

4071

2013-2014 Regular Sessions

I N S E N A T E

March 7, 2013

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to disclosure of arrest and prosecution records of applicants for employment by police departments and other law enforcement agencies

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

1 Section 1. Paragraph (d) of subdivision 1 of section 160.50 of the
2 criminal procedure law, as amended by section 73 of subpart B of part C
3 of chapter 62 of the laws of 2011, is amended to read as follows:
4 (d) such records shall be made available to the person accused or to
5 such person's designated agent, and shall be made available to (i) a
6 prosecutor in any proceeding in which the accused has moved for an order
7 pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law
8 enforcement agency upon ex parte motion in any superior court, if such
9 agency demonstrates to the satisfaction of the court that justice
10 requires that such records be made available to it, or (iii) any state
11 or local officer or agency with responsibility for the issuance of
12 licenses to possess guns, when the accused has made application for such
13 a license, or (iv) the New York state department of corrections and
14 community supervision when the accused is on parole supervision as a
15 result of conditional release or a parole release granted by the New
16 York state board of parole, and the arrest which is the subject of the
17 inquiry is one which occurred while the accused was under such super-
18 vision or (v) any prospective employer of a police officer or peace
19 officer as those terms are defined in subdivisions thirty-three and
20 thirty-four of section 1.20 of this chapter, in relation to an applica-
21 tion for employment as a police officer or peace officer; provided,
22 however, that every person who is an applicant for the position of
23 police officer or peace officer shall be furnished with a copy of all

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

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1 records obtained under this paragraph and afforded an opportunity to
2 make an explanation thereto, or (vi) A POLICE DEPARTMENT OR OTHER LAW
3 ENFORCEMENT AGENCY, IN RELATION TO AN APPLICATION BY THE PERSON ACCUSED
4 FOR EMPLOYMENT BY SUCH AGENCY OR DEPARTMENT; PROVIDED, HOWEVER, THAT
5 EVERY SUCH PERSON SHALL BE FURNISHED WITH A COPY OF ALL RECORDS OBTAINED
6 UNDER THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION
7 THERETO, OR (VII) the probation department responsible for supervision
8 of the accused when the arrest which is the subject of the inquiry is
9 one which occurred while the accused was under such supervision; and

10 S 2. Paragraph (d) of subdivision 1 of section 160.55 of the criminal
11 procedure law, as amended by section 74 of subpart B of part C of chap-
12 ter 62 of the laws of 2011, is amended to read as follows:

13 (d) the records referred to in paragraph (c) of this subdivision shall
14 be made available to the person accused or to such person's designated
15 agent, and shall be made available to (i) a prosecutor in any proceeding
16 in which the accused has moved for an order pursuant to section 170.56
17 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex
18 parte motion in any superior court, if such agency demonstrates to the
19 satisfaction of the court that justice requires that such records be
20 made available to it, or (iii) any state or local officer or agency with
21 responsibility for the issuance of licenses to possess guns, when the
22 accused has made application for such a license, or (iv) the New York
23 state department of corrections and community supervision when the
24 accused is under parole supervision as a result of conditional release
25 or parole release granted by the New York state board of parole and the
26 arrest which is the subject of the inquiry is one which occurred while
27 the accused was under such supervision, or (v) the probation department
28 responsible for supervision of the accused when the arrest which is the
29 subject of the inquiry is one which occurred while the accused was under
30 such supervision, or (vi) a police agency, probation department, sher-
31 iff's office, district attorney's office, department of correction of
32 any municipality and parole department, for law enforcement purposes,
33 upon arrest in instances in which the individual stands convicted of
34 harassment in the second degree, as defined in section 240.26 of the
35 penal law, committed against a member of the same family or household as
36 the defendant, as defined in subdivision one of section 530.11 of this
37 chapter, and determined pursuant to subdivision eight-a of section
38 170.10 of this title; OR (VII) A POLICE DEPARTMENT OR OTHER LAW ENFORCE-
39 MENT AGENCY, IN RELATION TO AN APPLICATION BY THE PERSON ACCUSED FOR
40 EMPLOYMENT BY SUCH AGENCY OR DEPARTMENT; PROVIDED, HOWEVER, THAT EVERY
41 SUCH PERSON SHALL BE FURNISHED WITH A COPY OF ALL RECORDS OBTAINED UNDER
42 THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION THERE-
43 TO; and

44 S 3. Subdivision 16 of section 296 of the executive law, as separately
45 amended by section 3 of part N and section 14 of part AAA of chapter 56
46 of the laws of 2009, is amended to read as follows:

47 16. It shall be an unlawful discriminatory practice, unless specif-
48 ically required or permitted by statute, for any person, agency, bureau,
49 corporation or association, including the state and any political subdivi-
50 sion thereof, to make any inquiry about, whether in any form of appli-
51 cation or otherwise, or to act upon adversely to the individual
52 involved, any arrest or criminal accusation of such individual not then
53 pending against that individual which was followed by a termination of
54 that criminal action or proceeding in favor of such individual, as
55 defined in subdivision two of section 160.50 of the criminal procedure
56 law, or by a youthful offender adjudication, as defined in subdivision

1 one of section 720.35 of the criminal procedure law, or by a conviction
2 for a violation sealed pursuant to section 160.55 of the criminal proce-
3 dure law or by a conviction which is sealed pursuant to section 160.58
4 of the criminal procedure law, in connection with the licensing, employ-
5 ment or providing of credit or insurance to such individual; provided,
6 further, that no person shall be required to divulge information
7 pertaining to any arrest or criminal accusation of such individual not
8 then pending against that individual which was followed by a termination
9 of that criminal action or proceeding in favor of such individual, as
10 defined in subdivision two of section 160.50 of the criminal procedure
11 law, or by a youthful offender adjudication, as defined in subdivision
12 one of section 720.35 of the criminal procedure law, or by a conviction
13 for a violation sealed pursuant to section 160.55 of the criminal proce-
14 dure law, or by a conviction which is sealed pursuant to section 160.58
15 of the criminal procedure law. The provisions of this subdivision shall
16 not apply to the licensing activities of governmental bodies in relation
17 to the regulation of guns, firearms and other deadly weapons or in
18 relation to an application for employment as a police officer or peace
19 officer as those terms are defined in subdivisions thirty-three and
20 thirty-four of section 1.20 of the criminal procedure law OR IN RELATION
21 TO AN APPLICATION FOR EMPLOYMENT FOR ANY POSITION IN A POLICE DEPART-
22 MENT OR OTHER LAW ENFORCEMENT AGENCY; provided further that the
23 provisions of this subdivision shall not apply to an application for
24 employment or membership in any law enforcement agency with respect to
25 any arrest or criminal accusation which was followed by a youthful
26 offender adjudication, as defined in subdivision one of section 720.35
27 of the criminal procedure law, or by a conviction for a violation sealed
28 pursuant to section 160.55 of the criminal procedure law, or by a
29 conviction which is sealed pursuant to section 160.58 of the criminal
30 procedure law.

31 S 4. Paragraphs (c) and (d) of subdivision 6 of section 160.58 of the
32 criminal procedure law, as added by section 3 of part AAA of chapter 56
33 of the laws of 2009, are amended and a new paragraph (e) is added to
34 read as follows:

35 (c) the court has received documentation that the sentences imposed on
36 the eligible misdemeanor convictions have been completed, or if no such
37 documentation is reasonably available, a sworn affidavit that the
38 sentences imposed on the prior misdemeanors have been completed; [and]

39 (d) the court has notified the district attorney of each jurisdiction
40 in which the defendant has been convicted of an offense with respect to
41 which sealing is sought, and the court or courts of record for such
42 offenses, that the court is considering sealing the records of the
43 defendant's eligible misdemeanor convictions. Both the district attorney
44 and the court shall be given a reasonable opportunity, which shall not
45 be less than thirty days, in which to comment and submit materials to
46 aid the court in making such a determination[.]; AND

47 (E) ANY POLICE DEPARTMENT OR LAW ENFORCEMENT AGENCY, IN RELATION TO AN
48 APPLICATION FOR EMPLOYMENT BY SUCH POLICE DEPARTMENT OR LAW ENFORCEMENT
49 AGENCY; PROVIDED, HOWEVER, THAT EVERY APPLICANT SHALL BE FURNISHED WITH
50 A COPY OF ALL RECORDS OBTAINED UNDER THIS PARAGRAPH AND AFFORDED AN
51 OPPORTUNITY TO MAKE AN EXPLANATION THERETO.

52 S 5. This act shall take effect on the ninetieth day after it shall
53 have become a law.