STATE OF NEW YORK

4391

2021-2022 Regular Sessions

IN ASSEMBLY

February 4, 2021

Introduced by M. of A. O'DONNELL, WEPRIN, SEAWRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the use of sealed records

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

Section 1. Paragraphs (c) and (d) of subdivision 1 of section 160.50 of the criminal procedure law, paragraph (c) as amended by chapter 169 of the laws of 1994, paragraph (d) as amended by chapter 449 of the laws of 2015, are amended to read as follows:

(c) all official records and papers, including judgments and orders of a court but not including published court decisions or opinions or records and briefs on appeal, relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be sealed and not made available to**, or used for any purpose not specifically authorized by law by** any person or public or private agency**, even if the records were previously obtained by such person or public or private agency**;

(d) [~~such~~] **the** records **referred to in paragraph (c) of this subdivision** shall **only** be made available to**, and may only be used by,** the person accused or to such person's designated agent, and shall **only** be made available to**, and may only be used by:** (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this [~~chapter~~] **part**, or (ii) a law enforcement agency upon ex parte motion in any superior court, or in any district court, city court or the criminal court of the city of New York provided that such court sealed the record, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when

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

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the accused has made application for such a license, or (iv) the New York state department of corrections and community supervision when the accused is on parole supervision as a result of conditional release or a parole release granted by the New York state board of parole, and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (v) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereto, or (vi) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision; and

§ 2. Paragraphs (c) and (d) of subdivision 1 of section 160.55 of the criminal procedure law, paragraph (c) as amended by chapter 169 of the laws of 1994, paragraph (d) as amended by chapter 449 of the laws of 2015, are amended to read as follows:

(c) all official records and papers relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, police agency, or prosecutor's office shall be sealed and not made available to**, or used for any purpose not specifically authorized by law by** any person or public or private agency**, even if the records were previously obtained by such person or public or private agency**;

(d) the records referred to in paragraph (c) of this subdivision shall be made available to**, and may only be used by,** the person accused or to such person's designated agent, and shall **only** be made available to**, and may only be used by:** (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this [~~**chapter**~~] **part**, or (ii) a law enforcement agency upon ex parte motion in any superior court, or in any district court, city court or the criminal court of the city of New York provided that such court sealed the record, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iv) the New York state department of corrections and community supervision when the accused is under parole supervision as a result of conditional release or parole release granted by the New York state board of parole and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (v) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (vi) a police agency, probation department, sheriff's office, district attorney's office, department of correction of any municipality and parole department, for law enforcement purposes, upon arrest in instances in which the individual stands convicted of harassment in the second degree, as defined in section 240.26 of the penal law, committed against a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter, and determined pursuant to subdivision eight-a of section 170.10 of this title; and

§ 3. Subdivision 4 of section 160.58 of the criminal procedure law, as added by section 3 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

4. When a court orders sealing pursuant to this section, all official records and papers relating to the arrests, prosecutions, and convictions, including all duplicates and copies thereof, on file with the division of criminal justice services or any court shall be sealed and not made available to**, or used for any purpose not specifically authorized by law by,** any person or public or private agency**, even if the records were previously obtained by such person or public or private agency**; provided, however, the division shall retain any fingerprints, palmprints and photographs, or digital images of the same.

§ 4. Subdivision 6 of section 160.58 of the criminal procedure law, as added by section 3 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

6. Records sealed pursuant to this subdivision shall **only** be made available to**, and may only be used by**:

(a) the defendant or the defendant's designated agent;

(b) qualified agencies, as defined in subdivision nine of section eight hundred thirty-five of the executive law, and federal and state law enforcement agencies, when acting within the scope of their law enforcement duties; or

(c) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the person has made application for such a license; or

(d) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereto.

§ 5. Subdivision 2 of section 720.35 of the criminal procedure law, as amended by section 87 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

2. Except where specifically required or permitted by statute or upon specific authorization of the court, all official records and papers, whether on file with the court, a police agency or the division of criminal justice services, relating to a case involving a youth who has been adjudicated a youthful offender, are confidential and may not be made available to**, or used for any purpose not specifically authorized by law by,** any person or public or private agency**, even if the records were previously obtained by such person or public or private agency**, other than the designated educational official of the public or private elementary or secondary school in which the youth is enrolled as a student provided that such local educational official shall only have made available a notice of such adjudication and shall not have access to any other official records and papers, such youth or such youth's designated agent (but only where the official records and papers sought are on file with a court and request therefor is made to that court or to a clerk thereof), an institution to which such youth has been committed, the department of corrections and community supervision and a probation department of this state that requires such official records and papers for the purpose of carrying out duties specifically authorized by law; provided, however, that information regarding an order of

protection or temporary order of protection issued pursuant to section 530.12 of this [~~chapter~~] **part** or a warrant issued in connection therewith may be maintained on the statewide automated order of protection and warrant registry established pursuant to section two hundred twenty-one-a of the executive law during the period that such order of protection or temporary order of protection is in full force and effect or during which such warrant may be executed. Such confidential information may be made available pursuant to law only for purposes of adjudicating or enforcing such order of protection or temporary order of protection and, where provided to a designated educational official, as defined in section 380.90 of this chapter, for purposes related to the execution of the student's educational plan, where applicable, successful school adjustment and reentry into the community. Such notification shall be kept separate and apart from such student's school records and shall be accessible only by the designated educational official. Such notification shall not be part of such student's permanent school record and shall not be appended to or included in any documentation regarding such student and shall be destroyed at such time as such student is no longer enrolled in the school district. At no time shall such notification be used for any purpose other than those specified in this subdivision.

§ 6. This act shall take effect on the ninetieth day after it shall have become a law.