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

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Introduced by M. of A. AUBRY, PERALTA, GREENE, POWELL, MILLMAN, TITUS, WRIGHT -- Multi-Sponsored by -- M. of A. BOYLAND, GLICK, HOOPER, PRETLOW, ROBINSON, TOWNS -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to the conditional sealing of drug convictions

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 TO CONDITIONALLY SEAL CERTAIN CONVICTIONS.

1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL MEAN AS FOLLOWS:

(A) "ELIGIBLE FELONY" SHALL BE A FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW;

(B) "ELIGIBLE MISDEMEANOR" SHALL BE A MISDEMEANOR OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW; AND

(C) "SPECIFIED OFFENSE" MEANS AN OFFENSE THAT WOULD MAKE A PERSON INELIGIBLE FOR MERIT TIME UNDER SECTION EIGHT HUNDRED THREE OF THE CORRECTION LAW OR AN OFFENSE FOR WHICH REGISTRATION AS A SEX OFFENDER IS REQUIRED AS SET FORTH IN SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW. SPECIFIED OFFENSE SHALL ALSO INCLUDE AN OFFENSE IN ANY OTHER JURISDICTION THAT INCLUDES ALL THE ESSENTIAL ELEMENTS OF AN OFFENSE DESCRIBED IN THIS PARAGRAPH.

2. A PERSON MAY PETITION FOR THE RECORD OF ANY ELIGIBLE FELONY OR ANY ELIGIBLE MISDEMEANOR TO BE CONDITIONALLY SEALED:

(A) UPON THE PERSON'S COMPLETION OF A SENTENCE, AND ANY PERIOD OF POST-RELEASE SUPERVISION WHERE APPLICABLE, ON AN ELIGIBLE FELONY, PROVIDED THAT SUCH PERSON HAS COMPLETED A CHEMICAL DEPENDENCE TREATMENT PROGRAM, AND DOES NOT STAND CONVICTED OF A SPECIFIED OFFENSE;

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

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(B) UPON COMPLETION OF A SENTENCE ON AN ELIGIBLE MISDEMEANOR, PROVIDED THAT SUCH PERSON DOES NOT STAND CONVICTED OF A SPECIFIED OFFENSE;

(C) TWO YEARS AFTER THE COMPLETION OF A SENTENCE, AND ANY PERIOD OF POST-RELEASE SUPERVISION WHERE APPLICABLE, ON A CLASS D OR E ELIGIBLE FELONY, PROVIDED THAT SUCH PERSON HAS NOT BEEN CONVICTED OF ANY CRIME FOR THE LAST TWO YEARS, AND DOES NOT STAND CONVICTED OF A SPECIFIED OFFENSE; OR

(D) FOUR YEARS AFTER THE COMPLETION OF A SENTENCE, AND ANY PERIOD OF POST-RELEASE SUPERVISION WHERE APPLICABLE, ON A CLASS B OR C ELIGIBLE FELONY, PROVIDED THAT SUCH PERSON HAS NOT BEEN CONVICTED OF ANY CRIME FOR THE LAST FOUR YEARS, AND DOES NOT STAND CONVICTED OF A SPECIFIED OFFENSE.

3. A PETITION AUTHORIZED BY THIS SECTION SHALL INCLUDE:

(A) IDENTIFICATION OF THE CONVICTION OR CONVICTIONS FOR WHICH THE PETITIONER IS SEEKING RELIEF;

(B) DOCUMENTATION THAT THE SENTENCE IMPOSED ON THE CONVICTION OR CONVICTIONS HAS BEEN COMPLETED AND DATE OF COMPLETION, OR IF SUCH DOCUMENTATION IS NOT REASONABLY AVAILABLE, A SWORN AFFIDAVIT THAT THE SENTENCE IMPOSED ON THE CONVICTION OR CONVICTIONS HAS BEEN COMPLETED AND DATE OF COMPLETION;

(C) FOR PETITIONS FILED UNDER PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, EVIDENCE THAT THE PETITIONER COMPLETED A CHEMICAL DEPENDENCE TREATMENT PROGRAM AND THAT THE PETITIONER IS NOT DEPENDENT ON ALCOHOL OR DRUGS EXCEPT AS PRESCRIBED BY A MEDICAL PRACTITIONER;

(D) A SWORN AFFIDAVIT THAT NO CRIMINAL CHARGES ARE PENDING AGAINST THE PETITIONER AND THE PETITIONER HAS NOT BEEN CONVICTED OF A SPECIFIED OFFENSE; AND

(E) ANY OTHER SUPPORTING MATERIALS THAT WOULD ASSIST IN DETERMINING WHETHER IT WOULD BE IN THE INTEREST OF JUSTICE TO GRANT THE PETITION.

4. (A) THE PETITION SHALL BE FILED WITH THE STATE BOARD OF PAROLE, AND THE PETITIONER SHALL NOTIFY THE DISTRICT ATTORNEY OF EACH JURISDICTION IN WHICH THE PETITIONER WAS CONVICTED OF A CRIME WITHIN TWENTY DAYS OF THE DATE THE PETITION WAS FILED. THE DISTRICT ATTORNEY, WITHIN THIRTY DAYS OF RECEIVING NOTICE OF THE PETITION, MAY SUBMIT MATERIALS IN SUPPORT OF THE PETITION OR TO DEMONSTRATE THAT THE INTEREST OF JUSTICE WOULD NOT BE SERVED BY GRANTING THE PETITION. THE STATE BOARD OF PAROLE SHALL REQUEST FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES A COPY OF THE PETITIONER'S CURRENT CRIMINAL HISTORY RECORD, INCLUDING ANY SEALED CONVICTION INFORMATION.

(B) THE STATE BOARD OF PAROLE SHALL DETERMINE WHETHER THE PETITIONER HAS DEMONSTRATED, BY A PREPONDERANCE OF THE EVIDENCE, THAT IT WOULD BE IN THE INTEREST OF JUSTICE TO GRANT THE PETITION. IN MAKING ITS DETERMINATION, THE STATE BOARD OF PAROLE SHALL CONSIDER THE FOLLOWING FACTORS: (I) THE CIRCUMSTANCES AND SERIOUSNESS OF THE OFFENSE OR OFFENSES THAT RESULTED IN THE CONVICTION OR CONVICTIONS; (II) THE CHARACTER OF THE PETITIONER, INCLUDING EVIDENCE THAT THE PETITIONER PARTICIPATED IN AND SUCCESSFULLY COMPLETED CHEMICAL DEPENDENCE TREATMENT OR OTHERWISE IS IN RECOVERY IF IT IS DETERMINED THAT THE PETITIONER HAS A HISTORY OF CHEMICAL DEPENDENCE; (III) THE CRIMINAL HISTORY OF THE PETITIONER; (IV) THE IMPACT OF GRANTING THE PETITION UPON THE REHABILITATION OF THE PETITIONER AND ON PUBLIC SAFETY; AND (V) ANY OTHER RELEVANT FACTORS.

(C) THE STATE BOARD OF PAROLE SHALL MAKE A DETERMINATION ON THE PETITION WITHIN NINETY DAYS OF THE DATE THE PETITION WAS FILED AND SHALL STATE IN WRITING THE REASONS FOR ITS DETERMINATION.

(D) UPON THE GRANTING OF A PETITION, THE STATE BOARD OF PAROLE SHALL ISSUE A CONDITIONAL SEALING ORDER AND PROMPTLY NOTIFY IN WRITING THE

PETITIONER, THE DISTRICT ATTORNEY OF EACH JURISDICTION IN WHICH THE PETITIONER WAS CONVICTED OF A CRIME, AND THE DIVISION OF CRIMINAL JUSTICE SERVICES. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL NOTIFY THE CLERK OF THE COURT WHERE SUCH ACTIONS OR PROCEEDINGS SHALL BE SEALED, THE HEADS OF ALL APPROPRIATE POLICE DEPARTMENTS AND OTHER LAW ENFORCEMENT AGENCIES OF THE CONDITIONAL SEALING ORDER. UPON SUCH NOTIFICATION, RECORDS SHALL BE SEALED IN A MANNER CONSISTENT WITH SECTION 160.50 OF THIS ARTICLE. THE STATE BOARD OF PAROLE SHALL ALSO NOTIFY THE PETITIONER THAT ANY SUBSEQUENT CHARGE FOR ANY MISDEMEANOR OR FELONY SHALL CONDITIONALLY UNSEAL THE RECORD OF THE CONVICTION OR CONVICTIONS AND THAT IF SUCH CHARGE RESULTS IN A CONVICTION FOR A CRIME, THE CONDITIONAL SEALING ORDER WILL BE AUTOMATICALLY VACATED.

(E) IF THE PETITION IS DENIED, THE STATE BOARD OF PAROLE SHALL PROMPTLY NOTIFY IN WRITING THE PETITIONER AND ANY DISTRICT ATTORNEY WHO SUBMITTED MATERIALS PURSUANT TO THIS SUBDIVISION.

(F) PURSUANT TO SECTION 160.70 OF THIS ARTICLE, THE PETITIONER AND THE DISTRICT ATTORNEY OF EACH JURISDICTION IN WHICH THE PETITIONER WAS CONVICTED OF A CRIME MAY BRING A MOTION IN COURT TO REVERSE OR MODIFY THE STATE BOARD OF PAROLE'S DETERMINATION ON THE PETITION. IF THE RECORDS TO BE CONDITIONALLY SEALED INCLUDE AN ELIGIBLE FELONY, A MOTION FILED UNDER THIS PARAGRAPH SHALL BE MADE IN THE COURT OF RECORD THAT LAST IMPOSED SENTENCE UPON THE PETITIONER FOR AN ELIGIBLE FELONY. IF THE RECORDS TO BE SEALED INCLUDE ONLY ELIGIBLE MISDEMEANORS, A MOTION FILED UNDER THIS PARAGRAPH SHALL BE MADE TO THE COURT THAT LAST IMPOSED A SENTENCE UPON PETITIONER FOR AN ELIGIBLE MISDEMEANOR.

5. IN THE EVENT THAT A PERSON WHO HAS HAD A RECORD CONDITIONALLY SEALED UNDER THIS SECTION IS SUBSEQUENTLY CHARGED WITH A CRIME, THE RECORDS RELATING TO THE CONVICTION OR CONVICTIONS SHALL BE CONDITIONALLY UNSEALED PENDING THE FINAL DISPOSITION OF THE CHARGE. IF SUCH CHARGE RESULTS IN A CONVICTION OF A CRIME, THE CONDITIONAL SEALING ORDER SHALL BE DEEMED AUTOMATICALLY VACATED. THE DIVISION OF CRIMINAL JUSTICE SERVICES AND ANY OTHER ENTITY SUBJECT TO SUCH ORDER SHALL UNSEAL ANY RECORDS THAT HAD BEEN SEALED BY VIRTUE OF THIS SECTION. ALL RECORDS UNSEALED PURSUANT TO THIS SUBDIVISION SHALL BE RESTORED TO THEIR ORIGINAL STATUS AND TREATED AS THOUGH THE CONDITIONAL SEALING ORDER HAD NOT BEEN ENTERED. IF SUCH SUBSEQUENT CHARGE RESULTS IN PROCEEDINGS THAT ARE TERMINATED IN FAVOR OF THE ACCUSED AS DESCRIBED IN SUBDIVISION THREE OF SECTION 160.50 OF THIS ARTICLE OR BY CONVICTION FOR A NONCRIMINAL OFFENSE AS DESCRIBED IN SECTION 160.55 OF THIS ARTICLE, THE ORIGINAL CONDITIONAL SEALING ORDER SHALL REMAIN IN EFFECT.

6. FOR PURPOSES OF THIS SECTION, CONDITIONAL SEALING SHALL MEAN THAT THE RECORDS OF THE SUBJECT CONVICTION OR CONVICTIONS ARE SEALED AS PROVIDED IN SECTION 160.50 OF THIS ARTICLE, AND SHALL NOT BE MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCY, EXCEPT SUCH RECORDS SHALL BE MADE AVAILABLE TO: (A) THE PETITIONER OR TO SUCH PETITIONER'S DESIGNATED AGENT; (B) A PROSECUTOR, A LAW ENFORCEMENT AGENCY, OR A COURT WHICH HAS RESPONSIBILITY FOR CRIMINALLY INVESTIGATING, PROSECUTING, OR ADJUDICATING THE PETITIONER; (C) ANY STATE OR LOCAL OFFICE OR AGENCY WITH RESPONSIBILITY FOR THE ISSUANCE OF LICENSES TO POSSESS GUNS, WHEN THE PETITIONER HAS MADE APPLICATION FOR SUCH A LICENSE; (D) ANY PROSPECTIVE EMPLOYER OF A POLICE OFFICER OR PEACE OFFICER AS THOSE TERMS ARE DEFINED IN SUBDIVISIONS THIRTY-THREE AND THIRTY-FOUR OF SECTION 1.20 OF THIS CHAPTER, IN RELATION TO AN APPLICATION FOR EMPLOYMENT AS A POLICE OFFICER OR PEACE OFFICER; PROVIDED, HOWEVER, THAT EVERY PERSON WHO IS AN APPLICANT FOR THE POSITION OF POLICE OFFICER OR PEACE OFFICER SHALL BE FURNISHED WITH A COPY OF ALL RECORDS OBTAINED UNDER THIS PARAGRAPH AND

AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION THERETO; (E) PERSONS OR PUBLIC OR PRIVATE AGENCIES WHO ARE MANDATED BY LAW TO FINGERPRINT INDIVIDUALS AS PART OF A BACKGROUND CHECK; AND (F) PROSPECTIVE EMPLOYERS OF CAREGIVERS WHO SUBMIT FINGERPRINTS TO THE DIVISION OF CRIMINAL JUSTICE SERVICES UNDER SECTION EIGHT HUNDRED THIRTY-SEVEN-N OF THE EXECUTIVE LAW. RECORDS CONDITIONALLY SEALED PURSUANT TO THIS SECTION SHALL ALSO BE MADE AVAILABLE, IF OTHERWISE ADMISSIBLE, FOR USE BEFORE THE JURY, OR THE JUDGE AS TRIER OF FACT, IF THE PERSON WHO IS THE SUBJECT OF THE RECORD IS A WITNESS AS DEFINED IN PARAGRAPH (B) OR (C) OF SUBDIVISION ONE OR PARAGRAPH (B) OR (C) OF SUBDIVISION TWO OF SECTION 240.45 OF THIS CHAPTER.

7. THE INTENTIONAL DISSEMINATION OR THE IMPROPER AND INTENTIONAL ACQUISITION OF INFORMATION THAT HAS BEEN SEALED PURSUANT TO THIS SECTION MAY RESULT IN A CIVIL PENALTY OF UP TO ONE THOUSAND DOLLARS FOR EACH SUCH VIOLATION. THE CIVIL PENALTY PROVIDED FOR IN THIS SUBDIVISION MAY BE RECOVERED IN A CIVIL ACTION BROUGHT BY THE ATTORNEY GENERAL.

S 2. The criminal procedure law is amended by adding a new section 160.70 to read as follows:

S 160.70 COURT DETERMINATIONS RELATING TO PETITIONS TO CONDITIONALLY SEAL CERTAIN CONVICTIONS.

WHEN THE COURT WHICH IMPOSED SENTENCE FOR AN ELIGIBLE FELONY OR ELIGIBLE MISDEMEANOR AS DESCRIBED IN SUBDIVISION ONE OF SECTION 160.65 OF THIS ARTICLE RECEIVES A MOTION PURSUANT TO PARAGRAPH (F) OF SUBDIVISION FOUR OF SUCH SECTION 160.65, SUCH COURT SHALL DETERMINE WHETHER THE DECISION BY THE STATE BOARD OF PAROLE WAS REASONABLE ACCORDING TO THE FACTORS SET FORTH IN PARAGRAPH (B) OF SUBDIVISION FOUR OF SUCH SECTION 160.65. IN MAKING THIS DETERMINATION, THE COURT SHALL ONLY CONSIDER THE RECORD THAT WAS BEFORE THE STATE BOARD OF PAROLE AT THE TIME OF THE BOARD'S DECISION. THE COURT SHALL HAVE ACCESS TO ALL MATERIALS REVIEWED BY THE STATE BOARD OF PAROLE IN MAKING ITS DETERMINATION. EACH PARTY SHALL HAVE AN OPPORTUNITY TO BE HEARD. AFTER DECIDING THE MOTION, THE COURT SHALL REMIT THE MATTER FOR A FINAL DETERMINATION BY THE STATE BOARD OF PAROLE, WHICH SHALL BE CONSISTENT WITH THE COURT'S RULING.

S 3. Section 160.60 of the criminal procedure law, as amended by chapter 877 of the laws of 1976, is amended to read as follows:

S 160.60 Effect of termination of criminal actions in favor of the accused.

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this [chapter] ARTICLE, OR UPON THE CONDITIONAL SEALING OF A CONVICTION OR CONVICTIONS, AS DEFINED IN SECTION 160.65 OF THIS ARTICLE, the arrest [and], prosecution AND CONVICTION OR CONVICTIONS CONDITIONALLY SEALED shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest [and], prosecution AND CONVICTION OR CONVICTIONS. The arrest [or], prosecution, CONVICTION OR CONVICTIONS CONDITIONALLY SEALED shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling. Except where specifically required IN SUCH SECTION 160.65 or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest [or], prosecution, CONVICTION OR CONVICTIONS CONDITIONALLY SEALED. IN THE CASE OF A CONVICTION CONDITIONALLY SEALED, AN EMPLOYER, EXCEPT THOSE PERSONS OR PUBLIC OR PRIVATE AGENCIES WHO ARE MANDATED BY LAW TO FINGERPRINT INDIVIDUALS AS PART OF A BACKGROUND CHECK AND PROSPECTIVE EMPLOYERS OF CAREGIVERS UNDER SECTION EIGHT HUNDRED THIRTY-SEVEN-N OF THE

EXECUTIVE LAW, MAY ONLY ASK WHETHER A PERSON HAS BEEN CONVICTED OF A CRIME THAT HAS NOT BEEN CONDITIONALLY SEALED. IN THE EVENT THAT AN EMPLOYER ASKS AN UNLAWFUL QUESTION, THE PERSON SHALL ONLY HAVE TO REVEAL THOSE CRIMINAL CONVICTIONS THAT HAVE NOT BEEN CONDITIONALLY SEALED.

S 4. Subdivision 16 of section 296 of the executive law, as amended by chapter 639 of the laws of 2007, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law OR ANY CONVICTION OR CONVICTIONS THAT HAVE BEEN CONDITIONALLY SEALED, AS DEFINED IN SECTION 160.65 OF THE CRIMINAL PROCEDURE LAW, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, however, that the provisions hereof shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law.

S 5. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all convictions occurring prior to, on, and after the effective date.