

# STATE OF NEW YORK

2583

2019-2020 Regular Sessions

## IN ASSEMBLY

January 24, 2019

Introduced by M. of A. LAVINE, SIMON, SEAWRIGHT, COLTON -- Multi-Sponsored by -- M. of A. GALEF -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law and the mental hygiene law, in relation to requiring a recent psychiatric evaluation of a petitioner seeking relief from firearms disabilities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (q) of subdivision 2 of section 212 of the judiciary law, as amended by chapter 1 of the laws of 2013, is amended to  
2 read as follows:

3  
4 (q) (i) Adopt rules to require transmission, to the criminal justice  
5 information services division of the federal bureau of investigation or  
6 to the division of criminal justice services, of the name and other  
7 identifying information of each person who has a guardian appointed for  
8 him or her pursuant to any provision of state law, based on a determination  
9 that as a result of marked subnormal intelligence, mental  
10 illness, incapacity, condition or disease, he or she lacks the mental  
11 capacity to contract or manage his or her own affairs. Any such records  
12 transmitted directly to the federal bureau of investigation must also be  
13 transmitted to the division of criminal justice services, and any  
14 records received by the division of criminal justice services pursuant  
15 to this paragraph may be checked against the statewide license and  
16 record database.

17 (ii) Adopt rules to establish a relief from disabilities program for  
18 those individuals who have had guardians appointed for them and who  
19 would otherwise be prohibited from purchasing or possessing firearms as  
20 a result of transmission of information pursuant to subparagraph (i) of  
21 this paragraph. Such rules shall require submission of a recent psychiatric  
22 evaluation of the petitioner for such relief by a qualified

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

LBD04597-01-9

1 psychiatrist, unless the petitioner submits evidence demonstrating that  
2 the original disqualification was issued in error.

3 § 2. Subdivision (j) of section 7.09 of the mental hygiene law, as  
4 amended by chapter 1 of the laws of 2013, is amended to read as follows:

5 (j) (1) The commissioner, in cooperation with other applicable state  
6 agencies, shall collect, retain or modify data or records, and shall  
7 transmit such data or records: (i) to the division of criminal justice  
8 services, or to the criminal justice information services division of  
9 the federal bureau of investigation, for the purposes of responding to  
10 queries to the national instant criminal background check system regard-  
11 ing attempts to purchase or otherwise take possession of firearms, as  
12 defined in 18 USC 921(a)(3), in accordance with applicable federal laws  
13 or regulations, or (ii) to the division of criminal justice services,  
14 which may re-disclose such data and records only for determining whether  
15 a license issued pursuant to section 400.00 of the penal law should be  
16 denied, suspended or revoked, under subdivision eleven of such section,  
17 or for determining whether a person is no longer permitted under federal  
18 or state law to possess a firearm. Such records, which may not be used  
19 for any other purpose, shall include only names and other non-clinical  
20 identifying information of persons who have been involuntarily committed  
21 to a hospital pursuant to article nine of this chapter, or section four  
22 hundred two or subdivision two of section five hundred eight of the  
23 correction law, or article seven hundred thirty or section 330.20 of the  
24 criminal procedure law or sections 322.2 or 353.4 of the family court  
25 act, or to a secure treatment facility pursuant to article ten of this  
26 chapter.

27 (2) The commissioner shall establish within the office of mental  
28 health an administrative process to permit a person who has been or may  
29 be disqualified from possessing such a firearm pursuant to 18 USC  
30 922(4)(d) or who has been or may be disqualified from continuing to have  
31 a license to carry, possess, repair, or dispose of a firearm under  
32 section 400.00 of the penal law because such person was involuntarily  
33 committed or civilly confined to a facility under the jurisdiction of  
34 the commissioner, to petition for relief from that disability where such  
35 person's record and reputation are such that such person will not be  
36 likely to act in a manner dangerous to public safety and where the  
37 granting of the relief would not be contrary to public safety. The  
38 commissioner shall promulgate regulations to establish the relief from  
39 disabilities program, which shall include, but not be limited to,  
40 provisions providing for: (i) an opportunity for a disqualified person  
41 to petition for relief in writing; (ii) submission of a recent psychiat-  
42 ric evaluation of the petitioner by a qualified psychiatrist, unless the  
43 petitioner submits evidence demonstrating that the original disquali-  
44 fication was issued in error; (iii) the authority for the agency to  
45 require that the petitioner undergo a clinical evaluation and risk  
46 assessment; and [~~(iii)~~] (iv) a requirement that the agency issue a deci-  
47 sion in writing explaining the reasons for a denial or grant of relief.  
48 The denial of a petition for relief from disabilities may be reviewed de  
49 novo pursuant to the proceedings under article seventy-eight of the  
50 civil practice law and rules.

51 § 3. Subdivision (g) of section 13.09 of the mental hygiene law, as  
52 amended by chapter 1 of the laws of 2013, is amended to read as follows:

53 (g) (1) The commissioner, in cooperation with other applicable state  
54 agencies, shall collect, retain or modify data or records, and shall  
55 transmit such data or records to: (i) the division of criminal justice  
56 services, or to the criminal justice information services division of

1 the federal bureau of investigation, for the purposes of responding to  
2 queries to the national instant criminal background check system regard-  
3 ing attempts to purchase or otherwise take possession of firearms, as  
4 defined in 18 USC 921(a)(3), in accordance with applicable federal laws  
5 or regulations, or (ii) to the division of criminal justice services,  
6 for the purposes of determining whether a license issued pursuant to  
7 section 400.00 of the penal law should be denied, suspended or revoked,  
8 under subdivision eleven of such section, or for determining whether a  
9 person is no longer permitted under federal or state law to possess a  
10 firearm. Such records shall include only names and other non-clinical  
11 identifying information of persons who have had a guardian appointed for  
12 them pursuant to any provision of state law, based on a determination  
13 that as a result of marked subnormal intelligence, mental illness, inca-  
14 pacity, condition or disease, they lack the mental capacity to contract  
15 or manage their own affairs, and persons who have been involuntarily  
16 committed to a facility pursuant to article fifteen of this chapter, or  
17 article seven hundred thirty or section 330.20 of the criminal procedure  
18 law or sections 322.2 or 353.4 of the family court act.

19 (2) The commissioner shall establish within the office for people with  
20 developmental disabilities an administrative process to permit a person  
21 who has been or may be disqualified from possessing such a firearm  
22 pursuant to 18 USC 922(4)(d), or who has been or may be disqualified  
23 from continuing to have a license to carry, possess, repair, or dispose  
24 of a firearm under section 400.00 of the penal law because such person  
25 was involuntarily committed or civilly confined to a facility under the  
26 jurisdiction of the commissioner, to petition for relief from that disa-  
27 bility where such person's record and reputation are such that such  
28 person will not be likely to act in a manner dangerous to public safety  
29 and where the granting of the relief would not be contrary to public  
30 safety. The commissioner shall promulgate regulations to establish the  
31 relief from disabilities program, which shall include, but not be limit-  
32 ed to, provisions providing for: (i) an opportunity for a disqualified  
33 person to petition for relief in writing; (ii) submission of a recent  
34 psychiatric evaluation of the petitioner by a qualified psychiatrist,  
35 unless the petitioner submits evidence demonstrating that the original  
36 disqualification was issued in error; (iii) the authority for the agency  
37 to require that the petitioner undergo a clinical evaluation and risk  
38 assessment; and [~~(iii)~~] (iv) a requirement that the agency issue a deci-  
39 sion in writing explaining the reasons for a denial or grant of relief.  
40 The denial of a petition for relief from disabilities may be reviewed de  
41 novo pursuant to the proceedings under article seventy-eight of the  
42 civil practice law and rules.

43 § 4. This act shall take effect on the first of January next succeed-  
44 ing the date upon which it shall have become a law.