

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:

1 Section 1. Section 160.50 of the criminal procedure law is amended by
2 adding a new subdivision 5 to read as follows:
3 5. (A) WHEN A CRIMINAL RECORD MAINTAINED BY THE DIVISION OF CRIMINAL
4 JUSTICE SERVICES PURSUANT TO SUBDIVISION SIX OF SECTION EIGHT HUNDRED
5 THIRTY-SEVEN OF THE EXECUTIVE LAW CONTAINS INFORMATION ABOUT AN ARREST
6 DATED AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, BUT THE CRIMINAL RECORD
7 CONTAINS NO DOCKET NUMBER OR OTHER INFORMATION ABOUT THE ARREST, THE
8 DIVISION, NO LATER THAN SIX MONTHS AFTER THE DATE OF ARREST, SHALL SEND
9 A NOTICE TO THE PROSECUTOR'S OFFICE, THE CLERK OF THE COURT OF THE LOCAL
10 CRIMINAL COURT WHEREIN THE ARREST WOULD BE PROSECUTED, THE OFFICE OF
11 COURT ADMINISTRATION, THE POLICE DEPARTMENT OR LAW ENFORCEMENT AGENCY
12 WHICH TRANSMITTED THE FINGERPRINTS OF THE PERSON TO THE DIVISION OF
13 CRIMINAL JUSTICE SERVICES, THE DEPARTMENT OF CORRECTIONAL SERVICES AND
14 THE LOCAL CORRECTIONAL FACILITY. SUCH NOTICE SHALL INFORM SUCH ENTITIES
15 THAT THE ARREST WILL BE CONSIDERED TERMINATED IN FAVOR OF SUCH PERSON
16 AND SEALED IN A MANNER CONSISTENT WITH SUBDIVISION THREE OF THIS
17 SECTION, SIXTY DAYS FROM TRANSMISSION OF SAID NOTIFICATION, IF THE DIVI-
18 SION OF CRIMINAL JUSTICE SERVICES DOES NOT RECEIVE INFORMATION THAT A
19 CRIMINAL INVESTIGATION OR PROSECUTION IS PROCEEDING. IF AFTER SIXTY DAYS
20 THE DIVISION OF CRIMINAL JUSTICE SERVICES RECEIVES NO INFORMATION THAT A
21 CRIMINAL INVESTIGATION OR PROSECUTION IS PROCEEDING, THE ARREST SHALL BE
22 CONSIDERED TERMINATED IN FAVOR OF SUCH PERSON AND BE SEALED IN ACCORD-
23 ANCE WITH THIS PARAGRAPH, AND THE DIVISION OF CRIMINAL JUSTICE SERVICES
24 SHALL SEND NOTICE OF SUCH SEALING TO SUCH ENTITIES. UPON SUCH NOTIFICA-
25 TION, 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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1 ALL DUPLICATES AND COPIES THEREOF ON FILE WITH SUCH ENTITIES SHALL BE
2 SEALED AND NOT MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGEN-
3 CIES. FOR ARRESTS THAT OCCURRED PRIOR TO JANUARY FIRST, TWO THOUSAND
4 ELEVEN, SUCH NOTICE SHALL BE TRANSMITTED BY THE DIVISION UPON REQUEST OF
5 THE PERSON ACCUSED OR SUCH PERSON'S DESIGNATED AGENT.

6 (B) WHEN A CRIMINAL RECORD MAINTAINED BY THE DIVISION OF CRIMINAL
7 JUSTICE SERVICES PURSUANT TO SUBDIVISION SIX OF SECTION EIGHT HUNDRED
8 THIRTY-SEVEN OF THE EXECUTIVE LAW INDICATES THAT AN ACCUSATORY INSTRU-
9 MENT HAS BEEN FILED ON A CASE AFTER JANUARY FIRST, TWO THOUSAND ELEVEN,
10 THE LAST ACTION OF THE CASE HAS NOT BEEN THE ISSUANCE OF A BENCH
11 WARRANT, NO ACTION HAS BEEN TAKEN ON THE CASE FOR A YEAR, AND NO DISPO-
12 SITION HAS BEEN RECORDED, THE DIVISION, NO LATER THAN TWO YEARS AFTER
13 THE DATE OF LAST ACTION ON THE CASE, SHALL SEND A NOTICE TO THE
14 PROSECUTOR'S OFFICE, THE CLERK OF THE COURT OF THE COURT WHERE THE ACCU-
15 SATORY INSTRUMENT WAS FILED, THE OFFICE OF COURT ADMINISTRATION, THE
16 POLICE DEPARTMENT OR LAW ENFORCEMENT AGENCY WHICH TRANSMITTED THE FING-
17 ERPRINTS OF THE PERSON TO THE DIVISION OF CRIMINAL JUSTICE SERVICES, THE
18 DEPARTMENT OF CORRECTIONAL SERVICES AND THE LOCAL CORRECTIONAL FACILITY.
19 SUCH NOTICE SHALL INFORM SUCH ENTITIES THAT THE DOCKETED CASE WILL BE
20 CONSIDERED TERMINATED IN FAVOR OF SUCH PERSON AND SEALED IN A MANNER
21 CONSISTENT WITH SUBDIVISION THREE OF THIS SECTION, SIXTY DAYS FROM TRAN-
22 SMISSION OF THE NOTIFICATION, IF THE DIVISION OF CRIMINAL JUSTICE
23 SERVICES DOES NOT RECEIVE INFORMATION THAT A CRIMINAL INVESTIGATION OR
24 PROSECUTION IS PROCEEDING, A BENCH WARRANT IS OUTSTANDING, OR A DISPOSI-
25 TION HAS BEEN ENTERED IN THE CASE. IF AFTER SIXTY DAYS THE DIVISION OF
26 CRIMINAL JUSTICE SERVICES RECEIVES NO INFORMATION THAT THE CRIMINAL
27 INVESTIGATION OR PROSECUTION IS PROCEEDING, A BENCH WARRANT IS OUTSTAND-
28 ING, OR A DISPOSITION HAS BEEN ENTERED IN THE CASE, THE CRIMINAL ACTION
29 OR PROCEEDING SHALL BE CONSIDERED TERMINATED IN FAVOR OF SUCH PERSON AND
30 BE SEALED IN ACCORDANCE WITH THIS PARAGRAPH AND THE DIVISION OF CRIMINAL
31 JUSTICE SERVICES SHALL SEND NOTICE OF SUCH SEALING TO SUCH ENTITIES.
32 UPON SUCH NOTIFICATION, ALL OFFICIAL RECORDS AND PAPERS RELATING TO THE
33 ARREST, INCLUDING ALL DUPLICATES AND COPIES THEREOF ON FILE WITH SUCH
34 ENTITIES SHALL BE SEALED AND NOT MADE AVAILABLE TO ANY PERSON OR PUBLIC
35 OR PRIVATE AGENCIES. FOR CASES INITIATED PRIOR TO JANUARY FIRST, TWO
36 THOUSAND ELEVEN, SUCH NOTICE SHALL BE TRANSMITTED BY THE DIVISION OF
37 CRIMINAL JUSTICE SERVICES UPON REQUEST OF THE PERSON ACCUSED OR SUCH
38 PERSON'S DESIGNATED AGENT.

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