

7288

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:

1 Section 1. The criminal procedure law is amended by adding a new
2 section 160.57 to read as follows:

3 S 160.57 APPLICATION FOR SEALING OF COURT RECORDS FOLLOWING TERMINATION
4 OF CRIMINAL ACTION OR PROCEEDING BY CONVICTION FOR NONCRIMI-
5 NAL OFFENSE.

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

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

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

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

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

21 5. UPON ENTRY OF AN ORDER TO SEAL, THE COURT RECORD OF SUCH ACTION OR
22 PROCEEDING SHALL BE SEALED AND THE CLERK OF THE COURT WHEREIN SUCH CRIM-
23 INAL ACTION OR PROCEEDING WAS TERMINATED SHALL IMMEDIATELY NOTIFY THE
24 COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE HEADS
25 OF ALL APPROPRIATE POLICE DEPARTMENTS AND OTHER LAW ENFORCEMENT AGENCIES
26 THAT THE ACTION SHALL BE SEALED AS IF IT HAS BEEN TERMINATED IN FAVOR OF
27 THE ACCUSED AND THAT THE RECORD OF SUCH ACTION OR PROCEEDING SHALL BE
28 SEALED.

29 6. UPON THE ENTRY OF AN ORDER TO SEAL OR THE EXPIRATION OF THIRTY-SIX
30 MONTHS FROM THE DATE OF SENTENCE WITHOUT OPPOSITION BY THE PEOPLE, ALL
31 OFFICIAL RECORDS AND PAPERS, INCLUDING JUDGMENTS AND ORDERS OF A COURT
32 BUT NOT INCLUDING PUBLISHED COURT DECISIONS OR OPINIONS OR RECORDS AND
33 BRIEFS ON APPEAL, RELATING TO THE ARREST OR PROSECUTION, INCLUDING ALL
34 DUPLICATES AND COPIES THEREOF, ON FILE WITH ANY COURT SHALL BE SEALED
35 AND NOT MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCY.

36 7. UPON THE GRANTING OF A MOTION TO SEAL PURSUANT TO THIS SECTION, OR
37 UPON THE EXPIRATION OF THIRTY-SIX MONTHS FROM THE DATE OF SENTENCE WITH-
38 OUT OPPOSITION, SUCH RECORDS SHALL BE MADE AVAILABLE TO THE PERSON
39 ACCUSED OR TO SUCH PERSON'S DESIGNATED AGENT, AND SHALL BE MADE AVAIL-
40 ABLE TO:

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

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

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

49 (D) THE NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPER-
50 VISION WHEN THE ACCUSED IS ON PAROLE SUPERVISION AS A RESULT OF CONDI-
51 TIONAL RELEASE OR PAROLE RELEASE GRANTED BY THE NEW YORK STATE BOARD OF
52 PAROLE, AND THE ARREST WHICH IS THE SUBJECT OF THE INQUIRY IS ONE WHICH
53 OCCURRED WHILE THE ACCUSED WAS UNDER SUPERVISION; OR

54 (E) ANY PROSPECTIVE EMPLOYER OF A POLICE OFFICER OR PEACE OFFICER AS
55 THOSE TERMS ARE DEFINED IN SUBDIVISIONS THIRTY-THREE AND THIRTY-FOUR OF
56 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 THERE-TO; 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.