

# STATE OF NEW YORK

1174

2019-2020 Regular Sessions

## IN SENATE

January 11, 2019

Introduced by Sens. AMEDORE, GALLIVAN, RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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; repealing certain provisions of the penal law relating to firearms licenses and sellers of ammunition; and repealing 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-o to  
4 read as follows:

5 § 79-o. 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,  
13 and where such pleading includes an allegation that the individual has  
14 been "involuntarily committed to a mental institution," such pleading

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

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1 shall include an allegation as to the said court order date and juris-  
2 diction;

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

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

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

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

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

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

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

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

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

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

51 § 3. Section 400.02 of the penal law, as added by chapter 1 of the  
52 laws of 2013, is amended to read as follows:  
53 § 400.02 Statewide license and record database.

54 There shall be a statewide license and record database which shall be  
55 created and maintained by the division of state police the cost of which  
56 shall not be borne by any municipality. Records assembled or collected  
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1 for purposes of inclusion in such database shall not be subject to  
2 disclosure pursuant to article six of the public officers law, ~~excepting~~  
3 ~~any non-identifying records such as existing statistical tabulations or~~  
4 ~~those capable of being performed or such record responses as can be~~  
5 ~~reasonably satisfied through redacted response.~~ Records containing  
6 granted license applications shall be periodically checked by the divi-  
7 sion of criminal justice services against criminal ~~[conviction, mental~~  
8 ~~health, and all other records]~~ convictions as ~~[are]~~ is necessary to  
9 determine their continued accuracy as well as whether an individual is

no longer a valid license holder. The division of criminal justice services shall also check pending applications made pursuant to this article against such records to determine whether a license may be granted. All state agencies shall cooperate with the division of criminal justice services, as otherwise authorized by law, in making their records available for such checks. The division of criminal justice services, upon determining that an individual is ineligible to possess a license, or is no longer a valid license holder, shall notify the applicable licensing official of such determination and such licensing official shall not issue a license or revoke such license and any weapons owned or possessed by such individual shall be removed consistent with the provisions of subdivision eleven of section 400.00 of this article. Local and state law enforcement shall have access to such database, as otherwise authorized by law, in the performance of their duties. Records assembled or collected for purposes of inclusion in the database established by this section shall be released pursuant to a court order.

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

§ 5. Section 400.05 of the penal law is amended by adding a new subdivision 7 to read as follows:

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

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

§ 7. Subdivision 1 of section 898 of the general business law, as added by chapter 1 of the laws of 2013, is amended to read as follows:

1. In addition to any other requirements pursuant to state and federal law, all sales, exchanges or disposals of firearms, rifles or shotguns shall be conducted in accordance with this section unless such sale, exchange or disposal is conducted by a licensed importer, licensed manufacturer or licensed dealer, as those terms are defined in 18 USC § 922, when such sale, exchange or disposal is conducted pursuant to that person's federal firearms license or such sale, exchange or disposal is between members of an immediate family. For purposes of this section, "immediate family" shall mean spouses, domestic partners, parents, brothers, sisters, children and step-children.

§ 8. Subdivision 17 of section 400.00 of the penal law is renumbered subdivision 18 and a new subdivision 17 is added to read as follows:

17. Applicants who have a genuine and sincere religious belief, who have provided fingerprints pursuant to this section, shall not be

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required to provide photographs of themselves in order to obtain a license as required by this section.

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

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

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

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

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

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

15 12. to a director of community services as defined in article nine of  
16 this chapter or his or her designee, provided that such director or his  
17 or her designee [~~(i)~~] requests such information in the exercise of his  
18 or her statutory functions, powers and duties pursuant to section 9.37,  
19 9.45, 9.47, 9.48, 9.60 or 41.13 of this chapter[~~; or (ii) the disclosure~~  
20 ~~of information is required pursuant to section 9.46 of this chapter~~].

21 § 14. One year after the completion of transmission of notification of  
22 all individuals pursuant to paragraph (b) of subdivision two of section  
23 79-o of the civil rights law, as added by section two of this act, all  
24 offices and agencies in use or possession of reports required under the  
25 former section 9.46 of the mental hygiene law shall purge all such  
26 information.

27 § 15. Severability. If any provision of this act, or the application  
28 thereof to any person or circumstance, shall be adjudged by any court of  
29 competent jurisdiction to be invalid or unconstitutional, such judgment  
30 shall not affect, impair or invalidate the remainder thereof, but shall  
31 be confined in its operation to the provision of this act, or in its  
32 application to the person or circumstance, directly involved in the  
33 controversy in which such judgment shall have been rendered.

34 § 16. This act shall take effect immediately.