

7770

2013-2014 Regular Sessions

I N A S S E M B L Y

June 4, 2013

Introduced by M. of A. O'DONNELL -- read once and referred to the
Committee on Codes

AN ACT to amend the criminal procedure law, in relation to sealing of
dismissals and violations that are more than twenty years old

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

1 Section 1. Subdivision 4 of section 160.50 of the criminal procedure
2 law, as amended by chapter 905 of the laws of 1977 and as renumbered by
3 chapter 142 of the laws of 1991, is amended to read as follows:
4 4. A person in whose favor a criminal action or proceeding was termi-
5 nated, as defined in [paragraph] PARAGRAPHS (a) through (h), (K) OR (L)
6 of subdivision [two] THREE of this section, prior to the effective date
7 of [this section, may upon motion apply to the court in which such
8 termination occurred, upon not less than twenty days notice to the
9 district attorney, for an order granting to such person the relief set
10 forth in subdivision one of this section, and such order shall be grant-
11 ed unless the district attorney demonstrates to the satisfaction of the
12 court that the interests of justice require otherwise. A person in whose
13 favor a criminal action or proceeding was terminated, as defined in
14 paragraph (i) or (j) of subdivision two of this section, prior to the
15 effective date of this section, may apply to the appropriate prosecutor
16 or police agency for a certification as described in said paragraph (i)
17 or (j) granting to such person the relief set forth therein, and such
18 certification shall be granted by such prosecutor or police agency] THE
19 CHAPTER OF THE LAWS OF TWO THOUSAND THIRTEEN WHICH AMENDED THIS SUBDIVI-
20 SION, AND WHOSE RECORDS HAVE NOT BEEN SEALED PURSUANT TO SUBDIVISION ONE
21 OF THIS SECTION, MAY APPLY TO HAVE THE RECORDS OF SUCH CRIMINAL ACTION
22 OR PROCEEDING SEALED AT THE CLERK'S OFFICE FOR THE COURT IN WHICH THE
23 CRIMINAL ACTION OR PROCEEDING WAS TERMINATED. APPLICATION MAY BE MADE BY
24 THE PERSON OR BY HIS OR HER ATTORNEY. UPON A DETERMINATION BY THE CLERK
25 THAT THE ACTION OR PROCEEDING WAS TERMINATED IN THE PERSON'S FAVOR AS

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

LBD11245-01-3

1 DEFINED IN SUBDIVISION THREE OF THIS SECTION, THE CLERK OF THE COURT
2 SHALL IMMEDIATELY NOTIFY THE COMMISSIONER AND THE HEADS OF ALL APPROPRI-
3 ATE POLICE DEPARTMENTS AND OTHER LAW ENFORCEMENT AGENCIES THAT THE
4 ACTION HAS BEEN TERMINATED IN FAVOR OF THE ACCUSED AND THAT THE RECORD
5 OF SUCH ACTION OR PROCEEDING SHALL BE SEALED. UPON RECEIPT OF NOTIFICA-
6 TION OF SUCH TERMINATION AND SEALING, ALL RECORDS RELATING TO THE CRIMI-
7 NAL ACTION SHALL BE SEALED, AS REQUIRED UNDER PARAGRAPH (C) OF SUBDIVI-
8 SION ONE OF THIS SECTION, AND ALL PHOTOGRAPHS, PHOTOGRAPHIC PLATES OR
9 PROOFS, PALM PRINTS AND FINGERPRINTS SHALL BE DESTROYED OR RETURNED AS
10 SPECIFIED IN PARAGRAPHS (A) OR (B) OF SUBDIVISION ONE OF THIS SECTION.

11 S 2. Subdivision 3 of section 160.55 of the criminal procedure law, as
12 amended by chapter 249 of the laws of 1981 and as renumbered by chapter
13 142 of the laws of 1991, is amended to read as follows:

14 3. A person against whom a criminal action or proceeding was termi-
15 nated by such person's conviction of a traffic infraction or violation
16 other than a violation of loitering as described in paragraph (d) [or
17 (e)] of subdivision one of section 160.10 of this chapter or the
18 violation of operating a motor vehicle while ability impaired as
19 described in subdivision one of section eleven hundred ninety-two of the
20 vehicle and traffic law, prior to the effective date of [this section,
21 may upon motion apply to the court in which such termination occurred,
22 upon not less than twenty days notice to the district attorney, for an
23 order granting to such person the relief set forth in subdivision one of
24 this section, and such order shall be granted unless the district attor-
25 ney demonstrates to the satisfaction of the court that the interests of
26 justice require otherwise] THE CHAPTER OF THE LAWS OF TWO THOUSAND THIR-
27 TEEN WHICH AMENDED THIS SUBDIVISION, AND WHOSE RECORDS HAVE NOT BEEN
28 SEALED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, MAY APPLY TO HAVE
29 THE RECORDS OF SUCH CRIMINAL ACTION OR PROCEEDING SEALED AT THE CLERK'S
30 OFFICE FOR THE COURT IN WHICH THE CRIMINAL ACTION OR PROCEEDING WAS
31 TERMINATED. APPLICATION MAY BE MADE BY THE DEFENDANT OR BY HIS OR HER
32 ATTORNEY. UPON A DETERMINATION BY THE CLERK THAT THE COURT DID NOT FIND
33 THAT THE INTERESTS OF JUSTICE REQUIRED THAT THE CASE NOT BE SEALED, AS
34 DEFINED IN SUBDIVISION ONE OF THIS SECTION, THE CLERK OF THE COURT SHALL
35 IMMEDIATELY NOTIFY THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE
36 SERVICES AND THE HEADS OF ALL APPROPRIATE POLICE DEPARTMENTS AND OTHER
37 LAW ENFORCEMENT AGENCIES THAT THE RECORD OF SUCH ACTION OR PROCEEDING
38 SHALL BE SEALED. UPON RECEIPT OF NOTIFICATION OF SUCH TERMINATION AND
39 SEALING, ALL RECORDS RELATING TO THE CRIMINAL ACTION SHALL BE SEALED, AS
40 REQUIRED UNDER PARAGRAPH (C) OF SUBDIVISION ONE OF THIS SECTION, AND ALL
41 PHOTOGRAPHS, PHOTOGRAPHIC PLATES OR PROOFS, PALM PRINTS AND FINGERPRINTS
42 SHALL BE DESTROYED OR RETURNED AS SPECIFIED IN PARAGRAPHS (A) AND (B) OF
43 SUBDIVISION ONE OF THIS SECTION. THIS SUBDIVISION SHALL NOT APPLY TO
44 CASES IN WHICH THE COURT DECLINED TO SEAL FOR REASONS STATED ON THE
45 RECORD, PURSUANT TO SUBDIVISION ONE OF THIS SECTION. WHEN AN APPLICANT
46 UNDER THIS SUBDIVISION PRESENTS TO THE COURT CLERK FINGERPRINT RECORDS
47 FROM THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES OR A COURT
48 DISPOSITION WHICH INDICATE THAT A CRIMINAL ACTION OR PROCEEDING AGAINST
49 THE APPLICANT RESULTED IN A SEALABLE CONVICTION, BUT SUPPORTING COURT
50 RECORDS CANNOT BE LOCATED, HAVE BEEN DESTROYED, OR DO NOT INDICATE
51 WHETHER THE COURT ORDERED THAT THE CASE NOT BE SEALED, THE CLERK OF THE
52 COURT WHEREIN SUCH CRIMINAL ACTION OR PROCEEDING WAS TERMINATED SHALL
53 PROCEED AS IF THE MATTER HAD BEEN SO TERMINATED.

54 S 3. This act shall take effect on the ninetieth day after it shall
55 have become law.