RECORDS, PAPERS, DNA
55 SAMPLES AND JUDGMENTS AND ORDERS OF A COURT PERTAINING TO AN ELIGIBLE
56 FELONY OR ELIGIBLE MISDEMEANOR, EXCLUDING PUBLISHED COURT DECISIONS OR

1 OPINIONS OR RECORDS AND BRIEFS ON APPEAL, RELATING TO THE ARREST OR
2 PROSECUTION OF SUCH PERSON FOR SUCH ELIGIBLE FELONY OR ELIGIBLE MISDE-
3 MEANOR, INCLUDING ALL DUPLICATES AND COPIES THEREOF ON FILE WITH THE
4 DIVISION OF CRIMINAL JUSTICE SERVICES, SEALED FOR ALL PURPOSES OTHER
5 THAN THOSE RELATED TO LAW ENFORCEMENT AND CRIMINAL PROSECUTION WHEN:

6 (A) A MINIMUM TIME PERIOD OF FIVE YEARS COMMENCING UPON THE MOST
7 RECENT DATE OF SENTENCE OR PAYMENT OF FINE FOR THOSE PERSONS WHO HAVE
8 NOT BEEN SANCTIONED TO A PERIOD OF INCARCERATION AND FOR OTHER INSTANCES
9 COMMENCING UPON THE COMPLETION OF SUCH PERSON'S TERM OF IMPRISONMENT HAS
10 ELAPSED WHEN SUCH PERSON HAS NOT BEEN SUBSEQUENTLY CONVICTED OF ANY
11 OTHER FELONY OR MISDEMEANOR OR TWO OR MORE NON-VEHICLE AND TRAFFIC LAW
12 VIOLATIONS; AND

13 (B) SUCH PERSON IS ELIGIBLE TO APPLY FOR A SEALING MOTION PURSUANT TO
14 SUBDIVISION THREE OF THIS SECTION.

15 3. TO BE ELIGIBLE TO APPLY FOR A SEALING MOTION FOR AN ELIGIBLE FELONY
16 OR ELIGIBLE MISDEMEANOR, THE PERSON MUST PRESENT VALID DOCUMENTATION TO
17 THE COMMISSION EVIDENCING SATISFACTORY FULFILLMENT AND PARTICIPATION IN
18 THE PROGRAM, INCLUDING EVIDENCE THAT THE PERSON IS FREE OF ALCOHOL OR
19 DRUG DEPENDENCE AT TIME OF APPLICATION FOR SEALING. PROGRAM REQUIREMENTS
20 INCLUDE COMPLETION OF AN INDIVIDUAL REHABILITATION PLAN THAT IS
21 PERFORMED AND MONITORED BY AN APPROVED JOB CORPS PROGRAM OR AN ACCRED-
22 ITED LIST OF CONTRACTORS APPROVED BY THE DIVISION OF CRIMINAL JUSTICE
23 SERVICES AND THAT INCLUDES:

24 (A) SUCCESSFUL COMPLETION OF A PUBLIC SERVICE COMPONENT OF AT LEAST
25 ONE YEAR;

26 (B) SUCCESSFUL COMPLETION OF ALCOHOL OR SUBSTANCE ABUSE TREATMENT AT A
27 PROGRAM LICENSED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE
28 SERVICES, PURSUANT TO ARTICLE NINETEEN OF THE MENTAL HYGIENE LAW, IF
29 MANDATORY SCREENING OR ASSESSMENT INDICATES TREATMENT IS NECESSARY, AND
30 REGULAR MONITORING OF SUCH PERSONS FOR A PERIOD OF AT LEAST ONE YEAR,
31 WHICH CAN INCLUDE DRUG TESTING IN ORDER TO ENSURE CONTINUED SOBRIETY;
32 AND

33 (C) ATTAINMENT OF A GED OR HIGH SCHOOL DIPLOMA, IF NOT ALREADY
34 OBTAINED.

35 4. A PERSON WHO HAS SATISFACTORILY MET ALL THE REQUIREMENTS OF THIS
36 SECTION MAY UPON MOTION APPLY TO THE COMMISSION FOR AN ORDER GRANTING TO
37 SUCH PERSON THE RELIEF SET FORTH IN SUBDIVISION TWO OF THIS SECTION. THE
38 APPLICANT SHALL GIVE NOT LESS THAN SIXTY DAYS NOTICE TO THE DISTRICT
39 ATTORNEY WITHIN EACH JURISDICTION THE APPLICANT HAS A CONVICTION AND THE
40 ATTORNEY GENERAL, IN SUCH CONVICTIONS AS THE ATTORNEY GENERAL HAS PROSE-
41 CUTED, OF THE INTENTION TO REQUEST SUCH RELIEF. SUCH ORDER SHALL BE
42 GRANTED UNLESS THE DISTRICT ATTORNEY WITHIN TWENTY DAYS NOTICE TO SUCH
43 PERSON OR HIS OR HER ATTORNEY DEMONSTRATES TO THE SATISFACTION OF THE
44 COMMISSION THAT THE INTERESTS OF JUSTICE REQUIRE OTHERWISE, OR THE
45 COMMISSION ON ITS OWN MOTION WITH NOT LESS THAN TWENTY DAYS NOTICE TO
46 SUCH PERSON OR HIS OR HER ATTORNEY DETERMINES THAT THE INTERESTS OF
47 JUSTICE REQUIRE OTHERWISE. THE COMMISSION SHALL STATE THE REASONS FOR
48 SUCH DETERMINATION ON THE RECORD, THE RECORDS SHALL BE ORDERED SEALED
49 AND THE CLERK OF THE COURT WHEREIN SUCH CRIMINAL ACTION OR PROCEEDING
50 WAS TERMINATED SHALL IMMEDIATELY NOTIFY THE COMMISSIONER OF THE DIVISION
51 OF CRIMINAL JUSTICE SERVICES THAT THE RECORD OF SUCH ACTION OR PROCEED-
52 ING HAS BEEN SEALED.

53 5. THE PETITIONER AND THE DISTRICT ATTORNEY CAN APPEAL THE DECISION OF
54 THE COMMISSION TO GRANT OR DENY THE SEALING MOTION. SUCH APPEAL MUST
55 TAKE PLACE WITHIN THIRTY DAYS OF THE COMMISSION'S DECISION AND MUST BE

1 MADE AS AN ARTICLE SEVENTY-EIGHT PROCEEDING IN THE JURISDICTION WHERE
2 SUCH PERSON'S MOST RECENT CONVICTION WAS ADJUDICATED.

3 6. UPON RECEIPT OF NOTIFICATION OF SUCH SEALING:

4 (A) ALL OFFICIAL RECORDS AND PAPERS, INCLUDING JUDGMENTS AND ORDERS OF
5 A COURT BUT NOT INCLUDING PUBLISHED COURT DECISIONS OR OPINIONS OR
6 RECORDS AND BRIEFS ON APPEAL, RELATING TO THE ARREST OR PROSECUTION,
7 INCLUDING ALL DUPLICATES AND COPIES THEREOF, ON FILE WITH THE DIVISION
8 OF CRIMINAL JUSTICE SERVICES, ANY COURT, POLICE AGENCY, OR PROSECUTOR'S
9 OFFICE SHALL BE SEALED AND NOT MADE AVAILABLE TO ANY PERSON OR PUBLIC OR
10 PRIVATE AGENCY; AND

11 (B) SUCH RECORDS SHALL BE MADE AVAILABLE TO THE PERSON ACCUSED OR TO
12 SUCH PERSON'S DESIGNATED AGENT, AND SHALL BE MADE AVAILABLE TO (I) A
13 PROSECUTOR, A LAW ENFORCEMENT AGENCY, OR A COURT WHICH HAS RESPONSIBIL-
14 ITY FOR CRIMINALLY INVESTIGATING, PROSECUTING, OR ADJUDICATING THE INDI-
15 VIDUAL; (II) ANY STATE OR LOCAL OFFICE OR AGENCY WITH RESPONSIBILITY FOR
16 THE ISSUANCE OF LICENSES TO POSSESS GUNS, WHEN THE ACCUSED HAS MADE
17 APPLICATION FOR SUCH A LICENSE; OR (III) ANY PROSPECTIVE CITY, STATE, OR
18 FEDERAL EMPLOYER OR AGENCY, INVOLVED IN INVESTIGATING AND/OR PROSECUTING
19 UNDER CRIMINAL OR CIVIL STATUTES INCLUDING EMPLOYERS OF POLICE OFFICERS
20 OR PEACE OFFICERS AS DEFINED IN SUBDIVISIONS THIRTY-THREE AND
21 THIRTY-FOUR OF SECTION 1.20 OF THIS CHAPTER, IN RELATION TO AN APPLICA-
22 TION FOR EMPLOYMENT AS AN EMPLOYEE OF A CITY, STATE OR FEDERAL EMPLOYER
23 OR AGENCY INVOLVED IN INVESTIGATING AND/OR PROSECUTING UNDER CRIMINAL OR
24 CIVIL STATUTES INCLUDING AS A POLICE OFFICER OR PEACE OFFICER; PROVIDED
25 HOWEVER, THAT EVERY PERSON WHO IS AN APPLICANT FOR THE POSITION OF
26 POLICE OFFICER, PEACE OFFICER, OR ANY OTHER PROSPECTIVE CITY, STATE OR
27 FEDERAL EMPLOYER OR AGENCY, INVOLVED IN INVESTIGATING AND/OR PROSECUTING
28 UNDER CRIMINAL OR CIVIL STATUTES SHALL BE FURNISHED WITH A COPY OF ALL
29 RECORDS OBTAINED UNDER THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO
30 MAKE AN EXPLANATION THERETO.

31 7. EXCEPT AS PROVIDED IN PARAGRAPH (B) OF SUBDIVISION SIX OF THIS
32 SECTION, THE SEALED CONVICTION OR CONVICTIONS SHALL NOT OPERATE AS A
33 DISQUALIFICATION OF ANY PERSON TO PURSUE OR ENGAGE IN ANY LAWFUL ACTIV-
34 ITY, OCCUPATION, PROFESSION, OR CALLING. EXCEPT WHERE SPECIFICALLY
35 REQUIRED OR PERMITTED BY STATUTE OR UPON SPECIFIC AUTHORIZATION OF A
36 SUPERIOR COURT, NO SUCH PERSON SHALL BE REQUIRED TO DIVULGE INFORMATION
37 PERTAINING TO THE SEALED RECORD. SUCH PERSON SHALL BE PERMITTED TO
38 RESPOND IN THE NEGATIVE TO THE QUESTION, "HAVE YOU EVER BEEN CONVICTED
39 OF A MISDEMEANOR OR A FELONY?", OR TO ANY QUESTION WITH THE SAME
40 SUBSTANTIVE CONTENTS.

41 8. THE KNOWING AND INTENTIONAL DISSEMINATION OF SEALED INFORMATION OR
42 THE IMPROPER ACQUISITION OF INFORMATION THAT HAS BEEN SEALED WILL RESULT
43 IN A PENALTY OF A FINE UP TO ONE THOUSAND DOLLARS FOR EACH SUCH
44 VIOLATION.

45 9. A PERSON PARTICIPATING IN THIS PROGRAM WILL BE REQUIRED TO PAY A
46 PORTION OF THE COSTS OF PARTICIPATING IN THE PROGRAM AND FILING FEES TO
47 THE COMMISSION, CONTINGENT UPON SUCH PERSON'S INCOME AND ABILITY TO PAY.

48 10. THE SEALING ORDER WILL BE AUTOMATICALLY REPEALED AND THE DIVISION
49 OF CRIMINAL JUSTICE SERVICES WILL UNSEAL ANY SUCH RECORDS THAT HAD BEEN
50 PREVIOUSLY SEALED BY VIRTUE OF PARTICIPATION IN THIS PROGRAM ON THE
51 SUBSEQUENT CONVICTION OF SUCH PERSON FOR ANY MISDEMEANOR OR FELONY
52 OFFENSE. IN THE EVENT THAT SUCH A PERSON IS SUBSEQUENTLY CONVICTED AND
53 SENTENCED TO A TERM OF PROBATION, THE PROBATION OFFICER ASSIGNED TO SUCH
54 PERSON SHALL BE RESPONSIBLE FOR NOTIFYING SUCH PERSON'S CURRENT EMPLOYER
55 THAT SUCH PERSON'S CRIMINAL RECORD HAS BEEN UNSEALED.

1 11. AN ELIGIBLE PERSON MAY APPLY FOR RELIEF UNDER THIS SECTION FOR
2 CRIMINAL OFFENSES WHICH OCCURRED ANY TIME PRIOR TO THE EFFECTIVE DATE OF
3 THIS SECTION.

4 S 2. This act shall take effect on the first of November next succeed-
5 ing the date on which it shall have become a law; provided however that
6 any eligible person may apply for relief pursuant to this act for crimi-
7 nal offenses occurring prior to the effective date of this act.