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

10010

I N A S S E M B L Y

May 4, 2016

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

AN ACT to amend the criminal procedure law and the executive law, in relation to the sealing of certain convictions

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 160.56 to read as follows:

S 160.56 SEALING OF CERTAIN CONVICTIONS.

1. AS USED IN THIS SECTION, "ELIGIBLE OFFENSE" SHALL MEAN ANY OFFENSE DEFINED IN THE LAWS OF THIS STATE OTHER THAN A SEX OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, A FELONY OFFENSE DEFINED IN ARTICLE ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW, A VIOLENT FELONY OFFENSE DEFINED IN SECTION 70.02 OF THE PENAL LAW, A CLASS A FELONY OFFENSE DEFINED IN THE PENAL LAW OTHER THAN A CLASS A FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, OR AN OFFENSE FOR WHICH REGISTRATION AS A SEX OFFENDER IS REQUIRED PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW. FOR THE PURPOSES OF THIS SECTION, WHERE THE DEFENDANT IS CONVICTED OF MORE THAN ONE ELIGIBLE OFFENSE, COMMITTED AS PART OF THE SAME CRIMINAL TRANSACTION AS DEFINED IN SUBDIVISION TWO OF SECTION 40.10 OF THIS CHAPTER, THOSE OFFENSES SHALL BE CONSIDERED ONE ELIGIBLE OFFENSE.

2. A DEFENDANT WHO HAS BEEN CONVICTED OF UP TO TWO ELIGIBLE OFFENSES BUT NOT MORE THAN ONE FELONY OFFENSE MAY PETITION THE COURT IN WHICH HE OR SHE WAS CONVICTED OF THE MOST SERIOUS OFFENSE TO HAVE SUCH CONVICTION OR CONVICTIONS SEALED. IF ALL OFFENSES ARE OFFENSES WITH THE SAME CLASSIFICATION, THE PETITION SHALL BE FILED IN THE COURT IN WHICH THE DEFENDANT WAS LAST CONVICTED. ON THE DEFENDANT'S MOTION, THE COURT MAY ORDER THAT ALL OFFICIAL RECORDS AND PAPERS RELATING TO THE ARREST, PROSECUTION AND CONVICTION FOR THE DEFENDANT'S PRIOR ELIGIBLE OFFENSES BE CONDITIONALLY SEALED WHEN:

(A) THE DEFENDANT HAS NOT BEEN CONVICTED OF ANY OTHER CRIME, INCLUDING CRIMES SEALED UNDER SECTION 160.58 OF THIS CHAPTER, OTHER THAN THE ELIGIBLE OFFENSES;

(B) FOR A MISDEMEANOR, AT LEAST ONE YEAR HAS PASSED SINCE: THE ENTRY OF THE JUDGMENT OR; IF THE DEFENDANT WAS SENTENCED TO A CONDITIONAL

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

LBD15049-02-6

DISCHARGE OR A PERIOD OF PROBATION, INCLUDING A PERIOD OF INCARCERATION IMPOSED IN CONJUNCTION WITH A SENTENCE OF PROBATION OR CONDITIONAL DISCHARGE, THE COMPLETION OF THE DEFENDANT'S TERM OF PROBATION OR CONDITIONAL DISCHARGE; OR IF THE DEFENDANT WAS SENTENCED TO INCARCERATION, THE DEFENDANT'S RELEASE FROM INCARCERATION, WHICHEVER IS THE LONGEST; OR

(C) FOR AN ELIGIBLE FELONY, AT LEAST THREE YEARS HAVE PASSED SINCE: THE ENTRY OF THE JUDGMENT OR; IF THE DEFENDANT WAS SENTENCED TO A CONDITIONAL DISCHARGE OR A PERIOD OF PROBATION, INCLUDING A PERIOD OF INCARCERATION IMPOSED IN CONJUNCTION WITH A SENTENCE OF PROBATION OR CONDITIONAL DISCHARGE, THE COMPLETION OF THE DEFENDANT'S TERM OF PROBATION OR CONDITIONAL DISCHARGE; OR IF THE DEFENDANT WAS SENTENCED TO INCARCERATION, THE DEFENDANT'S RELEASE FROM INCARCERATION, WHICHEVER IS THE LONGEST; AND

(D) THE SENTENCING COURT HAS REQUESTED AND RECEIVED FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES OR THE FEDERAL BUREAU OF INVESTIGATION A FINGERPRINT BASED CRIMINAL HISTORY RECORD OF THE DEFENDANT, INCLUDING ANY SEALED OR SUPPRESSED INFORMATION. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ALSO INCLUDE A CRIMINAL HISTORY REPORT, IF ANY, FROM THE FEDERAL BUREAU OF INVESTIGATION REGARDING ANY CRIMINAL HISTORY INFORMATION THAT OCCURRED IN OTHER JURISDICTIONS. THE DIVISION IS HEREBY AUTHORIZED TO RECEIVE SUCH INFORMATION FROM THE FEDERAL BUREAU OF INVESTIGATION FOR THIS PURPOSE. THE PARTIES SHALL BE PERMITTED TO EXAMINE THESE RECORDS;

(E) THE DEFENDANT OR COURT HAS IDENTIFIED THE MISDEMEANOR CONVICTION OR CONVICTIONS OR FELONY CONVICTION FOR WHICH RELIEF MAY BE GRANTED;

(F) THE COURT HAS RECEIVED DOCUMENTATION THAT THE SENTENCES IMPOSED ON THE ELIGIBLE CONVICTIONS HAVE BEEN COMPLETED, OR IF NO SUCH DOCUMENTATION IS REASONABLY AVAILABLE, A SWORN AFFIDAVIT THAT THE SENTENCES IMPOSED ON THE PRIOR ELIGIBLE CONVICTIONS HAVE BEEN COMPLETED;

(G) THE COURT HAS NOTIFIED THE DISTRICT ATTORNEY OF EACH JURISDICTION IN WHICH THE DEFENDANT HAS BEEN CONVICTED OF AN OFFENSE WITH RESPECT TO WHICH SEALING IS SOUGHT, AND THE COURT OR COURTS OF CONVICTION FOR SUCH OFFENSES, THAT THE COURT IS CONSIDERING SEALING THE RECORDS OF THE DEFENDANT'S ELIGIBLE CONVICTIONS. BOTH THE DISTRICT ATTORNEY AND THE COURT SHALL BE GIVEN A REASONABLE OPPORTUNITY, WHICH SHALL BE UP TO THIRTY DAYS, IN WHICH TO COMMENT AND SUBMIT MATERIALS TO AID THE COURT IN MAKING SUCH A DETERMINATION. WHEN THE COURT NOTIFIES A DISTRICT ATTORNEY OF A SEALING APPLICATION, THE DISTRICT ATTORNEY SHALL PROVIDE NOTICE TO THE VICTIM, IF ANY, OF THE SEALING APPLICATION BY MAILING WRITTEN NOTICE TO THE VICTIM'S LAST-KNOWN ADDRESS. FOR PURPOSES OF THIS SECTION "VICTIM" MEANS ANY PERSON WHO HAS SUSTAINED PHYSICAL OR FINANCIAL INJURY TO PERSON OR TO PROPERTY AS A DIRECT RESULT OF THE CRIME OR CRIMES FOR WHICH SEALING IS APPLIED. THE COURT SHALL PROVIDE THE DEFENDANT WITH ANY MATERIALS SUBMITTED TO THE COURT IN RESPONSE TO THE DEFENDANT'S PETITION; AND

(H) NO CHARGES FOR ANY OFFENSE ARE PENDING AGAINST THE DEFENDANT.

3. AT THE REQUEST OF THE DEFENDANT OR THE DISTRICT ATTORNEY OF A COUNTY IN WHICH THE DEFENDANT COMMITTED A CRIME THAT IS THE SUBJECT OF THE SEALING APPLICATION, THE COURT MAY CONDUCT A HEARING TO CONSIDER AND REVIEW ANY RELEVANT EVIDENCE OFFERED BY EITHER PARTY THAT WOULD AID THE COURT IN ITS DECISION WHETHER TO SEAL THE RECORDS OF THE DEFENDANT'S ARRESTS, PROSECUTIONS AND CONVICTIONS. IN MAKING SUCH A DETERMINATION, THE COURT SHALL CONSIDER ANY RELEVANT FACTORS, INCLUDING BUT NOT LIMITED TO:

(A) THE CIRCUMSTANCES AND SERIOUSNESS OF THE OFFENSE OR OFFENSES THAT RESULTED IN THE CONVICTION OR CONVICTIONS;

(B) THE CHARACTER OF THE DEFENDANT, INCLUDING WHAT STEPS THE PETITIONER HAS TAKEN SINCE THE TIME OF THE OFFENSE TOWARD PERSONAL REHABILITATION, INCLUDING TREATMENT, WORK, SCHOOL, OR OTHER PERSONAL HISTORY THAT DEMONSTRATES REHABILITATION;

(C) THE DEFENDANT'S CRIMINAL HISTORY;

(D) THE IMPACT OF SEALING THE DEFENDANT'S RECORDS UPON HIS OR HER REHABILITATION AND HIS OR HER SUCCESSFUL AND PRODUCTIVE REENTRY AND REINTEGRATION INTO SOCIETY, AND ON PUBLIC SAFETY; AND

(E) ANY STATEMENTS MADE BY THE VICTIM OF THE OFFENSE WHERE THERE IS IN FACT A VICTIM OF THE CRIME.

4. WHEN A COURT ORDERS SEALING PURSUANT TO THIS SECTION, ALL OFFICIAL RECORDS AND PAPERS RELATING TO THE ARRESTS, PROSECUTIONS, AND CONVICTIONS, INCLUDING ALL DUPLICATES AND COPIES THEREOF, ON FILE WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES OR ANY COURT SHALL BE SEALED AND NOT MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCY; PROVIDED, HOWEVER, THE DIVISION SHALL RETAIN ANY FINGERPRINTS, PALM PRINTS, PHOTOGRAPHS, OR DIGITAL IMAGES OF THE SAME.

5. WHEN THE COURT ORDERS SEALING PURSUANT TO THIS SECTION, THE CLERK OF SUCH COURT SHALL IMMEDIATELY NOTIFY THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES, AND ANY COURT THAT SENTENCED THE DEFENDANT FOR AN OFFENSE WHICH HAS BEEN CONDITIONALLY SEALED, REGARDING THE RECORDS THAT SHALL BE SEALED PURSUANT TO THIS SECTION.

6. RECORDS SEALED PURSUANT TO THIS SECTION SHALL BE MADE AVAILABLE TO:

(A) THE DEFENDANT OR THE DEFENDANT'S DESIGNATED AGENT;

(B) QUALIFIED AGENCIES, AS DEFINED IN SUBDIVISION NINE OF SECTION EIGHT HUNDRED THIRTY-FIVE OF THE EXECUTIVE LAW, AND FEDERAL AND STATE LAW ENFORCEMENT AGENCIES, WHEN ACTING WITHIN THE SCOPE OF THEIR LAW ENFORCEMENT DUTIES;

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

(D) 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 EMPLOYMENT 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

(E) THE CRIMINAL JUSTICE INFORMATION SERVICES DIVISION OF THE FEDERAL BUREAU OF INVESTIGATION, FOR THE PURPOSES OF RESPONDING TO QUERIES TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM REGARDING ATTEMPTS TO PURCHASE OR OTHERWISE TAKE POSSESSION OF FIREARMS, AS DEFINED IN 18 USC 921 (A) (3).

7. IF, WITHIN TEN YEARS FOLLOWING THE ENTRY OF THE JUDGMENT OR, IF THE DEFENDANT WAS SENTENCED TO A CONDITIONAL DISCHARGE OR A PERIOD OF PROBATION, INCLUDING A PERIOD OF INCARCERATION IMPOSED IN CONJUNCTION WITH A SENTENCE OF PROBATION OR CONDITIONAL DISCHARGE, THE COMPLETION OF THE DEFENDANT'S TERM OF PROBATION OR CONDITIONAL DISCHARGE, OR IF THE DEFENDANT WAS SENTENCED TO INCARCERATION, THE DEFENDANT'S RELEASE FROM INCARCERATION, THE PERSON WHO IS THE SUBJECT OF SUCH RECORDS SEALED PURSUANT TO THIS SECTION IS ARRESTED FOR OR FORMALLY CHARGED WITH ANY MISDEMEANOR OR FELONY OFFENSE, SUCH RECORDS SHALL BE UNSEALED IMMEDIATELY AND REMAIN UNSEALED; PROVIDED, HOWEVER, THAT IF SUCH NEW MISDEMEANOR OR FELONY ARREST RESULTS IN A TERMINATION IN FAVOR OF THE ACCUSED AS DEFINED IN SUBDIVISION THREE OF SECTION 160.50 OF THIS ARTICLE OR BY

CONVICTION FOR A NON-CRIMINAL OFFENSE AS DESCRIBED IN SECTION 160.55 OF THIS ARTICLE, SUCH UNSEALED RECORDS SHALL BE CONDITIONALLY SEALED PURSUANT TO THIS SECTION.

8. NO DEFENDANT SHALL BE REQUIRED OR PERMITTED TO WAIVE ELIGIBILITY FOR CONDITIONAL SEALING PURSUANT TO THIS SECTION AS PART OF A PLEA OF GUILTY, SENTENCE OR ANY AGREEMENT RELATED TO A CONVICTION FOR AN ELIGIBLE OFFENSE AND ANY SUCH WAIVER SHALL BE DEEMED VOID AND WHOLLY UNENFORCEABLE.

S 2. Subdivision 16 of section 296 of the executive law, as separately amended by section 3 of part N and section 14 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.56 OR 160.58 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.56 OR 160.58 of the criminal procedure law. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.56 OR 160.58 of the criminal procedure law.

S 3. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to all convictions occurring prior to, on, and after such date.