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

7263

2015-2016 Regular Sessions

I N A S S E M B L Y

May 1, 2015

Introduced by M. of A. ORTIZ -- read once and referred 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:

Section 1. Paragraph (d) of subdivision 1 of section 160.50 of the criminal procedure law, as amended by section 73 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(d) such records shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iv) the New York state department of corrections and community supervision when the accused is on parole supervision as a result of conditional release or a parole release granted by the New York state board of parole, and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision or (v) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of 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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records obtained under this paragraph and afforded an opportunity to make an explanation thereto, or (vi) A POLICE DEPARTMENT OR OTHER LAW ENFORCEMENT AGENCY, IN RELATION TO AN APPLICATION BY THE PERSON ACCUSED FOR EMPLOYMENT BY SUCH AGENCY OR DEPARTMENT; PROVIDED, HOWEVER, THAT EVERY SUCH PERSON SHALL BE FURNISHED WITH A COPY OF ALL RECORDS OBTAINED UNDER THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION THERETO, OR (VII) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision; and

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

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

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

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision

one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law OR IN RELATION TO AN APPLICATION FOR EMPLOYMENT FOR ANY POSITION IN A POLICE DEPARTMENT OR OTHER LAW ENFORCEMENT AGENCY; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law.

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

(c) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the person has made application for such a license; [or]

(d) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereto[.] ; OR

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

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