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

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I N S E N A T E

May 28, 2015

Introduced by Sens. O'MARA, GALLIVAN, MARCHIONE, NOZZOLIO, SEWARD, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to reports of substantial risk or threat of harm by mental health professionals

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

Section 1. Section 9.46 of the mental hygiene law, as added by chapter 1 of the laws of 2013, is amended to read as follows:

S 9.46 Reports of substantial risk or threat of harm by mental health professionals.

(a) For purposes of this section, the term "mental health professional" shall include a physician, psychologist, registered nurse or licensed clinical social worker.

(b) Notwithstanding any other law to the contrary, when a mental health professional currently providing treatment services to a person determines, in the exercise of reasonable professional judgment, that such person is likely to engage in conduct that would result in serious harm to self or others, he or she shall be required to report, as soon as practicable, to the director of community services, or the director's designee[, who shall report to the division of criminal justice services whenever he or she agrees that the person is likely to engage in such conduct]. *ANY REPORT MADE BY A MENTAL HEALTH PROFESSIONAL TO THE DIRECTOR OF COMMUNITY SERVICES, OR THE DIRECTOR'S DESIGNEE SHALL INCLUDE CURRENT CONTACT INFORMATION FOR SUCH PERSON INCLUDING, BUT NOT LIMITED TO, THE PERSON'S: (1) NAME, (2) MAILING ADDRESS, (3) PHONE NUMBER AND (4) EMAIL ADDRESS. THE DIRECTOR OF COMMUNITY SERVICES OR THE DIRECTOR'S DESIGNEE SHALL REPORT TO THE DIVISION OF CRIMINAL JUSTICE SERVICES UPON A FINDING THAT THE PERSON IS LIKELY TO ENGAGE IN CONDUCT THAT WOULD RESULT IN SERIOUS HARM TO SELF OR OTHERS.* Information transmitted to the division of criminal justice services shall be limited to names and

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

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other non-clinical identifying information, which may only be used for determining whether a license issued pursuant to section 400.00 of the penal law should be suspended or revoked, or for determining whether a person is ineligible for a license issued pursuant to section 400.00 of the penal law, or is no longer permitted under state or federal law to possess a firearm.

(c) THE DIRECTOR OF COMMUNITY SERVICES OR THE DIRECTOR'S DESIGNEE SHALL INFORM SUCH PERSON VIA WRITTEN NOTICE WHEN A REPORT REGARDING THE SUBSTANTIAL RISK OR THREAT OF HARM POSED BY THE PERSON IS SENT TO THE DIVISION OF CRIMINAL JUSTICE SERVICES. SUCH NOTICE SHALL INCLUDE, BUT NOT BE LIMITED TO:

(1) THE PERSON'S NAME;

(2) NOTICE THAT A REPORT HAS BEEN SENT TO THE DIVISION OF CRIMINAL JUSTICE SERVICES STATING THAT THE NAMED PERSON HAS BEEN DEEMED LIKELY TO ENGAGE IN CONDUCT THAT WOULD RESULT IN SERIOUS HARM TO SELF OR OTHERS;

(3) THE DATE THE REPORT WAS SENT TO THE DIVISION OF CRIMINAL JUSTICE SERVICES;

(4) THE PERSON'S RIGHT TO SUBMIT A PETITION FOR RELIEF FROM DISABILITY TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) APPEALS OFFICE OF THE OFFICE OF MENTAL HEALTH OR NICS APPEALS OFFICE OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, AS SET FORTH IN SUBDIVISION (J) OF SECTION 7.09 OF THIS TITLE AND SUBDIVISION (G) OF SECTION 13.09 OF THIS CHAPTER AND SECTIONS FIVE HUNDRED FORTY-THREE AND SIX HUNDRED FORTY-THREE OF ARTICLE FOURTEEN OF THE NEW YORK CODE OF RULES AND REGULATIONS;

(5) CONTACT INFORMATION FOR THE NICS APPEALS OFFICE OF THE OFFICE OF MENTAL HYGIENE OR THE NICS APPEALS OFFICE OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES; AND

(6) ANY APPLICABLE DEADLINE FOR SUBMISSION OF A PETITION FOR RELIEF FROM DISABILITY.

(D) Nothing in this section shall be construed to require a mental health professional to take any action which, in the exercise of reasonable professional judgment, would endanger such mental health professional or increase the danger to a potential victim or victims.

[(d)] (E) The decision of a mental health professional to disclose or not to disclose in accordance with this section, when made reasonably and in good faith, shall not be the basis for any civil or criminal liability of such mental health professional.

S 2. Paragraph 2 of 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:

(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, OR WHO HAS BEEN THE SUBJECT OF A REPORT SUBMITTED BY THE DIRECTOR OF COMMUNITY SERVICES OR THE DIRECTOR'S DESIGNEE TO THE DIVISION OF CRIMINAL JUSTICE SERVICES STATING THAT THE NAMED PERSON HAS BEEN DEEMED LIKELY TO ENGAGE IN CONDUCT THAT WOULD RESULT IN SERIOUS HARM TO SELF OR OTHERS PURSUANT TO SECTION 9.46 OF THIS TITLE, 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) the authority for the agency to require that the petitioner undergo a clinical evaluation and risk assessment; and (iii) 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. Paragraph 2 of 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:

(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, OR WHO HAS BEEN THE SUBJECT OF A REPORT SUBMITTED BY THE DIRECTOR OF COMMUNITY SERVICES OR THE DIRECTOR'S DESIGNEE TO THE DIVISION OF CRIMINAL JUSTICE SERVICES STATING THAT THE NAMED PERSON HAS BEEN DEEMED LIKELY TO ENGAGE IN CONDUCT THAT WOULD RESULT IN SERIOUS HARM TO SELF OR OTHERS PURSUANT TO SECTION 9.46 OF THIS CHAPTER, 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) the authority for the agency to require that the petitioner undergo a clinical evaluation and risk assessment; and (iii) 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 ninetieth day after it shall have become a law.