

6065

2009-2010 Regular Sessions

I N A S S E M B L Y

February 24, 2009

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

AN ACT to amend the criminal procedure law, in relation to permitting
the sealing of records of certain nonviolent misdemeanor or non-sexual
misdemeanor offenses

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

1 Section 1. This act shall be known and may be cited as the "second
2 chance for ex-offenders act".
3 S 2. The criminal procedure law is amended by adding a new section
4 160.65 to read as follows:
5 S 160.65 SEALING OF CERTAIN CRIMINAL RECORDS FOR A NONVIOLENT MISDEMEA-
6 NOR OR NON-SEXUAL MISDEMEANOR.
7 1. (A) FOR THE PURPOSES OF THIS SECTION, THE TERM "NONVIOLENT MISDE-
8 MEANOR" SHALL MEAN A MISDEMEANOR THAT DOES NOT HAVE AS AN ELEMENT OF THE
9 OFFENSE THE USE OF A WEAPON OR VIOLENCE AND WHICH DID NOT ACTUALLY
10 INVOLVE VIOLENCE IN ITS COMMISSION.
11 (B) FOR THE PURPOSES OF THIS SECTION, THE TERM "NON-SEXUAL MISDEMEANOR
12 OFFENSE" SHALL MEAN ANY OFFENSE THAT DOES NOT INCLUDE A CONVICTION UNDER
13 ARTICLE ONE HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE OF THE PENAL LAW
14 OR ANY OFFENSE THAT WOULD REQUIRE THE OFFENDER TO REGISTER AS A SEX
15 OFFENDER UNDER ARTICLE SIX-C OF THE CORRECTION LAW.
16 2. ANY NONVIOLENT, NON-SEXUAL MISDEMEANOR OFFENSE MAY BE SEALED.
17 3. A RECORD IDENTIFIED FOR SEALING UNDER SUBDIVISION TWO OF THIS
18 SECTION MAY BE SEALED WHEN THE INDIVIDUAL WAS:
19 (A) CONVICTED OF A MISDEMEANOR OFFENSE AND AT LEAST FIVE YEARS HAVE
20 ELAPSED SINCE HIS OR HER LAST CONVICTION FOR ANY MISDEMEANOR OR FELONY
21 OFFENSE; OR
22 (B) PLACED ON MISDEMEANOR SUPERVISION FOR AN OFFENSE; AND
23 (C) AT LEAST FIVE YEARS HAVE ELAPSED SINCE THE COMPLETION OF THE TERM
24 OF SUPERVISION; AND

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

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(D) THE INDIVIDUAL HAS NOT BEEN CONVICTED OF A FELONY OR MISDEMEANOR OR PLACED ON SUPERVISION FOR A MISDEMEANOR OR FELONY DURING THE PERIOD SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION.

4. UPON BEING PLACED ON SUPERVISION FOR A SEALABLE OFFENSE, OR UPON CONVICTION OF A SEALABLE OFFENSE, THE PERSON SHALL BE INFORMED BY THE COURT OF THE RIGHT TO HAVE THE RECORD SEALED AND THE PROCEDURE FOR SEALING OF THE RECORD.

5. (A) SUCH INDIVIDUAL MAY FILE A PETITION FOR SEALING IN THE COURT IN WHICH THE CONVICTION WAS OBTAINED. A COPY OF THE PETITION SHALL BE SERVED BY THE COURT UPON THE DISTRICT ATTORNEY FOR THE COUNTY IN WHICH THE CONVICTION SOUGHT TO BE SEALED WAS OBTAINED. NOT LATER THAN SIXTY DAYS AFTER RECEIPT OF SUCH PETITION, SUCH DISTRICT ATTORNEY MAY SUBMIT WRITTEN RECOMMENDATIONS TO THE COURT AND NOTIFY THE PETITIONER OF SUCH RECOMMENDATION.

(B) THE COURT, AFTER CONSIDERATION OF EVIDENCE SUBMITTED BY THE PETITIONER IN SUPPORT OF THE PETITION AND ANY EVIDENCE SUBMITTED BY THE DISTRICT ATTORNEY IN SUPPORT OF OBJECTIONS IT MAY HAVE TO GRANTING SUCH PETITION, SHALL RULE ON THE PETITION.

6. (A) AN ORDER GRANTING SEALING UNDER THIS SECTION SHALL RESTORE THE INDIVIDUAL CONCERNED, IN THE CONTEMPLATION OF THE LAW, TO THE STATUS SUCH INDIVIDUAL OCCUPIED BEFORE THE ARREST OR INSTITUTION OF CRIMINAL PROCEEDINGS FOR THE CRIME THAT WAS THE SUBJECT OF THE SEALING.

(B) AFTER AN ORDER GRANTING SEALING OF ANY INDIVIDUAL'S CRIMINAL RECORDS UNDER THIS SECTION, SUCH INDIVIDUAL SHALL NOT BE REQUIRED TO DIVULGE INFORMATION PERTAINING TO THE SEALED CONVICTION AND THE FACT THAT SUCH INDIVIDUAL HAS BEEN CONVICTED OF THE CRIMINAL OFFENSE CONCERNED SHALL NOT:

(I) OPERATE AS A DISQUALIFICATION OF SUCH INDIVIDUAL TO PURSUE OR ENGAGE IN ANY LAWFUL ACTIVITY, OCCUPATION OR PROFESSION; AND

(II) BE HELD UNDER ANY PROVISION OF LAW GUILTY OF PERJURY, FALSE ANSWERING OR MAKING A FALSE STATEMENT BY REASON OF HIS OR HER FAILURE TO RECITE OR ACKNOWLEDGE SUCH ARREST OR INSTITUTION OF CRIMINAL PROCEEDINGS, OR RESULTS THEREOF, IN RESPONSE TO AN INQUIRY MADE OF HIM OR HER FOR ANY PURPOSE.

(C) UPON ORDER OF SEALING, ALL OFFICIAL LAW ENFORCEMENT AND COURT RECORDS, INCLUDING, BUT NOT LIMITED TO, ALL REFERENCES TO SUCH PERSON'S ARREST FOR THE OFFENSE, THE INSTITUTION OF CRIMINAL PROCEEDINGS AGAINST HIM OR HER, AND THE RESULTS THEREOF, EXCEPT PUBLICLY AVAILABLE COURT OPINIONS OR BRIEFS ON APPEAL, SHALL BE SEALED OR GATHERED TOGETHER AND SEALED.

(D) A NONPUBLIC RECORD OF A DISPOSITION OR CONVICTION THAT IS THE SUBJECT OF A SEALING ORDER SHALL BE RETAINED ONLY BY THE OFFICE OF COURT ADMINISTRATION SOLELY FOR THE PURPOSE OF USE BY THE COURTS IN ANY SUBSEQUENT ADJUDICATION.

7. (A) THE OFFICE OF COURT ADMINISTRATION MAY MAINTAIN A NONPUBLIC MANUAL OR COMPUTERIZED INDEX OF SEALED RECORDS CONTAINING ONLY THE NAME OF, AND ALPHANUMERIC IDENTIFIERS THAT RELATE TO, THE PERSONS WHO ARE THE SUBJECT OF SUCH SEALED RECORDS, THE WORD "SEALED", AND THE NAME OF THE PERSON, AGENCY, OFFICE OR DEPARTMENT THAT HAS CUSTODY OF THE SEALED RECORDS, AND SHALL NOT NAME THE OFFENSE COMMITTED. THE INDEX SHALL BE MADE AVAILABLE ONLY TO FEDERAL AND STATE LAW ENFORCEMENT PERSONNEL WHO HAVE CUSTODY OF SUCH SEALED RECORDS AND ONLY FOR THE PURPOSES SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION.

(B) SUCH RECORDS SHALL BE MADE AVAILABLE TO THE PERSON ACCUSED OR TO SUCH PERSON'S DESIGNATED AGENT AND SHALL BE MADE AVAILABLE TO:

1 (I) ANY PROSECUTOR, LAW ENFORCEMENT AGENCY, OR COURT WHICH HAS RESPON-
2 SIBILITY FOR CRIMINALLY INVESTIGATING, PROSECUTING OR ADJUDICATING SUCH
3 INDIVIDUAL;

4 (II) ANY STATE OR LOCAL OFFICE OR AGENCY WITH RESPONSIBILITY FOR THE
5 ISSUANCE OF LICENSES TO POSSESS GUNS WHERE THE ACCUSED HAS MADE APPLICA-
6 TION FOR SUCH LICENSE; OR

7 (III) ANY PROSPECTIVE CITY, STATE OR FEDERAL EMPLOYER OR AGENCY,
8 INVOLVED IN INVESTIGATING AND/OR PROSECUTING UNDER CRIMINAL OR CIVIL LAW
9 INCLUDING EMPLOYERS OF POLICE OR PEACE OFFICERS AND IN RELATION TO AN
10 APPLICATION FOR EMPLOYMENT AS AN EMPLOYEE OF A CITY, STATE OR FEDERAL
11 EMPLOYER OR AGENCY INVOLVED IN INVESTIGATING OR PROSECUTING UNDER CRIMI-
12 NAL OR CIVIL STATUTES INCLUDING AS A POLICE OFFICER OR PEACE OFFICER,
13 AND EVERY PERSON WHO IS AN APPLICANT FOR THE POSITION OF POLICE OFFICER,
14 PEACE OFFICER OR ANY OTHER PROSPECTIVE CITY, STATE OR FEDERAL EMPLOYER
15 OR AGENCY, INVOLVED IN INVESTIGATING OR PROSECUTING UNDER CRIMINAL OR
16 CIVIL LAW SHALL BE FURNISHED WITH A COPY OF ALL RECORDS OBTAINED UNDER
17 THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION THERE-
18 TO.

19 (C) ANY PERSON WHO KNOWINGLY DISSEMINATES INFORMATION RELATING TO A
20 SEALED CONVICTION OTHER THAN THE OFFENDER SHALL BE FINED UNDER THIS
21 SECTION OR IMPRISONED NOT MORE THAN ONE YEAR, OR BOTH.

22 8. THE RECORDS SEALED UNDER THIS SECTION SHALL BE RESTORED BY OPERA-
23 TION OF LAW AS PUBLIC RECORDS AND MAY BE USED IN ALL COURT PROCEEDINGS
24 IF THE INDIVIDUAL WHOSE CONVICTION WAS SEALED IS SUBSEQUENTLY CONVICTED
25 OF ANY STATE OR FEDERAL OFFENSE.

26 S 3. This act shall take effect on the first of November next succeed-
27 ing the date on which it shall have become a law and shall apply to any
28 individual convicted of an offense before, on or after such effective
29 date.