

# STATE OF NEW YORK

7300

2021-2022 Regular Sessions

## IN ASSEMBLY

May 4, 2021

Introduced by M. of A. BICHOTTE HERMELYN, BARRON -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to expunction of records resulting from identity theft or mistaken identity

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

1 Section 1. The criminal procedure law is amended by adding a new  
2 section 160.53 to read as follows:

3 § 160.53 Order upon termination of criminal action in favor of the  
4 accused as a result of identity theft or mistaken identity.

5 1. For purposes of this section, the term "mistaken identity" means  
6 the erroneous arrest of a person for a crime as a result of misidentifi-  
7 cation by a witness or law enforcement, confusion on the part of a  
8 witness or law enforcement as to the identity of the person who commit-  
9 ted the crime, misinformation provided to law enforcement as to the  
10 identity of the person who committed the crime, or some other mistake on  
11 the part of a witness or law enforcement as to the identity of the  
12 person who committed the crime.

13 2. For purposes of this section, the term "law enforcement agency"  
14 means the department of attorney general, the superintendent of the  
15 state police or his/her designee, police officers, the division of crim-  
16 inal justice services, a federal, state or local law enforcement agency  
17 or police organization, and any agency, department, or bureau of the  
18 United States government which has as one of its functions the gathering  
19 of intelligence data.

20 3. For purposes of this section, the term "expunction of all official  
21 records" means and includes, but is not limited to, any fingerprint,  
22 photograph, DNA samples, physical measurements, or other record of iden-  
23 tification, heretofore or hereafter taken by or under the direction of a  
24 law enforcement agency or any other officer authorized by the laws of  
25 this state, of a person under arrest.

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

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1     4. If any person is named in a charge or arrested for any infraction  
2 or crime as a result of another person using the identifying information  
3 of the named person or mistaken identity, and the charge against the  
4 named person is dismissed, the prosecutor or other judicial officer or  
5 law enforcement agency who ordered the dismissal shall provide notice to  
6 the court of the dismissal. The court shall then:

7     (a) order the expunction of all official records containing any  
8 entries relating to the person's apprehension, charge, or trial;

9     (b) notify the person arrested that the charge was dismissed or that  
10 no charges have been filed and that all official records have been  
11 expunged; and

12     (c) order that the said entries shall be expunged from the records of  
13 the court and direct all law enforcement agencies, the department of  
14 corrections and community supervision, the department of motor vehicles,  
15 or any other state or local government agencies identified by the peti-  
16 tioner, or the person eligible for automatic expungement under this  
17 subdivision, as bearing record of the same to expunge their records of  
18 the entries. The clerk shall notify state and local agencies, including,  
19 but not limited to, the division of criminal justice services, the  
20 national crime information identity center and/or any other state or  
21 federal agency which compiles, retains or collects any arrest or identi-  
22 fying information of arrestees, of the court's order and that all  
23 records transmitted or generated shall be expunged as provided herein.  
24 The costs of expunging the records shall not be taxed against the peti-  
25 tioner.

26     5. The department of motor vehicles shall expunge from its records  
27 entries made as a result of the charge of conviction ordered expunged  
28 under this section. The department of motor vehicles shall also reverse  
29 any administrative actions taken against a person whose record is  
30 expunged under this section as a result of the charges or convictions  
31 expunged, including the assessment of driver's license points and driv-  
32 er's license suspension or revocation. Notwithstanding any other  
33 provision of law, the department of motor vehicles shall provide to the  
34 person whose motor vehicle record is expunged under this section a  
35 certified corrected driver history at no cost and shall reinstate at no  
36 cost any driver's license suspended or revoked as a result of a charge  
37 or conviction expunged under this section.

38     6. Where a charge or conviction is expunged under this section, the  
39 division of criminal justice services and any other applicable state or  
40 local government agency shall expunge its records. Those agencies shall  
41 also reverse any administrative actions taken against a person whose  
42 record is expunged under this section. Notwithstanding any other  
43 provision of law, the normal fee for any reinstatement of a license or  
44 privilege resulting under this section shall be waived.

45     7. Any insurance company that charged any additional premium based on  
46 insurance points assessed against a policyholder as a result of a charge  
47 or conviction that was expunged under this section shall refund those  
48 additional premiums to the policyholder upon notification of the  
49 expungement.

50     8. Any person arrested detained or otherwise identified as a suspect  
51 and who is thereafter exonerated consistent with this section may deny  
52 for any purpose that the arrest ever occurred and under no circumstances  
53 shall such an arrestee be required to disclose the arrest for any  
54 purposes including, but not limited to, any application for employment,  
55 professional license, concealed weapons permit or the purchase of a  
56 firearm or other weapon. No person as to whom such an order has been

1 entered under this section shall be held thereafter under any provision  
2 of any law to be guilty of perjury, or to be guilty of otherwise giving  
3 a false statement or response to any inquiry made for any purpose, by  
4 reason of the person's failure to recite or acknowledge any expunged  
5 entries concerning apprehension, charge, or trial.

6 9. Any such person arrested and not charged shall be entitled to the  
7 provisions under this section regardless of any prior record of arrest  
8 or conviction that may otherwise not be eligible for expungement.

9 § 2. This act shall take effect immediately.