

5959

2009-2010 Regular Sessions

I N S E N A T E

June 19, 2009

Introduced by Sen. SCHNEIDERMAN -- (at request of the Division of Probation and Correctional Alternatives) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the criminal procedure law and the family court act, in relation to fingerprinting of certain individuals under probation supervision

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 160.15 to read as follows:
3 S 160.15 FINGERPRINTING OF CERTAIN INDIVIDUALS UNDER PROBATION SUPER-
4 VISION.
5 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN OUT-OF-STATE PROBA-
6 TIONER ACCEPTED FOR PROBATION SUPERVISION IN ACCORDANCE WITH SECTION TWO
7 HUNDRED FIFTY-NINE-MM OF THE EXECUTIVE LAW AND ANY DEFENDANT, INCLUDING
8 A YOUTHFUL OFFENDER, ELIGIBLE AND SENTENCED TO PROBATION BY A CRIMINAL
9 COURT OR OTHERWISE RELEASED BY A CRIMINAL COURT TO PROBATION SUPER-
10 VISION, SHALL BE FINGERPRINTED BY A POLICE OFFICER OR PROBATION OFFICER
11 OR THEIR RESPECTIVE AGENCY. WHENEVER FINGERPRINTS ARE REQUIRED TO BE
12 TAKEN PURSUANT TO THIS SECTION, THE PHOTOGRAPH OR PALM PRINT OF SUCH
13 PROBATIONERS MAY ALSO BE TAKEN.
14 2. THE TAKING OF FINGERPRINTS AS PRESCRIBED IN THIS SECTION AND THE
15 SUBMISSION OF AVAILABLE INFORMATION CONCERNING THE INDIVIDUAL UNDER
16 PROBATION SUPERVISION MUST BE IN ACCORDANCE WITH THE STANDARDS ESTAB-
17 LISHED BY THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES.
18 SUCH DIVISION SHALL ENSURE LOCAL PROBATION RECEIVES NOTIFICATION OF ANY
19 SUBSEQUENT FINGERPRINTABLE ARRESTS OF THE INDIVIDUAL WHILE UNDER
20 PROBATION SUPERVISION.
21 3. UPON RECEIPT OF A REPORT OF THE DIVISION OF CRIMINAL JUSTICE
22 SERVICES AS PROVIDED IN SECTION 160.30 OF THIS ARTICLE, WITH RESPECT TO
23 AN INDIVIDUAL REQUIRING FINGERPRINTING PURSUANT TO SUBDIVISION ONE OF

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

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1 THIS SECTION, THE RECIPIENT POLICE OFFICER OR PROBATION OFFICER OR THEIR
2 RESPECTIVE AGENCY SHALL PROMPTLY TRANSMIT SUCH REPORT OR A COPY THEREOF
3 TO THE APPROPRIATE PROBATION OFFICER WITHIN THE PROBATION DEPARTMENT
4 RESPONSIBLE FOR SUPERVISION, WHERE SUCH PROBATION OFFICER OR PROBATION
5 DEPARTMENT WAS NOT THE EARLIER RECIPIENT OF THIS INFORMATION.

6 S 2. Section 160.20 of the criminal procedure law, as amended by chap-
7 ter 108 of the laws of 1973, is amended to read as follows:

8 S 160.20 Fingerprinting; forwarding of fingerprints.

9 Upon the taking of fingerprints of an arrested person or defendant as
10 prescribed in section 160.10 OF THIS ARTICLE OR ANY INDIVIDUAL AS
11 PRESCRIBED IN SECTION 160.15 OF THIS ARTICLE, the appropriate police
12 officer or PROBATION OFFICER OR THEIR RESPECTIVE agency must without
13 unnecessary delay forward two copies of such fingerprints to the divi-
14 sion of criminal justice services.

15 S 3. Section 160.30 of the criminal procedure law, as amended by chap-
16 ter 399 of the laws of 1972 and subdivision 1 as amended by chapter 920
17 of the laws of 1982, is amended to read as follows:

18 S 160.30 Fingerprinting; duties of division of criminal justice
19 services.

20 1. Upon receiving fingerprints from a police officer, PROBATION OFFI-
21 CER or THEIR RESPECTIVE agency pursuant to section 160.20 of this [chap-
22 ter] ARTICLE OR SECTION EIGHT HUNDRED FORTY-ONE-A OF THE FAMILY COURT
23 ACT, the division of criminal justice services must, except as provided
24 in subdivision two of this section, classify them and search its records
25 for information concerning a previous record of the defendant OR INDIV-
26 IDUAL UNDER PROBATION SUPERVISION, including any adjudication as a
27 juvenile delinquent pursuant to article three of the family court act,
28 or as a youthful offender pursuant to article seven hundred twenty of
29 this chapter, and promptly transmit to such forwarding police officer,
30 PROBATION OFFICER, or THEIR RESPECTIVE agency a report containing all
31 information on file with respect to such defendant's OR INDIVIDUAL UNDER
32 PROBATION SUPERVISION'S previous record, if any, or stating that the
33 defendant OR INDIVIDUAL UNDER PROBATION SUPERVISION has no previous
34 record according to its files. Such a report, if certified, constitutes
35 presumptive evidence of the facts so certified.

36 2. If the fingerprints so received are not sufficiently legible to
37 permit accurate and complete classification, they must be returned to
38 the forwarding police officer, PROBATION OFFICER, or TO THEIR RESPECTIVE
39 agency with an explanation of the defects and a request that the defend-
40 ant's OR THE INDIVIDUAL UNDER PROBATION SUPERVISION'S fingerprints be
41 retaken if possible.

42 3. WITH THE EXCEPTION OF AN OUT-OF-STATE PROBATIONER, WHERE ANY INDI-
43 VIDUAL UNDER PROBATION SUPERVISION HAS HAD FINGERPRINTS TAKEN PURSUANT
44 TO SECTION 160.15 OF THIS CHAPTER FOR A CRIME NOT LISTED IN SUBDIVISION
45 ONE OF SECTION 160.10 OF THIS CHAPTER OR PURSUANT TO SECTION EIGHT
46 HUNDRED FORTY-ONE-A OF THE FAMILY COURT ACT, AND SUCH INDIVIDUAL IS NO
47 LONGER UNDER PROBATION SUPERVISION, EXPUNGEMENT OF THE FINGERPRINT
48 RECORDS SHALL OCCUR BY THE DIVISION UPON DOCUMENTATION SUFFICIENT TO
49 SUBSTANTIATE THAT THE INDIVIDUAL IS NO LONGER UNDER PROBATION SUPER-
50 VISION. THE DIVISION SHALL VERIFY THAT THE INDIVIDUAL IS NO LONGER UNDER
51 PROBATION SUPERVISION AND IF NEEDED USE COMPUTERIZED DATABASES WITHIN
52 THE AUTHORITY OF THE DIVISION FOR SUCH PURPOSES. IF THE DIVISION VERI-
53 FIES THAT THE INDIVIDUAL IS NO LONGER UNDER PROBATION SUPERVISION, IT
54 SHALL DESTROY SUCH FINGERPRINTS AND ANY PHOTOGRAPH OR PALM PRINT TAKEN.
55 AFTER COMPLETION OF ALL ACTIVITIES BY THE DIVISION RELATED TO THIS
56 EXPUNGEMENT, THE FILE SHALL BE SEALED.

1 S 4. The family court act is amended by adding a new section 841-a to
2 read as follows:

3 S 841-A. FINGERPRINTING OF CERTAIN INDIVIDUALS UNDER PROBATION SUPER-
4 VISION. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY PERSON
5 SIXTEEN YEARS OF AGE OR OLDER, WHERE THE UNDERLYING FAMILY OFFENSE IS A
6 MISDEMEANOR OR FELONY, WHO HAS RECEIVED A DISPOSITION OF PROBATION,
7 SHALL BE FINGERPRINTED BY A POLICE OFFICER OR PROBATION OFFICER OR THEIR
8 RESPECTIVE AGENCY. WHENEVER FINGERPRINTS ARE REQUIRED TO BE TAKEN
9 PURSUANT TO THIS SECTION, THE PHOTOGRAPH OR PALM PRINT OF SUCH PROBA-
10 TIONER MAY ALSO BE TAKEN.

11 (B) THE TAKING OF FINGERPRINTS AS PRESCRIBED IN THIS SECTION AND THE
12 SUBMISSION OF AVAILABLE INFORMATION CONCERNING THE PROBATIONER MUST BE
13 IN ACCORDANCE WITH THE STANDARDS ESTABLISHED BY THE COMMISSIONER OF THE
14 DIVISION OF CRIMINAL JUSTICE SERVICES. THE DIVISION SHALL ENSURE LOCAL
15 PROBATION RECEIVES NOTIFICATION OF ANY SUBSEQUENT FINGERPRINTABLE
16 ARRESTS OF THE INDIVIDUAL UNDER PROBATION SUPERVISION.

17 (C) UPON THE TAKING OF FINGERPRINTS OF A PROBATIONER, THE APPROPRIATE
18 POLICE OFFICER OR PROBATION OFFICER OR THEIR RESPECTIVE AGENCY MUST
19 WITHOUT UNNECESSARY DELAY FORWARD TWO COPIES OF SUCH FINGERPRINTS TO THE
20 DIVISION OF CRIMINAL JUSTICE SERVICES.

21 (D) UPON RECEIPT OF A REPORT OF THE DIVISION OF CRIMINAL JUSTICE
22 SERVICES AS PROVIDED IN SECTION 160.30 OF THE CRIMINAL PROCEDURE LAW,
23 WITH RESPECT TO AN INDIVIDUAL REQUIRING FINGERPRINTING PURSUANT TO
24 SUBDIVISION (A) OF THIS SECTION, THE RECIPIENT POLICE OFFICER OR
25 PROBATION OFFICER OR THEIR RESPECTIVE AGENCY MUST PROMPTLY TRANSMIT SUCH
26 REPORT OR A COPY THEREOF TO THE APPROPRIATE PROBATION OFFICER WITHIN THE
27 PROBATION DEPARTMENT RESPONSIBLE FOR SUPERVISION, WHERE SUCH PROBATION
28 OFFICER OR PROBATION DEPARTMENT WAS NOT THE EARLIER RECIPIENT OF THIS
29 INFORMATION.

30 S 5. This act shall take effect on the one hundred eightieth day after
31 it shall have become a law and shall apply to individuals under
32 probation supervision on or after such date.