

STATE OF NEW YORK

6033

2021-2022 Regular Sessions

IN ASSEMBLY

March 4, 2021

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 Assembly, 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 twenty-one 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) and (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 23 of the laws of 2021, is amended to read as
14 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 the violation of operating a motor vehicle while ability
18 impaired as described in subdivision one of section eleven hundred nine-
19 ty-two of the vehicle and traffic law, prior to the effective date of
20 ~~[this section, may upon motion apply to the court in which such termi-~~
21 ~~nation occurred, upon not less than twenty days notice to the district~~
22 ~~attorney, for an order granting to such person the relief set forth in~~
23 ~~subdivision one of this section, and such order shall be granted unless~~
24 ~~the district attorney demonstrates to the satisfaction of the court that~~
25 ~~the interests of justice require otherwise]~~ the chapter of the laws of
26 two thousand twenty-one which amended this subdivision, and whose
27 records have not been sealed pursuant to subdivision one of this
28 section, may apply to have the records of such criminal action or
29 proceeding sealed at the clerk's office for the court in which the crim-
30 inal action or proceeding was terminated. Application may be made by the
31 defendant or by his or her attorney. Upon a determination by the clerk
32 that the court did not find that the interests of justice required that
33 the case not be sealed, as defined in subdivision one of this section,
34 the clerk of the court shall immediately notify the commissioner of the
35 division of criminal justice services and the heads of all appropriate
36 police departments and other law enforcement agencies that the record of
37 such action or proceeding shall be sealed. Upon receipt of notification
38 of such termination and sealing, all records relating to the criminal
39 action shall be sealed, as required under paragraph (c) of subdivision
40 one of this section, and all photographs, photographic plates or proofs,
41 palm prints and fingerprints shall be destroyed or returned as specified
42 in paragraphs (a) and (b) of subdivision one of this section. This
43 subdivision shall not apply to cases in which the court declined to seal
44 for reasons stated on the record, pursuant to subdivision one of this
45 section. When an applicant under this subdivision presents to the court
46 clerk fingerprint records from the New York state division of criminal
47 justice services or a court disposition which indicate that a criminal
48 action or proceeding against the applicant resulted in a sealable
49 conviction, but supporting court records cannot be located, have been
50 destroyed, or do not indicate whether the court ordered that the case
51 not be sealed, the clerk of the court wherein such criminal action or
52 proceeding was terminated shall proceed as if the matter had been so
53 terminated.

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