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

7046

2013-2014 Regular Sessions

I N A S S E M B L Y

April 30, 2013

Introduced by M. of A. LAVINE -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law and the mental hygiene law, in relation to requiring a recent psychiatric evaluation of a petitioner seeking relief from firearms disabilities

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

Section 1. Paragraph (q) of subdivision 2 of section 212 of the judiciary law, as amended by chapter 1 of the laws of 2013, is amended to read as follows:

(q) (I) Adopt rules to require transmission, to the criminal justice information services division of the federal bureau of investigation or to the division of criminal justice services, of the name and other identifying information of each person who has a guardian appointed for him or her 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, he or she lacks the mental capacity to contract or manage his or her own affairs. Any such records transmitted directly to the federal bureau of investigation must also be transmitted to the division of criminal justice services, and any records received by the division of criminal justice services pursuant to this paragraph may be checked against the statewide license and record database.

(II) ADOPT RULES TO ESTABLISH A RELIEF FROM DISABILITIES PROGRAM FOR THOSE INDIVIDUALS WHO HAVE HAD GUARDIANS APPOINTED FOR THEM AND WHO WOULD OTHERWISE BE PROHIBITED FROM PURCHASING OR POSSESSING FIREARMS AS A RESULT OF TRANSMISSION OF INFORMATION PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH. SUCH RULES SHALL REQUIRE SUBMISSION OF A RECENT PSYCHIATRIC EVALUATION OF THE PETITIONER FOR SUCH RELIEF BY A QUALIFIED PSYCHIATRIST, UNLESS THE PETITIONER SUBMITS EVIDENCE DEMONSTRATING THAT THE ORIGINAL DISQUALIFICATION WAS ISSUED IN ERROR.

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

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S 2. Subdivision (j) of section 7.09 of the mental hygiene law, as amended by chapter 1 of the laws of 2013, is amended to read as follows:

(j) (1) The commissioner, in cooperation with other applicable state agencies, shall collect, retain or modify data or records, and shall transmit such data or records: (i) 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, or (ii) to the division of criminal justice services, which may re-disclose such data and records only for determining whether a license issued pursuant to section 400.00 of the penal law should be denied, suspended or revoked, under subdivision eleven of such section, or for determining whether a person is no longer permitted under federal or state law to possess a firearm. Such records, which may not be used for any other purpose, 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 section four hundred two or subdivision two of section five hundred eight of the correction law, 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.

(2) 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) or who has been or may be disqualified from continuing to have a license to carry, possess, repair, or dispose of a firearm under section 400.00 of the penal law because such person was involuntarily committed or civilly confined to a facility under the jurisdiction of the commissioner, 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) SUBMISSION OF A RECENT PSYCHIATRIC EVALUATION OF THE PETITIONER BY A QUALIFIED PSYCHIATRIST, UNLESS THE PETITIONER SUBMITS EVIDENCE DEMONSTRATING THAT THE ORIGINAL DISQUALIFICATION WAS ISSUED IN ERROR; (III) the authority for the agency to require that the petitioner undergo a clinical evaluation and risk assessment; and [(iii)] (IV) a requirement that the agency issue a decision in writing explaining the reasons for a denial or grant of relief. The denial of a petition for relief from disabilities may be reviewed de novo pursuant to the proceedings under article seventy-eight of the civil practice law and rules.

S 3. Subdivision (g) of section 13.09 of the mental hygiene law, as amended by chapter 1 of the laws of 2013, is amended to read as follows:

(g) (1) The commissioner, in cooperation with other applicable state agencies, shall collect, retain or modify data or records, and shall transmit such data or records to: (i) 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 regard-

ing 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, or (ii) to the division of criminal justice services, for the purposes of determining whether a license issued pursuant to section 400.00 of the penal law should be denied, suspended or revoked, under subdivision eleven of such section, or for determining whether a person is no longer permitted under federal or state law to possess a firearm. Such records shall include only names and other non-clinical 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.

(2) The commissioner shall establish within the office for people with 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), or who has been or may be disqualified from continuing to have a license to carry, possess, repair, or dispose of a firearm under section 400.00 of the penal law because such person was involuntarily committed or civilly confined to a facility under the jurisdiction of the commissioner, 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) SUBMISSION OF A RECENT PSYCHIATRIC EVALUATION OF THE PETITIONER BY A QUALIFIED PSYCHIATRIST, UNLESS THE PETITIONER SUBMITS EVIDENCE DEMONSTRATING THAT THE ORIGINAL DISQUALIFICATION WAS ISSUED IN ERROR; (III) the authority for the agency to require that the petitioner undergo a clinical evaluation and risk assessment; and [(iii)] (IV) a requirement that the agency issue a decision in writing explaining the reasons for a denial or grant of relief. The denial of a petition for relief from disabilities may be reviewed de novo pursuant to the proceedings under article seventy-eight of the civil practice law and rules.

S 4. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law.