

5734--A

2009-2010 Regular Sessions

I N S E N A T E

June 1, 2009

Introduced by Sen. FOLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to the conditional sealing of records

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

1 Section 1. Subdivisions 6 and 8 of section 160.58 of the criminal
2 procedure law, as added by section 3 of part AAA of chapter 56 of the
3 laws of 2009, are amended and a new subdivision 6-a is added to read as
4 follows:
5 6. Records sealed pursuant to this subdivision shall be made available
6 to: (a) [the defendant or the defendant's designated agent;
7 (b) qualified agencies, as defined in subdivision nine of section
8 eight hundred thirty-five of the executive law, and federal and state
9 law enforcement agencies, when acting within the scope of their law
10 enforcement duties; or
11 (c) any state or local officer or agency with responsibility for the
12 issuance of licenses to possess guns, when the person has made applica-
13 tion for such a license; or
14 (d) any prospective employer of a police officer or peace officer as
15 those terms are defined in subdivisions thirty-three and thirty-four of
16 section 1.20 of this chapter, in relation to an application for employ-
17 ment as a police officer or peace officer; provided, however, that every
18 person who is an applicant for the position of police officer or peace
19 officer shall be furnished with a copy of all records obtained under
20 this paragraph and afforded an opportunity to make an explanation there-
21 to.] THE DEFENDANT OR TO SUCH DEFENDANT'S DESIGNATED AGENT; (B) A PROSE-
22 CUTOR, A LAW ENFORCEMENT AGENCY, OR A COURT WHICH HAS RESPONSIBILITY FOR
23 CRIMINALLY INVESTIGATING, PROSECUTING, OR ADJUDICATING THE DEFENDANT;

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

LBD14140-02-9

1 (C) ANY STATE OR LOCAL OFFICE OR AGENCY WITH RESPONSIBILITY FOR THE
2 ISSUANCE OF LICENSES TO POSSESS GUNS, WHEN THE DEFENDANT HAS MADE APPLI-
3 CATION FOR SUCH A LICENSE; (D) ANY PROSPECTIVE EMPLOYER OF A POLICE
4 OFFICER OR PEACE OFFICER AS THOSE TERMS ARE DEFINED IN SUBDIVISIONS
5 THIRTY-THREE AND THIRTY-FOUR OF SECTION 1.20 OF THIS CHAPTER, IN
6 RELATION TO AN APPLICATION FOR EMPLOYMENT AS A POLICE OFFICER OR PEACE
7 OFFICER; PROVIDED, HOWEVER, THAT EVERY PERSON WHO IS AN APPLICANT FOR
8 THE POSITION OF POLICE OFFICER OR PEACE OFFICER SHALL BE FURNISHED WITH
9 A COPY OF ALL RECORDS OBTAINED UNDER THIS PARAGRAPH AND AFFORDED AN
10 OPPORTUNITY TO MAKE AN EXPLANATION THERETO; (E) PERSONS OR PUBLIC OR
11 PRIVATE AGENCIES WHO ARE MANDATED BY LAW TO FINGERPRINT INDIVIDUALS AS
12 PART OF A BACKGROUND CHECK; (F) PROSPECTIVE EMPLOYERS OF CAREGIVERS WHO
13 SUBMIT FINGERPRINTS TO THE DIVISION OF CRIMINAL JUSTICE SERVICES UNDER
14 SECTION EIGHT HUNDRED THIRTY-SEVEN-N OF THE EXECUTIVE LAW; (G) THE NEW
15 YORK STATE DIVISION OF PAROLE WHEN THE DEFENDANT IS UNDER PAROLE SUPER-
16 VISION; AND (H) THE LOCAL PROBATION DEPARTMENT RESPONSIBLE FOR SUPER-
17 VISION OF THE DEFENDANT. RECORDS CONDITIONALLY SEALED PURSUANT TO THIS
18 SECTION SHALL ALSO BE MADE AVAILABLE, IF OTHERWISE ADMISSIBLE, FOR USE
19 BEFORE THE JURY, OR THE JUDGE AS TRIER OF FACT, IF THE PERSON WHO IS THE
20 SUBJECT OF THE RECORD IS A WITNESS AS DEFINED IN PARAGRAPH (B) OR (C) OF
21 SUBDIVISION ONE OR PARAGRAPH (B) OR (C) OF SUBDIVISION TWO OF SECTION
22 240.45 OF THIS CHAPTER.

23 6-A. ANY PERSON OR AGENCY THAT KNOWINGLY RELEASES OR PERMITS THE
24 RELEASE OF ANY RECORD OR INFORMATION THAT IS SEALED PURSUANT TO THIS
25 SECTION TO ANY PERSON OR AGENCY NOT AUTHORIZED TO RECEIVE IT SHALL BE
26 SUBJECT TO A CIVIL PENALTY FOR EACH SUCH VIOLATION OF UP TO ONE THOUSAND
27 DOLLARS. SUCH PENALTIES MAY BE RECOVERED IN A CIVIL ACTION BROUGHT BY
28 THE ATTORNEY GENERAL OR BY THE PERSON WHO IS THE SUBJECT OF SUCH RECORD
29 OR INFORMATION. WHEN THE PREVAILING PLAINTIFF IN SUCH CIVIL ACTION IS
30 THE PERSON WHO IS THE SUBJECT OF SUCH RECORD OR INFORMATION, THE COURT
31 SHALL INCLUDE IN THE JUDGMENT AN AWARD OF COSTS AND ATTORNEYS FEES.

32 8. If, subsequent to the sealing of records pursuant to this subdivi-
33 sion, the person who is the subject of such records is [arrested for or
34 formally charged with] CONVICTED OF any misdemeanor or felony offense,
35 such records shall be unsealed immediately and remain unsealed[;
36 provided, however, that if such new misdemeanor or felony arrest results
37 in a termination in favor of the accused as defined in subdivision three
38 of section 160.50 of this article or by conviction for a non criminal
39 offense as described in section 160.55 of this article, such unsealed
40 records shall be conditionally sealed pursuant to this section].

41 S 2. This act shall take effect immediately and shall be deemed to
42 have been in full force and effect on the same date as section 3 of part
43 AAA of chapter 56 of the laws of 2009, as amended, takes effect;
44 provided that any motions made or orders granted pursuant to section
45 160.58 of the criminal procedure law prior to the effective date of this
46 act shall be subject to the provisions of this act.