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

180

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sen. DIAZ -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to establishing the earned amnesty act of 2015; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Short title. This act shall be known and may be cited as "the earned amnesty act of 2015".

S 2. The criminal procedure law is amended by adding a new section 440.75 to read as follows:

S 440.75 PETITION FOR EXPUNGEMENT OF RECORDS FOR THE INNOCENT, DISMISSED CASES, AND THE FALSELY ARRESTED.

1. EXCEPT AS PROVIDED FOR IN THIS SECTION, ANY PERSON WHO HAS BEEN PREVIOUSLY CONVICTED OF ANY OFFENSE UNDER THE LAWS OF THIS STATE AND WHO HAS NOT BEEN CONVICTED OF ANY PRIOR OR SUBSEQUENT OFFENSE IN THIS STATE, ANOTHER STATE, OR BY THE UNITED STATES MAY, AFTER THE EXPIRATION OF A PERIOD OF TEN YEARS FROM THE DATE OF HIS OR HER CONVICTION, SATISFACTORY COMPLETION OF HIS OR HER PROBATION, PAROLE, SUPERVISED RELEASE AND PAID ANY FINES IMPOSED OR RESTITUTION ORDERED, WHICHEVER IS LATER, MAY PRESENT A VERIFIED PETITION TO THE CRIMINAL TERM OF THE SUPREME COURT IN THE COUNTY OF CONVICTION OR THE COUNTY COURT IN THE COUNTY OF CONVICTION SEEKING AN ORDER THAT SUCH CONVICTION AND ALL RECORDS AND INFORMATION PERTAINING THERETO BE EXPUNGED.

2. (A) A COPY OF THE PETITION FOR EXPUNGEMENT TOGETHER WITH A COPY OF ALL SUPPORTING DOCUMENTS SHALL BE SERVED UPON:

(I) THE DISTRICT ATTORNEY SERVING THE COUNTY OF CONVICTION;

(II) THE SUPERINTENDENT OF THE STATE POLICE AND THE POLICE DEPARTMENT IN THE JURISDICTION OF CONVICTION;

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

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(III) THE JUDGE OR JUSTICE WHO IMPOSED SENTENCE OR IF NOT SERVING THE ADMINISTRATIVE OR SUPERVISING JUDGE IN THE JURISDICTION WHERE THE CONVICTION WAS ENTERED; AND

(IV) THE VICTIM OF THE OFFENSE SOUGHT TO BE EXPUNGED.

(B) WITHIN NINETY DAYS OF THE FILING OF THE PETITION, IF THERE IS NO OBJECTION FROM THE LAW ENFORCEMENT AGENCIES NOTIFIED OR FROM THOSE OFFICES OR AGENCIES REQUIRED TO BE SERVED AND THE PETITIONER IS NOT DISQUALIFIED FROM OBTAINING AN ORDER OF EXPUNGEMENT, THE COURT MAY GRANT AN ORDER DIRECTING THE CLERK OF THE COURT AND ALL RELEVANT CRIMINAL JUSTICE AND LAW ENFORCEMENT AGENCIES TO EXPUNGE ALL RECORDS OF SAID DISPOSITION INCLUDING, BUT NOT LIMITED TO ALL EVIDENCE OF ARREST, DETENTION, CONVICTION, SENTENCE AND PROCEEDINGS RELATED THERETO.

(C) IN THE EVENT NONE OF THE PERSONS OR AGENCIES REQUIRED TO BE NOTIFIED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, HAS FILED ANY WRITTEN OBJECTION TO THE RELIEF SOUGHT, THE COURT MAY NONETHELESS DENY THE RELIEF SOUGHT IF IT CONCLUDES BY A PREPONDERANCE OF THE EVIDENCE THAT THE PETITIONER IS NOT ENTITLED TO RELIEF IF:

(I) ANY STATUTORY PREREQUISITE IS NOT FULFILLED OR THERE IS ANY OTHER BASIS FOR DENYING RELIEF;

(II) THE CONVICTION SOUGHT TO BE EXPUNGED AT THE TIME OF THE HEARING IS THE SUBJECT OF CIVIL LITIGATION BETWEEN PETITIONER AND THE STATE OR ANY POLITICAL SUBDIVISION THEREOF;

(III) PETITIONER HAS HAD ANY PREVIOUS CRIMINAL CONVICTION EXPUNGED IN THIS OR ANY OTHER STATE; OR

(IV) THE COURT FINDS THAT PETITIONER HAS EITHER NOT BEEN REHABILITATED OR THAT THE ORDER OF EXPUNGEMENT IS NOT IN THE INTEREST OF JUSTICE.

(D) THE COURT MAY CONDITIONALLY GRANT AN ORDER OF EXPUNGEMENT BASED UPON THE PERFORMANCE OF COMMUNITY SERVICE. FOR A CONVICTION OF A:

(I) CLASS B FELONY, THE PETITIONER SHALL COMPLETE FIVE HUNDRED HOURS OF COMMUNITY SERVICE;

(II) CLASS C FELONY, THE PETITIONER SHALL COMPLETE THREE HUNDRED HOURS OF COMMUNITY SERVICE;

(III) CLASS D FELONY, THE PETITIONER SHALL COMPLETE TWO HUNDRED HOURS OF COMMUNITY SERVICE;

(IV) CLASS E FELONY, THE PETITIONER SHALL COMPLETE ONE HUNDRED HOURS OF COMMUNITY SERVICE;

(V) CLASS A MISDEMEANOR, THE PETITIONER SHALL COMPLETE FIFTY HOURS OF COMMUNITY SERVICE; AND

(VI) CLASS B MISDEMEANOR, THE PETITIONER SHALL COMPLETE TWENTY-FIVE HOURS OF COMMUNITY SERVICE.

(E) UPON RECEIVING SATISFACTORY PROOF THAT THE IMPOSED TERM OF COMMUNITY SERVICE HAS BEEN PERFORMED AND THE DISTRICT ATTORNEY HAS VERIFIED THE PERFORMANCE THE COURT MAY GRANT A FINAL ORDER OF EXPUNGEMENT.

3. RECORDS OF CONVICTION FOR THE FOLLOWING OFFENSES SPECIFIED BY THE PENAL LAW AND THE VEHICLE AND TRAFFIC LAW SHALL NOT BE SUBJECT TO EXPUNGEMENT PURSUANT TO THIS SECTION:

(A) ALL CLASS A FELONIES;

(B) ALL VIOLENT FELONY OFFENSES;

(C) ALL VIOLATIONS OF ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW FOR WHICH A DEFENDANT WAS REQUIRED TO REGISTER UNDER ARTICLE SIX-C OF THE CORRECTION LAW;

(D) ALL CRIMES COMMITTED BY A PERSON HOLDING ANY PUBLIC OFFICE POSITION OR EMPLOYMENT ELECTIVE OR APPOINTIVE UNDER THE GOVERNMENT OF THIS STATE OR ANY AGENCY OR POLITICAL SUBDIVISION IF THE OFFENSE OF CONVICTION INVOLVED THE OFFICE OR POSITION OF EMPLOYMENT.

4. EVERY PETITION FOR EXPUNGEMENT FILED PURSUANT TO THIS SECTION SHALL BE VERIFIED UNDER THE PENALTY OF PERJURY AND SHALL INCLUDE:

(A) PETITIONER'S DATE OF BIRTH;

(B) PETITIONER'S DATE OF ARREST;

(C) THE SECTION OF LAW UNDER WHICH THE PETITIONER WAS CONVICTED;

(D) THE ORIGINAL INDICTMENT, SUPERIOR COURT INFORMATION OR COMPLAINT;

(E) A CERTIFICATE OF DISPOSITION WITH THE SEAL OF THE COURT FROM THE COURT OF CONVICTION; AND

(F) THE NAME OF THE JUDGE OR JUSTICE WHO IMPOSED THE SENTENCE.

5. THIS SECTION SHALL APPLY TO CONVICTIONS WHICH OCCURRED PRIOR TO AND WHICH ARE ENTERED SUBSEQUENT TO THE EFFECTIVE DATE OF THIS SECTION.

6. THE CHIEF JUDGE OF THE COURT OF APPEALS SHALL ANNUALLY FILE A REPORT WITH THE GOVERNOR, THE SPEAKER AND MINORITY LEADER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT AND MINORITY LEADER OF THE SENATE ON OR BEFORE MAY FIRST FOR THE PRECEDING CALENDAR YEAR REPORTING BY JUDICIAL DISTRICT UPON THE NUMBER OF EXPUNGEMENT APPLICATIONS FILED AND THEIR DISPOSITIONS.

S 3. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law and shall expire December 31, 2019 when upon such date the provisions of this act shall be deemed repealed.