

# STATE OF NEW YORK

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3995

2019-2020 Regular Sessions

## IN SENATE

February 22, 2019

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Introduced by Sens. SERRANO, COMRIE, HOYLMAN, KRUEGER, RIVERA, SEPULVEDA  
-- read twice and ordered printed, and when printed to be committed to  
the Committee on Investigations and Government Operations

AN ACT to amend the executive law and the criminal procedure law, in  
relation to preventing employment discrimination against persons whose  
criminal charges have been adjourned in contemplation of dismissal

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

1 Section 1. Subdivision 16 of section 296 of the executive law, as  
2 amended by section 48-a of part WWW of chapter 59 of the laws of 2017,  
3 is amended to read as follows:

4 16. It shall be an unlawful discriminatory practice, unless specif-  
5 ically required or permitted by statute, for any person, agency, bureau,  
6 corporation or association, including the state and any political subdi-  
7 vision thereof, to make any inquiry about, whether in any form of appli-  
8 cation or otherwise, or to act upon adversely to the individual  
9 involved, any arrest or criminal accusation of such individual not then  
10 pending against that individual which was followed by a termination of  
11 that criminal action or proceeding in favor of such individual, as  
12 defined in subdivision two of section 160.50 of the criminal procedure  
13 law, or by an order adjourning the criminal action in contemplation of  
14 dismissal, pursuant to section 170.55, 170.56, 210.46, 210.47, or 215.10  
15 of the criminal procedure law, or by a youthful offender adjudication,  
16 as defined in subdivision one of section 720.35 of the criminal proce-  
17 dure law, or by a conviction for a violation sealed pursuant to section  
18 160.55 of the criminal procedure law or by a conviction which is sealed  
19 pursuant to section 160.59 or 160.58 of the criminal procedure law, in  
20 connection with the licensing, employment or providing of credit or  
21 insurance to such individual; provided, further, that no person shall be  
22 required to divulge information pertaining to any arrest or criminal  
23 accusation of such individual not then pending against that individual

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

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1 which was followed by a termination of that criminal action or proceed-  
2 ing in favor of such individual, as defined in subdivision two of  
3 section 160.50 of the criminal procedure law, or by an order adjourning  
4 the criminal action in contemplation of dismissal, pursuant to section  
5 170.55, 170.56, 210.46, 210.47 or 215.10 of the criminal procedure law,  
6 or by a youthful offender adjudication, as defined in subdivision one of  
7 section 720.35 of the criminal procedure law, or by a conviction for a  
8 violation sealed pursuant to section 160.55 of the criminal procedure  
9 law, or by a conviction which is sealed pursuant to section 160.58 or  
10 160.59 of the criminal procedure law. The provisions of this subdivision  
11 shall not apply to the licensing activities of governmental bodies in  
12 relation to the regulation of guns, firearms and other deadly weapons or  
13 in relation to an application for employment as a police officer or  
14 peace officer as those terms are defined in subdivisions thirty-three  
15 and thirty-four of section 1.20 of the criminal procedure law; provided  
16 further that the provisions of this subdivision shall not apply to an  
17 application for employment or membership in any law enforcement agency  
18 with respect to any arrest or criminal accusation which was followed by  
19 a youthful offender adjudication, as defined in subdivision one of  
20 section 720.35 of the criminal procedure law, or by a conviction for a  
21 violation sealed pursuant to section 160.55 of the criminal procedure  
22 law, or by a conviction which is sealed pursuant to section 160.58 or  
23 160.59 of the criminal procedure law. For purposes of this subdivision,  
24 an action which has been adjourned in contemplation of dismissal, pursu-  
25 ant to section 170.55, 170.56, 210.46, 210.47 or 215.10 of the criminal  
26 procedure law, shall not be considered a pending action, unless the  
27 order to adjourn in contemplation of dismissal is revoked and the case  
28 is restored to the calendar for further prosecution.

29 § 2. Subdivision 8 of section 170.55 of the criminal procedure law, as  
30 added by chapter 134 of the laws of 1982 and as renumbered by chapter  
31 683 of the laws of 1990, is amended to read as follows:

32 8. The granting of an adjournment in contemplation of dismissal shall  
33 not be deemed to be a conviction or an admission of guilt. No person  
34 shall suffer any disability or forfeiture as a result of such an order.  
35 Upon granting the order of adjournment, the action shall be considered  
36 terminated in the defendant's favor for the purpose of the provisions of  
37 subdivision sixteen of section two hundred ninety-six of the executive  
38 law. Upon the dismissal of the accusatory instrument pursuant to this  
39 section, the arrest and prosecution shall be deemed a nullity and the  
40 defendant shall be restored, in contemplation of law, to the status he  
41 or she occupied before his or her arrest and prosecution.

42 § 3. Subdivision 4 of section 170.56 of the criminal procedure law, as  
43 added by chapter 1042 of the laws of 1971, is amended to read as  
44 follows:

45 4. Upon the granting of an order pursuant to subdivision two of this  
46 section, the action shall be considered terminated in the defendant's  
47 favor for the purpose of the provisions of subdivision sixteen of  
48 section two hundred ninety-six of the executive law. Upon the granting  
49 of an order pursuant to subdivision three, the arrest and prosecution  
50 shall be deemed a nullity and the defendant shall be restored, in  
51 contemplation of law, to the status he or she occupied before his or her  
52 arrest and prosecution.

53 § 4. No provision of this act shall be construed to impair or diminish  
54 any rights an employee or licensee, or an applicant for employment or a  
55 license, may already possess pursuant to section 170.55 or 170.56 of the  
56 criminal procedure law.

1     § 5. This act shall take effect on the ninetieth day after it shall  
2 have become a law. Effective immediately, the addition, amendment and/or  
3 repeal of any rule or regulation necessary for the implementation of  
4 this act on its effective date are authorized to be made on or before  
5 such date.