

STATE OF NEW YORK

4746

2017-2018 Regular Sessions

IN ASSEMBLY

February 3, 2017

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 Assem-
bly, do enact as follows:

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

4 4. A person in whose favor a criminal action or proceeding was termi-
5 nated, as defined in [~~paragraph~~] paragraphs (a) through (h), (k) or (l)
6 of subdivision [~~two~~] three of this section, prior to the effective date
7 of [~~this section, may upon motion apply to the court in which such~~
8 ~~termination occurred, upon not less than twenty days notice to the~~
9 ~~district attorney, for an order granting to such person the relief set~~
10 ~~forth in subdivision one of this section, and such order shall be grant-~~
11 ~~ed unless the district attorney demonstrates to the satisfaction of the~~
12 ~~court that the interests of justice require otherwise. A person in whose~~
13 ~~favor a criminal action or proceeding was terminated, as defined in~~
14 ~~paragraph (i) or (j) of subdivision two of this section, prior to the~~
15 ~~effective date of this section, may apply to the appropriate prosecutor~~
16 ~~or police agency for a certification as described in said paragraph (i)~~
17 ~~or (j) granting to such person the relief set forth therein, and such~~
18 ~~certification shall be granted by such prosecutor or police agency] the
19 chapter of the laws of two thousand seventeen which amended this subdi-
20 vision, and whose records have not been sealed pursuant to subdivision
21 one of this section, may apply to have the records of such criminal
22 action or proceeding sealed at the clerk's office for the court in which
23 the criminal action or proceeding was terminated. Application may be
24 made by the person or by his or her attorney. Upon a determination by
25 the clerk that the action or proceeding was terminated in the person's~~

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

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1 favor as defined in subdivision three of this section, the clerk of the
2 court shall immediately notify the commissioner and the heads of all
3 appropriate police departments and other law enforcement agencies that
4 the action has been terminated in favor of the accused and that the
5 record of such action or proceeding shall be sealed. Upon receipt of
6 notification of such termination and sealing, all records relating to
7 the criminal action shall be sealed, as required under paragraph (c) of
8 subdivision one of this section, and all photographs, photographic
9 plates or proofs, palm prints and fingerprints shall be destroyed or
10 returned as specified in paragraphs (a) or (b) of subdivision one of
11 this section.

12 § 2. Subdivision 3 of section 160.55 of the criminal procedure law, as
13 amended by chapter 249 of the laws of 1981 and as renumbered by chapter
14 142 of the laws of 1991, is amended to read as follows:

15 3. A person against whom a criminal action or proceeding was termi-
16 nated by such person's conviction of a traffic infraction or violation
17 other than a violation of loitering as described in paragraph (d) [~~or~~
18 ~~(e)~~] of subdivision one of section 160.10 of this chapter or the
19 violation of operating a motor vehicle while ability impaired as
20 described in subdivision one of section eleven hundred ninety-two of the
21 vehicle and traffic law, prior to the effective date of [~~this section,~~
22 ~~may upon motion apply to the court in which such termination occurred,~~
23 ~~upon not less than twenty days notice to the district attorney, for an~~
24 ~~order granting to such person the relief set forth in subdivision one of~~
25 ~~this section, and such order shall be granted unless the district attor-~~
26 ~~ney demonstrates to the satisfaction of the court that the interests of~~
27 ~~justice require otherwise] the chapter of the laws of two thousand
28 seventeen which amended this subdivision, and whose records have not
29 been sealed pursuant to subdivision one of this section, may apply to
30 have the records of such criminal action or proceeding sealed at the
31 clerk's office for the court in which the criminal action or proceeding
32 was terminated. Application may be made by the defendant or by his or
33 her attorney. Upon a determination by the clerk that the court did not
34 find that the interests of justice required that the case not be sealed,
35 as defined in subdivision one of this section, the clerk of the court
36 shall immediately notify the commissioner of the division of criminal
37 justice services and the heads of all appropriate police departments and
38 other law enforcement agencies that the record of such action or
39 proceeding shall be sealed. Upon receipt of notification of such termi-
40 nation and sealing, all records relating to the criminal action shall be
41 sealed, as required under paragraph (c) of subdivision one of this
42 section, and all photographs, photographic plates or proofs, palm prints
43 and fingerprints shall be destroyed or returned as specified in para-
44 graphs (a) and (b) of subdivision one of this section. This subdivision
45 shall not apply to cases in which the court declined to seal for reasons
46 stated on the record, pursuant to subdivision one of this section. When
47 an applicant under this subdivision presents to the court clerk finger-
48 print records from the New York state division of criminal justice
49 services or a court disposition which indicate that a criminal action or
50 proceeding against the applicant resulted in a sealable conviction, but
51 supporting court records cannot be located, have been destroyed, or do
52 not indicate whether the court ordered that the case not be sealed, the
53 clerk of the court wherein such criminal action or proceeding was termi-
54 nated shall proceed as if the matter had been so terminated.~~

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