

STATE OF NEW YORK

7461--A

2017-2018 Regular Sessions

IN ASSEMBLY

April 26, 2017

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- 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
24 for the position of police officer or peace officer shall be furnished

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

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1 with a copy of all records obtained under this paragraph and afforded an
2 opportunity to make an explanation thereto, or (vi) a police department
3 or other law enforcement agency, in relation to an application by the
4 person accused for employment by such agency or department; provided,
5 however, that every such person shall be furnished with a copy of all
6 records obtained under this paragraph and afforded an opportunity to
7 make an explanation thereto, or (vii) the probation department responsi-
8 ble for supervision of the accused when the arrest which is the subject
9 of the inquiry is one which occurred while the accused was under such
10 supervision; and

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

14 (d) the records referred to in paragraph (c) of this subdivision shall
15 be made available to the person accused or to such person's designated
16 agent, and shall be made available to (i) a prosecutor in any proceeding
17 in which the accused has moved for an order pursuant to section 170.56
18 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex
19 parte motion in any superior court, or in any district court, city court
20 or the criminal court of the city of New York provided that such court
21 sealed the record, if such agency demonstrates to the satisfaction of
22 the court that justice requires that such records be made available to
23 it, or (iii) any state or local officer or agency with responsibility
24 for the issuance of licenses to possess guns, when the accused has made
25 application for such a license, or (iv) the New York state department of
26 corrections and community supervision when the accused is under parole
27 supervision as a result of conditional release or parole release granted
28 by the New York state board of parole and the arrest which is the
29 subject of the inquiry is one which occurred while the accused was under
30 such supervision, or (v) the probation department responsible for super-
31 vision of the accused when the arrest which is the subject of the
32 inquiry is one which occurred while the accused was under such super-
33 vision, or (vi) a police agency, probation department, sheriff's office,
34 district attorney's office, department of correction of any municipality
35 and parole department, for law enforcement purposes, upon arrest in
36 instances in which the individual stands convicted of harassment in the
37 second degree, as defined in section 240.26 of the penal law, committed
38 against a member of the same family or household as the defendant, as
39 defined in subdivision one of section 530.11 of this chapter, and deter-
40 mined pursuant to subdivision eight-a of section 170.10 of this title;
41 or (vii) a police department or other law enforcement agency, in
42 relation to an application by the person accused for employment by such
43 agency or department; provided, however, that every such person shall be
44 furnished with a copy of all records obtained under this paragraph and
45 afforded an opportunity to make an explanation thereto; and

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

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

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

1 person who is an applicant for the position of police officer or peace
2 officer shall be furnished with a copy of all records obtained under
3 this paragraph and afforded an opportunity to make an explanation there-
4 to[-] ; or

5 (e) any police department or law enforcement agency, in relation to an
6 application for employment by such police department or law enforcement
7 agency; provided, however, that every applicant shall be furnished with
8 a copy of all records obtained under this paragraph and afforded an
9 opportunity to make an explanation thereto.

10 § 4. Subdivision 16 of section 296 of the executive law, as amended by
11 section 48-a of part WWW of chapter 59 of the laws of 2017, is amended
12 to read as follows:

13 16. It shall be an unlawful discriminatory practice, unless specif-
14 ically required or permitted by statute, for any person, agency, bureau,
15 corporation or association, including the state and any political subdi-
16 vision thereof, to make any inquiry about, whether in any form of appli-
17 cation or otherwise, or to act upon adversely to the individual
18 involved, any arrest or criminal accusation of such individual not then
19 pending against that individual which was followed by a termination of
20 that criminal action or proceeding in favor of such individual, as
21 defined in subdivision two of section 160.50 of the criminal procedure
22 law, or by a youthful offender adjudication, as defined in subdivision
23 one of section 720.35 of the criminal procedure law, or by a conviction
24 for a violation sealed pursuant to section 160.55 of the criminal proce-
25 dure law or by a conviction which is sealed pursuant to section 160.59
26 or 160.58 of the criminal procedure law, in connection with the licens-
27 ing, employment or providing of credit or insurance to such individual;
28 provided, further, that no person shall be required to divulge informa-
29 tion pertaining to any arrest or criminal accusation of such individual
30 not then pending against that individual which was followed by a termi-
31 nation of that criminal action or proceeding in favor of such individ-
32 ual, as defined in subdivision two of section 160.50 of the criminal
33 procedure law, or by a youthful offender adjudication, as defined in
34 subdivision one of section 720.35 of the criminal procedure law, or by a
35 conviction for a violation sealed pursuant to section 160.55 of the
36 criminal procedure law, or by a conviction which is sealed pursuant to
37 section 160.58 or 160.59 of the criminal procedure law. The provisions
38 of this subdivision shall not apply to the licensing activities of
39 governmental bodies in relation to the regulation of guns, firearms and
40 other deadly weapons or in relation to an application for employment as
41 a police officer or peace officer as those terms are defined in subdivi-
42 sions thirty-three and thirty-four of section 1.20 of the criminal
43 procedure law or in relation to an application for employment for any
44 position in a police department or other law enforcement agency;
45 provided further that the provisions of this subdivision shall not apply
46 to an application for employment or membership in any law enforcement
47 agency with respect to any arrest or criminal accusation which was
48 followed by a youthful offender adjudication, as defined in subdivision
49 one of section 720.35 of the criminal procedure law, or by a conviction
50 for a violation sealed pursuant to section 160.55 of the criminal proce-
51 dure law, or by a conviction which is sealed pursuant to section 160.58
52 or 160.59 of the criminal procedure law.

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