

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:

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

4 (q) (I) Adopt rules to require transmission, to the criminal justice
5 information services division of the federal bureau of investigation or
6 to the division of criminal justice services, of the name and other
7 identifying information of each person who has a guardian appointed for
8 him or her pursuant to any provision of state law, based on a determi-
9 nation that as a result of marked subnormal intelligence, mental
10 illness, incapacity, condition or disease, he or she lacks the mental
11 capacity to contract or manage his or her own affairs. Any such records
12 transmitted directly to the federal bureau of investigation must also be
13 transmitted to the division of criminal justice services, and any
14 records received by the division of criminal justice services pursuant
15 to this paragraph may be checked against the statewide license and
16 record database.

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

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

LBD10530-01-3

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

3 (j) (1) The commissioner, in cooperation with other applicable state
4 agencies, shall collect, retain or modify data or records, and shall
5 transmit such data or records: (i) to the division of criminal justice
6 services, or to the criminal justice information services division of
7 the federal bureau of investigation, for the purposes of responding to
8 queries to the national instant criminal background check system regard-
9 ing attempts to purchase or otherwise take possession of firearms, as
10 defined in 18 USC 921(a)(3), in accordance with applicable federal laws
11 or regulations, or (ii) to the division of criminal justice services,
12 which may re-disclose such data and records only for determining whether
13 a license issued pursuant to section 400.00 of the penal law should be
14 denied, suspended or revoked, under subdivision eleven of such section,
15 or for determining whether a person is no longer permitted under federal
16 or state law to possess a firearm. Such records, which may not be used
17 for any other purpose, shall include only names and other non-clinical
18 identifying information of persons who have been involuntarily committed
19 to a hospital pursuant to article nine of this chapter, or section four
20 hundred two or subdivision two of section five hundred eight of the
21 correction law, or article seven hundred thirty or section 330.20 of the
22 criminal procedure law or sections 322.2 or 353.4 of the family court
23 act, or to a secure treatment facility pursuant to article ten of this
24 chapter.

25 (2) The commissioner shall establish within the office of mental
26 health an administrative process to permit a person who has been or may
27 be disqualified from possessing such a firearm pursuant to 18 USC
28 922(4)(d) or who has been or may be disqualified from continuing to have
29 a license to carry, possess, repair, or dispose of a firearm under
30 section 400.00 of the penal law because such person was involuntarily
31 committed or civilly confined to a facility under the jurisdiction of
32 the commissioner, to petition for relief from that disability where such
33 person's record and reputation are such that such person will not be
34 likely to act in a manner dangerous to public safety and where the
35 granting of the relief would not be contrary to public safety. The
36 commissioner shall promulgate regulations to establish the relief from
37 disabilities program, which shall include, but not be limited to,
38 provisions providing for: (i) an opportunity for a disqualified person
39 to petition for relief in writing; (ii) SUBMISSION OF A RECENT PSYCHIAT-
40 RIC EVALUATION OF THE PETITIONER BY A QUALIFIED PSYCHIATRIST, UNLESS THE
41 PETITIONER SUBMITS EVIDENCE DEMONSTRATING THAT THE ORIGINAL DISQUALI-
42 FICATION WAS ISSUED IN ERROR; (III) the authority for the agency to
43 require that the petitioner undergo a clinical evaluation and risk
44 assessment; and [(iii)] (IV) a requirement that the agency issue a deci-
45 sion in writing explaining the reasons for a denial or grant of relief.
46 The denial of a petition for relief from disabilities may be reviewed de
47 novo pursuant to the proceedings under article seventy-eight of the
48 civil practice law and rules.

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

51 (g) (1) The commissioner, in cooperation with other applicable state
52 agencies, shall collect, retain or modify data or records, and shall
53 transmit such data or records to: (i) the division of criminal justice
54 services, or to the criminal justice information services division of
55 the federal bureau of investigation, for the purposes of responding to
56 queries to the national instant criminal background check system regard-

1 ing attempts to purchase or otherwise take possession of firearms, as
2 defined in 18 USC 921(a)(3), in accordance with applicable federal laws
3 or regulations, or (ii) to the division of criminal justice services,
4 for the purposes of determining whether a license issued pursuant to
5 section 400.00 of the penal law should be denied, suspended or revoked,
6 under subdivision eleven of such section, or for determining whether a
7 person is no longer permitted under federal or state law to possess a
8 firearm. Such records shall include only names and other non-clinical
9 identifying information of persons who have had a guardian appointed for
10 them pursuant to any provision of state law, based on a determination
11 that as a result of marked subnormal intelligence, mental illness, inca-
12 pacity, condition or disease, they lack the mental capacity to contract
13 or manage their own affairs, and persons who have been involuntarily
14 committed to a facility pursuant to article fifteen of this chapter, or
15 article seven hundred thirty or section 330.20 of the criminal procedure
16 law or sections 322.2 or 353.4 of the family court act.

17 (2) The commissioner shall establish within the office for people with
18 developmental disabilities an administrative process to permit a person
19 who has been or may be disqualified from possessing such a firearm
20 pursuant to 18 USC 922(4)(d), or who has been or may be disqualified
21 from continuing to have a license to carry, possess, repair, or dispose
22 of a firearm under section 400.00 of the penal law because such person
23 was involuntarily committed or civilly confined to a facility under the
24 jurisdiction of the commissioner, to petition for relief from that disa-
25 bility where such person's record and reputation are such that such
26 person will not be likely to act in a manner dangerous to public safety
27 and where the granting of the relief would not be contrary to public
28 safety. The commissioner shall promulgate regulations to establish the
29 relief from disabilities program, which shall include, but not be limit-
30 ed to, provisions providing for: (i) an opportunity for a disqualified
31 person to petition for relief in writing; (ii) SUBMISSION OF A RECENT
32 PSYCHIATRIC EVALUATION OF THE PETITIONER BY A QUALIFIED PSYCHIATRIST,
33 UNLESS THE PETITIONER SUBMITS EVIDENCE DEMONSTRATING THAT THE ORIGINAL
34 DISQUALIFICATION WAS ISSUED IN ERROR; (III) the authority for the agency
35 to require that the petitioner undergo a clinical evaluation and risk
36 assessment; and [(iii)] (IV) a requirement that the agency issue a deci-
37 sion in writing explaining the reasons for a denial or grant of relief.
38 The denial of a petition for relief from disabilities may be reviewed de
39 novo pursuant to the proceedings under article seventy-eight of the
40 civil practice law and rules.

41 S 4. This act shall take effect on the first of January next succeed-
42 ing the date upon which it shall have become a law.