# STATE OF NEW YORK

8203

# IN SENATE

April 17, 2018

Introduced by Sen. GALLIVAN -- (at request of the Division of Criminal Justice Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law and the judiciary law, in relation to sealing of records; and to authorize the commissioner of the division of criminal justice services to direct certain records to be sealed

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

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

**§ 845-c. Criminal history record searches; undisposed cases. 1. When, pursuant to statute or the regulations of the division, the division conducts a search of its criminal history records and returns a report thereon, all references to undisposed cases contained in such criminal history record shall be excluded from such report.**

**2. For purposes of this section, "undisposed case" shall mean a criminal action or proceeding, other than a criminal action or proceeding for a class A-I felony, a violent felony offense as defined in section 70.02 of the penal law, a sex offense as defined in article one hundred thirty of the penal law, or an offense as defined in section 255.25, 255.26 or 255.27 or article two hundred sixty-three of the penal law, for which:**

**(a) no conviction or imposition of sentence or other final disposition has been recorded; and**

**(b) no entry has been made in the division's criminal history records for a period of at least five years preceding the issuance of such report; and**

**(c) no warrant is outstanding.**

**3. When a criminal action in the division's criminal history record repository becomes an undisposed case pursuant to this section, the division shall notify the district attorney in the county which has jurisdiction. If the district attorney notifies the division that such case is pending and should not meet the definition of an undisposed case, the case shall not be excluded from such report.**

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

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4. The provisions of subdivision one of this section shall not apply to criminal history record information (a) provided by the division to qualified agencies pursuant to subdivision six of section eight hundred thirty-seven of this article, or to federal or state law enforcement agencies, for criminal justice purposes; (b) prepared solely for a bona fide research purpose; or (c) prepared for the internal record keeping or case management purposes of the division.

§ 2. Subdivision 2 of section 212 of the judiciary law is amended by adding a new paragraph (w) to read as follows:

(w) Take such actions and adopt such measures as may be necessary to ensure that no written or electronic report of a criminal history record search conducted by the office of court administration, other than a search conducted solely for the internal recordkeeping or case management purposes of the judiciary or for a bona fide research purpose, contains information relating to an undisposed case. For purposes of this paragraph, "undisposed case" shall mean a criminal action or proceeding, other than a criminal action or proceeding for a class A-I felony, a violent felony offense as defined in section 70.02 of the penal law, a sex offense as defined in article one hundred thirty of the penal law, or an offense as defined in section 255.25, 255.26 or 255.27 or article two hundred sixty-three of the penal law, for which:

(i) no conviction or imposition of sentence or other final disposition has been recorded; and

(ii) no entry has been made in the division's criminal history records for a period of at least five years preceding the issuance of such report; and

(iii) no warrant is outstanding.

Nothing contained in this paragraph shall be deemed to permit or require the release, disclosure or other dissemination by the office of court administration of criminal history record information that has been sealed in accordance with law.

§ 3. The commissioner of the division of criminal justice services is authorized to direct that records of any action or proceeding terminated in favor of the accused, as defined by section 160.50 of the criminal procedure law, on or after September 1, 1976 and before November 1, 1991 maintained by the division of criminal justice services be sealed in the manner provided for by section 160.50 of the criminal procedure law. The commissioner of the division of criminal justice services is further authorized to direct that records of any action or proceeding terminated by a conviction for a traffic infraction or a violation, other than a violation of loitering as described in paragraph (d) of subdivision 1 of section 160.10 of the penal law or the violation of operating a motor vehicle while ability impaired as described in subdivision 1 of section 1192 of the vehicle and traffic law on or after September 1, 1980 and before November 1, 1991 maintained by the division of criminal justice services be sealed in the manner provided for by section 160.55 of the criminal procedure law.

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