

1450--A

2015-2016 Regular Sessions

I N S E N A T E

January 12, 2015

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 chapter 449 of the laws of 2015,
3 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, or in any
9 district court, city court or the criminal court of the city of New York
10 provided that such court sealed the record, if such agency demonstrates
11 to the satisfaction of the court that justice requires that such records
12 be made available to it, or (iii) any state or local officer or agency
13 with responsibility for the issuance of licenses to possess guns, when
14 the accused has made application for such a license, or (iv) the New
15 York state department of corrections and community supervision when the
16 accused is on parole supervision as a result of conditional release or a
17 parole release granted by the New York state board of parole, and the
18 arrest which is the subject of the inquiry is one which occurred while
19 the accused was under such supervision, or (v) any prospective employer
20 of a police officer or peace officer as those terms are defined in
21 subdivisions thirty-three and thirty-four of section 1.20 of this chap-
22 ter, in relation to an application for employment as a police officer or
23 peace officer; provided, however, that every person who is an applicant

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

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

12 S 2. Paragraph (d) of subdivision 1 of section 160.55 of the criminal
13 procedure law, as amended by chapter 449 of the laws of 2015, is amended
14 to read as follows:

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

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

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

54 (d) any prospective employer of a police officer or peace officer as
55 those terms are defined in subdivisions thirty-three and thirty-four of
56 section 1.20 of this chapter, in relation to an application for employ-

ment 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 thereof[.] ; 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 4. 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 5. This act shall take effect on the ninetieth day after it shall have become a law.