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

5093

2015-2016 Regular Sessions

I N A S S E M B L Y

February 12, 2015

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 4 of section 160.50 of the criminal procedure law, as amended by chapter 905 of the laws of 1977 and as renumbered by chapter 142 of the laws of 1991, is amended to read as follows:

4. A person in whose favor a criminal action or proceeding was terminated, as defined in [paragraph] PARAGRAPHS (a) through (h), (K) OR (L) of subdivision [two] THREE of this section, prior to the effective date of [this section, may upon motion apply to the court in which such termination occurred, 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 court that the interests of justice require otherwise. A person in whose favor a criminal action or proceeding was terminated, as defined in paragraph (i) or (j) of subdivision two of this section, prior to the effective date of this section, may apply to the appropriate prosecutor or police agency for a certification as described in said paragraph (i) or (j) granting to such person the relief set forth therein, and such certification shall be granted by such prosecutor or police agency] THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SUBDIVISION, AND WHOSE RECORDS HAVE NOT BEEN SEALED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, MAY APPLY TO HAVE THE RECORDS OF SUCH CRIMINAL ACTION OR PROCEEDING SEALED AT THE CLERK'S OFFICE FOR THE COURT IN WHICH THE CRIMINAL ACTION OR PROCEEDING WAS TERMINATED. APPLICATION MAY BE MADE BY THE PERSON OR BY HIS OR HER ATTORNEY. UPON A DETERMINATION BY THE CLERK 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.

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DEFINED IN SUBDIVISION THREE OF THIS SECTION, THE CLERK OF THE COURT SHALL IMMEDIATELY NOTIFY THE COMMISSIONER AND THE HEADS OF ALL APPROPRIATE POLICE DEPARTMENTS AND OTHER LAW ENFORCEMENT AGENCIES THAT THE ACTION HAS BEEN TERMINATED IN FAVOR OF THE ACCUSED AND THAT THE RECORD OF SUCH ACTION OR PROCEEDING SHALL BE SEALED. UPON RECEIPT OF NOTIFICATION OF SUCH TERMINATION AND SEALING, ALL RECORDS RELATING TO THE CRIMINAL ACTION SHALL BE SEALED, AS REQUIRED UNDER PARAGRAPH (C) OF SUBDIVISION ONE OF THIS SECTION, AND ALL PHOTOGRAPHS, PHOTOGRAPHIC PLATES OR PROOFS, PALM PRINTS AND FINGERPRINTS SHALL BE DESTROYED OR RETURNED AS SPECIFIED IN PARAGRAPHS (A) OR (B) OF SUBDIVISION ONE OF THIS SECTION.

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

3. A person against whom a criminal action or proceeding was terminated by such person's conviction of a traffic infraction or violation other than a violation of loitering as described in paragraph (d) [or (e)] of subdivision one of section 160.10 of this chapter or the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, prior to the effective date of [this section, may upon motion apply to the court in which such termination occurred, 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 court that the interests of justice require otherwise] THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SUBDIVISION, AND WHOSE RECORDS HAVE NOT BEEN SEALED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, MAY APPLY TO HAVE THE RECORDS OF SUCH CRIMINAL ACTION OR PROCEEDING SEALED AT THE CLERK'S OFFICE FOR THE COURT IN WHICH THE CRIMINAL ACTION OR PROCEEDING WAS TERMINATED. APPLICATION MAY BE MADE BY THE DEFENDANT OR BY HIS OR HER ATTORNEY. UPON A DETERMINATION BY THE CLERK THAT THE COURT DID NOT FIND THAT THE INTERESTS OF JUSTICE REQUIRED THAT THE CASE NOT BE SEALED, AS DEFINED IN SUBDIVISION ONE OF THIS SECTION, THE CLERK OF THE COURT 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 RECORD OF SUCH ACTION OR PROCEEDING SHALL BE SEALED. UPON RECEIPT OF NOTIFICATION OF SUCH TERMINATION AND SEALING, ALL RECORDS RELATING TO THE CRIMINAL ACTION SHALL BE SEALED, AS REQUIRED UNDER PARAGRAPH (C) OF SUBDIVISION ONE OF THIS SECTION, AND ALL PHOTOGRAPHS, PHOTOGRAPHIC PLATES OR PROOFS, PALM PRINTS AND FINGERPRINTS SHALL BE DESTROYED OR RETURNED AS SPECIFIED IN PARAGRAPHS (A) AND (B) OF SUBDIVISION ONE OF THIS SECTION. THIS SUBDIVISION SHALL NOT APPLY TO CASES IN WHICH THE COURT DECLINED TO SEAL FOR REASONS STATED ON THE RECORD, PURSUANT TO SUBDIVISION ONE OF THIS SECTION. WHEN AN APPLICANT UNDER THIS SUBDIVISION PRESENTS TO THE COURT CLERK FINGERPRINT RECORDS FROM THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES OR A COURT DISPOSITION WHICH INDICATE THAT A CRIMINAL ACTION OR PROCEEDING AGAINST THE APPLICANT RESULTED IN A SEALABLE CONVICTION, BUT SUPPORTING COURT RECORDS CANNOT BE LOCATED, HAVE BEEN DESTROYED, OR DO NOT INDICATE WHETHER THE COURT ORDERED THAT THE CASE NOT BE SEALED, THE CLERK OF THE COURT WHEREIN SUCH CRIMINAL ACTION OR PROCEEDING WAS TERMINATED SHALL PROCEED AS IF THE MATTER HAD BEEN SO TERMINATED.

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