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

1446

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to expungement of criminal records and penalties for violation of such provisions

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 PETITION FOR EXPUNGEMENT OF RECORDS OF ARREST, INVESTIGATION, DETENTION AND COMPUTER DATABASES FOR THE INNOCENT, DISMISSED CASES, AND THE FALSELY ARRESTED.

1. ANY PERSON WHO HAS BEEN ARRESTED WITH OR WITHOUT WARRANT MAY PETITION THE COURT IN WHICH THE PROCEEDING OCCURRED OR, IF THERE WERE NO COURT PROCEEDING, ANY COURT IN THE JURISDICTION WHERE THE ARREST OCCURRED, FOR AN ORDER EXPUNGING ANY AND ALL RECORDS OF ARREST, INVESTIGATION, COMPUTER DATABASES, AND RECORDS OF DETENTION PURSUANT TO THAT VOIDABLE ARREST NOT LATER THAN THIRTY DAYS AFTER THE DATE ON WHICH THE ARREST BECOMES A VOIDABLE ARREST. LAW ENFORCEMENT AGENCIES MUST PROVIDE IMMEDIATE NOTIFICATION TO A PERSON WHEN A RECORD OF DETENTION OR ARREST IS BEING GENERATED ON SUCH PERSON. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "VOIDABLE ARREST" MEANS ANY ARREST RESULTING IN THE FOLLOWING:

(A) THE PERSON WAS RELEASED WITHOUT THE FILING OF FORMAL CHARGES;

(B) A DETERMINATION THAT THE ARREST WAS WITHOUT PROBABLE CAUSE; OR

(C) DISMISSAL OF PROCEEDINGS AGAINST THE PERSON.

2. ANY PERSON WHO KNOWINGLY FAILS TO EXPUNGE OR OBLITERATE, OR WHO RELEASES INFORMATION ORDERED EXPUNGED, IS GUILTY OF A CLASS B MISDEMEANOR. A PERSON, WHO, KNOWING THE RECORDS ARE EXPUNGED, USES THE INFORMATION FOR FINANCIAL GAIN, OR WILLFUL DESTRUCTION OF A PERSON'S CHARACTER IS GUILTY OF A CLASS D FELONY.

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

LBD00397-01-9

3. A PERSON WHO HAS RECEIVED EXPUNGEMENT OF AN ARREST UNDER THIS SECTION MAY RESPOND TO ANY EMPLOYMENT INQUIRY AS THOUGH THE ARREST DID NOT OCCUR.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.