

CPL ARTICLE 160: FINGERPRINTS.

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Fingerprints are taken as per standards set by the Department of Criminal Justice Services [DCJS].

Defendant shall be fingerprinted for any felony; also for Penal Law misdemeanors, and any misdemeanor elsewhere which would be a felony by virtue of prior convictions.

Defendant shall also be fingerprinted to charged with loitering for the purpose of sex, including prostitution.

Defendant may be fingerprinted by police if they are unable to obtain satisfactory identification.

If fingerprints are to be taken, police may also take palmprints as well as mug shots.

Defendant shall be printed upon arrest; or if arraigned upon a summons or ticket, then prints are directed at that time.

Two (2) copies of the fingerprint report are sent to DCJS; DCJS shall return them with instructions when illegible. DCJS searches its records, including juvenile delinquency and youthful offender files.

A certified report to the police is considered presumptive evidence of defendant's involvement with the reported crime. The police shall forward 1 copy of the report to the D.A., and 2 to court. Court provides 1 copy to defense counsel, or alternatively to a pro se defendant.

Polygraphs shall NOT be used on victims of sex crimes!

Termination of a case in favor of defendant means a dismissal or verdict of acquittal; provided that the People have not appealed, unless the appeal was dismissed or the underlying affirmed. Also if the judgment was vacated or set-aside without a new trial; if a discharge invalidated the conviction, etc..

Termination does NOT include certain Adjournments in Contemplation of Dismissal (ACDs) regarding marihuana.

Upon such termination as above, the paperwork must be sealed unless either the Court or D.A. makes successful motion with 5 days' notice to defendant.

Previously published opinions need not be sealed.

Once sealed, records are only open to the defendant or his agent; also to the D.A. in certain marijuana cases so as to determine if another ACD is appropriate; to a firearms licensing agency if defendant so applies; to police/peace officer agency where defendant seeks employment, accused then gets a copy of the report; to Probation Department or Parole Board if defendant was arrested while under such supervision. Ex-parte motion may also be made in Superior Court to unseal records in the interests of justice.

The Clerk must also notify police and DCJS of the termination; if records are NOT to be sealed, report must so specify. If it was a Grand Jury dismissal, then that clerk notifies. If the D.A. declined to file, D.A. must so notify. If police decided not to refer to D.A., then they notify DCJS.

Once notification is received, all prints and related reports must be either destroyed; or in the agency's discretion, returned to the defendant or his attorney of record at the time of the termination. If digital record of prints was made, DCJS can retain as long as there be another valid offense which was not sealed.

If the termination took place before this law went into effect, defendant may apply for sealing to the court on 20 days' notice to D.A.; or if no court action, to the D.A. or police agency which declined to so file.

Convictions for Marijuana Violations may be sealed if 3 years have elapsed since offense with no further charges.

Convictions for traffic infractions or non-sexually motivated loitering shall be sealed, also the violation of operating a vehicle while impaired. If a traffic defendant waives court action in favor of submission to DMA authority, clerk shall notice of termination. If a defendant under 21 years of age is subject solely to DMV authority, DMV shall notify of termination. If no notice is made, sealing shall occur after 3 years, or defendant turns 21, whichever later.

Termination in favor with sealing means that the arrest and prosecution is deemed a nullity, defendant is restored to pre-arrest status, and there is no bar to employment resulting therefrom. Defendant shall not be required to divulge sealed arrest unless specifically mandated elsewhere.