

# STATE OF NEW YORK

9878

## IN ASSEMBLY

February 15, 2018

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

AN ACT to amend the criminal procedure law, in relation to establishing an automatic expunction system for certain records

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. On August 12, 2013, United States  
2 District Judge Shira A. Scheindlin issued an order in Floyd v. City of  
3 New York that found the city of New York had violated the Fourth and  
4 Fourteenth Amendments by acting with "deliberate indifference" toward  
5 the New York City Police Department's (NYPD) practice of making suspi-  
6 cionless "stops" and "frisks" and by adopting "a policy of indirect  
7 racial profiling by targeting racially defined groups" for "stops" and  
8 "frisks". Additionally, a remedial order was issued imposing remedies or  
9 "reforms" to the NYPD's "stop and frisk" practices. (959 F.Supp.2d 540,  
10 562, 668 (S.D.N.Y. 2013)). In a settlement to a lawsuit brought by the  
11 New York Civil Liberties Union the city was required to delete personal  
12 information including names and addresses of individuals that were  
13 stopped, questioned and/or frisked. Between January 2004 and June 2012  
14 the NYPD made 4.4 million stops in which 83% of them were made on Afri-  
15 can Americans and Hispanics. The legislature finds that any records  
16 associated with such unconstitutional stops, frisks and arrests shall be  
17 automatically expunged and notification shall be made to such individ-  
18 uals of such expunction.

19 § 2. The criminal procedure law is amended by adding a new section  
20 160.65 to read as follows:

21 § 160.65 New York city stop and frisk automatic expunction.

22 1. For purposes of this section, the following terms shall have the  
23 following meanings:

24 (a) "Stop and frisk" shall have the same meaning as section 140.50 of  
25 the criminal procedure law.

26 (b) "Voidable stop" shall mean any stop that:

27 (i) qualifies as a stop and frisk;

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

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1 (ii) occurred between January two thousand four and June two thousand  
2 twelve by the New York city police department; and

3 (iii) resulted in either the completion of:

4 (A) a UF-250 form, a stop, question and frisk report worksheet; or

5 (B) a Form 61 complaint in which the SQF section was completed and  
6 resulted in a qualified arrest.

7 (b) "Qualified arrest" shall mean an arrest for any of the following  
8 offenses:

9 (i) resisting arrest pursuant to section 205.30 of the penal law;

10 (ii) disorderly conduct pursuant to section 240.20 of the penal law;

11 (iii) criminal possession of a weapon pursuant to sections 265.01,  
12 265.02, 265.03 and 265.04 of the penal law; and

13 (iv) offenses involving marihuana pursuant to article two hundred  
14 twenty-one of the penal law.

15 2. The division of criminal justice services, in conjunction with the  
16 New York city police department shall establish an automatic expunction  
17 system to expunge official and unofficial records of all voidable stops.  
18 Such expunction shall include but not be limited to any convictions and  
19 all records pertaining to such stop including UF-250 form information,  
20 any and all records of arrest, investigation including computer data-  
21 bases, and records of detention pursuant to such voidable stop and/or  
22 qualified arrest, fingerprints, photographs, DNA samples, physical meas-  
23 urements, or any other record of identification.

24 3. Such automatic expunction system shall include:

25 (a) an automatic certification process that shall notify any individ-  
26 ual at their last known address of such expunction; and

27 (b) an automatic notification mechanism for all licensing agencies to  
28 notify such that such expunctions have occurred and no individual shall  
29 be adversely affected by such voidable stop and/or qualified arrest.

30 4. (a) Any individual who knowingly fails to expunge or obliterate, or  
31 who releases information ordered expunged, is guilty of a class A misde-  
32 meanor. An individual, who, knowing the records are expunged, uses the  
33 information for financial gain, or willful destruction of a person's  
34 character is guilty of a class D felony.

35 (b) A penalty of thirty thousand dollars shall be assessed upon the  
36 New York city police department every month such department fails to  
37 comply with subdivision five of this section. Such penalty shall be  
38 deposited in the indigent legal services fund established under section  
39 ninety-eight-b of the state finance law.

40 (c) Should the division of criminal justice services or the New York  
41 city police department negligently disseminate any official or unoffi-  
42 cial record described under subdivision two of this section, any indi-  
43 vidual adversely affected by such dissemination may, in a court having  
44 jurisdiction, bring a civil action in which a civil penalty may be  
45 assessed upon such division or department.

46 5. All expunctions, certifications and notifications required under  
47 this section shall be completed within one year of the effective date of  
48 this section.

49 § 3. This act shall take effect on the sixtieth day after it shall  
50 have become a law; provided, however, that effective immediately, the  
51 addition, amendment and/or repeal of any rule or regulation necessary  
52 for the implementation of this act on its effective date are authorized  
53 and directed to be made and completed on or before such effective date.