

# STATE OF NEW YORK

4236

2023-2024 Regular Sessions

## IN ASSEMBLY

February 13, 2023

Introduced by M. of A. HAWLEY, BRABENEC, BLANKENBUSH, TAGUE, ANGELINO, GALLAHAN, DeSTEFANO, MANKTELOW -- Multi-Sponsored by -- M. of A. BARCLAY, DiPIETRO, MILLER -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil rights law, in relation to establishing the civil rights restoration act; to amend the penal law, in relation to medical and/or clinical records and reporting for purposes of firearm licenses, in relation to the destruction of firearms, in relation to registration of sellers of ammunition, and in relation to exempting certain individuals from having to provide a photograph for firearm licensing purposes; to amend the general business law, in relation to expanding the definition of immediate family; to amend the mental hygiene law, in relation to reporting; to repeal certain provisions of the penal law relating to firearms licenses and sellers of ammunition; and to repeal certain provisions of the mental hygiene law and the executive law, relating to reporting 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. Short title. This act shall be known and may be cited as  
2 the "civil rights restoration act".

3 § 2. The civil rights law is amended by adding a new section 79-r to  
4 read as follows:

5 § 79-r. Civil rights restoration. 1. In any proceeding that may impact  
6 an individual's rights under the second amendment of the United States  
7 constitution, or any similar state right, including such proceedings  
8 that could result in the loss of a license to carry or possess a  
9 firearm:

10 (a) No court order shall be issued nor proceeding be commenced unless  
11 all pleadings or other accusatory instruments have been filed and served  
12 in conformity with article thirty of the civil practice law and rules,

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

LBD08392-01-3

1 and where such pleading includes an allegation that the individual has  
2 been "involuntarily committed to a mental institution," such pleading  
3 shall include an allegation as to the said court order date and juris-  
4 isdiction;

5 (b) The burden of proof in such proceeding shall be no less than clear  
6 and convincing evidence;

7 (c) Individuals may examine the entire contents of his or her firearm  
8 license records constructed by state and local licensing and law  
9 enforcement authorities;

10 (d) There shall be a right to counsel, including the right to assigned  
11 counsel, if counsel cannot be afforded; and

12 (e) Any firearms confiscated and/or surrendered into law enforcement  
13 evidence status during such proceeding shall not be destroyed, unless  
14 specifically directed through a written order by a court of competent  
15 jurisdiction at the conclusion of all disqualification proceedings  
16 relating to the individual, including any appeals undertaken.

17 2. (a) There shall be contemporaneous written notification to all  
18 individuals being reported to any law enforcement database that could  
19 result in the deprivation of rights to own, possess, or use a firearm  
20 and/or the deprivation of a lawfully owned firearm, including, but not  
21 limited to, reports under former section 9.46 of the mental hygiene law  
22 and under 18 USC § 922(g).

23 (b) There shall be written notification transmitted within ninety days  
24 of the effective date of this section to all individuals previously  
25 reported into any law enforcement database that could result in the  
26 deprivation of rights to own, possess, or use a firearm and/or the  
27 deprivation of a lawfully owned firearm, including, but not limited to,  
28 the databases maintained by the office of mental health, the division of  
29 criminal justice services, and the division of state police in conjunc-  
30 tion with reports made under the former section 9.46 of the mental  
31 hygiene law and/or under 18 USC § 922(g)(4), and that such written  
32 notification shall include notice that the individual may have a right  
33 to commence a proceeding in either the New York state supreme court or  
34 county court under article seventy-eight of the civil practice law and  
35 rules if he or she believes that the information contained within the  
36 notification is in error.

37 (c) Any individual, business, or governmental official who, knowing  
38 the information reported, conveyed or circulated to be false, reports  
39 that a person has been involuntarily committed, shall be subject to a  
40 civil fine of not more than ten thousand dollars per offense.

41 (d) In any proceeding where an individual establishes that a report  
42 that he or she was involuntarily committed was false, reasonable attor-  
43 ney's fees and costs shall be reimbursed by the state.

44 (e) The state shall correct any false or incorrect report against an  
45 individual to state and federal databases, including those under 18 USC  
46 §922(g), within seven days of entry and service upon the state of a  
47 final order of disposition in a case. The failure of the state to timely  
48 do so shall be punishable as a contempt of court.

49 (f) Notwithstanding any law, rule or regulation to the contrary, an  
50 individual's medical and/or clinical records shall not be used for  
51 routine law enforcement reporting purposes relative to firearms owner-  
52 ship, use, possession, or suitability.

53 § 3. Section 400.02 of the penal law, as amended by chapter 371 of the  
54 laws of 2022, is amended to read as follows:

55 § 400.02 Statewide license and record database.

1 1. There shall be a statewide license and record database which shall  
2 be created and maintained by the division of state police the cost of  
3 which shall not be borne by any municipality. Records assembled or  
4 collected for purposes of inclusion in such database shall not be  
5 subject to disclosure pursuant to article six of the public officers  
6 law, excepting any non-identifying records such as existing statistical  
7 tabulations or those capable of being performed or such record responses  
8 as can be reasonably satisfied through redacted response. All records  
9 containing granted license applications from all licensing authorities  
10 shall be monthly checked by the division of criminal justice services in  
11 conjunction with the division of state police against criminal  
12 conviction, criminal indictment, mental health, extreme risk protection  
13 orders, orders of protection, and all other records as are necessary to  
14 determine their continued accuracy as well as whether an individual is  
15 no longer a valid license holder. The division of criminal justice  
16 services shall also check pending applications made pursuant to this  
17 article against such records to determine whether a license may be  
18 granted. All state and local agencies shall cooperate with the division  
19 of criminal justice services, as otherwise authorized by law, in making  
20 their records available for such checks. The division of criminal  
21 justice services, upon determining that an individual is ineligible to  
22 possess a license, or is no longer a valid license holder, shall notify  
23 the applicable licensing official of such determination and such licens-  
24 ing official shall not issue a license or shall revoke such license [~~and~~  
25 ~~any weapons owned or possessed by such individual shall be removed~~  
26 ~~consistent with the provisions of subdivision eleven of section 400.00~~  
27 ~~of this article~~]. Local and state law enforcement shall have access to  
28 such database in the performance of their duties. Records assembled or  
29 collected for purposes of inclusion in the database established by this  
30 section shall be released pursuant to a court order.

31 2. There shall be a statewide license and record database specific for  
32 ammunition sales which shall be created and maintained by the division  
33 of state police the cost of which shall not be borne by any municipality  
34 no later than thirty days upon designating the division of state police  
35 as the point of contact to perform both firearm and ammunition back-  
36 ground checks under federal and state law. Records assembled or  
37 collected for purposes of inclusion in such database shall not be  
38 subject to disclosure pursuant to article six of the public officers  
39 law, excepting any non-identifying records such as existing statistical  
40 tabulations or those capable of being performed or such record responses  
41 as can be reasonably satisfied through redacted response. All records  
42 containing granted license applications from all licensing authorities  
43 shall be monthly checked by the division of criminal justice services in  
44 conjunction with the division of state police against criminal  
45 conviction, criminal indictments, mental health, extreme risk protection  
46 orders, orders of protection, and all other records as are necessary to  
47 determine their continued accuracy as well as whether an individual is  
48 no longer a valid license holder. The division of criminal justice  
49 services shall also check pending applications made pursuant to this  
50 article against such records to determine whether a license may be  
51 granted. All state and local agencies shall cooperate with the division  
52 of criminal justice services, as otherwise authorized by law, in making  
53 their records available for such checks. No later than thirty days after  
54 the superintendent of the state police certifies that the statewide  
55 license and record database established pursuant to this section and the  
56 statewide license and record database established for ammunition sales

1 are operational for the purposes of this section, a dealer in firearms  
2 licensed pursuant to section 400.00 of this article, a seller of ammuni-  
3 tion as defined in subdivision twenty-four of section 265.00 of this  
4 chapter shall not transfer any ammunition to any other person who is not  
5 a dealer in firearms as defined in subdivision nine of such section  
6 265.00 or a seller of ammunition as defined in subdivision twenty-four  
7 of section 265.00 of this chapter, unless:

8 (a) before the completion of the transfer, the licensee or seller  
9 contacts the statewide license and record database and provides the  
10 database with information sufficient to identify such dealer or seller  
11 transferee based on information on the transferee's identification docu-  
12 ment as defined in paragraph (c) of this subdivision, as well as the  
13 amount, caliber, manufacturer's name and serial number, if any, of such  
14 ammunition;

15 (b) the licensee or seller is provided with a unique identification  
16 number; and

17 (c) the transferor has verified the identity of the transferee by  
18 examining a valid state identification document of the transferee issued  
19 by the department of motor vehicles or if the transferee is not a resi-  
20 dent of the state of New York, a valid identification document issued by  
21 the transferee's state or country of residence containing a photograph  
22 of the transferee.

23 § 4. Paragraph (b) of subdivision 11 of section 400.00 of the penal  
24 law is REPEALED.

25 § 5. Section 400.05 of the penal law is amended by adding a new subdi-  
26 vision 7 to read as follows:

27 7. Whenever any machine-gun or firearm is destroyed pursuant to subdi-  
28 vision two of this section, all state and local law enforcement agencies  
29 shall publish on their website, on an annual basis, an inventory of  
30 every machine-gun or firearm that is destroyed, including the caliber,  
31 make, model, manufacturer's name, serial number, or if none, any other  
32 distinguishing number or identification mark of the machine-gun or  
33 firearm, and if applicable, the jurisdiction and date of the court order  
34 directing the surrender and/or destruction of such machine-gun or  
35 firearm.

36 § 6. Paragraphs (c) of subdivisions 11 and 16-a and paragraph (b) of  
37 subdivision 10 of section 400.00 of the penal law are REPEALED.

38 § 7. Subdivision 1 of section 898 of the general business law, as  
39 amended by chapter 129 of the laws of 2019, is amended to read as  
40 follows:

41 1. In addition to any other requirements pursuant to state and federal  
42 law, all sales, exchanges or disposals of firearms, rifles or shotguns  
43 shall be conducted in accordance with this section unless such sale,  
44 exchange or disposal is conducted by a licensed importer, licensed  
45 manufacturer or licensed dealer, as those terms are defined in 18 USC §  
46 922, when such sale, exchange or disposal is conducted pursuant to that  
47 person's federal firearms license or such sale, exchange or disposal is  
48 between members of an immediate family. When a sale, exchange or  
49 disposal is conducted pursuant to a person's federal firearms license,  
50 before delivering a firearm, rifle or shotgun to any person, either (a)  
51 the National Instant Criminal Background Check System (NICS) or its  
52 successor has issued a "proceed" response to the federal firearms licen-  
53 see, or (b) thirty calendar days shall have elapsed since the date the  
54 federal firearms licensee contacted NICS to initiate a national instant  
55 criminal background check and NICS has not notified the federal firearms  
56 licensee that the transfer of the firearm, rifle or shotgun to such

1 person should be denied. For purposes of this section, "immediate fami-  
2 ly" shall mean spouses, domestic partners, parents, brothers, sisters,  
3 children and step-children.

4 § 8. Subdivision 17 of section 400.00 of the penal law is renumbered  
5 subdivision 20 and a new subdivision 17 is added to read as follows:

6 17. Applicants who have a genuine and sincere religious belief, who  
7 have provided fingerprints pursuant to this section, shall not be  
8 required to provide photographs of themselves in order to obtain a  
9 license as required by this section.

10 § 9. Section 400.03 of the penal law is REPEALED.

11 § 10. Subdivision 16-a of section 400.00 of the penal law is amended  
12 by adding a new paragraph (c) to read as follows:

13 (c) The division of state police shall not require the registration of  
14 a seller of ammunition, as defined in subdivision twenty-four of section  
15 265.00 of this chapter, in order for such seller of ammunition to oper-  
16 ate his or her business.

17 § 11. Section 9.46 of the mental hygiene law is REPEALED.

18 § 12. Subdivision 19 of section 837 of the executive law is REPEALED.

19 § 13. Paragraph 12 of subdivision (c) of section 33.13 of the mental  
20 hygiene law, as amended by chapter 1 of the laws of 2013, is amended to  
21 read as follows:

22 12. to a director of community services as defined in article nine of  
23 this chapter or his or her designee, provided that such director or his  
24 or her designee ~~[(i)]~~ requests such information in the exercise of his  
25 or her statutory functions, powers and duties pursuant to section 9.37,  
26 9.45, 9.47, 9.48, 9.60 or 41.13 of this chapter~~[, or (ii) the disclosure~~  
27 ~~of information is required pursuant to section 9.46 of this chapter]~~.

28 § 14. One year after the completion of transmission of notification of  
29 all individuals pursuant to paragraph (b) of subdivision two of section  
30 79-r of the civil rights law, as added by section two of this act, all  
31 offices and agencies in use or possession of reports required under the  
32 former section 9.46 of the mental hygiene law shall purge all such  
33 information.

34 § 15. Severability. If any provision of this act, or the application  
35 thereof to any person or circumstance, shall be adjudged by any court of  
36 competent jurisdiction to be invalid or unconstitutional, such judgment  
37 shall not affect, impair or invalidate the remainder thereof, but shall  
38 be confined in its operation to the provision of this act, or in its  
39 application to the person or circumstance, directly involved in the  
40 controversy in which such judgment shall have been rendered.

41 § 16. This act shall take effect immediately.