

5958

2009-2010 Regular Sessions

I N   S E N A T E

June 19, 2009

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Introduced by Sen. SCHNEIDERMAN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the criminal procedure law, in relation to sealing court records involving convictions for certain petty offenses

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 160.57 to read as follows:  
3     S 160.57 APPLICATION FOR SEALING OF COURT RECORDS FOLLOWING TERMINATION  
4         OF CRIMINAL ACTION BY CONVICTION FOR NONCRIMINAL OFFENSE.  
5     1. A PERSON CONVICTED OF A TRAFFIC INFRACTION OR A VIOLATION, OTHER  
6     THAN LOITERING AS DESCRIBED IN PARAGRAPH (D) OR (E) OF SUBDIVISION ONE  
7     OF SECTION 160.10 OF THIS CHAPTER OR OPERATING A MOTOR VEHICLE WHILE  
8     ABILITY IMPAIRED AS DESCRIBED IN SUBDIVISION ONE OF SECTION ELEVEN  
9     HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW, AND WHOSE CASE WAS  
10    SEALED PURSUANT TO SECTION 160.55 OF THIS ARTICLE, MAY MOVE IN ACCORD-  
11    ANCE WITH THE PROVISIONS OF THIS SECTION FOR AN ORDER SEALING THE COURT  
12    RECORD OF SUCH ACTION OR PROCEEDING. IN THE ABSENCE OF AN EARLIER APPLI-  
13    CATION FOR AN ORDER TO SEAL, THE RECORD OF A CONVICTION OF A TRAFFIC  
14    INFRACTION OR A VIOLATION PURSUANT TO THIS SUBDIVISION SHALL BE AUTOMAT-  
15    ICALLY SEALED BY OPERATION OF LAW THIRTY-SIX MONTHS FROM THE DATE OF  
16    SENTENCE, UNLESS THE PEOPLE FILE A NOTICE OF OPPOSITION UPON NOTICE TO  
17    THE DEFENDANT, NO LESS THAN TWENTY DAYS PRIOR TO THE SEALING DATE AND NO  
18    LATER THAN NINETY DAYS PRIOR TO THE EXPIRATION OF THIRTY-SIX MONTHS.  
19    2. A MOTION TO SEAL MAY BE FILED IN WRITING WITH THE LOCAL CRIMINAL  
20    COURT OR SUPERIOR COURT IN WHICH THE CONVICTION AND SENTENCE OCCURRED  
21    NOT EARLIER THAN TWELVE MONTHS FOLLOWING THE DATE OF SENTENCE. SUCH  
22    MOTION MUST BE MADE UPON NOT LESS THAN TWENTY DAYS NOTICE TO THE  
23    DISTRICT ATTORNEY.

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

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1 3. UPON MOTION TO SEAL THE COURT RECORD PURSUANT TO THIS SECTION,  
2 WHERE BOTH PARTIES CONSENT TO SUCH SEALING, THE COURT SHALL ENTER AN  
3 ORDER SEALING THE COURT RECORD UNLESS THE INTERESTS OF JUSTICE REQUIRE  
4 OTHERWISE. FOR PURPOSES OF THIS SUBDIVISION, A PARTY WHO IS GIVEN WRIT-  
5 TEN NOTICE OF A MOTION TO SEAL PURSUANT TO THIS SECTION SHALL BE DEEMED  
6 TO CONSENT TO SUCH APPLICATION UNLESS, PRIOR TO THE RETURN DATE OF SUCH  
7 MOTION, SUCH PARTY FILES A NOTICE OF OPPOSITION THERETO WITH THE COURT.

8 4. WHERE THE PEOPLE FILE A NOTICE OF OPPOSITION PRIOR TO THE RETURN  
9 DATE OR THE PROPOSED SEALING DATE PURSUANT TO SUBDIVISION ONE, THE COURT  
10 SHALL CONDUCT A HEARING ON THE RETURN DATE IN WHICH IT MAY RECEIVE ANY  
11 RELEVANT EVIDENCE. UPON REQUEST, THE COURT MUST GRANT A REASONABLE  
12 ADJOURNMENT TO EITHER PARTY TO ENABLE SUCH PARTY TO PREPARE FOR THE  
13 HEARING. FOLLOWING SUCH HEARING, AN ORDER TO SEAL PURSUANT TO THIS  
14 SECTION SHALL BE GRANTED UNLESS THE DISTRICT ATTORNEY DEMONSTRATES TO  
15 THE SATISFACTION OF THE COURT THAT THE INTERESTS OF JUSTICE REQUIRE  
16 OTHERWISE. WHERE THE COURT HAS DETERMINED THAT SEALING PURSUANT TO THIS  
17 SECTION IS NOT IN THE INTERESTS OF JUSTICE, THE COURT SHALL PUT FORTH  
18 ITS REASONS ON THE RECORD.

19 5. UPON ENTRY OF AN ORDER TO SEAL, THE COURT RECORD OF SUCH ACTION OR  
20 PROCEEDING SHALL BE SEALED AND THE CLERK OF THE COURT WHEREIN SUCH  
21 CRIMINAL ACTION OR PROCEEDING WAS TERMINATED SHALL IMMEDIATELY NOTIFY  
22 THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE  
23 HEADS OF ALL APPROPRIATE POLICE DEPARTMENTS AND OTHER LAW ENFORCEMENT  
24 AGENCIES THAT THE ACTION SHALL BE SEALED AS IF IT HAS BEEN TERMINATED IN  
25 FAVOR OF THE ACCUSED AND THAT THE RECORD OF SUCH ACTION OR PROCEEDING  
26 SHALL BE SEALED.

27 6. UPON THE ENTRY OF AN ORDER TO SEAL OR THE EXPIRATION OF THIRTY-SIX  
28 MONTHS FROM THE DATE OF SENTENCE WITHOUT OPPOSITION BY THE PEOPLE, ALL  
29 OFFICIAL RECORDS AND PAPERS, INCLUDING JUDGEMENTS AND ORDERS OF A COURT  
30 BUT NOT INCLUDING PUBLISHED COURT DECISIONS OR OPINIONS OR RECORDS AND  
31 BRIEFS ON APPEAL, RELATING TO THE ARREST OR PROSECUTION, INCLUDING ALL  
32 DUPLICATES AND COPIES THEREOF, ON FILE WITH ANY COURT SHALL BE SEALED  
33 AND NOT MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCY.

34 7. UPON THE GRANTING OF A MOTION TO SEAL PURSUANT TO THIS SECTION, OR  
35 UPON THE EXPIRATION OF THIRTY-SIX MONTHS FROM THE DATE OF SENTENCING  
36 WITHOUT OPPOSITION, SUCH RECORDS SHALL BE MADE AVAILABLE TO THE PERSON  
37 ACCUSED OR TO SUCH PERSON'S DESIGNATED AGENT, AND SHALL BE MADE AVAIL-  
38 ABLE TO:

39 (A) A PROSECUTOR IN ANY PROCEEDING IN WHICH THE ACCUSED HAS MOVED FOR  
40 AN ORDER PURSUANT TO SECTION 170.56 OR 210.46 OF THIS CHAPTER, OR

41 (B) A LAW ENFORCEMENT AGENCY UPON EX PARTE MOTION IN ANY SUPERIOR  
42 COURT, IF SUCH AGENCY DEMONSTRATES TO THE SATISFACTION OF THE COURT THAT  
43 JUSTICE REQUIRES THAT SUCH RECORDS BE MADE AVAILABLE TO IT, OR

44 (C) ANY STATE OR LOCAL OFFICER OR AGENCY WITH RESPONSIBILITY FOR THE  
45 ISSUANCE OF LICENSES TO POSSESS GUNS, WHEN THE ACCUSED HAS MADE APPLICA-  
46 TION FOR SUCH A LICENSE, OR

47 (D) THE DIVISION OF PAROLE WHEN THE ACCUSED IS ON PAROLE SUPERVISION  
48 AS A RESULT OF CONDITIONAL RELEASE OR A PAROLE RELEASE GRANTED BY THE  
49 STATE BOARD OF PAROLE, AND THE ARREST WHICH IS THE SUBJECT OF THE  
50 INQUIRY IS ONE WHICH OCCURRED WHILE THE ACCUSED WAS UNDER SUPERVISION,  
51 OR

52 (E) ANY PROSPECTIVE EMPLOYER OF A POLICE OFFICER OR PEACE OFFICER AS  
53 THOSE TERMS ARE DEFINED IN SUBDIVISIONS THIRTY-THREE AND THIRTY-FOUR OF  
54 SECTION 1.20 OF THIS CHAPTER, IN RELATION TO AN APPLICATION FOR EMPLOY-  
55 MENT AS A POLICE OFFICER OR PEACE OFFICER; PROVIDED, HOWEVER, THAT EVERY  
56 PERSON WHO IS AN APPLICANT FOR THE POSITION OF POLICE OFFICER OR PEACE

1 OFFICER SHALL BE FURNISHED WITH A COPY OF ALL RECORDS OBTAINED UNDER  
2 THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION THERE-  
3 TO, OR

4 (F) THE PROBATION DEPARTMENT RESPONSIBLE FOR SUPERVISION OF THE  
5 ACCUSED WHEN THE ARREST WHICH IS THE SUBJECT OF THE INQUIRY IS ONE WHICH  
6 OCCURRED WHILE THE ACCUSED WAS UNDER SUCH SUPERVISION.

7 8. THE CHIEF ADMINISTRATOR OF THE COURTS, IN CONSULTATION WITH THE  
8 COMMISSIONER OF CRIMINAL JUSTICE SERVICES AND REPRESENTATIVES OF APPRO-  
9 PRIATE PROSECUTORIAL AND CRIMINAL DEFENSE ORGANIZATIONS IN THE STATE,  
10 SHALL ADOPT FORMS FOR THE MOTION TO SEAL, THE NOTICE OF OPPOSITION TO  
11 SEALING, AND THE ORDER GRANTING SEALING PURSUANT TO THIS SECTION.

12 S 2. Subdivision 3 of section 160.50 of the criminal procedure law is  
13 amended by adding a new paragraph (m) to read as follows:

14 (M) A SEALING ORDER PURSUANT TO SECTION 160.57 OF THIS ARTICLE WAS  
15 ENTERED.

16 S 3. This act shall take effect on the first of November next succeed-  
17 ing the date on which it shall have become a law, and shall apply to all  
18 qualifying criminal actions for which the sentence date occurred after  
19 such effective date.