STATE OF NEW YORK

6760

2021-2022 Regular Sessions

IN SENATE

May 14, 2021

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, the civil rights law, and the family court act to allow access to sealed and protected records to civilian law enforcement oversight entities conducting investigations and disciplinary proceedings for misconduct by police and peace officers

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

Section 1. Section 1.20 of the criminal procedure law is amended by adding a new subdivision 46 to read as follows:

46. "Civilian law enforcement oversight entity" means an entity with responsibility for investigating or recommending discipline for a police officer or peace officer for misconduct that does not employ any current police officer or peace officer.

§ 2. Paragraph (d) of subdivision 1 of section 160.50 of the criminal procedure law, as amended by chapter 449 of the laws of 2015, 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, or in any district court, city court or the criminal court of the city of New York provided that such court sealed the record, 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

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

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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 records obtained under this paragraph and afforded an opportunity to make an explanation thereto, or (vi) 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 (vii) any civilian law enforcement oversight entity, provided that the records and papers obtained under this paragraph relate to an open investigation or disciplinary proceeding at the civilian law enforcement oversight entity and are being used in furtherance of that open investigation or disciplinary proceeding**; and

§ 3. Paragraph (d) of subdivision 1 of section 160.55 of the criminal procedure law, as amended by chapter 449 of the laws of 2015, 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, or in any district court, city court or the criminal court of the city of New York provided that such court sealed the record, 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) any civilian law enforcement oversight entity, provided that the records and papers obtained under this paragraph relate to an open investigation or disciplinary proceeding at the civilian law enforcement oversight entity and are being used in furtherance of that open investigation or disciplinary proceeding**; and

§ 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 civilian law enforcement oversight entity, provided that the records and papers obtained under this paragraph relate to an open investigation or disciplinary proceeding at the civilian law enforcement oversight entity and are being used in furtherance of that open investigation or disciplinary proceeding.

§ 5. Paragraphs (d) and (e) of subdivision 9 of section 160.59 of the criminal procedure law, as added by section 48 of part WWW of chapter 59 of the laws of 2017, are amended and a new paragraph (f) is added to read as follows:

(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) the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 USC 921 (a) (3)[~~.~~]**; or**

(f) any civilian law enforcement oversight entity, provided that the records and papers obtained under this paragraph relate to an open investigation or disciplinary proceeding at the civilian law enforcement oversight entity and are being used in furtherance of such open investigation or disciplinary proceeding.

§ 6. Paragraph a of subdivision 2 of section 50-b of the civil rights law, as amended by chapter 643 of the laws of 1999, is amended to read as follows:

a. Any person charged with the commission of an offense, as defined in subdivision one of this section, against the same victim; the counsel or guardian of such person; the public officers and employees**, including the employees of civilian law enforcement oversight entities as defined in section 1.20 of the criminal procedure law,** charged with the duty of investigating, prosecuting, keeping records relating to the offense, or any other act when done pursuant to the lawful discharge of their duties; and any necessary witnesses for either party; or

§ 7. Section 166 of the family court act, is amended to read as follows:

§ 166. Privacy of records. The records of any proceeding in the family court shall not be open to indiscriminate public inspection. However, the court in its discretion in any case may permit the inspection of any

papers or records. Any duly authorized agency, association, society or institution to which a child is committed may cause an inspection of the record of investigation to be had and may in the discretion of the court obtain a copy of the whole or part of such record. **The provisions of this section shall only apply to records within the possession of the family court.**

§ 8. Subdivision 3 of section 375.1 of the family court act, as amended by chapter 398 of the laws of 1983, is amended to read as follows:

3. Records sealed pursuant to subdivision one shall be made available to the respondent or his designated agent**, to civilian law enforcement oversight entity as defined in section 1.20 of the criminal procedure law; provided that the records and papers made available under this subdivision relate to an open investigation or disciplinary proceeding at the civilian law enforcement oversight entity and are being used in furtherance of such open investigation or disciplinary proceeding,** and the records and papers of a probation service shall be available to any probation service for the purpose of complying with subdivision four of section 308.1.

§ 9. Subdivision 2 of section 381.3 of the family court act, as added by chapter 920 of the laws of 1982, paragraph (b) as amended by chapter 926 of the laws of 1982, is amended to read as follows:

2. Notwithstanding the provisions of subdivision one, the family court in the county in which the petition was adjudicated may, upon motion and for good cause shown, order such records open:

(a) to the respondent or his parent or person responsible for his care; [~~or~~]

(b) if the respondent is subsequently convicted of a crime, to a judge of the court in which he was convicted, unless such record has been sealed pursuant to section 375.1**; or**

(c) to any civilian law enforcement oversight entity as defined in section 1.20 of the criminal procedure law; provided that the records and papers made available under this subdivision relate to an open investigation or disciplinary proceeding at the civilian law enforcement oversight entity and are being used in furtherance of such open investigation or disciplinary proceeding.

§ 10. This act shall take effect immediately.