

10710

I N A S S E M B L Y

June 13, 2016

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Lentol, Aubry) -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to sealing of certain convictions (Part A); to amend the executive law and the judiciary law, in relation to certain criminal history record searches (Part B); and to direct the commissioner of the division of criminal justice services to seal certain records (Part C)

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

1 Section 1. This act enacts into law major components of legislation.  
2 Each component is wholly contained with a Part identified as Parts A  
3 through C. The effective date for each particular provision contained  
4 within such Part is set forth in the last section of such Part. Any  
5 provision in any section contained within a Part, including the effec-  
6 tive date of the Part, which makes reference to a section "of this act",  
7 when used in connection with that particular component, shall be deemed  
8 to mean and refer to the corresponding section of the Part in which it  
9 is found. Section three of this act sets forth the general effective  
10 date of this act.

11 PART A

12 Section 1. The criminal procedure law is amended by adding a new  
13 section 160.59 to read as follows:

14 S 160.59 SEALING OF CERTAIN CONVICTIONS.

15 1. DEFINITIONS: AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL  
16 HAVE THE FOLLOWING MEANINGS;

17 (A) "ELIGIBLE OFFENSE" SHALL MEAN ANY CRIME DEFINED IN THE LAWS OF  
18 THIS STATE OTHER THAN A SEX OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIR-  
19 TY OF THE PENAL LAW, AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED  
20 SIXTY-THREE OF THE PENAL LAW, A FELONY OFFENSE DEFINED IN ARTICLE ONE  
21 HUNDRED TWENTY-FIVE OF THE PENAL LAW, A VIOLENT FELONY OFFENSE DEFINED  
22 IN SECTION 70.02 OF THE PENAL LAW, A CLASS A FELONY OFFENSE DEFINED IN

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

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1 THE PENAL LAW, A FELONY OFFENSE DEFINED IN ARTICLE ONE HUNDRED FIVE OF  
2 THE PENAL LAW WHERE THE UNDERLYING OFFENSE IS NOT AN ELIGIBLE OFFENSE,  
3 AN ATTEMPT TO COMMIT AN OFFENSE THAT IS NOT AN ELIGIBLE OFFENSE IF THE  
4 ATTEMPT IS A FELONY, OR AN OFFENSE FOR WHICH REGISTRATION AS A SEX  
5 OFFENDER IS REQUIRED PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW.

6 (B) "SENTENCING JUDGE" SHALL MEAN THE JUDGE WHO PRONOUNCED SENTENCE  
7 UPON THE CONVICTION UNDER CONSIDERATION, OR IF THAT JUDGE IS NO LONGER  
8 SITTING IN A COURT IN THE JURISDICTION IN WHICH THE CONVICTION WAS  
9 OBTAINED, ANY OTHER JUDGE WHO IS SITTING IN THE CRIMINAL COURT WHERE THE  
10 JUDGMENT OF CONVICTION WAS ENTERED.

11 2. (A) A DEFENDANT WHO HAS BEEN CONVICTED OF UP TO TWO ELIGIBLE  
12 OFFENSES BUT NOT MORE THAN ONE FELONY OFFENSE MAY APPLY TO THE COURT IN  
13 WHICH HE OR SHE WAS CONVICTED OF THE MOST SERIOUS OFFENSE TO HAVE SUCH  
14 CONVICTION SEALED. IF ALL OFFENSES ARE OFFENSES WITH THE SAME CLASSI-  
15 FICATION, THE APPLICATION SHALL BE MADE TO THE COURT IN WHICH THE  
16 DEFENDANT WAS LAST CONVICTED.

17 (B) AN APPLICATION SHALL CONTAIN: (I) A COPY OF A CERTIFICATE OF  
18 DISPOSITION OR OTHER SIMILAR DOCUMENTATION FOR ANY OFFENSE FOR WHICH THE  
19 DEFENDANT HAS BEEN CONVICTED, OR AN EXPLANATION OF WHY SUCH CERTIFICATE  
20 OR OTHER DOCUMENTATION IS NOT AVAILABLE; (II) A SWORN STATEMENT OF THE  
21 DEFENDANT AS TO WHETHER HE OR SHE HAS FILED, OR THEN INTENDS TO FILE,  
22 ANY APPLICATION FOR SEALING OF ANY OTHER ELIGIBLE OFFENSE; (III) A COPY  
23 OF ANY OTHER SUCH APPLICATION THAT HAS BEEN FILED; (IV) A SWORN STATE-  
24 MENT AS TO THE CONVICTION OR CONVICTIONS FOR WHICH RELIEF IS BEING  
25 SOUGHT; AND (V) A SWORN STATEMENT OF THE REASON OR REASONS WHY THE COURT  
26 SHOULD, IN ITS DISCRETION, GRANT SUCH SEALING, ALONG WITH ANY SUPPORTING  
27 DOCUMENTATION.

28 (C) A COPY OF ANY APPLICATION FOR SUCH SEALING SHALL BE SERVED UPON  
29 THE DISTRICT ATTORNEY OF THE COUNTY IN WHICH THE CONVICTION, OR, IF MORE  
30 THAN ONE, THE CONVICTIONS, WAS OR WERE OBTAINED. THE DISTRICT ATTORNEY  
31 SHALL NOTIFY THE COURT WITHIN FORTY-FIVE DAYS IF HE OR SHE OBJECTS TO  
32 THE APPLICATION FOR SEALING.

33 (D) WHEN SUCH APPLICATION IS FILED WITH THE COURT, IT SHALL BE  
34 ASSIGNED TO THE SENTENCING JUDGE UNLESS MORE THAN ONE APPLICATION IS  
35 FILED IN WHICH CASE THE APPLICATION SHALL BE ASSIGNED TO THE COUNTY  
36 COURT OR THE SUPREME COURT OF THE COUNTY IN WHICH THE CRIMINAL COURT IS  
37 LOCATED, WHO SHALL REQUEST AND RECEIVE FROM THE DIVISION OF CRIMINAL  
38 JUSTICE SERVICES A FINGERPRINT BASED CRIMINAL HISTORY RECORD OF THE  
39 DEFENDANT, INCLUDING ANY SEALED OR SUPPRESSED RECORDS. THE DIVISION OF  
40 CRIMINAL JUSTICE SERVICES ALSO SHALL INCLUDE A CRIMINAL HISTORY REPORT,  
41 IF ANY, FROM THE FEDERAL BUREAU OF INVESTIGATION REGARDING ANY CRIMINAL  
42 HISTORY INFORMATION THAT OCCURRED IN OTHER JURISDICTIONS. THE DIVISION  
43 IS HEREBY AUTHORIZED TO RECEIVE SUCH INFORMATION FROM THE FEDERAL BUREAU  
44 OF INVESTIGATION FOR THIS PURPOSE, AND TO MAKE SUCH INFORMATION AVAIL-  
45 ABLE TO THE COURT, WHICH MAY MAKE THIS INFORMATION AVAILABLE TO THE  
46 DISTRICT ATTORNEY AND THE DEFENDANT.

47 3. THE SENTENCING JUDGE, OR COUNTY OR SUPREME COURT SHALL SUMMARILY  
48 DENY THE DEFENDANT'S APPLICATION WHEN:

49 (A) THE DEFENDANT IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT  
50 TO ARTICLE SIX-C OF THE CORRECTION LAW; OR

51 (B) THE DEFENDANT HAS PREVIOUSLY OBTAINED SEALING OF THE MAXIMUM  
52 NUMBER OF CONVICTIONS ALLOWABLE UNDER SECTION 160.58 OF THE CRIMINAL  
53 PROCEDURE LAW; OR

54 (C) THE DEFENDANT HAS PREVIOUSLY OBTAINED SEALING OF THE MAXIMUM  
55 NUMBER OF CONVICTIONS ALLOWABLE UNDER SUBDIVISION FOUR OF THIS SECTION;

56 OR

1 (D) THE TIME PERIOD SPECIFIED IN SUBDIVISION FIVE OF THIS SECTION HAS  
2 NOT YET BEEN SATISFIED; OR

3 (E) THE DEFENDANT HAS AN UNDISPOSED ARREST OR CHARGE PENDING; OR

4 (F) THE DEFENDANT WAS CONVICTED OF ANY CRIME AFTER THE DATE OF THE  
5 IMPOSITION OF THE SENTENCE ON THE DEFENDANT'S LATEST CONVICTION FOR  
6 WHICH SEALING IS SOUGHT; OR

7 (G) THE DEFENDANT HAS FAILED TO PROVIDE THE COURT WITH THE REQUIRED  
8 SWORN STATEMENT OF THE REASONS WHY THE COURT SHOULD GRANT THE RELIEF  
9 REQUESTED; OR

10 (H) THE DEFENDANT HAS BEEN CONVICTED OF TWO OR MORE FELONIES OR MORE  
11 THAN TWO CRIMES.

12 4. PROVIDED THAT THE APPLICATION IS NOT SUMMARILY DENIED FOR THE  
13 REASONS SET FORTH IN SUBDIVISION THREE OF THIS SECTION, A DEFENDANT WHO  
14 STANDS CONVICTED OF UP TO TWO ELIGIBLE OFFENSES, MAY OBTAIN SEALING OF  
15 NO MORE THAN TWO ELIGIBLE OFFENSES BUT NOT MORE THAN ONE FELONY OFFENSE.

16 5. ANY ELIGIBLE OFFENSE MAY BE SEALED ONLY AFTER AT LEAST TEN YEARS  
17 HAVE PASSED SINCE THE IMPOSITION OF THE SENTENCE ON THE DEFENDANT'S  
18 LATEST CONVICTION, OR, IF THE DEFENDANT WAS SENTENCED TO A PERIOD OF  
19 INCARCERATION, INCLUDING A PERIOD OF INCARCERATION IMPOSED IN CONJUNC-  
20 TION WITH A SENTENCE OF PROBATION, THE DEFENDANT'S LATEST RELEASE FROM  
21 INCARCERATION. IN CALCULATING THE TEN YEAR PERIOD UNDER THIS SUBDIVI-  
22 SION, ANY PERIOD OF TIME THE DEFENDANT SPENT INCARCERATED AFTER THE  
23 CONVICTION FOR WHICH THE APPLICATION FOR SEALING IS SOUGHT, SHALL BE  
24 EXCLUDED AND SUCH TEN YEAR PERIOD SHALL BE EXTENDED BY A PERIOD OR PERI-  
25 ODS EQUAL TO THE TIME SERVED UNDER SUCH INCARCERATION.

26 6. UPON DETERMINING THAT THE APPLICATION IS NOT SUBJECT TO MANDATORY  
27 DENIAL PURSUANT TO SUBDIVISION THREE OF THIS SECTION AND THAT THE APPLI-  
28 CATION IS OPPOSED BY THE DISTRICT ATTORNEY, THE SENTENCING JUDGE OR  
29 COUNTY OR SUPREME COURT SHALL CONDUCT A HEARING ON THE APPLICATION IN  
30 ORDER TO CONSIDER ANY EVIDENCE OFFERED BY EITHER PARTY THAT WOULD AID  
31 THE SENTENCING JUDGE IN HIS OR HER DECISION WHETHER TO SEAL THE RECORDS  
32 OF THE DEFENDANT'S CONVICTIONS. NO HEARING IS REQUIRED IF THE DISTRICT  
33 ATTORNEY DOES NOT OPPOSE THE APPLICATION, HOWEVER THE COURT MAY HOLD A  
34 HEARING AT ITS DISCRETION.

35 7. IN CONSIDERING ANY SUCH APPLICATION, THE SENTENCING JUDGE OR COUNTY  
36 OR SUPREME COURT SHALL CONSIDER ANY RELEVANT FACTORS, INCLUDING BUT NOT  
37 LIMITED TO:

38 (A) THE AMOUNT OF TIME THAT HAS ELAPSED SINCE THE DEFENDANT'S LAST  
39 CONVICTION;

40 (B) THE CIRCUMSTANCES AND SERIOUSNESS OF THE OFFENSE FOR WHICH THE  
41 DEFENDANT IS SEEKING RELIEF, INCLUDING WHETHER THE ARREST CHARGE WAS NOT  
42 AN ELIGIBLE OFFENSE;

43 (C) THE CIRCUMSTANCES AND SERIOUSNESS OF ANY OTHER OFFENSES FOR WHICH  
44 THE DEFENDANT STANDS CONVICTED;

45 (D) THE CHARACTER OF THE DEFENDANT, INCLUDING ANY MEASURES THAT THE  
46 DEFENDANT HAS TAKEN TOWARD REHABILITATION, SUCH AS PARTICIPATING IN  
47 TREATMENT PROGRAMS, WORK, OR SCHOOLING, AND PARTICIPATING IN COMMUNITY  
48 SERVICE OR OTHER VOLUNTEER PROGRAMS;

49 (E) ANY STATEMENTS MADE BY THE VICTIM OF THE OFFENSE FOR WHICH THE  
50 DEFENDANT IS SEEKING RELIEF;

51 (F) THE IMPACT OF SEALING THE DEFENDANT'S RECORD UPON HIS OR HER REHA-  
52 BILITATION AND UPON HIS OR HER SUCCESSFUL AND PRODUCTIVE REENTRY AND  
53 REINTEGRATION INTO SOCIETY; AND

54 (G) THE IMPACT OF SEALING THE DEFENDANT'S RECORD ON PUBLIC SAFETY AND  
55 UPON THE PUBLIC'S CONFIDENCE IN AND RESPECT FOR THE LAW.

1 8. WHEN A SENTENCING JUDGE OR COUNTY OR SUPREME COURT ORDERS SEALING  
2 PURSUANT TO THIS SECTION, ALL OFFICIAL RECORDS AND PAPERS RELATING TO  
3 THE ARRESTS, PROSECUTIONS, AND CONVICTIONS, INCLUDING ALL DUPLICATES AND  
4 COPIES THEREOF, ON FILE WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES  
5 OR ANY COURT SHALL BE SEALED AND NOT MADE AVAILABLE TO ANY PERSON OR  
6 PUBLIC OR PRIVATE AGENCY EXCEPT AS PROVIDED FOR IN SUBDIVISION NINE OF  
7 THIS SECTION; PROVIDED, HOWEVER, THE DIVISION SHALL RETAIN ANY FINGER-  
8 PRINTS, PALMPRINTS AND PHOTOGRAPHS, OR DIGITAL IMAGES OF THE SAME. THE  
9 CLERK OF SUCH COURT SHALL IMMEDIATELY NOTIFY THE COMMISSIONER OF THE  
10 DIVISION OF CRIMINAL JUSTICE SERVICES REGARDING THE RECORDS THAT SHALL  
11 BE SEALED PURSUANT TO THIS SECTION. THE CLERK ALSO SHALL NOTIFY ANY  
12 COURT IN WHICH THE DEFENDANT HAS STATED, PURSUANT TO PARAGRAPH (B) OF  
13 SUBDIVISION TWO OF THIS SECTION, THAT HE OR SHE HAS FILED OR INTENDS TO  
14 FILE AN APPLICATION FOR SEALING OF ANY OTHER ELIGIBLE OFFENSE.

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

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

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

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

24 (D) ANY PROSPECTIVE EMPLOYER OF A POLICE OFFICER OR PEACE OFFICER AS  
25 THOSE TERMS ARE DEFINED IN SUBDIVISIONS THIRTY-THREE AND THIRTY-FOUR OF  
26 SECTION 1.20 OF THIS CHAPTER, IN RELATION TO AN APPLICATION FOR EMPLOY-  
27 MENT AS A POLICE OFFICER OR PEACE OFFICER; PROVIDED, HOWEVER, THAT EVERY  
28 PERSON WHO IS AN APPLICANT FOR THE POSITION OF POLICE OFFICER OR PEACE  
29 OFFICER SHALL BE FURNISHED WITH A COPY OF ALL RECORDS OBTAINED UNDER  
30 THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION THERE-  
31 TO; OR

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

37 10. A CONVICTION WHICH IS SEALED PURSUANT TO THIS SECTION IS INCLUDED  
38 WITHIN THE DEFINITION OF A CONVICTION FOR THE PURPOSES OF ANY CRIMINAL  
39 PROCEEDING IN WHICH THE FACT OF A PRIOR CONVICTION WOULD ENHANCE A  
40 PENALTY OR IS AN ELEMENT OF THE OFFENSE CHARGED.

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

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

48 16. It shall be an unlawful discriminatory practice, unless specif-  
49 ically required or permitted by statute, for any person, agency, bureau,  
50 corporation or association, including the state and any political subdi-  
51 vision thereof, to make any inquiry about, whether in any form of appli-  
52 cation or otherwise, or to act upon adversely to the individual  
53 involved, any arrest or criminal accusation of such individual not then  
54 pending against that individual which was followed by a termination of  
55 that criminal action or proceeding in favor of such individual, as  
56 defined in subdivision two of section 160.50 of the criminal procedure

1 law, or by a youthful offender adjudication, as defined in subdivision  
2 one of section 720.35 of the criminal procedure law, or by a conviction  
3 for a violation sealed pursuant to section 160.55 of the criminal proce-  
4 dure law or by a conviction which is sealed pursuant to section 160.58  
5 OR 160.59 of the criminal procedure law, in connection with the licens-  
6 ing, employment or providing of credit or insurance to such individual;  
7 provided, further, that no person shall be required to divulge informa-  
8 tion pertaining to any arrest or criminal accusation of such individual  
9 not then pending against that individual which was followed by a termi-  
10 nation of that criminal action or proceeding in favor of such individ-  
11 ual, as defined in subdivision two of section 160.50 of the criminal  
12 procedure law, or by a youthful offender adjudication, as defined in  
13 subdivision one of section 720.35 of the criminal procedure law, or by a  
14 conviction for a violation sealed pursuant to section 160.55 of the  
15 criminal procedure law, or by a conviction which is sealed pursuant to  
16 section 160.58 OR 160.59 of the criminal procedure law. The provisions  
17 of this subdivision shall not apply to the licensing activities of  
18 governmental bodies in relation to the regulation of guns, firearms and  
19 other deadly weapons or in relation to an application for employment as  
20 a police officer or peace officer as those terms are defined in subdivi-  
21 sions thirty-three and thirty-four of section 1.20 of the criminal  
22 procedure law; provided further that the provisions of this subdivision  
23 shall not apply to an application for employment or membership in any  
24 law enforcement agency with respect to any arrest or criminal accusation  
25 which was followed by a youthful offender adjudication, as defined in  
26 subdivision one of section 720.35 of the criminal procedure law, or by a  
27 conviction for a violation sealed pursuant to section 160.55 of the  
28 criminal procedure law, or by a conviction which is sealed pursuant to  
29 section 160.58 OR 160.59 of the criminal procedure law.

30 S 3. This act shall take effect on the one hundred eightieth day after  
31 it shall have become a law and shall apply to searches of criminal  
32 history records conducted on or after such date; provided, however, that  
33 a defendant may request sealing, as set forth in section 160.59 of the  
34 criminal procedure law, as added by section one of this act, for an  
35 offense which was committed prior to the effective date of this act or  
36 on or after the effective date of this act.

37

## PART B

38 Section 1. The executive law is amended by adding a new section 845-c  
39 to read as follows:

40 S 845-C. CRIMINAL HISTORY RECORD SEARCHES; UNDISPOSED CASES. 1. WHEN,  
41 PURSUANT TO STATUTE OR THE REGULATIONS OF THE DIVISION, THE DIVISION  
42 CONDUCTS A SEARCH OF ITS CRIMINAL HISTORY RECORDS AND RETURNS A REPORT  
43 THEREON, ALL REFERENCES TO UNDISPOSED CASES CONTAINED IN SUCH CRIMINAL  
44 HISTORY RECORD SHALL BE EXCLUDED FROM SUCH REPORT.

45 2. FOR PURPOSES OF THIS SECTION, "UNDISPOSED CASE" SHALL MEAN A CRIMI-  
46 NAL ACTION OR PROCEEDING IDENTIFIED IN THE DIVISION'S CRIMINAL HISTORY  
47 RECORD REPOSITORY, FOR WHICH THERE IS NO RECORD OF AN UNEXECUTED WARRANT  
48 OF ARREST, SUPERIOR COURT WARRANT OF ARREST, OR BENCH WARRANT, AND FOR  
49 WHICH THERE IS NO RECORD OF CONVICTION OR IMPOSITION OF SENTENCE OR  
50 OTHER FINAL DISPOSITION, OTHER THAN THE ISSUANCE OF AN APPARENTLY UNEXE-  
51 CUTED WARRANT, HAS BEEN RECORDED AND WITH RESPECT TO WHICH NO ENTRY HAS  
52 BEEN MADE IN THE DIVISION'S CRIMINAL HISTORY RECORDS FOR A PERIOD OF AT  
53 LEAST FIVE YEARS PRECEDING THE ISSUANCE OF SUCH REPORT. WHEN A CRIMINAL  
54 ACTION IN THE DIVISION'S CRIMINAL HISTORY RECORD REPOSITORY BECOMES AN

1 UNDISPOSED CASE PURSUANT TO THIS SECTION, THE DIVISION SHALL NOTIFY THE  
2 DISTRICT ATTORNEY IN THE COUNTY WHICH HAS JURISDICTION. IF THE DISTRICT  
3 ATTORNEY NOTIFIES THE DIVISION THAT SUCH CASE IS PENDING AND SHOULD NOT  
4 MEET THE DEFINITION OF AN UNDISPOSED CASE, THE CASE SHALL NOT BE  
5 EXCLUDED FROM SUCH REPORT.

6 3. THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL NOT APPLY  
7 TO CRIMINAL HISTORY RECORD INFORMATION: (A) PROVIDED BY THE DIVISION TO  
8 QUALIFIED AGENCIES PURSUANT TO SUBDIVISION SIX OF SECTION EIGHT HUNDRED  
9 THIRTY-SEVEN OF THIS ARTICLE, OR TO FEDERAL OR STATE LAW ENFORCEMENT  
10 AGENCIES, FOR CRIMINAL JUSTICE PURPOSES; (B) PREPARED SOLELY FOR A BONA  
11 FIDE RESEARCH PURPOSE; OR (C) PREPARED FOR THE INTERNAL RECORDKEEPING OR  
12 CASE MANAGEMENT PURPOSES OF THE DIVISION.

13 S 2. Subdivision 2 of section 212 of the judiciary law is amended by  
14 adding a new paragraph (u) to read as follows:

15 (U) TAKE SUCH ACTIONS AND ADOPT SUCH MEASURES AS MAY BE NECESSARY TO  
16 ENSURE THAT NO WRITTEN OR ELECTRONIC REPORT OF A CRIMINAL HISTORY RECORD  
17 SEARCH CONDUCTED BY THE OFFICE OF COURT ADMINISTRATION, OTHER THAN A  
18 SEARCH CONDUCTED SOLELY FOR THE INTERNAL RECORDKEEPING OR CASE MANAGE-  
19 MENT PURPOSES OF THE JUDICIARY OR FOR A BONA FIDE RESEARCH PURPOSE,  
20 CONTAINS INFORMATION RELATING TO AN UNDISPOSED CASE. FOR PURPOSES OF  
21 THIS PARAGRAPH, "UNDISPOSED CASE" SHALL MEAN A CRIMINAL ACTION OR  
22 PROCEEDING, OR AN ARREST INCIDENT, APPEARING IN THE CRIMINAL HISTORY  
23 RECORDS OF THE OFFICE OF COURT ADMINISTRATION FOR WHICH NO CONVICTION,  
24 IMPOSITION OF SENTENCE, ORDER OF REMOVAL OR OTHER FINAL DISPOSITION,  
25 OTHER THAN THE ISSUANCE OF AN APPARENTLY UNEXECUTED WARRANT, HAS BEEN  
26 RECORDED AND WITH RESPECT TO WHICH NO ENTRY HAS BEEN MADE IN SUCH  
27 RECORDS FOR A PERIOD OF AT LEAST FIVE YEARS PRECEDING THE ISSUANCE OF  
28 SUCH REPORT. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE DEEMED TO  
29 PERMIT OR REQUIRE THE RELEASE, DISCLOSURE OR OTHER DISSEMINATION BY THE  
30 OFFICE OF COURT ADMINISTRATION OF CRIMINAL HISTORY RECORD INFORMATION  
31 THAT HAS BEEN SEALED IN ACCORDANCE WITH LAW.

32 S 3. This act shall take effect on the one hundred eightieth day after  
33 it shall have become a law and shall apply to searches of criminal  
34 history records conducted on or after such date; provided, however, that  
35 prior to such effective date, the division of criminal justice services,  
36 in consultation with the state administrator of the unified court system  
37 as well as any other public or private agency, shall undertake such  
38 measures as may be necessary and appropriate to update its criminal  
39 history records with respect to criminal cases and arrest incidents for  
40 which no final disposition has been reported.

41

## PART C

42 Section 1. The commissioner of the division of criminal justice  
43 services is authorized to direct that records of any action or proceed-  
44 ing terminated in favor of the accused, as defined by section 160.50 of  
45 the criminal procedure law, on or after September 1, 1976 and before  
46 November 1, 1991 maintained by the division of criminal justice services  
47 be sealed in the manner provided for by section 160.50 of the criminal  
48 procedure law. The commissioner of the division of criminal justice  
49 services is further authorized to direct that records of any action or  
50 proceeding terminated by a conviction for a traffic infraction or a  
51 violation, other than a violation of loitering as described in paragraph  
52 (d) of subdivision 1 of section 160.10 of the criminal procedure law or  
53 the violation of driving while ability impaired as described in subdivi-  
54 sion 1 of section 1192 of the vehicle and traffic law on or after

1 September 1, 1980 and before November 1, 1991 maintained by the division  
2 of criminal justice services be sealed in the manner provided for by  
3 section 160.55 of the criminal procedure law.

4 S 2. This act shall take effect on the one hundred eightieth day after  
5 it shall have become a law.

6 S 2. Severability clause. If any provision of this act or application  
7 thereof shall for any reason be adjudged by any court of competent  
8 jurisdiction to be invalid, such judgment shall not affect, impair, or  
9 invalidate the remainder of the act, but shall be confined in its opera-  
10 tion to the provision thereof directly involved in the controversy in  
11 which the judgment shall have been rendered.

12 S 3. This act shall take effect immediately, provided, however, that  
13 the applicable effective date of Parts A through C of this act shall be  
14 as specifically set forth in the last section of such Parts.