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

670

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subparagraph (f) of paragraph 1 of subdivision a of section 265.20 of the penal law, as amended by chapter 578 of the laws of 2006, is amended to read as follows:

(f) A person [voluntarily] surrendering OR OTHERWISE VOLUNTARILY DELIVERING such weapon, instrument, appliance or substance, provided that such surrender shall be made to the superintendent of the division of state police or a member thereof designated by such superintendent, or to the sheriff of the county in which such person resides, or in the county of Nassau or in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown in the county of Suffolk to the commissioner of police or a member of the police department thereof designated by such commissioner, or if such person resides in a city, town other than one named in this subparagraph, or village to the police commissioner or head of the police force or department thereof or to a member of the force or department designated by such commissioner or head; and provided, further, that the same shall be surrendered by such person in accordance with such terms and conditions as may be established by such superintendent, sheriff, police force or department. Nothing in this paragraph shall be construed as granting immunity from prosecution for any crime or offense except that of unlawful possession of such weapons, instruments, appliances or substances surrendered as herein provided. A person who possesses any such weapon, instrument, appliance or substance as an executor or administrator or any other lawful possessor of such

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

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

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

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

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

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

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

S 730.55 FIREARM, RIFLE OR SHOTGUN SURRENDER ORDER.

WHENEVER A LOCAL CRIMINAL COURT OR A SUPERIOR COURT FINDS THAT A DEFENDANT IS AN INCAPACITATED PERSON, THE COURT SHALL REVOKE THE DEFENDANT'S FIREARM LICENSE, IF ANY, INQUIRE OF THE DEFENDANT AS TO THE EXISTENCE AND LOCATION OF ANY FIREARM, RIFLE OR SHOTGUN OWNED OR POSSESSED BY SUCH DEFENDANT AND DIRECT THE SURRENDER OF SUCH FIREARM, RIFLE OR SHOTGUN PURSUANT TO SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF THE PENAL LAW.

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

S 9.36 ISSUANCE OF COURT ORDER AUTHORIZING INVOLUNTARY CARE AND TREATMENT UNDER THIS ARTICLE.

IN ISSUING ANY ORDER OR DETERMINATION UNDER THIS ARTICLE THAT A PERSON IS IN NEED OF INVOLUNTARY CARE AND TREATMENT OR THAT THERE IS A NEED FOR RETENTION OF SUCH PERSON, THE COURT SHALL REVOKE SUCH PERSON'S FIREARM

LICENSE, IF ANY, INQUIRE OF THE PERSON AS TO THE EXISTENCE AND LOCATION OF ANY FIREARM, RIFLE OR SHOTGUN OWNED OR POSSESSED BY SUCH PERSON AND DIRECT THE SURRENDER OF SUCH FIREARM, RIFLE OR SHOTGUN PURSUANT TO SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF THE PENAL LAW.

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

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

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

S 15.36 ISSUANCE OF COURT ORDER AUTHORIZING INVOLUNTARY CARE AND TREATMENT UNDER THIS ARTICLE.

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

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

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

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

S 9. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the

judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 10. This act shall take effect on the ninetieth day after it shall have become a law, provided that the amendments to paragraph 2 of subdivision (j) of section 9.60 of the mental hygiene law made by section six of this act shall not affect the repeal of such section and shall be deemed repealed therewith.