

1423

2011-2012 Regular Sessions

I N S E N A T E

January 7, 2011

Introduced by Sens. GOLDEN, LARKIN -- read twice and ordered printed,
and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in
relation to disclosure of arrest and prosecution records of applicants
for employment by police departments and other law enforcement agen-
cies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (d) of subdivision 1 of section 160.50 of the
2 criminal procedure law, as amended by chapter 169 of the laws of 1994,
3 is amended to read as follows:
4 (d) such records shall be made available to the person accused or to
5 such person's designated agent, and shall be made available to (i) a
6 prosecutor in any proceeding in which the accused has moved for an order
7 pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law
8 enforcement agency upon ex parte motion in any superior court, if such
9 agency demonstrates to the satisfaction of the court that justice
10 requires that such records be made available to it, or (iii) any state
11 or local officer or agency with responsibility for the issuance of
12 licenses to possess guns, when the accused has made application for such
13 a license, or (iv) the New York state division of parole when the
14 accused is on parole supervision as a result of conditional release or a
15 parole release granted by the New York state board of parole, and the
16 arrest which is the subject of the inquiry is one which occurred while
17 the accused was under such supervision, or (v) any prospective employer
18 of a police officer or peace officer as those terms are defined in
19 subdivisions thirty-three and thirty-four of section 1.20 of this chap-
20 ter, in relation to an application for employment as a police officer or
21 peace officer; provided, however, that every person who is an applicant
22 for the position of police officer or peace officer shall be furnished
23 with a copy of all records obtained under this paragraph and afforded an

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

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1 opportunity to make an explanation thereto, or (vi) A POLICE DEPARTMENT
2 OR OTHER LAW ENFORCEMENT AGENCY, IN RELATION TO AN APPLICATION BY THE
3 PERSON ACCUSED FOR EMPLOYMENT BY SUCH AGENCY OR DEPARTMENT; PROVIDED,
4 HOWEVER, THAT EVERY SUCH PERSON SHALL BE FURNISHED WITH A COPY OF ALL
5 RECORDS OBTAINED UNDER THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO
6 MAKE AN EXPLANATION THERETO, OR (VII) the probation department responsi-
7 ble for supervision of the accused when the arrest which is the subject
8 of the inquiry is one which occurred while the accused was under such
9 supervision; and

10 S 2. Paragraph (d) of subdivision 1 of section 160.55 of the criminal
11 procedure law, as amended by chapter 476 of the laws of 2009, is amended
12 to read as follows:

13 (d) the records referred to in paragraph (c) of this subdivision shall
14 be made available to the person accused or to such person's designated
15 agent, and shall be made available to (i) a prosecutor in any proceeding
16 in which the accused has moved for an order pursuant to section 170.56
17 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex
18 parte motion in any superior court, if such agency demonstrates to the
19 satisfaction of the court that justice requires that such records be
20 made available to it, or (iii) any state or local officer or agency with
21 responsibility for the issuance of licenses to possess guns, when the
22 accused has made application for such a license, or (iv) the New York
23 state division of parole when the accused is under parole supervision as
24 a result of conditional release or parole release granted by the New
25 York state board of parole and the arrest which is the subject of the
26 inquiry is one which occurred while the accused was under such super-
27 vision, or (v) the probation department responsible for supervision of
28 the accused when the arrest which is the subject of the inquiry is one
29 which occurred while the accused was under such supervision, or (vi) a
30 police agency, probation department, sheriff's office, district attor-
31 ney's office, department of correction of any municipality and parole
32 department, for law enforcement purposes, upon arrest in instances in
33 which the individual stands convicted of harassment in the second
34 degree, as defined in section 240.26 of the penal law, committed against
35 a member of the same family or household as the defendant, as defined in
36 subdivision one of section 530.11 of this chapter, and determined pursu-
37 ant to subdivision eight-a of section 170.10 of this title; OR (VII) A
38 POLICE DEPARTMENT OR OTHER LAW ENFORCEMENT AGENCY, IN RELATION TO AN
39 APPLICATION BY THE PERSON ACCUSED FOR EMPLOYMENT BY SUCH AGENCY OR
40 DEPARTMENT; PROVIDED, HOWEVER, THAT EVERY SUCH PERSON SHALL BE FURNISHED
41 WITH A COPY OF ALL RECORDS OBTAINED UNDER THIS PARAGRAPH AND AFFORDED AN
42 OPPORTUNITY TO MAKE AN EXPLANATION THERETO; and

43 S 3. Subdivision 16 of section 296 of the executive law, as separately
44 amended by section 3 of part N and section 14 of part AAA of chapter 56
45 of the laws of 2009, is amended to read as follows:

46 16. It shall be an unlawful discriminatory practice, unless specif-
47 ically required or permitted by statute, for any person, agency, bureau,
48 corporation or association, including the state and any political subdivi-
49 sion thereof, to make any inquiry about, whether in any form of appli-
50 cation or otherwise, or to act upon adversely to the individual
51 involved, any arrest or criminal accusation of such individual not then
52 pending against that individual which was followed by a termination of
53 that criminal action or proceeding in favor of such individual, as
54 defined in subdivision two of section 160.50 of the criminal procedure
55 law, or by a youthful offender adjudication, as defined in subdivision
56 one of section 720.35 of the criminal procedure law, or by a conviction

1 for a violation sealed pursuant to section 160.55 of the criminal proce-
2 dure law or by a conviction which is sealed pursuant to section 160.58
3 of the criminal procedure law, in connection with the licensing, employ-
4 ment or providing of credit or insurance to such individual; provided,
5 further, that no person shall be required to divulge information
6 pertaining to any arrest or criminal accusation of such individual not
7 then pending against that individual which was followed by a termination
8 of that criminal action or proceeding in favor of such individual, as
9 defined in subdivision two of section 160.50 of the criminal procedure
10 law, or by a youthful offender adjudication, as defined in subdivision
11 one of section 720.35 of the criminal procedure law, or by a conviction
12 for a violation sealed pursuant to section 160.55 of the criminal proce-
13 dure law, or by a conviction which is sealed pursuant to section 160.58
14 of the criminal procedure law. The provisions of this subdivision shall
15 not apply to the licensing activities of governmental bodies in relation
16 to the regulation of guns, firearms and other deadly weapons or in
17 relation to an application for employment as a police officer or peace
18 officer as those terms are defined in subdivisions thirty-three and
19 thirty-four of section 1.20 of the criminal procedure law OR IN RELATION
20 TO AN APPLICATION FOR EMPLOYMENT FOR ANY POSITION IN A POLICE DEPART-
21 MENT OR OTHER LAW ENFORCEMENT AGENCY; provided further that the
22 provisions of this subdivision shall not apply to an application for
23 employment or membership in any law enforcement agency with respect to
24 any arrest or criminal accusation which was followed by a youthful
25 offender adjudication, as defined in subdivision one of section 720.35
26 of the criminal procedure law, or by a conviction for a violation sealed
27 pursuant to section 160.55 of the criminal procedure law, or by a
28 conviction which is sealed pursuant to section 160.58 of the criminal
29 procedure law.

30 S 4. This act shall take effect on the ninetieth day after it shall
31 have become a law.