STATE OF NEW YORK

1935

2023-2024 Regular Sessions

IN ASSEMBLY

January 23, 2023

Introduced by M. of A. BICHOTTE HERMELYN -- 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:

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

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

1. For purposes of this section, the term "mistaken identity" means the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime.

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

3. For purposes of this section, the term "expunction of all official records" means and includes, but is not limited to, any fingerprint, photograph, DNA samples, physical measurements, or other record of identification, heretofore or hereafter taken by or under the direction of a law enforcement agency or any other officer authorized by the laws of 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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4. If any person is named in a charge or arrested for any infraction or crime as a result of another person using the identifying information of the named person or mistaken identity, and the charge against the named person is dismissed, the prosecutor or other judicial officer or law enforcement agency who ordered the dismissal shall provide notice to the court of the dismissal. The court shall then:

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

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

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

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

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

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

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

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

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

§ 2. This act shall take effect immediately.