

2101

2009-2010 Regular Sessions

I N S E N A T E

February 11, 2009

Introduced by Sens. GOLDEN, LANZA, MORAHAN, PADAVAN -- 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 agencies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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

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

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

11 S 2. Paragraph (d) of subdivision 1 of section 160.55 of the criminal
12 procedure law, as amended by chapter 169 of the laws of 1994, is amended
13 to read as follows:

14 (d) the records referred to in paragraph (c) of this subdivision shall
15 be made available to the person accused or to such person's designated
16 agent, and shall be made available to (i) a prosecutor in any proceeding
17 in which the accused has moved for an order pursuant to section 170.56
18 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex
19 parte motion in any superior court, if such agency demonstrates to the
20 satisfaction of the court that justice requires that such records be
21 made available to it, or (iii) any state or local officer or agency with
22 responsibility for the issuance of licenses to possess guns, when the
23 accused has made application for such a license, or (iv) the New York
24 state division of parole when the accused is under parole supervision as
25 a result of conditional release or parole release granted by the New
26 York state board of parole and the arrest which is the subject of the
27 inquiry is one which occurred while the accused was under such super-
28 vision, or (v) ANY PROSPECTIVE EMPLOYER OF A POLICE OFFICER OR PEACE
29 OFFICER AS THOSE TERMS ARE DEFINED IN SUBDIVISIONS THIRTY-THREE AND
30 THIRTY-FOUR OF SECTION 1.20 OF THIS CHAPTER, IN RELATION TO AN APPLICA-
31 TION FOR EMPLOYMENT AS A POLICE OFFICER OR PEACE OFFICER; PROVIDED,
32 HOWEVER, THAT EVERY PERSON WHO IS AN APPLICANT FOR THE POSITION OF
33 POLICE OFFICER OR PEACE OFFICER SHALL BE FURNISHED WITH A COPY OF ALL
34 RECORDS OBTAINED UNDER THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO
35 MAKE AN EXPLANATION THERETO, OR (VI) A POLICE DEPARTMENT OR OTHER LAW
36 ENFORCEMENT AGENCY, IN RELATION TO AN APPLICATION BY THE PERSON ACCUSED
37 FOR EMPLOYMENT BY SUCH AGENCY OR DEPARTMENT; PROVIDED, HOWEVER, THAT
38 EVERY SUCH PERSON SHALL BE FURNISHED WITH A COPY OF ALL RECORDS OBTAINED
39 UNDER THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION
40 THERETO, OR (VII) the probation department responsible for supervision
41 of the accused when the arrest which is the subject of the inquiry is
42 one which occurred while the accused was under such supervision; and

43 S 3. Subdivision 16 of section 296 of the executive law, as amended by
44 chapter 639 of the laws of 2007, is amended to read as follows:

45 16. It shall be an unlawful discriminatory practice, unless specif-
46 ically required or permitted by statute, for any person, agency, bureau,
47 corporation or association, including the state and any political subdi-
48 vision thereof, to make any inquiry about, whether in any form of appli-
49 cation or otherwise, or to act upon adversely to the individual
50 involved, any arrest or criminal accusation of such individual not then
51 pending against that individual which was followed by a termination of
52 that criminal action or proceeding in favor of such individual, as
53 defined in subdivision two of section 160.50 of the criminal procedure
54 law, or by a youthful offender adjudication, as defined in subdivision
55 one of section 720.35 of the criminal procedure law, or by a conviction
56 for a violation sealed pursuant to section 160.55 of the criminal proce-

1 dure law in connection with the licensing, employment or providing of
2 credit or insurance to such individual; provided, however, that the
3 provisions hereof shall not apply to the licensing activities of govern-
4 mental bodies in relation to the regulation of guns, firearms and other
5 deadly weapons or in relation to an application for employment as a
6 police officer or peace officer as those terms are defined in subdivi-
7 sions thirty-three and thirty-four of section 1.20 of the criminal
8 procedure law OR IN RELATION TO AN APPLICATION FOR EMPLOYMENT FOR ANY
9 POSITION IN A POLICE DEPARTMENT OR OTHER LAW ENFORCEMENT AGENCY;
10 provided further that the provisions of this subdivision shall not apply
11 to an application for employment or membership in any law enforcement
12 agency with respect to any arrest or criminal accusation which was
13 followed by a youthful offender adjudication, as defined in subdivision
14 one of section 720.35 of the criminal procedure law, or by a conviction
15 for a violation sealed pursuant to section 160.55 of the criminal proce-
16 dure law.

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