

STATE OF NEW YORK

8909

IN ASSEMBLY

January 8, 2018

Introduced by M. of A. HAWLEY, STEC, BRABENEC, LAWRENCE, CROUCH, MONTES-
ANO, BLANKENBUSH -- read once and referred to the Committee on Judici-
ary

AN ACT to amend the civil rights law, in relation to establishing the
civil rights restoration act; to amend the penal law, in relation to
medical and/or clinical records and reporting for purposes of firearm
licenses, in relation to the destruction of firearms, in relation to
registration of sellers of ammunition, and in relation to exempting
certain individuals from having to provide a photograph for firearm
licensing purposes; to amend the general business law, in relation to
expanding the definition of immediate family; to amend the mental
hygiene law, in relation to reporting; repealing certain provisions of
the penal law relating to firearms licenses and sellers of ammunition;
and repealing certain provisions of the mental hygiene law and the
executive law, relating to reporting of substantial risk or threat of
harm by mental health professionals

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "civil rights restoration act".

3 § 2. The civil rights law is amended by adding a new section 79-o to
4 read as follows:

5 § 79-o. Civil rights restoration. 1. In any proceeding that may impact
6 an individual's rights under the second amendment of the United States
7 constitution, or any similar state right, including such proceedings
8 that could result in the loss of a license to carry or possess a
9 firearm:

10 (a) No court order shall be issued nor proceeding be commenced unless
11 all pleadings or other accusatory instruments have been filed and served
12 in conformity with article thirty of the civil practice law and rules,
13 and where such pleading includes an allegation that the individual has
14 been "involuntarily committed to a mental institution," such pleading
15 shall include an allegation as to the said court order date and juris-
16 diction;

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

LBD08834-04-7

1 (b) The burden of proof in such proceeding shall be no less than clear
2 and convincing evidence;

3 (c) Individuals may examine the entire contents of his or her firearm
4 license records constructed by state and local licensing and law
5 enforcement authorities;

6 (d) There shall be a right to counsel, including the right to assigned
7 counsel, if counsel cannot be afforded; and

8 (e) Any firearms confiscated and/or surrendered into law enforcement
9 evidence status during such proceeding shall not be destroyed, unless
10 specifically directed through a written order by a court of competent
11 jurisdiction at the conclusion of all disqualification proceedings
12 relating to the individual, including any appeals undertaken.

13 2. (a) There shall be contemporaneous written notification to all
14 individuals being reported to any law enforcement database that could
15 result in the deprivation of rights to own, possess, or use a firearm
16 and/or the deprivation of a lawfully owned firearm, including, but not
17 limited to, reports under former section 9.46 of the mental hygiene law
18 and under 18 USC § 922(g).

19 (b) There shall be written notification transmitted within ninety days
20 of the effective date of this section to all individuals previously
21 reported into any law enforcement database that could result in the
22 deprivation of rights to own, possess, or use a firearm and/or the
23 deprivation of a lawfully owned firearm, including, but not limited to,
24 the databases maintained by the office of mental health, the division of
25 criminal justice services, and the division of state police in conjunc-
26 tion with reports made under the former section 9.46 of the mental
27 hygiene law and/or under 18 USC § 922(g)(4), and that such written
28 notification shall include notice that the individual may have a right
29 to commence a proceeding in either the New York state supreme court or
30 county court under article seventy-eight of the civil practice laws and
31 rules if he or she believes that the information contained within the
32 notification is in error.

33 (c) Any individual, business, or governmental official who, knowing
34 the information reported, conveyed or circulated to be false, reports
35 that a person has been involuntarily committed, shall be subject to a
36 civil fine of not more than ten thousand dollars per offense.

37 (d) In any proceeding where an individual establishes that a report
38 that he or she was involuntarily committed was false, reasonable attor-
39 ney's fees and costs shall be reimbursed by the state.

40 (e) The state shall correct any false or incorrect report against an
41 individual to state and federal databases, including those under 18 USC
42 §922(g), within seven days of entry and service upon the state of a
43 final order of disposition in a case. The failure of the state to timely
44 do so shall be punishable as a contempt of court.

45 (f) Notwithstanding any law, rule or regulation to the contrary, an
46 individual's medical and/or clinical records shall not be used for
47 routine law enforcement reporting purposes relative to firearms owner-
48 ship, use, possession, or suitability.

49 § 3. Section 400.02 of the penal law, as added by chapter 1 of the
50 laws of 2013, is amended to read as follows:

51 § 400.02 Statewide license and record database.

52 There shall be a statewide license and record database which shall be
53 created and maintained by the division of state police the cost of which
54 shall not be borne by any municipality. Records assembled or collected
55 for purposes of inclusion in such database shall not be subject to
56 disclosure pursuant to article six of the public officers law, excepting

1 any non-identifying records such as existing statistical tabulations or
2 those capable of being performed or such record responses as can be
3 reasonably satisfied through redacted response. Records containing
4 granted license applications shall be periodically checked by the divi-
5 sion of criminal justice services against criminal [~~conviction, mental~~
6 ~~health, and all other records~~] convictions as [are] is necessary to
7 determine their continued accuracy as well as whether an individual is
8 no longer a valid license holder. The division of criminal justice
9 services shall also check pending applications made pursuant to this
10 article against such records to determine whether a license may be
11 granted. All state agencies shall cooperate with the division of crimi-
12 nal justice services, as otherwise authorized by law, in making their
13 records available for such checks. The division of criminal justice
14 services, upon determining that an individual is ineligible to possess a
15 license, or is no longer a valid license holder, shall notify the appli-
16 cable licensing official of such determination and such licensing offi-
17 cial shall not issue a license or revoke such license and any weapons
18 owned or possessed by such individual shall be removed consistent with
19 the provisions of subdivision eleven of section 400.00 of this article.
20 Local and state law enforcement shall have access to such database, as
21 otherwise authorized by law, in the performance of their duties. Records
22 assembled or collected for purposes of inclusion in the database estab-
23 lished by this section shall be released pursuant to a court order.

24 § 4. Paragraph (b) of subdivision 11 of section 400.00 of the penal
25 law is REPEALED.

26 § 5. Section 400.05 of the penal law is amended by adding a new subdi-
27 vision 7 to read as follows:

28 7. Whenever any machine-gun or firearm is destroyed pursuant to subdi-
29 vision two of this section, all state and local law enforcement agencies
30 shall publish on their website, on an annual basis, an inventory of
31 every machine-gun or firearm that is destroyed, including the caliber,
32 make, model, manufacturer's name, serial number, or if none, any other
33 distinguishing number or identification mark of the machine-gun or
34 firearm, and if applicable, the jurisdiction and date of the court order
35 directing the surrender and/or destruction of such machine-gun or
36 firearm.

37 § 6. Paragraph (c) of subdivisions 11 and 16-a and paragraph (b) of
38 subdivision 10 of section 400.00 of the penal law are REPEALED.

39 § 7. Subdivision 1 of section 898 of the general business law, as
40 added by chapter 1 of the laws of 2013, is amended to read as follows:

41 1. In addition to any other requirements pursuant to state and feder-
42 al law, all sales, exchanges or disposals of firearms, rifles or shot-
43 guns shall be conducted in accordance with this section unless such
44 sale, exchange or disposal is conducted by a licensed importer, licensed
45 manufacturer or licensed dealer, as those terms are defined in 18 USC §
46 922, when such sale, exchange or disposal is conducted pursuant to that
47 person's federal firearms license or such sale, exchange or disposal is
48 between members of an immediate family. For purposes of this section,
49 "immediate family" shall mean spouses, domestic partners, parents,
50 brothers, sisters, children and step-children.

51 § 8. Subdivision 17 of section 400.00 of the penal law is renumbered
52 subdivision 18 and a new subdivision 17 is added to read as follows:

53 17. Applicants who have a genuine and sincere religious belief, who
54 have provided fingerprints pursuant to this section, shall not be
55 required to provide photographs of themselves in order to obtain a
56 license as required by this section.

1 § 9. Section 400.03 of the penal law is REPEALED.

2 § 10. Subdivision 16-a of section 400.00 of the penal law is amended
3 by adding a new paragraph (c) to read as follows:

4 (c) The division of state police shall not require the registration of
5 a seller of ammunition, as defined in subdivision twenty-four of section
6 265.00 of this chapter, in order for such seller of ammunition to oper-
7 ate his or her business.

8 § 11. Section 9.46 of the mental hygiene law is REPEALED.

9 § 12. Subdivision 19 of section 837 of the executive law is REPEALED.

10 § 13. Paragraph 12 of subdivision (c) of section 33.13 of the mental
11 hygiene law, as amended by chapter 1 of the laws of 2013, is amended to
12 read as follows:

13 12. to a director of community services as defined in article nine of
14 this chapter or his or her designee, provided that such director or his
15 or her designee ~~[(i)]~~ requests such information in the exercise of his
16 or her statutory functions, powers and duties pursuant to section 9.37,
17 9.45, 9.47, 9.48, 9.60 or 41.13 of this chapter~~[-; or (ii) the disclosure~~
18 ~~of information is required pursuant to section 9.46 of this chapter]~~.

19 § 14. One year after the completion of transmission of notification of
20 all individuals pursuant to paragraph (b) of subdivision two of section
21 79-o of the civil rights law, as added by section two of this act, all
22 offices and agencies in use or possession of reports required under the
23 former section 9.46 of the mental hygiene law shall purge all such
24 information.

25 § 15. Severability. If any provision of this act, or the application
26 thereof to any person or circumstance, shall be adjudged by any court of
27 competent jurisdiction to be invalid or unconstitutional, such judgment
28 shall not affect, impair or invalidate the remainder thereof, but shall
29 be confined in its operation to the provision of this act, or in its
30 application to the person or circumstance, directly involved in the
31 controversy in which such judgment shall have been rendered.

32 § 16. This act shall take effect immediately.