S T A T E O F N E W Y O R K

6208

2009-2010 Regular Sessions

I N A S S E M B L Y

February 26, 2009

Introduced by M. of A. BARRA, WALKER -- read once and referred to the Committee on Mental Health, Mental Retardation and Developmental Disabilities

AN ACT to amend the penal law and the mental hygiene law, in relation to certifications of certain persons not suitable to possess a firearm or self-defense spray device

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

Section 1. Subdivision 16 of section 265.00 of the penal law, as amended by chapter 354 of the laws of 1996, is amended to read as follows:

16. "Certified not suitable to possess A FIREARM OR a self-defense spray device, a rifle or shotgun" means that the director or physician in charge of any hospital or institution for mental illness, public or private, has certified to the superintendent of state police [or to any organized police department of a county, city, town or village of this state], that a person who has been judicially adjudicated incompetent, or who has been confined to such institution for mental illness pursuant to judicial authority, VOLUNTARY ADMISSION AND/OR MEDICAL CERTIFICATION, is not suitable to possess A FIREARM; OR a self-defense spray device, as defined in section 265.20 of this article[,]; or a rifle or shotgun; PURSUANT TO SECTION 9.65 OF THE MENTAL HYGIENE LAW.

S 2. The mental hygiene law is amended by adding a new section 9.65 to read as follows:

S 9.65 CERTIFICATIONS OF PERSONS NOT SUITABLE TO POSSESS A FIREARM OR SELF-DEFENSE SPRAY DEVICE.

(A) THE DIRECTOR OR PHYSICIAN IN CHARGE OF ANY PRIVATE OR PUBLIC HOSPITAL OR INSTITUTION FOR THE TREATMENT OF MENTAL ILLNESS SHALL CERTIFY TO THE SUPERINTENDENT OF THE STATE POLICE THAT A PERSON WHO IS CONFINED TO SUCH HOSPITAL OR INSTITUTION PURSUANT TO JUDICIAL ORDER, VOLUNTARY ADMISSION AND/OR MEDICAL CERTIFICATION, IS NOT SUITABLE TO

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

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POSSESS A FIREARM, SELF-DEFENSE SPRAY DEVICE, RIFLE AND/OR SHOTGUN IF THERE IS THE LIKELIHOOD THAT THE INDIVIDUAL'S FUTURE ACTIONS AS AFFECTED BY HIS OR HER MENTAL ILLNESS SHALL RESULT IN SERIOUS HARM TO HIMSELF OR HERSELF AND/OR OTHERS, AS DEFINED IN SECTION 9.01 OF THIS ARTICLE. SUCH CERTIFICATION SHALL BE MADE AT LEAST FIFTEEN DAYS PRIOR TO THE DATE THE INDIVIDUAL IS SCHEDULED TO BE DISCHARGED AND SHALL IMMEDIATELY BE FORWARDED TO THE SUPERINTENDENT OF THE STATE POLICE.

(B) THE COMMISSIONER OF MENTAL HEALTH IS HEREBY AUTHORIZED AND DIRECTED TO PROMULGATE RULES AND REGULATIONS FOR THE CERTIFICATION PROCESS AND THE APPEALS PROCESS RELATED TO SUCH CERTIFICATIONS.

(C) UPON RECEIPT OF THE CERTIFICATION SET FORTH IN SUBDIVISION (A) OF THIS SECTION, THE SUPERINTENDENT OF STATE POLICE SHALL CAUSE SUCH INFORMATION TO BE ENTERED INTO THE NEW YORK STATEWIDE POLICE INFORMATION NETWORK AND MADE AVAILABLE TO AN INVESTIGATING OFFICER OF A POLICE AUTHORITY CONDUCTING AN INVESTIGATION PURSUANT TO SECTION 400.00 OF THE PENAL LAW RELATING TO AN APPLICANT FOR A PERIOD TO CARRY, POSSESS, REPAIR OR DISPOSE OF A FIREARM.

(D) UPON RECEIPT OF THE CERTIFICATION SET FORTH IN SUBDIVISION (A) OF THIS SECTION, THE SUPERINTENDENT OF STATE POLICE SHALL TRANSMIT SUCH INFORMATION TO THE APPROPRIATE FEDERAL AGENCY FOR INCLUSION IN THE NATIONWIDE DATABASE OF PERSONS INELIGIBLE TO POSSESS OR PURCHASE A RIFLE, SHOTGUN, PISTOL, OR REVOLVER.

(E) THE SUPERINTENDENT OF THE STATE POLICE SHALL DETERMINE IF THE PERSON SUBJECT TO SUCH CERTIFICATION HAS BEEN ISSUED A LICENSE TO CARRY, POSSESS, REPAIR OR DISPOSE OF A FIREARM PURSUANT TO SECTION 400.00 OF THE PENAL LAW, AND IF FOUND TO BE SUCH A LICENSE HOLDER, PROVIDE NOTICE OF BOTH THE CERTIFICATION AND THE LICENSE TO THE DISTRICT ATTORNEY AND LICENSING OFFICER IN THE COUNTY WHERE SUCH LICENSE WAS ISSUED.

S 3. Section 400.00 of the penal law is amended by adding a new subdivision 11-a to read as follows:

11-A. LICENSE: REVOCATION AND SUSPENSION. (A) WHEN IT HAS BEEN CERTIFIED THAT A LICENSEE IS UNSUITABLE TO POSSESS A FIREARM PURSUANT TO SECTION 9.65 OF THE MENTAL HYGIENE LAW, THE DISTRICT ATTORNEY IN THE COUNTY WHERE SUCH LICENSE WAS ISSUED SHALL PETITION ANY JUDGE OR COURT OF RECORD TO SUSPEND AND/OR REVOKE ANY SUCH EXISTING LICENSE POSSESSED BY THE INDIVIDUAL, ORDER THE INDIVIDUAL INELIGIBLE FOR SUCH A LICENSE AND ORDER THE IMMEDIATE SURRENDER OF ANY OR ALL FIREARMS OWNED OR POSSESSED BY SUCH INDIVIDUAL.

(B) THE COURT SHALL SUSPEND ANY SUCH EXISTING LICENSE POSSESSED BY THE INDIVIDUAL, ORDER THE INDIVIDUAL INELIGIBLE FOR SUCH A LICENSE AND ORDER THE IMMEDIATE SURRENDER OF ANY OR ALL FIREARMS OWNED OR POSSESSED BY SUCH INDIVIDUAL WHERE THE COURT RECEIVES INFORMATION THAT GIVES THE COURT GOOD CAUSE TO BELIEVE IT LIKELY THAT THE INDIVIDUAL'S FUTURE ACTIONS AS AFFECTED BY HIS OR HER MENTAL ILLNESS SHALL RESULT IN SERIOUS HARM TO HIMSELF OR HERSELF AND/OR OTHERS, AS DEFINED IN SECTION 9.01 OF THE MENTAL HYGIENE LAW.

(C) THE COURT SHALL REVOKE ANY SUCH EXISTING LICENSE POSSESSED BY THE INDIVIDUAL, ORDER THE INDIVIDUAL INELIGIBLE FOR SUCH A LICENSE AND ORDER THE IMMEDIATE SURRENDER OF ANY OR ALL FIREARMS OWNED OR POSSESSED BY SUCH INDIVIDUAL WHERE THE COURT RECEIVES INFORMATION THAT GIVES THE COURT GOOD CAUSE TO BELIEVE THAT THE INDIVIDUAL USED OR THREATENED THE USE OF A FIREARM UNLAWFULLY AGAINST ANOTHER PERSON OR HIMSELF OR HERSELF, AND TO BELIEVE IT LIKELY THAT THE INDIVIDUAL'S FUTURE ACTIONS AS AFFECTED BY HIS OR HER MENTAL ILLNESS SHALL RESULT IN SERIOUS HARM TO HIMSELF OR HERSELF AND/OR OTHERS, AS DEFINED IN SECTION 9.01 OF THE MENTAL HYGIENE LAW.

(D) ANY SUSPENSION ORDER ISSUED PURSUANT TO THIS SECTION SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE CERTIFICATE PURSUANT TO SECTION 9.65 OF THE MENTAL HYGIENE LAW HAS BEEN WITHDRAWN, REVOKED OR NULLIFIED, OR UNLESS THE SUSPENSION IS VACATED BY THE COURT.

(E) (1) WHERE AN ORDER TO SURRENDER ONE OR MORE FIREARMS HAS BEEN ISSUED, IT SHALL SPECIFY THE PLACE WHERE SUCH FIREARMS SHALL BE SURRENDERED, SHALL SPECIFY A DATE AND TIME BY WHICH THE SURRENDER SHALL BE COMPLETED AND, TO THE EXTENT POSSIBLE, SHALL DESCRIBE SUCH FIREARMS TO BE SURRENDERED, AND SHALL DIRECT THE AUTHORITY RECEIVING SUCH SURRENDERED FIREARMS TO IMMEDIATELY NOTIFY THE COURT OF SUCH SURRENDER.

(2) THE PROMPT SURRENDER OF ONE OR MORE FIREARMS PURSUANT TO A COURT ORDER ISSUED PURSUANT TO THIS SECTION SHALL BE CONSIDERED A VOLUNTARY SURRENDER FOR PURPOSES OF SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF THIS CHAPTER. THE DISPOSITION OF ANY SUCH FIREARMS SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION SIX OF SECTION 400.05 OF THIS ARTICLE.

(F) WHERE AN ORDER OF REVOCATION, SUSPENSION OR INELIGIBILITY HAS BEEN ISSUED PURSUANT TO THIS SECTION, MODIFIED OR VACATED, THE COURT SHALL IMMEDIATELY NOTIFY THE SUPERINTENDENT OF STATE POLICE.

(G) UPON RECEIPT OF NOTICE SET FORTH IN PARAGRAPH (F) OF THIS SUBDIVISION, THE SUPERINTENDENT OF STATE POLICE SHALL CAUSE SUCH INFORMATION TO BE ENTERED INTO THE NEW YORK STATEWIDE POLICE INFORMATION NETWORK FOR INCLUSION IN SUCH NETWORK AND SHALL TRANSMIT SUCH INFORMATION TO THE APPROPRIATE FEDERAL AGENCY FOR THE INCLUSION IN THE NATIONWIDE DATABASE OF PERSONS INELIGIBLE TO POSSESS OR PURCHASE A RIFLE, SHOTGUN, PISTOL, OR REVOLVER.

(H) THE INDIVIDUAL SHALL HAVE THE RIGHT TO A HEARING BEFORE THE COURT REGARDING ANY REVOCATION, SUSPENSION, INELIGIBILITY OR SURRENDER ORDER ISSUED PURSUANT TO THIS SECTION, PROVIDED THAT NOTHING IN THIS PARAGRAPH SHALL PRECLUDE THE COURT FROM ISSUING ANY SUCH ORDER PRIOR TO A HEARING. WHERE THE COURT HAS ISSUED SUCH AN ORDER PRIOR TO A HEARING, IT SHALL COMMENCE SUCH HEARING WITHIN FOURTEEN DAYS OF THE DATE SUCH ORDER WAS ISSUED.

S 4. This act shall take effect immediately.