STATE OF NEW YORK

3697

2023-2024 Regular Sessions

IN ASSEMBLY

February 7, 2023

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

AN ACT to amend the criminal procedure law, in relation to orders of adjournment in contemplation of dismissal and sealing of defendant records

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

Section 1. Subdivision 1 of section 160.58 of the criminal procedure law, as added by section 3 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

1. A defendant convicted of any offense defined in article two hundred twenty [~~or two hundred twenty-one~~] of the penal law or a specified offense defined in subdivision five of section 410.91 of this chapter who has successfully completed a judicial diversion program under article two hundred sixteen of this chapter, or one of the programs heretofore known as drug treatment alternative to prison or another judicially sanctioned drug treatment program of similar duration, requirements and level of supervision, and has completed the sentence imposed for the offense or offenses, [~~is eligible to~~] **shall** have such offense or offenses sealed pursuant to this section.

§ 2. Subdivision 2 of section 160.58 of the criminal procedure law, as added by section 3 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

2. The court that sentenced the defendant to a judicially sanctioned drug treatment program [~~may on its own motion, or on the defendant's motion,~~] **shall** order that all official records and papers relating to the arrest, prosecution and conviction which resulted in the defendant's participation in the judicially sanctioned drug treatment program be conditionally sealed. In such case, the court may also conditionally seal the arrest, prosecution and conviction records for no more than [~~three~~] **five** of the defendant's prior [~~eligible~~] misdemeanors, [~~which~~

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

LBD07176-01-3

~~for purposes of this subdivision shall be limited to misdemeanor offenses defined in article two hundred twenty or two hundred twenty-one of the penal law. The court may only seal the records of the defendant's arrests, prosecutions and convictions when~~] **provided that a misdemeanor for which registration as a sex offender is required shall not be sealed pursuant to this section. The court may seal such records 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.

§ 3. Subdivision 3 of section 160.58 of the criminal procedure law, as added by section 3 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

3. 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~~] **shall** 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 **the following factors**: (i) the circumstances [~~and seriousness~~] of the offense or offenses that resulted in the conviction or convictions; (ii) [~~the character of the defendant, including his or her~~] **the defendant's** completion of the judicially sanctioned treatment program as described in subdivision one of this section; (iii) the defendant's criminal **conviction** history **taking into account the time that has elapsed since the occurrence of any conviction and the age of the defendant at the time of such conviction**; and (iv) 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.

§ 4. Subdivision 2 of section 170.55 of the criminal procedure law, as amended by chapter 222 of the laws of 1994, is amended to read as follows:

2. An adjournment in contemplation of dismissal is an adjournment of the action without date ordered [~~with a view to ultimate~~] **intended for the** dismissal of the accusatory instrument in furtherance of justice.

Upon issuing such an order, the court must release the defendant on his own recognizance. [~~Upon application of the people, made at any time not more than six months, or in the case of a family offense as defined in subdivision one of section 530.11 of this chapter, one year, after the issuance of such order, the court may restore the case to the calendar upon a determination that dismissal of the accusatory instrument would not be in furtherance of justice, and the action must thereupon proceed. If the case is not so restored within such six months or one year period, the accusatory instrument is, at the expiration of such period, deemed to have been dismissed by the court in furtherance of justice.~~] At any time prior to dismissal the court may modify the conditions or extend or reduce the term of adjournment, except that the total period of adjournment shall not exceed ninety days, or in the case of a family offense as defined in section 530.11 of this chapter, the period of adjournment shall not be more than one year. Upon violation of any condition fixed by the court, the court may revoke its order and restore the case to the calendar and the prosecution may proceed. If the case is not so restored to the calendar during the period fixed by the court, the accusatory instrument is, at the expiration of such period, deemed to have been dismissed.

§ 5. Section 170.56 of the criminal procedure law, as added by chapter 1042 of the laws of 1971, subdivision 1 as amended by chapter 92 of the laws of 2021 and subdivision 3 as amended by chapter 905 of the laws of 1977, is amended to read as follows:

§ 170.56 Adjournment in contemplation of dismissal in cases involving marihuana.

1. Upon or after arraignment in a local criminal court upon an information, a prosecutor's information or a misdemeanor complaint, where the sole remaining count or counts charge a violation or violations of former section 222.10, 222.15, 222.25, 222.30, 222.45 or 222.50 of the penal law, or upon summons for a nuisance offense under section sixty-five-c of the alcoholic beverage control law and before the entry of a plea of guilty thereto or commencement of a trial thereof, the court, upon motion of a defendant, may order that all proceedings be suspended and the action adjourned in contemplation of dismissal, or upon a finding that adjournment would not be necessary [~~or appropriate~~] and the setting forth in the record of the reasons for such findings, may dismiss in furtherance of justice the accusatory instrument[~~; provided, however, that the court may not order such adjournment in contemplation of dismissal or dismiss the accusatory instrument if: (a) the defendant has previously been granted such adjournment in contemplation of dismissal, or (b) the defendant has previously been granted a dismissal under this section, or (c) the defendant has previously been convicted of any offense involving controlled substances, or (d) the defendant has previously been convicted of a crime and the district attorney does not consent or (e) the defendant has previously been adjudicated a youthful offender on the basis of any act or acts involving controlled substances and the district attorney does not consent. Notwithstanding the limitations set forth in this subdivision, the court may order that all proceedings be suspended and the action adjourned in contemplation of dismissal based upon a finding of exceptional circumstances. For purposes of this subdivision, exceptional circumstances exist when, regardless of the ultimate disposition of the case, the entry of a plea of guilty is likely to result in severe or ongoing consequences, including, but not limited to, potential or actual immigration consequences~~].

2. [~~Upon ordering the action adjourned in contemplation of dismissal, the court must set and specify such conditions for the adjournment as may be appropriate, and such conditions may include placing the defendant under the supervision of any public or private agency. At any time prior to dismissal the court may modify the conditions or extend or reduce the term of the adjournment, except that the total period of adjournment shall not exceed twelve months. Upon violation of any condition fixed by the court, the court may revoke its order and restore the case to the calendar and the prosecution thereupon must proceed. If the case is not so restored to the calendar during the period fixed by the court, the accusatory instrument is, at the expiration of such period, deemed to have been dismissed in the furtherance of justice.~~] **An adjournment in contemplation of dismissal is an adjournment of the action without date ordered intended for the dismissal of the accusatory instrument in furtherance of justice. Upon issuing such an order, the court must release the defendant on his own recognizance. At any time prior to dismissal the court may modify the conditions or extend or reduce the term of adjournment, except that the total period of adjournment shall not exceed ninety days. Upon violation of any condition fixed by the court, the court may revoke its order and restore the case to the calendar and the prosecution may proceed. If the case is not so restored to the calendar during the period fixed by the court, the accusatory instrument is, at the expiration of such period, deemed to have been dismissed.**

3. Upon or after dismissal of such charges against a defendant [~~not previously convicted of a crime,~~] the court shall order that all official records and papers, relating to the defendant's arrest and prosecution, whether on file with the court, a police agency, or the New York state division of criminal justice services, be sealed and, except as otherwise provided in paragraph (d) of subdivision one of section 160.50 of this chapter, not made available to any person or public or private agency[~~; except, such records shall be made available under order of a court for the purpose of determining whether, in subsequent proceedings, such person qualifies under this section for a dismissal or adjournment in contemplation of dismissal of the accusatory instrument~~].

4. Upon the granting of an order pursuant to subdivision three **of this section**, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to the status he occupied before his arrest and prosecution.

§ 6. This act shall take effect on the sixtieth day after it shall have become a law.