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

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2011-2012 Regular Sessions

I N  A S S E M B L Y

April 28, 2011

Introduced by M. of A. O'DONNELL, LENTOL -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to sealing court records involving convictions for certain petty offenses

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 160.57 to read as follows:

S 160.57 APPLICATION FOR SEALING OF COURT RECORDS FOLLOWING TERMINATION OF CRIMINAL ACTION OR PROCEEDING BY CONVICTION FOR NONCRIMINAL OFFENSE.

1. A PERSON CONVICTED OF A TRAFFIC INFRACTION OR A VIOLATION, OTHER THAN LOITERING AS DESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION 160.10 OF THIS ARTICLE OR OPERATING A MOTOR VEHICLE WHILE ABILITY IMPAIRED AS DESCRIBED IN SUBDIVISION ONE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW, AND WHOSE CASE WAS SEALED PURSUANT TO SECTION 160.55 OF THIS ARTICLE, MAY MOVE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION FOR AN ORDER SEALING THE COURT RECORD OF SUCH ACTION OR PROCEEDING. IN THE ABSENCE OF AN EARLIER APPLICATION FOR AN ORDER TO SEAL, THE RECORD OF A CONVICTION OF A TRAFFIC INFRACTION OR A VIOLATION PURSUANT TO THIS SUBDIVISION SHALL BE AUTOMATICALLY SEALED BY OPERATION OF LAW THIRTY-SIX MONTHS FROM THE DATE OF SENTENCE, UNLESS THE PEOPLE FILE A NOTICE OF OPPOSITION UPON NOTICE TO THE DEFENDANT, NO EARLIER THAN NINETY DAYS AND NO LATER THAN TWENTY DAYS PRIOR TO THE EXPIRATION OF THIRTY-SIX MONTHS.

2. A MOTION TO SEAL MAY BE FILED IN WRITING WITH THE LOCAL CRIMINAL COURT OR SUPERIOR COURT IN WHICH THE CONVICTION AND SENTENCE OCCURRED NOT EARLIER THAN TWELVE MONTHS FOLLOWING THE DATE OF SENTENCE. SUCH MOTION MUST BE MADE UPON NOT LESS THAN TWENTY DAYS' NOTICE TO THE DISTRICT ATTORNEY.

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

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3. UPON MOTION TO SEAL THE COURT RECORD PURSUANT TO THIS SECTION, WHERE BOTH PARTIES CONSENT TO SUCH SEALING, THE COURT SHALL ENTER AN ORDER SEALING THE COURT RECORD UNLESS THE COURT DETERMINES THAT SEALING PURSUANT TO THIS SECTION IS NOT IN THE INTERESTS OF JUSTICE. FOR PURPOSES OF THIS SUBDIVISION, A PARTY WHO IS GIVEN WRITTEN NOTICE OF A MOTION TO SEAL PURSUANT TO THIS SECTION SHALL BE DEEMED TO CONSENT TO SUCH APPLICATION UNLESS, PRIOR TO THE RETURN DATE OF SUCH MOTION, SUCH PARTY FILES A NOTICE OF OPPOSITION THERETO WITH THE COURT.

4. WHERE THE PEOPLE FILE A NOTICE OF OPPOSITION PRIOR TO THE RETURN DATE OF A MOTION TO SEAL OR THE EXPIRATION OF THE THIRTY-SIX MONTH PERIOD REFERRED TO IN SUBDIVISION ONE OF THIS SECTION, THE COURT SHALL CONDUCT A HEARING ON THE RETURN DATE OF THE MOTION IN WHICH IT MAY RECEIVE ANY RELEVANT EVIDENCE. UPON REQUEST, THE COURT MUST GRANT A REASONABLE ADJOURNMENT TO EITHER PARTY TO ENABLE SUCH PARTY TO PREPARE FOR THE HEARING. FOLLOWING SUCH HEARING, AN ORDER TO SEAL PURSUANT TO THIS SECTION SHALL BE GRANTED UNLESS THE DISTRICT ATTORNEY DEMONSTRATES TO THE SATISFACTION OF THE COURT THAT THE INTERESTS OF JUSTICE REQUIRE OTHERWISE. WHERE THE COURT HAS DETERMINED THAT SEALING PURSUANT TO THIS SECTION IS NOT IN THE INTERESTS OF JUSTICE, THE COURT SHALL PUT FORTH ITS REASONS ON THE RECORD.

5. UPON ENTRY OF AN ORDER TO SEAL, THE COURT RECORD OF SUCH ACTION OR PROCEEDING SHALL BE 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 AND THE HEADS OF ALL APPROPRIATE POLICE DEPARTMENTS AND OTHER LAW ENFORCEMENT AGENCIES THAT THE ACTION SHALL BE SEALED AS IF IT HAS BEEN TERMINATED IN FAVOR OF THE ACCUSED AND THAT THE RECORD OF SUCH ACTION OR PROCEEDING SHALL BE SEALED.

6. UPON THE ENTRY OF AN ORDER TO SEAL OR THE EXPIRATION OF THIRTY-SIX MONTHS FROM THE DATE OF SENTENCE WITHOUT OPPOSITION BY THE PEOPLE, 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 ANY COURT SHALL BE SEALED AND NOT MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCY.

7. UPON THE GRANTING OF A MOTION TO SEAL PURSUANT TO THIS SECTION, OR UPON THE EXPIRATION OF THIRTY-SIX MONTHS FROM THE DATE OF SENTENCE WITHOUT OPPOSITION, SUCH RECORDS SHALL BE MADE AVAILABLE TO THE PERSON ACCUSED OR TO SUCH PERSON'S DESIGNATED AGENT, AND SHALL BE MADE AVAILABLE TO:

(A) A PROSECUTOR IN ANY PROCEEDING IN WHICH THE ACCUSED HAS MOVED FOR AN ORDER PURSUANT TO SECTION 170.56 OR 210.46 OF THIS PART; OR

(B) A LAW ENFORCEMENT AGENCY UPON EX PARTE MOTION IN ANY SUPERIOR COURT, IF SUCH AGENCY DEMONSTRATES TO THE SATISFACTION OF THE COURT THAT JUSTICE REQUIRES THAT SUCH RECORDS BE MADE AVAILABLE TO IT; OR

(C) ANY STATE OR LOCAL OFFICER OR AGENCY WITH RESPONSIBILITY FOR THE ISSUANCE OF LICENSES TO POSSESS GUNS, WHEN THE ACCUSED HAS MADE APPLICATION FOR SUCH A LICENSE; OR

(D) THE NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION WHEN THE ACCUSED IS ON PAROLE SUPERVISION AS A RESULT OF CONDITIONAL RELEASE OR PAROLE RELEASE GRANTED BY THE NEW YORK STATE BOARD OF PAROLE, AND THE ARREST WHICH IS THE SUBJECT OF THE INQUIRY IS ONE WHICH OCCURRED WHILE THE ACCUSED WAS UNDER SUPERVISION; OR

(E) ANY PROSPECTIVE EMPLOYER OF A POLICE OFFICER OR PEACE OFFICER AS THOSE TERMS ARE DEFINED IN SUBDIVISIONS THIRTY-THREE AND THIRTY-FOUR OF SECTION 1.20 OF THIS CHAPTER, IN RELATION TO AN APPLICATION FOR EMPLOY-

MENT AS A POLICE OFFICER OR PEACE OFFICER; PROVIDED, HOWEVER, THAT EVERY PERSON WHO IS AN APPLICANT FOR THE POSITION OF POLICE OFFICER OR PEACE OFFICER SHALL BE FURNISHED WITH A COPY OF ALL RECORDS OBTAINED UNDER THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION THERETO; OR

(F) THE PROBATION DEPARTMENT RESPONSIBLE FOR SUPERVISION OF THE ACCUSED WHEN THE ARREST WHICH IS THE SUBJECT OF THE INQUIRY IS ONE WHICH OCCURRED WHILE THE ACCUSED WAS UNDER SUCH SUPERVISION; OR

(G) A POLICE AGENCY, PROBATION DEPARTMENT, SHERIFF'S OFFICE, DISTRICT ATTORNEY'S OFFICE, DEPARTMENT OF CORRECTION OF ANY MUNICIPALITY AND PAROLE DEPARTMENT OR THE COURT, UPON ARREST OF THE INDIVIDUAL AND WHERE THE SEALED RECORDS ARE FOR CONVICTION OF HARASSMENT IN THE SECOND DEGREE, AS DEFINED IN SECTION 240.26 OF THE PENAL LAW, COMMITTED AGAINST A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS THE DEFENDANT, AS DEFINED IN SECTION 530.11 OF THIS CHAPTER, AND DETERMINED PURSUANT TO SUBDIVISION EIGHT-A OF SECTION 170.10 OF THIS TITLE.

8. THE RECORD OF A CONVICTION THAT OCCURRED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION SHALL NOT BE AUTOMATICALLY SEALED PURSUANT TO SUBDIVISION ONE OF THIS SECTION. HOWEVER, A PERSON CONVICTED OF A TRAFFIC INFRACTION OR A VIOLATION PRIOR TO SUCH EFFECTIVE DATE, MAY UPON WRITTEN MOTION APPLY TO THE LOCAL CRIMINAL COURT OR SUPERIOR COURT IN WHICH THE CONVICTION AND SENTENCE OCCURRED NOT EARLIER THAN TWELVE MONTHS FOLLOWING THE DATE OF THE SENTENCE, AND UPON NOT LESS THAN TWENTY DAYS' NOTICE TO THE DISTRICT ATTORNEY, FOR AN ORDER GRANTING TO SUCH PERSON THE RELIEF SET FORTH IN SUBDIVISION ONE OF THIS SECTION, AND SUCH ORDER SHALL BE GRANTED UNLESS THE DISTRICT ATTORNEY DEMONSTRATES TO THE SATISFACTION OF THE COURTS THAT THE INTERESTS OF JUSTICE REQUIRE OTHERWISE.

9. THE CHIEF ADMINISTRATOR OF THE COURTS, IN CONSULTATION WITH THE DIRECTOR OF THE DIVISION OF CRIMINAL JUSTICE SERVICES AND REPRESENTATIVES OF APPROPRIATE PROSECUTORIAL AND CRIMINAL DEFENSE ORGANIZATIONS IN THE STATE, SHALL ADOPT FORMS FOR THE MOTION TO SEAL, THE NOTICE OF OPPOSITION TO SEALING, AND THE ORDER GRANTING SEALING PURSUANT TO THIS SECTION.

S 2. Section 160.60 of the criminal procedure law, as amended by chapter 877 of the laws of 1976, is amended to read as follows:

S 160.60 Effect of termination of criminal actions in favor of the accused OR SEALING OF A COURT RECORD OF CONVICTION FOR A NONCRIMINAL OFFENSE.

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision [two] THREE of section 160.50 of this [chapter] ARTICLE, OR THE SEALING OF COURT RECORDS BY ORDER OF COURT OR OPERATION OF LAW PURSUANT TO SECTION 160.57 OF THIS ARTICLE, the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he OR SHE occupied before the arrest and prosecution. The arrest or prosecution shall not operate as a disqualification of any person so accused 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 arrest or prosecution.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.