§ 160.55 Order upon termination of criminal action by conviction for noncriminal offense; entry of waiver; administrative findings.

1. Regardless of the class of offense for which a person is initially charged, upon the termination of a criminal action or proceeding against a person by the conviction of such person of a traffic infraction or a violation, other than the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, unless the district attorney upon motion with not less than five days' notice to such person or his or her attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days' notice to such person or his or her attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, the clerk of the court wherein such criminal action or proceeding was terminated shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated by such conviction. Upon receipt of notification of such termination:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated, and all duplicates and copies thereof, except a digital fingerprint image where authorized pursuant to paragraph (e) of this subdivision, except for the palmprints and fingerprints concerning a disposition of harassment in the second degree as defined in section 240.26 of the penal law, committed against a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter, and determined pursuant to subdivision eight-a of section 170.10 of this title, shall forthwith be, at the discretion of the recipient agency, either destroyed or returned to such person, or to the attorney who represented such person at the time of the termination of the action or proceeding, at the address given by such person or attorney during the action or proceeding, by the division of criminal justice services and by any police department or law

enforcement agency having any such photograph, photographic plate or proof, palmprints or fingerprints in its possession or under its control;

(b) any police department or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints and fingerprints, shall forthwith formally request in writing that all such copies be destroyed or returned to the police department or law enforcement agency which transmitted or forwarded them, and upon such return such department or agency shall, at its discretion, either destroy or return them as provided herein;

(c) all official records and papers relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency;

(d) the records referred to in paragraph (c) of this subdivision shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, or in any district court, city court or the criminal court of the city of New York provided that such court sealed the record, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iv) the New York state department of corrections and community supervision when the accused is under parole supervision as a result of conditional release or parole release granted by the New York state board of parole and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (v) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such

supervision, or (vi) a police agency, probation department, sheriff's office, district attorney's office, department of correction of any municipality and parole department, for law enforcement purposes, upon arrest in instances in which the individual stands convicted of harassment in the second degree, as defined in section 240.26 of the penal law, committed against a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter, and determined pursuant to subdivision eight-a of section 170.10 of this title; and

(e) 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 which was not sealed pursuant to this section or section 160.50 of this article.

2. A report of the termination of the action or proceeding by conviction of a traffic violation or a violation other than the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, shall be sufficient notice of sealing to the commissioner of the division of criminal justice services unless the report also indicates that the court directed that the record not be sealed in the interests of justice. Where the court has determined pursuant to subdivision one of this section that sealing is not in the interests of justice, the clerk of the court shall include notification of that determination in any report to such division of the disposition of the action or proceeding. When the defendant has been found guilty of a violation of harassment in the second degree and it was determined pursuant to subdivision eight-a of section 170.10 of this title that such violation was committed against a member of the same family or household as the defendant, the clerk of the court shall include notification of that determination in any report to such division of the disposition of the action or proceeding for purposes of paragraph (a) and subparagraph (vi) of paragraph (d) of subdivision one of this section.

3. A person against whom a criminal action or proceeding was terminated by such person's conviction of a traffic infraction or violation other than the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

4. This section shall not apply to an action terminated in a manner described in paragraph (k) of subdivision two of section 160.50 of this chapter.

5. (a) When a criminal action or proceeding is terminated against a person by the entry of a waiver of a hearing pursuant to paragraph (c) of subdivision ten of section eleven hundred ninety-two of the vehicle and traffic law or section forty-nine-b of the navigation law, the record of the criminal action shall be sealed in accordance with this subdivision. Upon the entry of such waiver, the court or the clerk of the court shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that a waiver has been entered and that the record of the action shall be sealed when the person reaches the age of twenty-one or three years from the date of commission of the offense, whichever is the greater period of time. At the expiration of such period, the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies shall take the actions required by paragraphs (a), (b) and (c) of subdivision one of section 160.50 of this article.

(b) Where a person under the age of twenty-one is referred by the police to the department of motor vehicles for action pursuant to section eleven hundred ninety-two-a or eleven hundred ninety-four-a of

the vehicle and traffic law, or section forty-nine-b of the navigation law and a finding in favor of the motorist or operator is rendered, the commissioner of the department of motor vehicles shall, as soon as practicable, but not later than three years from the date of commission of the offense or when such person reaches the age of twenty-one, whichever is the greater period of time, notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that such finding in favor of the motorist or operator was rendered. Upon receipt of such notification, the commissioner of the division of criminal justice services and the heads of such police departments and other law enforcement agencies shall take the actions required by paragraphs (a), (b) and (c) of subdivision one of section 160.50 of this article.

(c) Where a person under the age of twenty-one is referred by the police to the department of motor vehicles for action pursuant to section eleven hundred ninety-two-a or eleven hundred ninety-four-a of the vehicle and traffic law, or section forty-nine-b of the navigation law, and no notification is received by the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies pursuant to paragraph (b) of this subdivision, such commissioner of the division of criminal justice services and such heads of police departments and other law enforcement agencies shall, after three years from the date of commission of the offense or when the person reaches the age of twenty-one, whichever is the greater period of time, take the actions required by paragraphs (a), (b) and (c) of subdivision one of section 160.50 of this article.