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

8208--A

I N S E N A T E

June 16, 2010

Introduced by Sens. ESPADA, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to expungement of criminal records

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

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

S 160.65 EXPUNGEMENT OF ARREST REFERENCES AND RECORDS.

1. FOR THE PURPOSES OF THIS SECTION, THE TERM "ELIGIBLE MISDEMEANOR" SHALL BE A MISDEMEANOR OFFENSE DEFINED IN THE PENAL LAW, PROVIDED THAT AN ELIGIBLE MISDEMEANOR SHALL NOT MEAN A MISDEMEANOR OFFENSE DEFINED IN ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED THIRTY, ONE HUNDRED THIRTY-FIVE, ONE HUNDRED FIFTY, TWO HUNDRED THIRTY-FIVE, TWO HUNDRED FORTY-FIVE, TWO HUNDRED SIXTY, TWO HUNDRED SIXTY-THREE, TWO HUNDRED SIXTY-FIVE OR FOUR HUNDRED OF THE PENAL LAW. AN ELIGIBLE MISDEMEANOR SHALL NOT INCLUDE ANY ONE OR MORE OF THE FOLLOWING: KILLING OR INJURING A POLICE ANIMAL AS DEFINED IN SECTION 195.06, HARMING AN ANIMAL TRAINED TO AID A PERSON WITH A DISABILITY IN THE SECOND DEGREE AS DEFINED IN SECTION 195.11, HARMING AN ANIMAL TRAINED TO AID A PERSON WITH A DISABILITY IN THE FIRST DEGREE AS DEFINED IN SECTION 195.12, PROMOTING PROSTITUTION IN THE FORTH DEGREE AS DEFINED IN SECTION 230.20, RIOT IN THE SECOND DEGREE AS DEFINED IN SECTION 240.05, INCITING TO RIOT AS DEFINED IN SECTION 240.08, AGGRAVATED HARASSMENT IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION THREE OF SECTION 240.30, CRIMINAL INTERFERENCE WITH HEALTH CARE SERVICES OR RELIGIOUS WORSHIP IN THE SECOND DEGREE AS DEFINED IN SECTION 240.70, HARMING A SERVICE ANIMAL IN THE SECOND DEGREE AS DEFINED IN SECTION 242.10, DISSEMINATION OF AN UNLAWFUL SURVEILLANCE IMAGE IN THE SECOND DEGREE AS DEFINED IN SECTION 250.55, OR ANY SPECIFIED OFFENSE SUBJECT TO THE PROVISION RELATING TO HATE CRIMES AS DEFINED IN SECTION 485.05 OF THE PENAL LAW.

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

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2. A PERSON CONVICTED OF AN ELIGIBLE MISDEMEANOR, WHO DOES NOT STAND CONVICTED OF ANY FELONY, OR WHO IS NOT REQUIRED TO MAINTAIN REGISTRATION UNDER ARTICLE SIX-C OF THE CORRECTION LAW, MAY PETITION THE COURT TO EXPUNGE THE ELIGIBLE MISDEMEANORS WHEN:

(A) AT LEAST FIVE YEARS HAVE PAST SINCE THE COMPLETION OF A SENTENCE ON AN ELIGIBLE MISDEMEANOR; AND

(B) SUCH PERSON HAS NOT BEEN CONVICTED OF AN OFFENSE DURING THE LAST FIVE YEARS AND IS NOT THE SUBJECT OF AN UNDISPOSED ARREST.

3. THE PETITION AUTHORIZED BY THIS SECTION SHALL BE FILED IN THE COURT OF RECORD THAT LAST IMPOSED A SENTENCE UPON PETITIONER FOR AN ELIGIBLE MISDEMEANOR. ON THE DEFENDANT'S MOTION, THE COURT MAY ORDER THAT ALL OFFICIAL RECORDS AND PAPERS RELATING TO THE ARREST, PROSECUTION AND CONVICTION RECORDS FOR NO MORE THAN THREE OF THE DEFENDANT'S PRIOR ELIGIBLE MISDEMEANORS BE EXPUNGED. THE COURT MAY ONLY EXPUNGE THE RECORDS OF THE DEFENDANT'S ARRESTS, PROSECUTIONS AND CONVICTIONS WHEN:

(A) THE SENTENCING COURT HAS REQUESTED AND RECEIVED FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES OR THE FEDERAL BUREAU OF INVESTIGATION A FINGERPRINT BASED CRIMINAL HISTORY RECORD OF THE DEFENDANT, INCLUDING ANY SEALED OR SUPPRESSED INFORMATION. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ALSO INCLUDE A CRIMINAL HISTORY REPORT, IF ANY, FROM THE FEDERAL BUREAU OF INVESTIGATION REGARDING ANY CRIMINAL HISTORY INFORMATION THAT OCCURRED IN OTHER JURISDICTIONS. THE DIVISION IS HEREBY AUTHORIZED TO RECEIVE SUCH INFORMATION FROM THE FEDERAL BUREAU OF INVESTIGATION FOR THIS PURPOSE. THE PARTIES SHALL BE PERMITTED TO EXAMINE THESE RECORDS;

(B) THE DEFENDANT OR COURT HAS IDENTIFIED THE MISDEMEANOR CONVICTION FOR WHICH RELIEF MAY BE GRANTED;

(C) THE COURT HAS RECEIVED DOCUMENTATION THAT THE SENTENCES IMPOSED ON THE ELIGIBLE MISDEMEANOR CONVICTIONS HAVE BEEN COMPLETED, OR IF NO SUCH DOCUMENTATION IS REASONABLY AVAILABLE, A SWORN AFFIDAVIT THAT THE SENTENCES IMPOSED ON THE PRIOR MISDEMEANORS HAVE BEEN COMPLETED; AND

(D) THE COURT HAS NOTIFIED THE DISTRICT ATTORNEY OF EACH JURISDICTION IN WHICH THE DEFENDANT HAS BEEN CONVICTED OF AN OFFENSE WITH RESPECT TO WHICH SEALING IS SOUGHT, AND THE COURT OR COURTS OF RECORD FOR SUCH OFFENSES, THAT THE COURT IS CONSIDERING SEALING THE RECORDS OF THE DEFENDANT'S ELIGIBLE MISDEMEANOR CONVICTIONS. BOTH THE DISTRICT ATTORNEY AND THE COURT SHALL BE GIVEN A REASONABLE OPPORTUNITY, WHICH SHALL NOT BE LESS THAN THIRTY DAYS, IN WHICH TO COMMENT AND SUBMIT MATERIALS TO AID THE COURT IN MAKING SUCH A DETERMINATION. WHEN THE COURT NOTIFIES A DISTRICT ATTORNEY OF A SEALING APPLICATION, THE DISTRICT ATTORNEY SHALL PROVIDE NOTICE TO THE VICTIM, IF ANY, OF THE SEALING APPLICATION BY MAILING WRITTEN NOTICE TO THE VICTIM'S LAST-KNOWN ADDRESS. FOR PURPOSES OF THIS SECTION "VICTIM" MEANS ANY PERSON WHO HAS SUSTAINED PHYSICAL OR FINANCIAL INJURY TO PERSON OR TO PROPERTY AS A DIRECT RESULT OF THE MISDEMEANOR CRIME OR MISDEMEANOR CRIMES FOR WHICH SEALING IS APPLIED.

4. AT THE REQUEST OF THE DEFENDANT OR THE DISTRICT ATTORNEY OF A COUNTY IN WHICH THE DEFENDANT COMMITTED A CRIME THAT IS THE SUBJECT OF THE EXPUNGING APPLICATION, THE COURT MAY CONDUCT A HEARING TO CONSIDER AND REVIEW ANY RELEVANT EVIDENCE OFFERED BY EITHER PARTY THAT WOULD AID THE COURT IN ITS DECISION WHETHER TO EXPUNGE THE RECORDS OF THE DEFENDANT'S ARRESTS, PROSECUTIONS AND CONVICTIONS. IN MAKING SUCH A DETERMINATION, THE COURT SHALL CONSIDER ANY RELEVANT FACTORS, INCLUDING BUT NOT LIMITED TO:

(A) THE CIRCUMSTANCES AND SERIOUSNESS OF THE OFFENSE OR OFFENSES THAT RESULTED IN THE CONVICTION OR CONVICTIONS;

(B) THE CHARACTER OF THE DEFENDANT, INCLUDING WHAT STEPS THE PETITIONER HAS TAKEN SINCE THE TIME OF THE OFFENSE TOWARD PERSONAL REHABILITATION, INCLUDING TREATMENT, WORK, SCHOOL, OR OTHER PERSONAL HISTORY THAT DEMONSTRATES REHABILITATION;

(C) THE DEFENDANT'S CRIMINAL HISTORY;

(D) THE IMPACT OF SEALING THE DEFENDANT'S RECORDS UPON HIS OR HER REHABILITATION AND HIS OR HER SUCCESSFUL AND PRODUCTIVE RE-ENTRY AND REINTEGRATION INTO SOCIETY, AND ON PUBLIC SAFETY; AND

(E) ANY STATEMENTS MADE BY THE VICTIM OF THE OFFENSE WHERE THERE IS IN FACT A VICTIM OF THE CRIME.

5. WHEN A COURT ORDERS EXPUNGING PURSUANT TO THIS SECTION, ALL OFFICIAL RECORDS AND PAPERS RELATING TO THE ARRESTS, PROSECUTIONS, AND CONVICTIONS, INCLUDING ALL DUPLICATES AND COPIES THEREOF, ON FILE WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES OR ANY COURT SHALL BE EXPUNGED AND NOT MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCY; PROVIDED, HOWEVER, THE DIVISION SHALL RETAIN ANY FINGERPRINTS, PALMPRINTS, PHOTOGRAPHS, OR DIGITAL IMAGES OF THE SAME.

6. WHEN THE COURT ORDERS SEALING PURSUANT TO THIS SECTION, THE CLERK OF SUCH COURT SHALL IMMEDIATELY NOTIFY THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES, AND ANY COURT THAT SENTENCED THE DEFENDANT FOR AN OFFENSE WHICH HAS BEEN CONDITIONALLY SEALED, REGARDING THE RECORDS THAT SHALL BE SEALED PURSUANT TO THIS SECTION.

7. THE COURT SHALL NOT EXPUNGE THE DEFENDANT'S RECORD PURSUANT TO THIS SECTION WHILE ANY CHARGED OFFENSE IS PENDING.

S 2. This act shall take effect immediately.