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

2244

2009-2010 Regular Sessions

I N S E N A T E

February 13, 2009

Introduced by Sen. VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the sealing of certain 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 ORDER UPON TERMINATION OF CRIMINAL ACTION BY THE CONVICTION FOR APPLICABLE NON-VIOLENT CRIMINAL OFFENSES.

1. AS USED IN THIS SECTION THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:

(A) AN "ELIGIBLE PERSON" MEANS A PERSON WHO HAS BEEN CONVICTED OF AN ELIGIBLE FELONY OR AN ELIGIBLE MISDEMEANOR, PROVIDED HOWEVER, THAT NO PERSON SHALL BE AN ELIGIBLE PERSON WHERE SUCH PERSON HAS BEEN CONVICTED OF MORE THAN TWO ELIGIBLE FELONIES OR MORE THAN TWO ELIGIBLE MISDEMEANORS OR SUCH PERSON HAS BEEN CONVICTED OF A SPECIFIED OFFENSE. A PERSON IS NOT AN ELIGIBLE PERSON FOR PURPOSES OF THIS SECTION IF SUCH PERSON HAS BEEN CONVICTED IN ANY OTHER JURISDICTION OF AN OFFENSE WHICH INCLUDES ALL OF THE ESSENTIAL ELEMENTS OF ANY SPECIFIED OFFENSE;

(B) "PROGRAM" MEANS THE SECOND CHANCE PROGRAM;

(C) "COMMISSION" MEANS THE SECOND CHANCE COMMISSION. SUCH COMMISSION SHALL AWARD RELIEF PROVIDED IN THIS SECTION AND, SHALL CONSIST OF FIVE MEMBERS TO BE APPOINTED FOR TERMS OF THREE YEARS. THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY SHALL EACH APPOINT ONE MEMBER OF THE COMMISSION. TWO APPOINTMENTS SHALL BE MADE BY THE NEW YORK STATE DISTRICT ATTORNEYS ASSOCIATION, ONE OF WHOM SHALL SERVE AS A GEOGRAPHIC REPRESENTATIVE OF NEW YORK CITY AND ONE OF WHOM SHALL SERVE AS A GEOGRAPHIC REPRESENTATIVE OF OTHER COUNTIES;

(D) "ELIGIBLE FELONIES" MEANS CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FIFTH DEGREE AS DEFINED IN SECTION 220.06 OF THE PENAL

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

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LAW, CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE AS DEFINED IN SECTION 220.09 OF THE PENAL LAW, CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE AS DEFINED IN SECTION 220.16 OF THE PENAL LAW, CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 220.18 OF THE PENAL LAW, CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 220.21 OF THE PENAL LAW, CRIMINAL POSSESSION OF PRECURSORS OF CONTROLLED SUBSTANCES AS DEFINED IN SECTION 220.60 OF THE PENAL LAW, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE FIFTH DEGREE AS DEFINED IN SECTION 220.31 OF THE PENAL LAW, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE AS DEFINED IN SECTION 220.34 OF THE PENAL LAW, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE AS DEFINED IN SECTION 220.39 OF THE PENAL LAW, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 220.41 OF THE PENAL LAW, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 220.43 OF THE PENAL LAW, CRIMINAL POSSESSION OF MARIHUANA IN THE THIRD DEGREE AS DEFINED IN SECTION 221.20 OF THE PENAL LAW, CRIMINAL POSSESSION OF MARIHUANA IN THE SECOND DEGREE AS DEFINED IN SECTION 221.25 OF THE PENAL LAW, CRIMINAL POSSESSION OF MARIHUANA IN THE FIRST DEGREE AS DEFINED IN SECTION 221.30 OF THE PENAL LAW, CRIMINAL SALE OF MARIHUANA IN THE THIRD DEGREE AS DEFINED IN SECTION 221.45 OF THE PENAL LAW, CRIMINAL SALE OF MARIHUANA IN THE SECOND DEGREE AS DEFINED IN SECTION 221.50 OF THE PENAL LAW, CRIMINAL SALE OF MARIHUANA IN THE FIRST DEGREE AS DEFINED IN SECTION 221.55 OF THE PENAL LAW, CRIMINAL INJECTION OF A NARCOTIC DRUG AS DEFINED IN SECTION 220.46 OF THE PENAL LAW, CRIMINALLY USING DRUG PARAPHERNALIA IN THE FIRST DEGREE AS DEFINED IN SECTION 220.55 OF THE PENAL LAW, AND CRIMINAL SALE OF A PRESCRIPTION FOR A CONTROLLED SUBSTANCE AS DEFINED IN SECTION 220.65 OF THE PENAL LAW, PROVIDED HOWEVER, THAT "ELIGIBLE FELONIES" SHALL NOT INCLUDE ANY OF THE ENUMERATED CRIMES IN THIS PARAGRAPH WHERE THE CRIME INVOLVED THE SALE OF A CONTROLLED SUBSTANCE OR MARIHUANA TO A PERSON UNDER THE AGE OF SIXTEEN.

(E) "ELIGIBLE MISDEMEANORS" MEANS CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE AS DEFINED IN SECTION 220.03 OF THE PENAL LAW, CRIMINAL POSSESSION OF MARIHUANA IN THE FIFTH DEGREE AS DEFINED IN SECTION 221.10 OF THE PENAL LAW, CRIMINAL POSSESSION OF MARIHUANA IN THE FOURTH DEGREE AS DEFINED IN SECTION 221.15 OF THE PENAL LAW, CRIMINAL SALE OF MARIHUANA IN THE FIFTH DEGREE AS DEFINED IN SECTION 221.35 OF THE PENAL LAW, CRIMINAL SALE OF MARIHUANA IN THE FOURTH DEGREE AS DEFINED IN SECTION 221.40 OF THE PENAL LAW, CRIMINALLY USING DRUG PARAPHERNALIA IN THE SECOND DEGREE AS DEFINED IN SECTION 220.50 OF THE PENAL LAW, AND CRIMINALLY POSSESSING A HYPODERMIC INSTRUMENT AS DEFINED IN SECTION 220.45 OF THE PENAL LAW, PROVIDED HOWEVER, THAT "ELIGIBLE MISDEMEANOR" SHALL NOT INCLUDE ANY OF THE ENUMERATED CRIMES IN THIS PARAGRAPH WHERE THE CRIME INVOLVED THE SALE OF A CONTROLLED SUBSTANCE OR MARIHUANA TO A PERSON UNDER THE AGE OF SIXTEEN; AND

(F) "SPECIFIED OFFENSE" MEANS AN A-1 FELONY OFFENSE OTHER THAN AN OFFENSE CONTAINED IN ARTICLE 220 OF THE PENAL LAW, A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THE PENAL LAW, MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE, CRIMINALLY NEGLIGENT HOMICIDE, AN OFFENSE DEFINED IN ARTICLE 130 OF THE PENAL LAW, INCEST, OR AN OFFENSE DEFINED IN ARTICLE 263 OF THE PENAL LAW.

2. AN ELIGIBLE PERSON MAY HAVE ALL OFFICIAL RECORDS, PAPERS, DNA SAMPLES AND JUDGMENTS AND ORDERS OF A COURT PERTAINING TO AN ELIGIBLE FELONY OR ELIGIBLE MISDEMEANOR, EXCLUDING PUBLISHED COURT DECISIONS OR

OPINIONS OR RECORDS AND BRIEFS ON APPEAL, RELATING TO THE ARREST OR PROSECUTION OF SUCH PERSON FOR SUCH ELIGIBLE FELONY OR ELIGIBLE MISDEMEANOR, INCLUDING ALL DUPLICATES AND COPIES THEREOF ON FILE WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES, SEALED FOR ALL PURPOSES OTHER THAN THOSE RELATED TO LAW ENFORCEMENT AND CRIMINAL PROSECUTION WHEN:

(A) A MINIMUM TIME PERIOD OF FIVE YEARS COMMENCING UPON THE MOST RECENT DATE OF SENTENCE OR PAYMENT OF FINE FOR THOSE PERSONS WHO HAVE NOT BEEN SANCTIONED TO A PERIOD OF INCARCERATION AND FOR OTHER INSTANCES COMMENCING UPON THE COMPLETION OF SUCH PERSON'S TERM OF IMPRISONMENT HAS ELAPSED WHEN SUCH PERSON HAS NOT BEEN SUBSEQUENTLY CONVICTED OF ANY OTHER FELONY OR MISDEMEANOR OR TWO OR MORE NON-VEHICLE AND TRAFFIC LAW VIOLATIONS; AND

(B) SUCH PERSON IS ELIGIBLE TO APPLY FOR A SEALING MOTION PURSUANT TO SUBDIVISION THREE OF THIS SECTION.

3. TO BE ELIGIBLE TO APPLY FOR A SEALING MOTION FOR AN ELIGIBLE FELONY OR ELIGIBLE MISDEMEANOR, THE PERSON MUST PRESENT VALID DOCUMENTATION TO THE COMMISSION EVIDENCING SATISFACTORY FULFILLMENT AND PARTICIPATION IN THE PROGRAM, INCLUDING EVIDENCE THAT THE PERSON IS FREE OF ALCOHOL OR DRUG DEPENDENCE AT TIME OF APPLICATION FOR SEALING. PROGRAM REQUIREMENTS INCLUDE COMPLETION OF AN INDIVIDUAL REHABILITATION PLAN THAT IS PERFORMED AND MONITORED BY AN APPROVED JOB CORPS PROGRAM OR AN ACCREDITED LIST OF CONTRACTORS APPROVED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THAT INCLUDES:

(A) SUCCESSFUL COMPLETION OF A PUBLIC SERVICE COMPONENT OF AT LEAST ONE YEAR;

(B) SUCCESSFUL COMPLETION OF ALCOHOL OR SUBSTANCE ABUSE TREATMENT AT A PROGRAM LICENSED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, PURSUANT TO ARTICLE NINETEEN OF THE MENTAL HYGIENE LAW, IF MANDATORY SCREENING OR ASSESSMENT INDICATES TREATMENT IS NECESSARY, AND REGULAR MONITORING OF SUCH PERSONS FOR A PERIOD OF AT LEAST ONE YEAR, WHICH CAN INCLUDE DRUG TESTING IN ORDER TO ENSURE CONTINUED SOBRIETY; AND

(C) ATTAINMENT OF A GED OR HIGH SCHOOL DIPLOMA, IF NOT ALREADY OBTAINED.

4. A PERSON WHO HAS SATISFACTORILY MET ALL THE REQUIREMENTS OF THIS SECTION MAY UPON MOTION APPLY TO THE COMMISSION FOR AN ORDER GRANTING TO SUCH PERSON THE RELIEF SET FORTH IN SUBDIVISION TWO OF THIS SECTION. THE APPLICANT SHALL GIVE NOT LESS THAN SIXTY DAYS NOTICE TO THE DISTRICT ATTORNEY WITHIN EACH JURISDICTION THE APPLICANT HAS A CONVICTION AND THE ATTORNEY GENERAL, IN SUCH CONVICTIONS AS THE ATTORNEY GENERAL HAS PROSECUTED, OF THE INTENTION TO REQUEST SUCH RELIEF. SUCH ORDER SHALL BE GRANTED UNLESS THE DISTRICT ATTORNEY WITHIN TWENTY DAYS NOTICE TO SUCH PERSON OR HIS OR HER ATTORNEY DEMONSTRATES TO THE SATISFACTION OF THE COMMISSION THAT THE INTERESTS OF JUSTICE REQUIRE OTHERWISE, OR THE COMMISSION ON ITS OWN MOTION WITH NOT LESS THAN TWENTY DAYS NOTICE TO SUCH PERSON OR HIS OR HER ATTORNEY DETERMINES THAT THE INTERESTS OF JUSTICE REQUIRE OTHERWISE. THE COMMISSION SHALL STATE THE REASONS FOR SUCH DETERMINATION ON THE RECORD, THE RECORDS SHALL BE ORDERED SEALED AND THE CLERK OF THE COURT WHEREIN SUCH CRIMINAL ACTION OR PROCEEDING WAS TERMINATED SHALL IMMEDIATELY NOTIFY THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES THAT THE RECORD OF SUCH ACTION OR PROCEEDING HAS BEEN SEALED.

5. THE PETITIONER AND THE DISTRICT ATTORNEY CAN APPEAL THE DECISION OF THE COMMISSION TO GRANT OR DENY THE SEALING MOTION. SUCH APPEAL MUST TAKE PLACE WITHIN THIRTY DAYS OF THE COMMISSION'S DECISION AND MUST BE

MADE AS AN ARTICLE SEVENTY-EIGHT PROCEEDING IN THE JURISDICTION WHERE SUCH PERSON'S MOST RECENT CONVICTION WAS ADJUDICATED.

6. UPON RECEIPT OF NOTIFICATION OF SUCH SEALING:

(A) ALL OFFICIAL RECORDS AND PAPERS, INCLUDING JUDGMENTS AND ORDERS OF A COURT BUT NOT INCLUDING PUBLISHED COURT DECISIONS OR OPINIONS OR RECORDS AND BRIEFS ON APPEAL, RELATING TO THE ARREST OR PROSECUTION, INCLUDING ALL DUPLICATES AND COPIES THEREOF, ON FILE WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES, ANY COURT, POLICE AGENCY, OR PROSECUTOR'S OFFICE SHALL BE SEALED AND NOT MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCY; AND

(B) SUCH RECORDS SHALL BE MADE AVAILABLE TO THE PERSON ACCUSED OR TO SUCH PERSON'S DESIGNATED AGENT, AND SHALL BE MADE AVAILABLE TO (I) A PROSECUTOR, A LAW ENFORCEMENT AGENCY, OR A COURT WHICH HAS RESPONSIBILITY FOR CRIMINALLY INVESTIGATING, PROSECUTING, OR ADJUDICATING THE INDIVIDUAL; (II) ANY STATE OR LOCAL OFFICE OR AGENCY WITH RESPONSIBILITY FOR THE ISSUANCE OF LICENSES TO POSSESS GUNS, WHEN THE ACCUSED HAS MADE APPLICATION FOR SUCH A LICENSE; OR (III) ANY PROSPECTIVE CITY, STATE, OR FEDERAL EMPLOYER OR AGENCY, INVOLVED IN INVESTIGATING AND/OR PROSECUTING UNDER CRIMINAL OR CIVIL STATUTES INCLUDING EMPLOYERS OF POLICE OFFICERS OR PEACE OFFICERS AS DEFINED IN SUBDIVISIONS THIRTY-THREE AND THIRTY-FOUR OF SECTION 1.20 OF THIS CHAPTER, IN RELATION TO AN APPLICATION FOR EMPLOYMENT AS AN EMPLOYEE OF A CITY, STATE OR FEDERAL EMPLOYER OR AGENCY INVOLVED IN INVESTIGATING AND/OR PROSECUTING UNDER CRIMINAL OR CIVIL STATUTES INCLUDING AS A POLICE OFFICER OR PEACE OFFICER; PROVIDED HOWEVER, THAT EVERY PERSON WHO IS AN APPLICANT FOR THE POSITION OF POLICE OFFICER, PEACE OFFICER, OR ANY OTHER PROSPECTIVE CITY, STATE OR FEDERAL EMPLOYER OR AGENCY, INVOLVED IN INVESTIGATING AND/OR PROSECUTING UNDER CRIMINAL OR CIVIL STATUTES SHALL BE FURNISHED WITH A COPY OF ALL RECORDS OBTAINED UNDER THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION THERETO.

7. EXCEPT AS PROVIDED IN PARAGRAPH (B) OF SUBDIVISION SIX OF THIS SECTION, THE SEALED CONVICTION OR CONVICTIONS SHALL NOT OPERATE AS A DISQUALIFICATION OF ANY PERSON TO PURSUE OR ENGAGE IN ANY LAWFUL ACTIVITY, OCCUPATION, PROFESSION, OR CALLING. EXCEPT WHERE SPECIFICALLY REQUIRED OR PERMITTED BY STATUTE OR UPON SPECIFIC AUTHORIZATION OF A SUPERIOR COURT, NO SUCH PERSON SHALL BE REQUIRED TO DIVULGE INFORMATION PERTAINING TO THE SEALED RECORD. SUCH PERSON SHALL BE PERMITTED TO RESPOND IN THE NEGATIVE TO THE QUESTION, "HAVE YOU EVER BEEN CONVICTED OF A MISDEMEANOR OR A FELONY?", OR TO ANY QUESTION WITH THE SAME SUBSTANTIVE CONTENTS.

8. THE KNOWING AND INTENTIONAL DISSEMINATION OF SEALED INFORMATION OR THE IMPROPER ACQUISITION OF INFORMATION THAT HAS BEEN SEALED WILL RESULT IN A PENALTY OF A FINE UP TO ONE THOUSAND DOLLARS FOR EACH SUCH VIOLATION.

9. A PERSON PARTICIPATING IN THIS PROGRAM WILL BE REQUIRED TO PAY A PORTION OF THE COSTS OF PARTICIPATING IN THE PROGRAM AND FILING FEES TO THE COMMISSION, CONTINGENT UPON SUCH PERSON'S INCOME AND ABILITY TO PAY.

10. THE SEALING ORDER WILL BE AUTOMATICALLY REPEALED AND THE DIVISION OF CRIMINAL JUSTICE SERVICES WILL UNSEAL ANY SUCH RECORDS THAT HAD BEEN PREVIOUSLY SEALED BY VIRTUE OF PARTICIPATION IN THIS PROGRAM ON THE SUBSEQUENT CONVICTION OF SUCH PERSON FOR ANY MISDEMEANOR OR FELONY OFFENSE. IN THE EVENT THAT SUCH A PERSON IS SUBSEQUENTLY CONVICTED AND SENTENCED TO A TERM OF PROBATION, THE PROBATION OFFICER ASSIGNED TO SUCH PERSON SHALL BE RESPONSIBLE FOR NOTIFYING SUCH PERSON'S CURRENT EMPLOYER THAT SUCH PERSON'S CRIMINAL RECORD HAS BEEN UNSEALED.

11. AN ELIGIBLE PERSON MAY APPLY FOR RELIEF UNDER THIS SECTION FOR CRIMINAL OFFENSES WHICH OCCURRED ANY TIME PRIOR TO THE EFFECTIVE DATE OF THIS SECTION.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided however that any eligible person may apply for relief pursuant to this act for criminal offenses occurring prior to the effective date of this act.