STATE OF NEW YORK

2106

2021-2022 Regular Sessions

IN SENATE

January 19, 2021

Introduced by Sens. SEPULVEDA, RIVERA -- read twice and ordered printed, and when printed to be committed 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:

Section 1. The criminal procedure law is amended by adding a new section 160.61 to read as follows:

§ 160.61 Automatic expungement of records of arrest.

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

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

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

(c) the dismissal of proceedings against the individual.

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

(i) every photograph of such person and photographic plate or proof, and all palmprints, fingerprints and retina scans made of such person pursuant to the provisions of this article, and all duplicates and copies thereof, except a digital fingerprint image where authorized pursuant to subparagraph (iv) of this paragraph, shall forthwith be 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.

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

(ii) any police department, prosecutor's office or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or any other state or jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints, fingerprints or retina scans shall forthwith formally inform such agency in writing that the matter has been expunged and request in writing that all such copies be destroyed or returned to any such department, office or agency in the state of New York;

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

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

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

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

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

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