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

4454

2015-2016 Regular Sessions

I N S E N A T E

March 20, 2015

Introduced by Sen. SANDERS -- 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 petition for expungement of records for certain juveniles convicted of a nonviolent offense after five years

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 440.75 to read as follows:

S 440.75 PETITION FOR EXPUNGEMENT OF RECORDS FOR CERTAIN JUVENILES CONVICTED OF A NONVIOLENT OFFENSE.

1. ANY PERSON WHO HAS BEEN PREVIOUSLY CONVICTED AS A JUVENILE OF A NONVIOLENT OFFENSE, PROVIDED THAT AN ELIGIBLE OFFENSE SHALL NOT INCLUDE ANY SEX OFFENSE AS DEFINED UNDER SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW, MAY AFTER THE EXPIRATION OF A PERIOD OF FIVE YEARS FROM THE DATE OF HIS OR HER PREVIOUS 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. FOR THE PURPOSE OF THIS SECTION THE TERM "JUVENILE" SHALL MEAN A PERSON BETWEEN THE AGES OF SEVEN AND EIGHTEEN YEARS OF AGE.

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

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

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

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.

(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, 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, CONVICTION, SENTENCE AND PROCEEDINGS RELATED THERETO. WHEN ANY LAW ENFORCEMENT AGENCY MAKES A RECOMMENDATION THAT THE JUVENILE RECORD SHOULD NOT BE EXPUNGED THEY MUST PROVIDE A WRITTEN DECISION STATING REASONS WHY SUCH EXPUNGEMENT IS NOT COMPATIBLE WITH THE STATE'S PUBLIC PROTECTION OR BEST INTEREST OF SOCIETY.

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

(A) PETITIONER'S DATE OF BIRTH;

(B) PETITIONER'S DATE OF ARREST;

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

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

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

5. THE DECIDING COURT MAY CONSIDER:

(A) THE CHARACTER OF THE PETITIONER, 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;

(B) THE PETITIONER'S CRIMINAL HISTORY; AND

(C) THE IMPACT OF EXPUNGING THE RECORDS UPON HIS OR HER REHABILITATION, SUCCESSFUL AND PRODUCTIVE REENTRY AND REINTEGRATION INTO SOCIETY AND ON PUBLIC SAFETY.

6. THE PETITIONER SHALL HAVE THE OPPORTUNITY TO APPEAL AN UNFAVORABLE DETERMINATION.

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

S 2. This act shall take effect immediately.