

3081

2011-2012 Regular Sessions

I N A S S E M B L Y

January 24, 2011

Introduced by M. of A. LUPARDO, LENTOL, GOTTFRIED -- Multi-Sponsored by
-- M. of A. TOWNS -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law, and the
mental hygiene law, in relation to authorizing court to revoke the
firearms license and seize weapons of certain individuals

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

1 Section 1. Subparagraph (f) of paragraph 1 of subdivision a of
2 section 265.20 of the penal law, as amended by chapter 578 of the laws
3 of 2006, is amended to read as follows:
4 (f) A person [voluntarily] surrendering OR OTHERWISE VOLUNTARILY
5 DELIVERING such weapon, instrument, appliance or substance, provided
6 that such surrender shall be made to the superintendent of the division
7 of state police or a member thereof designated by such superintendent,
8 or to the sheriff of the county in which such person resides, or in the
9 county of Nassau or in the towns of Babylon, Brookhaven, Huntington,
10 Islip and Smithtown in the county of Suffolk to the commissioner of
11 police or a member of the police department thereof designated by such
12 commissioner, or if such person resides in a city, town other than one
13 named in this subparagraph, or village to the police commissioner or
14 head of the police force or department thereof or to a member of the
15 force or department designated by such commissioner or head; and
16 provided, further, that the same shall be surrendered by such person in
17 accordance with such terms and conditions as may be established by such
18 superintendent, sheriff, police force or department. Nothing in this
19 paragraph shall be construed as granting immunity from prosecution for
20 any crime or offense except that of unlawful possession of such weapons,
21 instruments, appliances or substances surrendered as herein provided. A
22 person who possesses any such weapon, instrument, appliance or substance
23 as an executor or administrator or any other lawful possessor of such
24 property of a decedent may continue to possess such property for a peri-

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

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1 od not over fifteen days. If such property is not lawfully disposed of
2 within such period the possessor shall deliver it to an appropriate
3 official described in this paragraph or such property may be delivered
4 to the superintendent of state police. Such officer shall hold it and
5 shall thereafter deliver it on the written request of such executor,
6 administrator or other lawful possessor of such property to a named
7 person, provided such named person is licensed to or is otherwise
8 lawfully permitted to possess the same. If no request to deliver the
9 property is received by such official within one year of the delivery of
10 such property, such official shall dispose of it in accordance with the
11 provisions of section 400.05 of this chapter.

12 S 2. Subdivision 6 of section 400.05 of the penal law, as amended by
13 chapter 578 of the laws of 2006, is amended to read as follows:

14 6. A firearm or other weapon which is surrendered AS REQUIRED BY COURT
15 ORDER, or is otherwise voluntarily delivered pursuant to section 265.20
16 of this chapter and which has not been declared a nuisance pursuant to
17 subdivision one of this section, shall be retained by the official to
18 whom it was delivered for a period not to exceed one year. Prior to the
19 expiration of such time period, a person who surrenders a firearm shall
20 have the right to arrange for the sale, or transfer, of such firearm to
21 a dealer in firearms licensed in accordance with this chapter or for the
22 transfer of such firearm to himself or herself provided that a license
23 therefor has been issued in accordance with this chapter. If no lawful
24 disposition of the firearm or other weapon is made within the time
25 provided, the firearm or weapon concerned shall be declared a nuisance
26 and shall be disposed of in accordance with the provisions of this
27 section.

28 S 3. Section 330.20 of the criminal procedure law is amended by adding
29 a new subdivision 2-a to read as follows:

30 2-A. FIREARM, RIFLE OR SHOTGUN SURRENDER ORDER. UPON ENTRY OF A
31 VERDICT OF NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT, OR
32 UPON THE ACCEPTANCE OF A PLEA OF NOT RESPONSIBLE BY REASON OF MENTAL
33 DISEASE OR DEFECT, THE COURT SHALL REVOKE THE DEFENDANT'S FIREARM
34 LICENSE, IF ANY, INQUIRE OF THE DEFENDANT AS TO THE EXISTENCE AND
35 LOCATION OF ANY FIREARM, RIFLE OR SHOTGUN OWNED OR POSSESSED BY SUCH
36 DEFENDANT AND DIRECT THE SURRENDER OF SUCH FIREARM, RIFLE OR SHOTGUN
37 PURSUANT TO SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF
38 SECTION 265.20 OF THE PENAL LAW.

39 S 4. The criminal procedure law is amended by adding a new section
40 730.55 to read as follows:

41 S 730.55 FIREARM, RIFLE OR SHOTGUN SURRENDER ORDER.

42 WHENEVER A LOCAL CRIMINAL COURT OR A SUPERIOR COURT FINDS THAT A
43 DEFENDANT IS AN INCAPACITATED PERSON, THE COURT SHALL REVOKE THE DEFEND-
44 ANT'S FIREARM LICENSE, IF ANY, INQUIRE OF THE DEFENDANT AS TO THE EXIST-
45 ENCE AND LOCATION OF ANY FIREARM, RIFLE OR SHOTGUN OWNED OR POSSESSED BY
46 SUCH DEFENDANT AND DIRECT THE SURRENDER OF SUCH FIREARM, RIFLE OR SHOT-
47 GUN PURSUANT TO SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF
48 SECTION 265.20 OF THE PENAL LAW.

49 S 5. The mental hygiene law is amended by adding a new section 9.36 to
50 read as follows:

51 S 9.36 ISSUANCE OF COURT ORDER AUTHORIZING INVOLUNTARY CARE AND TREAT-
52 MENT UNDER THIS ARTICLE.

53 IN ISSUING ANY ORDER OR DETERMINATION UNDER THIS ARTICLE THAT A PERSON
54 IS IN NEED OF INVOLUNTARY CARE AND TREATMENT OR THAT THERE IS A NEED FOR
55 RETENTION OF SUCH PERSON, THE COURT SHALL REVOKE SUCH PERSON'S FIREARM
56 LICENSE, IF ANY, INQUIRE OF THE PERSON AS TO THE EXISTENCE AND LOCATION

1 OF ANY FIREARM, RIFLE OR SHOTGUN OWNED OR POSSESSED BY SUCH PERSON AND
2 DIRECT THE SURRENDER OF SUCH FIREARM, RIFLE OR SHOTGUN PURSUANT TO
3 SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF
4 THE PENAL LAW.

5 S 6. Paragraph 2 of subdivision (j) of section 9.60 of the mental
6 hygiene law, as amended by chapter 158 of the laws of 2005, is amended
7 to read as follows:

8 (2) If after hearing all relevant evidence, the court finds by clear
9 and convincing evidence that the subject of the petition meets the
10 criteria for assisted outpatient treatment, and there is no appropriate
11 and feasible less restrictive alternative, the court may order the
12 subject to receive assisted outpatient treatment for an initial period
13 not to exceed six months. In fashioning the order, the court shall
14 specifically make findings by clear and convincing evidence that the
15 proposed treatment is the least restrictive treatment appropriate and
16 feasible for the subject. The order shall state an assisted outpatient
17 treatment plan, which shall include all categories of assisted outpa-
18 tient treatment, as set forth in paragraph one of subdivision (a) of
19 this section, which the assisted outpatient is to receive, but shall not
20 include any such category that has not been recommended in both the
21 proposed written treatment plan and the testimony provided to the court
22 pursuant to subdivision (i) of this section. SUCH ORDER SHALL ALSO
23 STATE THAT THE SUBJECT'S FIREARMS LICENSE, IF ANY, IS REVOKED. FURTHER,
24 THE COURT SHALL INQUIRE OF THE SUBJECT AS TO THE EXISTENCE AND LOCATION
25 OF ANY FIREARM, RIFLE OR SHOTGUN OWNED OR POSSESSED BY SUCH PERSON AND
26 DIRECT THE SURRENDER OF SUCH FIREARM, RIFLE OR SHOTGUN PURSUANT TO
27 SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF
28 THE PENAL LAW.

29 S 7. The mental hygiene law is amended by adding a new section 15.36
30 to read as follows:

31 S 15.36 ISSUANCE OF COURT ORDER AUTHORIZING INVOLUNTARY CARE AND TREAT-
32 MENT UNDER THIS ARTICLE.

33 IN ISSUING ANY ORDER OR DETERMINATION UNDER THIS ARTICLE THAT A PERSON
34 IS IN NEED OF INVOLUNTARY CARE AND TREATMENT OR THAT THERE IS A NEED FOR
35 RETENTION OF SUCH PERSON, THE COURT SHALL REVOKE SUCH PERSON'S FIREARM
36 LICENSE, IF ANY, INQUIRE OF THE PERSON AS TO THE EXISTENCE AND LOCATION
37 OF ANY FIREARM, RIFLE OR SHOTGUN OWNED OR POSSESSED BY SUCH PERSON AND
38 DIRECT THE SURRENDER OF SUCH FIREARM, RIFLE OR SHOTGUN PURSUANT TO
39 SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF
40 THE PENAL LAW.

41 S 8. Section 29.03 of the mental hygiene law is amended to read as
42 follows:

43 S 29.03 Effect of court order authorizing retention of a patient.

44 No order or determination under this article that a person is in need
45 of involuntary care and treatment or that there was need for retention
46 of such person shall be construed or deemed to be a determination or
47 finding that such person is incompetent or is unable adequately to
48 conduct his OR HER personal or business affairs; PROVIDED, HOWEVER, THAT
49 THE EXISTENCE OF SUCH AN ORDER OR DETERMINATION SHALL MAKE SUCH PERSON
50 INELIGIBLE FOR A FIREARMS LICENSE PURSUANT TO SECTION 400.00 OF THE
51 PENAL LAW AND SHALL MAKE SUCH PERSON INELIGIBLE TO PURCHASE A FIREARM
52 PURSUANT TO 18 USC 922.

53 S 9. Severability. If any clause, sentence, paragraph, section or part
54 of this act shall be adjudged by any court of competent jurisdiction to
55 be invalid and after exhaustion of all further judicial review, the
56 judgment shall not affect, impair or invalidate the remainder thereof,

1 but shall be confined in its operation to the clause, sentence, para-
2 graph, section or part of this act directly involved in the controversy
3 in which the judgment shall have been rendered.
4 S 10. This act shall take effect on the ninetieth day after it shall
5 have become a law, provided that the amendments to paragraph 2 of subdi-
6 vision (j) of section 9.60 of the mental hygiene law made by section six
7 of this act shall not affect the repeal of such section and shall be
8 deemed repealed therewith.