

7389

2013-2014 Regular Sessions

I N A S S E M B L Y

May 14, 2013

Introduced by M. of A. GABRYSZAK -- read once and referred to the
Committee on Codes

AN ACT to amend the penal law, in relation to prohibiting the release of
personal medical records or information without a warrant or express
written authorization of the individual

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

1 Section 1. Subdivision 4 of section 400.00 of the penal law, as
2 amended by chapter 331 of the laws of 2005, is amended to read as
3 follows:
4 4. Investigation. Before a license is issued or renewed, there shall
5 be an investigation of all statements required in the application by the
6 duly constituted police authorities of the locality where such applica-
7 tion is made. For that purpose, the records of the appropriate office of
8 the department of mental hygiene concerning previous or present mental
9 illness of the applicant shall be available for inspection by the inves-
10 tigating officer of the police authority. In order to ascertain any
11 previous criminal record, the investigating officer shall take the fing-
12 erprints and physical descriptive data in quadruplicate of each individ-
13 ual by whom the application is signed and verified. Two copies of such
14 fingerprints shall be taken on standard fingerprint cards eight inches
15 square, and one copy may be taken on a card supplied for that purpose by
16 the federal bureau of investigation; provided, however, that in the case
17 of a corporate applicant that has already been issued a dealer in
18 firearms license and seeks to operate a firearm dealership at a second
19 or subsequent location, the original fingerprints on file may be used to
20 ascertain any criminal record in the second or subsequent application
21 unless any of the corporate officers have changed since the prior appli-
22 cation, in which case the new corporate officer shall comply with proce-
23 dures governing an initial application for such license. When completed,
24 one standard card shall be forwarded to and retained by the division of

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

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1 criminal justice services in the executive department, at Albany. A
2 search of the files of such division and written notification of the
3 results of the search to the investigating officer shall be made without
4 unnecessary delay. Thereafter, such division shall notify the licensing
5 officer and the executive department, division of state police, Albany,
6 of any criminal record of the applicant filed therein subsequent to the
7 search of its files. A second standard card, or the one supplied by the
8 federal bureau of investigation, as the case may be, shall be forwarded
9 to that bureau at Washington with a request that the files of the bureau
10 be searched and notification of the results of the search be made to the
11 investigating police authority. The failure or refusal of the federal
12 bureau of investigation to make the fingerprint check provided for in
13 this section shall not constitute the sole basis for refusal to issue a
14 permit pursuant to the provisions of this section. Of the remaining two
15 fingerprint cards, one shall be filed with the executive department,
16 division of state police, Albany, within ten days after issuance of the
17 license, and the other remain on file with the investigating police
18 authority. No such fingerprints may be inspected by any person other
19 than a peace officer, who is acting pursuant to his special duties, or a
20 police officer, except on order of a judge or justice of a court of
21 record either upon notice to the licensee or without notice, as the
22 judge or justice may deem appropriate. Upon completion of the investi-
23 gation, the police authority shall report the results to the licensing
24 officer without unnecessary delay. NOTWITHSTANDING ANY OTHER PROVISION
25 OF LAW TO THE CONTRARY NEITHER THE STATE POLICE, THE DIVISION OF CRIMI-
26 NAL JUSTICE SERVICES, NOR ANY OTHER LAW ENFORCEMENT AGENCY OR EMPLOYEE
27 THEREOF SHALL BE PERMITTED TO ACCESS PERSONAL MEDICAL RECORDS AND OTHER
28 MEDICAL INFORMATION OTHER THAN RECORDS REQUIRED TO BE PROVIDED BY THE
29 DEPARTMENT OF MENTAL HYGIENE WITHOUT A PROPERLY ISSUED WARRANT, OR THE
30 EXPRESS WRITTEN, NOTARIZED PERMISSION OF THE INDIVIDUAL WHOSE INFORMA-
31 TION IS SOUGHT.

32 S 2. Subdivision 4 of section 400.00 of the penal law, as amended by
33 chapter 1 of the laws of 2013, is amended to read as follows:

34 4. Investigation. Before a license is issued or renewed, there shall
35 be an investigation of all statements required in the application by the
36 duly constituted police authorities of the locality where such applica-
37 tion is made, including but not limited to such records as may be acces-
38 sible to the division of state police or division of criminal justice
39 services pursuant to section 400.02 of this article. For that purpose,
40 the records of the appropriate office of the department of mental
41 hygiene concerning previous or present mental illness of the applicant
42 shall be available for inspection by the investigating officer of the
43 police authority. In order to ascertain any previous criminal record,
44 the investigating officer shall take the fingerprints and physical
45 descriptive data in quadruplicate of each individual by whom the appli-
46 cation is signed and verified. Two copies of such fingerprints shall be
47 taken on standard fingerprint cards eight inches square, and one copy
48 may be taken on a card supplied for that purpose by the federal bureau
49 of investigation; provided, however, that in the case of a corporate
50 applicant that has already been issued a dealer in firearms license and
51 seeks to operate a firearm dealership at a second or subsequent
52 location, the original fingerprints on file may be used to ascertain any
53 criminal record in the second or subsequent application unless any of
54 the corporate officers have changed since the prior application, in
55 which case the new corporate officer shall comply with procedures
56 governing an initial application for such license. When completed, one

1 standard card shall be forwarded to and retained by the division of
2 criminal justice services in the executive department, at Albany. A
3 search of the files of such division and written notification of the
4 results of the search to the investigating officer shall be made without
5 unnecessary delay. Thereafter, such division shall notify the licensing
6 officer and the executive department, division of state police, Albany,
7 of any criminal record of the applicant filed therein subsequent to the
8 search of its files. A second standard card, or the one supplied by the
9 federal bureau of investigation, as the case may be, shall be forwarded
10 to that bureau at Washington with a request that the files of the bureau
11 be searched and notification of the results of the search be made to the
12 investigating police authority. Of the remaining two fingerprint cards,
13 one shall be filed with the executive department, division of state
14 police, Albany, within ten days after issuance of the license, and the
15 other remain on file with the investigating police authority. No such
16 fingerprints may be inspected by any person other than a peace officer,
17 who is acting pursuant to his special duties, or a police officer,
18 except on order of a judge or justice of a court of record either upon
19 notice to the licensee or without notice, as the judge or justice may
20 deem appropriate. Upon completion of the investigation, the police
21 authority shall report the results to the licensing officer without
22 unnecessary delay. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
23 CONTRARY NEITHER THE STATE POLICE, THE DIVISION OF CRIMINAL JUSTICE
24 SERVICES, NOR ANY OTHER LAW ENFORCEMENT AGENCY OR EMPLOYEE THEREOF SHALL
25 BE PERMITTED TO ACCESS PERSONAL MEDICAL RECORDS AND OTHER MEDICAL INFOR-
26 MATION OTHER THAN RECORDS REQUIRED TO BE PROVIDED BY THE DEPARTMENT OF
27 MENTAL HYGIENE WITHOUT A PROPERLY ISSUED WARRANT, OR THE EXPRESS WRIT-
28 TEN, NOTARIZED PERMISSION OF THE INDIVIDUAL WHOSE INFORMATION IS SOUGHT.

29 S 3. Section 400.02 of the penal law, as added by chapter 1 of the
30 laws of 2013, is amended to read as follows:

31 S 400.02 Statewide license and record database.

32 1. There shall be a statewide license and record database which shall
33 be created and maintained by the division of state police the cost of
34 which shall not be borne by any municipality. Records assembled or
35 collected for purposes of inclusion in such database shall not be
36 subject to disclosure pursuant to article six of the public officers
37 law. Records containing granted license applications shall be period-
38 ically checked by the division of criminal justice services against
39 criminal conviction, mental health, and all other records as are neces-
40 sary to determine their continued accuracy as well as whether an indi-
41 vidual is no longer a valid license holder. The division of criminal
42 justice services shall also check pending applications made pursuant to
43 this article against such records to determine whether a license may be
44 granted. All state agencies shall cooperate with the division of crimi-
45 nal justice services, as otherwise authorized by law, in making their
46 records available for such checks. The division of criminal justice
47 services, upon determining that an individual is ineligible to possess a
48 license, or is no longer a valid license holder, shall notify the appli-
49 cable licensing official of such determination and such licensing offi-
50 cial shall not issue a license or revoke such license and any weapons
51 owned or possessed by such individual shall be removed consistent with
52 the provisions of subdivision eleven of section 400.00 of this article.
53 Local and state law enforcement shall have access to such database, as
54 otherwise authorized by law, in the performance of their duties. Records
55 assembled or collected for purposes of inclusion in the database estab-
56 lished by this section shall be released pursuant to a court order.

1 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY NEITHER
2 THE STATE POLICE, THE DIVISION OF CRIMINAL JUSTICE SERVICES, NOR ANY
3 OTHER LAW ENFORCEMENT AGENCY OR EMPLOYEE THEREOF SHALL BE PERMITTED TO
4 ACCESS PERSONAL MEDICAL RECORDS AND OTHER MEDICAL INFORMATION OTHER THAN
5 RECORDS REQUIRED TO BE PROVIDED BY THE DEPARTMENT OF MENTAL HYGIENE
6 WITHOUT A PROPERLY ISSUED WARRANT, OR THE EXPRESS WRITTEN, NOTARIZED
7 PERMISSION OF THE INDIVIDUAL WHOSE INFORMATION IS SOUGHT.

8 S 4. Subdivision 3 of section 400.00 of the penal law is amended by
9 adding a new paragraph (c) to read as follows:

10 (C) (I) THE APPLICATION FOR A LICENSE TO CARRY, POSSESS, REPAIR OR
11 DISPOSE OF FIREARMS, OR THE RENEWAL THEREOF, PURSUANT TO THIS SECTION
12 SHALL NOT REQUIRE THE APPLICANT TO CONSENT TO THE RELEASE OF THEIR
13 PERSONAL MEDICAL RECORDS AND OTHER MEDICAL INFORMATION, OTHER THAN
14 RECORDS REQUIRED TO BE PROVIDED BY THE DEPARTMENT OF MENTAL HYGIENE, AS
15 A CONDITION OF RECEIVING OR RETAINING SUCH LICENSE UNLESS THE INVESTI-
16 GATING AGENCY HAS A REASONABLE BELIEF THAT A MEDICAL ISSUE EXISTS WHICH
17 WOULD JUSTIFY THE DENIAL OF A LICENSE PURSUANT TO THIS SECTION.

18 (II) THE STATE POLICE, THE DIVISION OF CRIMINAL JUSTICE SERVICES, AND
19 ANY OTHER LAW ENFORCEMENT AGENCY OR EMPLOYEE THEREOF MAY REQUEST A
20 CONSENT FROM INDIVIDUALS FOR THE RELEASE OF THEIR PERSONAL MEDICAL
21 RECORDS OR OTHER MEDICAL INFORMATION WHERE SUCH LAW ENFORCEMENT AGENCY
22 HAS A REASONABLE BELIEF THAT A MEDICAL ISSUE EXISTS WHICH WOULD JUSTIFY
23 THE SUSPENSION OR REVOCATION OF A LICENSE ISSUED PURSUANT TO THIS
24 SECTION.

25 S 5. This act shall take effect immediately; provided, however that
26 sections two and three of this act shall take effect on the same date
27 and in the same manner as sections 48 and 49, respectively, of chapter 1
28 of the laws of 2013, take effect.