STATE OF NEW YORK

3319

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

Introduced by Sens. BAILEY, KRUEGER, PARKER, SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to permitting the sealing of records of certain nonviolent misdemeanor or non-sexual misdemeanor offenses

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

Section 1. This act shall be known and may be cited as the "second chance for ex-offenders act".

§ 2. The criminal procedure law is amended by adding a new section 160.65 to read as follows:

§ 160.65 Conditional sealing of certain misdemeanor offenses.

1. For the purposes of this section, the term "eligible misdemeanor" shall be a misdemeanor offense defined in the penal law, provided that an eligible misdemeanor shall not include any sex offense as defined under subdivision two of section one hundred sixty-eight-a of the correction law.

2. A person having a conviction for no more than three misdemeanors, who does not stand convicted of any felony, or who is not required to maintain registration under article six-C of the correction law, may petition the court to conditionally seal up to three eligible misdemeanors when:

(a) at least five years have passed since the completion of a sentence on an eligible misdemeanor; and

(b) such person has not been convicted of a crime during the last five years and is not the subject of an undisposed arrest.

3. The petition authorized by this section shall be filed in the court of record that last imposed a sentence upon petitioner for an eligible misdemeanor. On the defendant's motion, the court may order that all official records and papers relating to the arrest, prosecution and

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

LBD07069-01-1

conviction records for no more than three of the defendant's prior eligible misdemeanors be conditionally sealed. The court may only seal the records of the defendant's arrests, prosecutions and convictions when:

(a) the sentencing court has requested and received from the division of criminal justice services or the federal bureau of investigation a fingerprint based criminal history record of the defendant, including any sealed or suppressed information. The division of criminal justice services shall also include a criminal history report, if any, from the federal bureau of investigation regarding any criminal history information that occurred in other jurisdictions. The division is hereby authorized to receive such information from the federal bureau of investigation for this purpose. The parties shall be permitted to examine these records;

(b) the defendant or court has identified the misdemeanor conviction or convictions for which relief may be granted;

(c) the court has received documentation that the sentences imposed on the eligible misdemeanor convictions have been completed, or if no such documentation is reasonably available, a sworn affidavit that the sentences imposed on the prior misdemeanors have been completed; and

(d) the court has notified the district attorney of each jurisdiction in which the defendant has been convicted of an offense with respect to which sealing is sought, and the court or courts of record for such offenses, that the court is considering sealing the records of the defendant's eligible misdemeanor convictions. Both the district attorney and the court shall be given a reasonable opportunity, which shall not be less than thirty days, in which to comment and submit materials to aid the court in making such a determination. When the court notifies a district attorney of a sealing application, the district attorney shall provide notice to the victim, if any, of the sealing application by mailing written notice to the victim's last-known address. For purposes of this section "victim" means any person who has sustained physical or financial injury to person or to property as a direct result of the misdemeanor crime or misdemeanor crimes for which sealing is applied.

4. At the request of the defendant or the district attorney of a county in which the defendant committed a crime that is the subject of the sealing application, the court may conduct a hearing to consider and review any relevant evidence offered by either party that would aid the court in its decision whether to seal the records of the defendant's arrests, prosecutions and convictions. In making such a determination, the court shall consider any relevant factors, including but not limited to:

(a) the circumstances and seriousness of the offense or offenses that resulted in the conviction or convictions;

(b) the character of the defendant, including what steps the petitioner has taken since the time of the offense toward personal rehabilitation, including treatment, work, school, or other personal history that demonstrates rehabilitation;

(c) the defendant's criminal history;

(d) the impact of sealing the defendant's records upon his or her rehabilitation and his or her successful and productive reentry and reintegration into society, and on public safety; and

(e) any statements made by the victim of the offense where there is in fact a victim of the crime.

5. After a court declares its willingness to grant the defendant's request for conditional sealing pursuant to this section, but before the

court orders sealing pursuant to this section, the defendant shall pay a mandatory conditional sealing fee. The mandatory conditional sealing fee will be a fee of eighty dollars, however, such filing fee shall be waived in cases of indigence. The mandatory filing fee shall be paid to the clerk of the court or administrative tribunal that rendered the conviction. Within the first ten days of the month following collection of the mandatory filing fee, the collecting authority if it is an administrative tribunal, or a town or village justice court, shall then pay such money to the state comptroller who shall deposit such money in the state treasury pursuant to section one hundred twenty-one of the state finance law to the credit of the indigent legal services fund. If such collecting authority is any other court of the unified court system, it shall, within such period, pay such money attributable to the mandatory filing fee to the state commissioner of taxation and finance to the credit of the indigent legal services fund established by section ninety-eight-b of the state finance law.

6. 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 any person or public or private agency; provided, however, the division shall retain any fingerprints, palmprints, photographs, or digital images of the same.

7. When the court orders sealing pursuant to this section, the clerk of such court shall immediately notify the commissioner of the division of criminal justice services, and any court that sentenced the defendant for an offense which has been conditionally sealed, regarding the records that shall be sealed pursuant to this section.

8. Records sealed pursuant to this subdivision shall be made available to:

(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;

(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.

9. The court shall not seal the defendant's record pursuant to this section while any charged offense is pending.

10. If, subsequent to the sealing of records pursuant to this subdivision, the person who is the subject of such records is arrested or formally charged with any misdemeanor or felony offense, such records shall be unsealed immediately and remain unsealed; provided, however, that if such new misdemeanor or felony arrest results in a termination in favor of the accused as defined in subdivision three of section 160.50 of this article or by conviction for a non-criminal offense as

described in section 160.55 of this article, such unsealed records shall be conditionally sealed pursuant to this section.

11. No defendant shall be required or permitted to waive eligibility for conditional sealing pursuant to this section as part of a plea of guilty, sentence or any agreement related to a conviction for an eligible offense and any such waiver shall be deemed void and wholly unenforceable.

§ 3. Subdivision 16 of section 296 of the executive law, as amended by section 2 of subpart O of part II of chapter 55 of the laws of 2019, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by an order adjourning the criminal action in contemplation of dismissal, pursuant to section 170.55, 170.56, 210.46, 210.47, or 215.10 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.59 or 160.58 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.65 of the criminal procedure law, in connection with the licensing, housing, employment, including volunteer positions, or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by an order adjourning the criminal action in contemplation of dismissal, pursuant to section 170.55 or 170.56, 210.46, 210.47 or 215.10 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.65 of the criminal procedure law. An individual required or requested to provide information in violation of this subdivision may respond as if the arrest, criminal accusation, or disposition of such arrest or criminal accusation did not occur. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction

for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law**, or by a conviction which is sealed pursuant to section 160.65 of the criminal procedure law**. For purposes of this subdivision, an action which has been adjourned in contemplation of dismissal, pursuant to section 170.55 or 170.56, 210.46, 210.47 or 215.10 of the criminal procedure law, shall not be considered a pending action, unless the order to adjourn in contemplation of dismissal is revoked and the case is restored to the calendar for further prosecution.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all convictions occurring prior to, on, and after such date.