

5696

2015-2016 Regular Sessions

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:

1 Section 1. Section 9.46 of the mental hygiene law, as added by chapter
2 1 of the laws of 2013, is amended to read as follows:
3 S 9.46 Reports of substantial risk or threat of harm by mental health
4 professionals.
5 (a) For purposes of this section, the term "mental health profes-
6 sional" shall include a physician, psychologist, registered nurse or
7 licensed clinical social worker.
8 (b) Notwithstanding any other law to the contrary, when a mental
9 health professional currently providing treatment services to a person
10 determines, in the exercise of reasonable professional judgment, that
11 such person is likely to engage in conduct that would result in serious
12 harm to self or others, he or she shall be required to report, as soon
13 as practicable, to the director of community services, or the director's
14 designee[, who shall report to the division of criminal justice services
15 whenever he or she agrees that the person is likely to engage in such
16 conduct]. ANY REPORT MADE BY A MENTAL HEALTH PROFESSIONAL TO THE DIREC-
17 TOR OF COMMUNITY SERVICES, OR THE DIRECTOR'S DESIGNEE SHALL INCLUDE
18 CURRENT CONTACT INFORMATION FOR SUCH PERSON INCLUDING, BUT NOT LIMITED
19 TO, THE PERSON'S: (1) NAME, (2) MAILING ADDRESS, (3) PHONE NUMBER AND
20 (4) EMAIL ADDRESS. THE DIRECTOR OF COMMUNITY SERVICES OR THE DIRECTOR'S
21 DESIGNEE SHALL REPORT TO THE DIVISION OF CRIMINAL JUSTICE SERVICES UPON
22 A FINDING THAT THE PERSON IS LIKELY TO ENGAGE IN CONDUCT THAT WOULD
23 RESULT IN SERIOUS HARM TO SELF OR OTHERS. Information transmitted to the
24 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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1 other non-clinical identifying information, which may only be used for
2 determining whether a license issued pursuant to section 400.00 of the
3 penal law should be suspended or revoked, or for determining whether a
4 person is ineligible for a license issued pursuant to section 400.00 of
5 the penal law, or is no longer permitted under state or federal law to
6 possess a firearm.

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

12 (1) THE PERSON'S NAME;

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

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

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

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

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

31 (D) Nothing in this section shall be construed to require a mental
32 health professional to take any action which, in the exercise of reason-
33 able professional judgment, would endanger such mental health profes-
34 sional or increase the danger to a potential victim or victims.

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

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

42 (2) The commissioner shall establish within the office of mental
43 health an administrative process to permit a person who has been or may
44 be disqualified from possessing such a firearm pursuant to 18 USC
45 922(4)(d) or who has been or may be disqualified from continuing to have
46 a license to carry, possess, repair, or dispose of a firearm under
47 section 400.00 of the penal law because such person was involuntarily
48 committed or civilly confined to a facility under the jurisdiction of
49 the commissioner, OR WHO HAS BEEN THE SUBJECT OF A REPORT SUBMITTED BY
50 THE DIRECTOR OF COMMUNITY SERVICES OR THE DIRECTOR'S DESIGNEE TO THE
51 DIVISION OF CRIMINAL JUSTICE SERVICES STATING THAT THE NAMED PERSON HAS
52 BEEN DEEMED LIKELY TO ENGAGE IN CONDUCT THAT WOULD RESULT IN SERIOUS
53 HARM TO SELF OR OTHERS PURSUANT TO SECTION 9.46 OF THIS TITLE, to peti-
54 tion for relief from that disability where such person's record and
55 reputation are such that such person will not be likely to act in a
56 manner dangerous to public safety and where the granting of the relief

1 would not be contrary to public safety. The commissioner shall promul-
2 gate regulations to establish the relief from disabilities program,
3 which shall include, but not be limited to, provisions providing for:
4 (i) an opportunity for a disqualified person to petition for relief in
5 writing; (ii) the authority for the agency to require that the petition-
6 er undergo a clinical evaluation and risk assessment; and (iii) a
7 requirement that the agency issue a decision in writing explaining the
8 reasons for a denial or grant of relief. The denial of a petition for
9 relief from disabilities may be reviewed de novo pursuant to the
10 proceedings under article seventy-eight of the civil practice law and
11 rules.

12 S 3. Paragraph 2 of subdivision (g) of section 13.09 of the mental
13 hygiene law, as amended by chapter 1 of the laws of 2013, is amended to
14 read as follows:

15 (2) The commissioner shall establish within the office for people with
16 developmental disabilities an administrative process to permit a person
17 who has been or may be disqualified from possessing such a firearm
18 pursuant to 18 USC 922(4)(d), or who has been or may be disqualified
19 from continuing to have a license to carry, possess, repair, or dispose
20 of a firearm under section 400.00 of the penal law because such person
21 was involuntarily committed or civilly confined to a facility under the
22 jurisdiction of the commissioner, OR WHO HAS BEEN THE SUBJECT OF A
23 REPORT SUBMITTED BY THE DIRECTOR OF COMMUNITY SERVICES OR THE DIRECTOR'S
24 DESIGNEE TO THE DIVISION OF CRIMINAL JUSTICE SERVICES STATING THAT THE
25 NAMED PERSON HAS BEEN DEEMED LIKELY TO ENGAGE IN CONDUCT THAT WOULD
26 RESULT IN SERIOUS HARM TO SELF OR OTHERS PURSUANT TO SECTION 9.46 OF
27 THIS CHAPTER, to petition for relief from that disability where such
28 person's record and reputation are such that such person will not be
29 likely to act in a manner dangerous to public safety and where the
30 granting of the relief would not be contrary to public safety. The
31 commissioner shall promulgate regulations to establish the relief from
32 disabilities program, which shall include, but not be limited to,
33 provisions providing for: (i) an opportunity for a disqualified person
34 to petition for relief in writing; (ii) the authority for the agency to
35 require that the petitioner undergo a clinical evaluation and risk
36 assessment; and (iii) a requirement that the agency issue a decision in
37 writing explaining the reasons for a denial or grant of relief. The
38 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 ninetieth day after it shall
42 have become a law.