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

5184

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. 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 the sealing of certain court records for noncriminal offenses

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

Section 1. Paragraphs (c) and (d) of subdivision 1 of section 160.55 of the criminal procedure law, as amended by chapter 169 of the laws of 1994, are amended to read as follows:

(c) all official records and papers relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, ANY COURT, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency, EXCEPT AS PROVIDED IN PARAGRAPH (D) OR (E) OF THIS SUBDIVISION; PROVIDED HOWEVER THAT THIS PARAGRAPH SHALL NOT APPLY TO PUBLISHED COURT DECISIONS OR OPINIONS, OR RECORDS AND BRIEFS ON APPEAL;

(d) the records referred to in paragraph (c) of this subdivision shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it IN FURTHERANCE OF A PENDING CRIMINAL INVESTIGATION, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iv) the New York state division of parole when the accused is under parole supervision as a result of conditional release or parole release granted by the New York state board of parole, OR IS SERVING A PERIOD OF POST-RELEASE SUPERVISION, and

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

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the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (v) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision; [and]

S 2. Paragraph (e) of subdivision 1 of section 160.55 of the criminal procedure law is relettered paragraph (g) and two new paragraphs (e) and (f) are added to read as follows:

(E) THE COURT RECORDS REFERRED TO IN PARAGRAPH (C) OF THIS SUBDIVISION SHALL ALSO BE MADE AVAILABLE TO A PROSECUTOR IN FURTHERANCE OF A PENDING CRIMINAL INVESTIGATION AND SHALL ALSO BE MADE AVAILABLE TO THE COURT, THE PROSECUTION AND THE DEFENSE IN THE EVENT THAT (I) THE CRIMINAL ACTION OR PROCEEDING IS RE-OPENED, OR (II) THE ACCUSED PERSON IS SUBSEQUENTLY CHARGED, BY AN ACCUSATORY INSTRUMENT FILED IN A CRIMINAL COURT, WITH AN ADDITIONAL CRIME OR OFFENSE, OR (III) THE ACCUSED PERSON SUBSEQUENTLY BECOMES A WITNESS AND DISCLOSURE OF HIS OR HER CRIMINAL RECORD IS REQUIRED BY THIS CHAPTER OR BY COURT ORDER;

(F) RECORDS MADE AVAILABLE TO AN OFFICER OR AGENCY UNDER PARAGRAPH (D) OF THIS SUBDIVISION SHALL BE USED ONLY BY THE OFFICER OR AGENCY AND SHALL NOT BE RE-DISCLOSED, EXCEPT WITH THE CONSENT OF THE ACCUSED OR PURSUANT TO A LAWFUL COURT ORDER, TO ANY OTHER PERSON OR PUBLIC OR PRIVATE AGENCY. RECORDS MADE AVAILABLE TO THE COURT, THE PROSECUTION AND THE DEFENSE UNDER PARAGRAPH (D) OR (E) OF THIS SUBDIVISION SHALL BE USED ONLY IN THE PARTICULAR CRIMINAL PROCEEDING AND SHALL NOT BE RE-DISCLOSED, EXCEPT WITH THE CONSENT OF THE ACCUSED OR PURSUANT TO A LAWFUL COURT ORDER, TO ANY OTHER PERSON OR PUBLIC OR PRIVATE AGENCY. AT THE CONCLUSION OF THE PROCEEDING, SUCH RECORDS SHALL BE RE-SEALED; AND

S 3. Subdivision 3 of section 160.55 of the criminal procedure law, as amended by chapter 249 of the laws of 1981 and renumbered by chapter 142 of the laws of 1991, is amended to read as follows:

3. A person against whom a criminal action or proceeding was terminated [by such person's conviction of a traffic infraction or violation other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law] AS DEFINED IN SUBDIVISION ONE OF THIS SECTION, prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided, however that effective immediately the chief administrator of the courts shall develop and promulgate regulations which shall require the implementation of this act with respect to criminal actions or proceedings terminated prior to the effective date of this act. Such regulations shall provide for the sealing of all court records, without the need of a motion for such relief, in all cases where a clerk's notification pursuant to subdivision 1 of section 160.55 of the criminal procedure law has previously been made.