

STATE OF NEW YORK

2485

2021-2022 Regular Sessions

IN ASSEMBLY

January 19, 2021

Introduced by M. of A. AUBRY -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the automatic expungement of arrest records

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 160.61 to read as follows:

3 § 160.61 Automatic expungement of records of arrest.

4 1. In any jurisdiction in which an arrest occurred where such arrest
5 is voidable, a court which had jurisdiction, or would have had jurisdic-
6 tion over the matter had such arrest not been voidable shall issue an
7 order expunging any and all records, pursuant to such arrest not later
8 than thirty days after the date on which such arrest becomes a voidable
9 arrest. For purposes of this subdivision, the term "voidable arrest"
10 means any arrest resulting in the following:

11 (a) the individual was released without the filing of formal charges;

12 (b) a determination was made that the arrest was without probable
13 cause; or

14 (c) the dismissal of proceedings against the individual.

15 2. (a) When an order is issued for the expungement of records pursuant
16 to this section, the heads of all appropriate police departments,
17 prosecutor's offices and law enforcement agencies shall be notified by
18 the court that all records of or relating to any such arrest be imme-
19 diately expunged as follows:

20 (i) every photograph of such person and photographic plate or proof,
21 and all palmprints, fingerprints and retina scans made of such person
22 pursuant to the provisions of this article, and all duplicates and
23 copies thereof, except a digital fingerprint image where authorized
24 pursuant to subparagraph (iv) of this paragraph, shall forthwith be
25 destroyed by any police department, prosecutor's office or law enforce-

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

LBD00753-01-1

1 ment agency having any such photograph, photographic plate, fingerprints
2 or retina scans under its possession or control;

3 (ii) any police department, prosecutor's office or law enforcement
4 agency, including the division of criminal justice services, which tran-
5 smitted or otherwise forwarded to any agency of the United States or any
6 other state or jurisdiction outside the state of New York copies of any
7 such photographs, photographic plates or proofs, palmprints, finger-
8 prints or retina scans shall forthwith formally inform such agency in
9 writing that the matter has been expunged and request in writing that
10 all such copies be destroyed or returned to any such department, office
11 or agency in the state of New York;

12 (iii) all official records and papers, including judgments for and
13 orders of a court but not including public court decisions or opinions
14 or records or briefs relating to the arrest, including any duplicates
15 and copies thereof on file with any court, police department,
16 prosecutor's office or law enforcement agency shall be marked as
17 expunged and sealed and not be made available to, or used for, any
18 purpose not explicitly authorized by law by any person or public or
19 private agency; and

20 (iv) where fingerprints subject to the provisions of this section have
21 been received by the division of criminal justice services and have been
22 filed by the division as digital images, such images may be retained,
23 provided that a fingerprint card of the individual is on file with the
24 division and was not expunged pursuant to this section.

25 (b) Notification of expungement shall be provided to the person whose
26 arrest was voidable and to his or her attorney of record, if any.

27 3. In any situation where automatic expungement and record destruction
28 have not taken place as required by this section, or where supporting
29 court records cannot be located or have been destroyed, an individual or
30 his or her attorney may submit a notification of such fact to a court
31 which had jurisdiction over the matter, or which would have had juris-
32 diction over such matter had the arrest not been voidable, and such
33 arrest records shall be expunged as set forth pursuant to this section.

34 4. A person who has received expungement of an arrest under this
35 section may respond to any employment inquiry as though the arrest did
36 not occur.

37 § 2. This act shall take effect on the one hundred eightieth day after
38 it shall have become a law.