

STATE OF NEW YORK

8067

IN SENATE

January 24, 2022

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, the civil rights law, and the family court act to allow access to sealed and protected records to civilian law enforcement oversight entities conducting investigations and disciplinary proceedings for misconduct by police and peace officers

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

1 Section 1. Section 1.20 of the criminal procedure law is amended by
2 adding a new subdivision 46 to read as follows:

3 46. "Civilian law enforcement oversight entity" means an entity with
4 responsibility for investigating or recommending discipline for a police
5 officer or peace officer for misconduct that does not employ any current
6 police officer or peace officer.

7 § 2. Paragraph (d) of subdivision 1 of section 160.50 of the criminal
8 procedure law, as amended by chapter 449 of the laws of 2015, is amended
9 to read as follows:

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

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

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1 of a police officer or peace officer as those terms are defined in
2 subdivisions thirty-three and thirty-four of section 1.20 of this chap-
3 ter, in relation to an application for employment as a police officer or
4 peace officer; provided, however, that every person who is an applicant
5 for the position of police officer or peace officer shall be furnished
6 with a copy of all records obtained under this paragraph and afforded an
7 opportunity to make an explanation thereto, or (vi) the probation
8 department responsible for supervision of the accused when the arrest
9 which is the subject of the inquiry is one which occurred while the
10 accused was under such supervision, or (vii) any civilian law enforce-
11 ment oversight entity, provided that the records and papers obtained
12 under this paragraph relate to an open investigation or disciplinary
13 proceeding at the civilian law enforcement oversight entity and are
14 being used in furtherance of that open investigation or disciplinary
15 proceeding; and

16 § 3. Paragraph (d) of subdivision 1 of section 160.55 of the criminal
17 procedure law, as amended by chapter 449 of the laws of 2015, is amended
18 to read as follows:

19 (d) the records referred to in paragraph (c) of this subdivision shall
20 be made available to the person accused or to such person's designated
21 agent, and shall be made available to (i) a prosecutor in any proceeding
22 in which the accused has moved for an order pursuant to section 170.56
23 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex
24 parte motion in any superior court, or in any district court, city court
25 or the criminal court of the city of New York provided that such court
26 sealed the record, if such agency demonstrates to the satisfaction of
27 the court that justice requires that such records be made available to
28 it, or (iii) any state or local officer or agency with responsibility
29 for the issuance of licenses to possess guns, when the accused has made
30 application for such a license, or (iv) the New York state department of
31 corrections and community supervision when the accused is under parole
32 supervision as a result of conditional release or parole release granted
33 by the New York state board of parole and the arrest which is the
34 subject of the inquiry is one which occurred while the accused was under
35 such supervision, or (v) the probation department responsible for super-
36 vision of the accused when the arrest which is the subject of the
37 inquiry is one which occurred while the accused was under such super-
38 vision, or (vi) a police agency, probation department, sheriff's office,
39 district attorney's office, department of correction of any municipality
40 and parole department, for law enforcement purposes, upon arrest in
41 instances in which the individual stands convicted of harassment in the
42 second degree, as defined in section 240.26 of the penal law, committed
43 against a member of the same family or household as the defendant, as
44 defined in subdivision one of section 530.11 of this chapter, and deter-
45 mined pursuant to subdivision eight-a of section 170.10 of this title,
46 or (vii) any civilian law enforcement oversight entity, provided that
47 the records and papers obtained under this paragraph relate to an open
48 investigation or disciplinary proceeding at the civilian law enforcement
49 oversight entity and are being used in furtherance of that open investi-
50 gation or disciplinary proceeding; and

51 § 4. Paragraphs (c) and (d) of subdivision 6 of section 160.58 of the
52 criminal procedure law, as added by section 3 of part AAA of chapter 56
53 of the laws of 2009, are amended and a new paragraph (e) is added to
54 read as follows:

(c) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the person has made application for such a license; ~~[or]~~

(d) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation there-to~~[-]~~; or

(e) any civilian law enforcement oversight entity, provided that the records and papers obtained under this paragraph relate to an open investigation or disciplinary proceeding at the civilian law enforcement oversight entity and are being used in furtherance of that open investigation or disciplinary proceeding.

§ 5. Paragraphs (d) and (e) of subdivision 9 of section 160.59 of the criminal procedure law, as added by section 48 of part WWW of chapter 59 of the laws of 2017, are amended and a new paragraph (f) is added to read as follows:

(d) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation there-to; ~~[or]~~

(e) the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 USC 921 (a) (3)~~[-]~~; or

(f) any civilian law enforcement oversight entity, provided that the records and papers obtained under this paragraph relate to an open investigation or disciplinary proceeding at the civilian law enforcement oversight entity and are being used in furtherance of such open investigation or disciplinary proceeding.

§ 6. Paragraph a of subdivision 2 of section 50-b of the civil rights law, as amended by chapter 643 of the laws of 1999, is amended to read as follows:

a. Any person charged with the commission of an offense, as defined in subdivision one of this section, against the same victim; the counsel or guardian of such person; the public officers and employees, including the employees of civilian law enforcement oversight entities as defined in section 1.20 of the criminal procedure law, charged with the duty of investigating, prosecuting, keeping records relating to the offense, or any other act when done pursuant to the lawful discharge of their duties; and any necessary witnesses for either party; or

§ 7. Section 166 of the family court act, is amended to read as follows:

§ 166. Privacy of records. The records of any proceeding in the family court shall not be open to indiscriminate public inspection. However, the court in its discretion in any case may permit the inspection of any papers or records. Any duly authorized agency, association, society or institution to which a child is committed may cause an inspection of the

1 record of investigation to be had and may in the discretion of the court
2 obtain a copy of the whole or part of such record. The provisions of
3 this section shall only apply to records within the possession of the
4 family court.

5 § 8. Subdivision 3 of section 375.1 of the family court act, as
6 amended by chapter 398 of the laws of 1983, is amended to read as
7 follows:

8 3. Records sealed pursuant to subdivision one shall be made available
9 to the respondent or his designated agent, to civilian law enforcement
10 oversight entity as defined in section 1.20 of the criminal procedure
11 law; provided that the records and papers made available under this
12 subdivision relate to an open investigation or disciplinary proceeding
13 at the civilian law enforcement oversight entity and are being used in
14 furtherance of such open investigation or disciplinary proceeding, and
15 the records and papers of a probation service shall be available to any
16 probation service for the purpose of complying with subdivision four of
17 section 308.1.

18 § 9. Subdivision 2 of section 381.3 of the family court act, as added
19 by chapter 920 of the laws of 1982, paragraph (b) as amended by chapter
20 926 of the laws of 1982, is amended to read as follows:

21 2. Notwithstanding the provisions of subdivision one, the family court
22 in the county in which the petition was adjudicated may, upon motion and
23 for good cause shown, order such records open:

24 (a) to the respondent or his parent or person responsible for his
25 care; ~~or~~

26 (b) if the respondent is subsequently convicted of a crime, to a judge
27 of the court in which he was convicted, unless such record has been
28 sealed pursuant to section 375.1; or

29 (c) to any civilian law enforcement oversight entity as defined in
30 section 1.20 of the criminal procedure law; provided that the records
31 and papers made available under this subdivision relate to an open
32 investigation or disciplinary proceeding at the civilian law enforcement
33 oversight entity and are being used in furtherance of such open investi-
34 gation or disciplinary proceeding.

35 § 10. This act shall take effect immediately.