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

2656

2009-2010 Regular Sessions

I N S E N A T E

February 26, 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 termination of criminal action in favor of the accused

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

Section 1. Section 160.50 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. (A) WHEN A CRIMINAL RECORD MAINTAINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO SUBDIVISION SIX OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW CONTAINS INFORMATION ABOUT AN ARREST DATED AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, BUT THE CRIMINAL RECORD CONTAINS NO DOCKET NUMBER OR OTHER INFORMATION ABOUT THE ARREST, THE DIVISION, NO LATER THAN SIX MONTHS AFTER THE DATE OF ARREST, SHALL SEND A NOTICE TO THE PROSECUTOR'S OFFICE, THE CLERK OF THE COURT OF THE LOCAL CRIMINAL COURT WHEREIN THE ARREST WOULD BE PROSECUTED, THE OFFICE OF COURT ADMINISTRATION, THE POLICE DEPARTMENT OR LAW ENFORCEMENT AGENCY WHICH TRANSMITTED THE FINGERPRINTS OF THE PERSON TO THE DIVISION OF CRIMINAL JUSTICE SERVICES, THE DEPARTMENT OF CORRECTIONAL SERVICES AND THE LOCAL CORRECTIONAL FACILITY. SUCH NOTICE SHALL INFORM SUCH ENTITIES THAT THE ARREST WILL BE CONSIDERED TERMINATED IN FAVOR OF SUCH PERSON AND SEALED IN A MANNER CONSISTENT WITH SUBDIVISION THREE OF THIS SECTION, SIXTY DAYS FROM TRANSMISSION OF SAID NOTIFICATION, IF THE DIVISION OF CRIMINAL JUSTICE SERVICES DOES NOT RECEIVE INFORMATION THAT A CRIMINAL INVESTIGATION OR PROSECUTION IS PROCEEDING. IF AFTER SIXTY DAYS THE DIVISION OF CRIMINAL JUSTICE SERVICES RECEIVES NO INFORMATION THAT A CRIMINAL INVESTIGATION OR PROSECUTION IS PROCEEDING, THE ARREST SHALL BE CONSIDERED TERMINATED IN FAVOR OF SUCH PERSON AND BE SEALED IN ACCORDANCE WITH THIS PARAGRAPH, AND THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL SEND NOTICE OF SUCH SEALING TO SUCH ENTITIES. UPON SUCH NOTIFICATION, ALL OFFICIAL RECORDS AND PAPERS RELATING TO THE ARREST, INCLUDING

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

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ALL DUPLICATES AND COPIES THEREOF ON FILE WITH SUCH ENTITIES SHALL BE SEALED AND NOT MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCIES. FOR ARRESTS THAT OCCURRED PRIOR TO JANUARY FIRST, TWO THOUSAND ELEVEN, SUCH NOTICE SHALL BE TRANSMITTED BY THE DIVISION UPON REQUEST OF THE PERSON ACCUSED OR SUCH PERSON'S DESIGNATED AGENT.

(B) WHEN A CRIMINAL RECORD MAINTAINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO SUBDIVISION SIX OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW INDICATES THAT AN ACCUSATORY INSTRUMENT HAS BEEN FILED ON A CASE AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, THE LAST ACTION OF THE CASE HAS NOT BEEN THE ISSUANCE OF A BENCH WARRANT, NO ACTION HAS BEEN TAKEN ON THE CASE FOR A YEAR, AND NO DISPOSITION HAS BEEN RECORDED, THE DIVISION, NO LATER THAN TWO YEARS AFTER THE DATE OF LAST ACTION ON THE CASE, SHALL SEND A NOTICE TO THE PROSECUTOR'S OFFICE, THE CLERK OF THE COURT OF THE COURT WHERE THE ACCUSATORY INSTRUMENT WAS FILED, THE OFFICE OF COURT ADMINISTRATION, THE POLICE DEPARTMENT OR LAW ENFORCEMENT AGENCY WHICH TRANSMITTED THE FINGERPRINTS OF THE PERSON TO THE DIVISION OF CRIMINAL JUSTICE SERVICES, THE DEPARTMENT OF CORRECTIONAL SERVICES AND THE LOCAL CORRECTIONAL FACILITY. SUCH NOTICE SHALL INFORM SUCH ENTITIES THAT THE DOCKETED CASE WILL BE CONSIDERED TERMINATED IN FAVOR OF SUCH PERSON AND SEALED IN A MANNER CONSISTENT WITH SUBDIVISION THREE OF THIS SECTION, SIXTY DAYS FROM TRANSMISSION OF THE NOTIFICATION, IF THE DIVISION OF CRIMINAL JUSTICE SERVICES DOES NOT RECEIVE INFORMATION THAT A CRIMINAL INVESTIGATION OR PROSECUTION IS PROCEEDING, A BENCH WARRANT IS OUTSTANDING, OR A DISPOSITION HAS BEEN ENTERED IN THE CASE. IF AFTER SIXTY DAYS THE DIVISION OF CRIMINAL JUSTICE SERVICES RECEIVES NO INFORMATION THAT THE CRIMINAL INVESTIGATION OR PROSECUTION IS PROCEEDING, A BENCH WARRANT IS OUTSTANDING, OR A DISPOSITION HAS BEEN ENTERED IN THE CASE, THE CRIMINAL ACTION OR PROCEEDING SHALL BE CONSIDERED TERMINATED IN FAVOR OF SUCH PERSON AND BE SEALED IN ACCORDANCE WITH THIS PARAGRAPH AND THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL SEND NOTICE OF SUCH SEALING TO SUCH ENTITIES. UPON SUCH NOTIFICATION, ALL OFFICIAL RECORDS AND PAPERS RELATING TO THE ARREST, INCLUDING ALL DUPLICATES AND COPIES THEREOF ON FILE WITH SUCH ENTITIES SHALL BE SEALED AND NOT MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCIES. FOR CASES INITIATED PRIOR TO JANUARY FIRST, TWO THOUSAND ELEVEN, SUCH NOTICE SHALL BE TRANSMITTED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES UPON REQUEST OF THE PERSON ACCUSED OR SUCH PERSON'S DESIGNATED AGENT.

S 2. This act shall take effect January 1, 2011.