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

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2009-2010 Regular Sessions

I N S E N A T E

March 20, 2009

Introduced by Sen. HUNTLEY -- (at request of the Office of Mental Health) -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to the transmission of data to the federal bureau of investigation to complete background checks relating to the possession and acquisition of a firearm

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

Section 1. Subdivision (j) of section 7.09 of the mental hygiene law, as added by chapter 491 of the laws of 2008, is amended to read as follows:

(j) The commissioner, in cooperation with other applicable state agencies, shall be authorized to collect, retain or modify data or records, or to transmit such data or records to the division of criminal justice services, or to 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), in accordance with applicable federal laws or regulations. Such records shall include only names and other non-clinical identifying information of persons who have been involuntarily committed to a hospital pursuant to article nine of this chapter, or article seven hundred thirty or section 330.20 of the criminal procedure law or sections 322.2 or 353.4 of the family court act, or to a secure treatment facility pursuant to article ten of this chapter. The commissioner shall establish within the office of mental health an administrative process to permit a person who has been or may be disqualified from possessing such a firearm pursuant to 18 USC 922(4)(d) to petition for relief from that disability where such person's record and reputation are such that such person will not be likely to act in a manner danger-

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

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ous to public safety and where the granting of the relief would not be contrary to public safety. The commissioner shall promulgate regulations to establish the relief from disabilities program, which shall include, but not be limited to, provisions providing for: (i) an opportunity for a disqualified person to petition for relief in writing; (ii) the authority for the agency to require that the petitioner undergo a clinical evaluation and risk assessment; and (iii) a requirement that the agency issue a decision in writing explaining the reasons for a denial or grant of relief. THE AGENCY IS AUTHORIZED TO CONTACT THE PETITIONER, OR ANY HEALTH OR MENTAL HYGIENE PROVIDER OF THE PETITIONER, TO RECEIVE INFORMATION IT DEEMS NECESSARY TO MAKE A DETERMINATION REGARDING THE PETITION FOR RELIEF. The denial of a petition for relief from disabilities may be reviewed de novo pursuant to the proceedings under article [seventy-eight] FOUR of the civil practice law and rules, EXCEPT THAT A PROCEEDING TO REVIEW THE DENIAL OF A PETITION FOR RELIEF FROM DISABILITIES SHALL BE COMMENCED IN THE COUNTY IN WHICH THE AGENCY MADE THE DETERMINATION TO DENY THE PETITION AND SUCH PROCEEDING SHALL BE COMMENCED WITHIN FOUR MONTHS FROM THE DATE OF THE AGENCY'S DETERMINATION.

S 2. Subdivision (f) of section 13.09 of the mental hygiene law, as added by chapter 491 of the laws of 2008, is amended to read as follows:

(f) The commissioner, in cooperation with other applicable state agencies, shall be authorized to collect, retain or modify data or records, or to transmit such data or records to the division of criminal justice services, or to 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), in accordance with applicable federal laws or regulations. Such records shall include only names and other nonclinical identifying information of persons who [have had a guardian appointed for them pursuant to any provision of state law, based on a determination that as a result of marked subnormal intelligence, mental illness, incapacity, condition or disease, they lack the mental capacity to contract or manage their own affairs, and persons who] have been involuntarily committed to a facility pursuant to article fifteen of this chapter, or article seven hundred thirty or section 330.20 of the criminal procedure law or sections 322.2 or 353.4 of the family court act. The commissioner shall establish within the office of mental retardation and developmental disabilities an administrative process to permit a person who has been or may be disqualified from possessing such a firearm pursuant to 18 USC 922(4)(d) to petition for relief from that disability where such person's record and reputation are such that such person will not be likely to act in a manner dangerous to public safety and where the granting of the relief would not be contrary to public safety. The commissioner shall promulgate regulations to establish the relief from disabilities program, which shall include, but not be limited to, provisions providing for: (i) an opportunity for a disqualified person to petition for relief in writing; (ii) the authority for the agency to require that the petitioner undergo a clinical evaluation and risk assessment; and (iii) a requirement that the agency issue a decision in writing explaining the reasons for a denial or grant of relief. THE AGENCY IS AUTHORIZED TO CONTACT THE PETITIONER, OR ANY HEALTH OR MENTAL HYGIENE PROVIDER OF THE PETITIONER, TO RECEIVE INFORMATION IT DEEMS NECESSARY TO MAKE A DETERMINATION REGARDING THE PETITION FOR RELIEF. The denial of a petition for relief from disabilities may be

reviewed de novo pursuant to the proceedings under article [seventy-eight] FOUR of the civil practice law and rules, EXCEPT THAT A PROCEEDING TO REVIEW THE DENIAL OF A PETITION FOR RELIEF FROM DISABILITIES SHALL BE COMMENCED IN THE COUNTY IN WHICH THE AGENCY MADE THE DETERMINATION TO DENY THE PETITION AND SUCH PROCEEDING SHALL BE COMMENCED WITHIN FOUR MONTHS FROM THE DATE OF THE AGENCY'S DETERMINATION.

S 3. Subdivision (b) of section 33.13 of the mental hygiene law, as amended by chapter 491 of the laws of 2008, is amended to read as follows:

(b) The commissioners may require that [statistical] information about patients or clients SHALL be reported to the offices, INCLUDING BUT NOT LIMITED TO, ANY INFORMATION OR RECORDS WHICH IDENTIFY PATIENTS OR CLIENTS, CLINICAL RECORDS OR CLINICAL INFORMATION TENDING TO IDENTIFY PATIENTS OR CLIENTS, OR OTHER STATISTICAL INFORMATION. [Names of patients treated at out-patient or non-residential facilities shall not be required as part of any such reports. Hospitals licensed by the office of mental health and general hospitals shall provide to the office of mental health, upon request, records relating to persons described in subdivision (j) of section 7.09 of this chapter who may be disqualified from possessing a firearm pursuant to 18 USC 422(4)(d).]

S 4. This act shall take effect immediately, provided, however, that the amendments to subdivision (b) of section 33.13 of the mental hygiene law made by section three of this act shall take effect on the same date as the reversion of such subdivision as provided in section 18 of chapter 408 of the laws of 1999, as amended.