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privacy and security of criminal justice information.

FAMILY COURT ACT

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§ 306.1. Fingerprinting of certain alleged juvenile delinquents

1. Following the arrest of a child alleged to be a juvenile delinquent, or the filing of a delinquency petition involving a child who has not been arrested, the arresting officer or other appropriate police officer or agency shall take or cause to be taken fingerprints of such child if:

(a) the child is eleven years of age or older and the crime which is the subject of the arrest or which is charged in the petition constitutes a class A or B felony; or

(b) the child is thirteen years of age or older and the crime which is the subject of the arrest or which is charged in the petition constitutes a class C felony.

2. Whenever fingerprints are required to be taken pursuant to subdivision one, the photograph and palmprints of the arrested child may also be taken.

3. The taking of fingerprints, palmprints, photographs, and related information concerning the child and the facts and circumstances of the acts charged in the juvenile delinquency proceeding shall be in accordance with standards established by the commissioner of the division of criminal justice services and by applicable provisions of this article.

4. Upon the taking of fingerprints pursuant to subdivision one the appropriate officer or agency shall, without unnecessary delay, forward such fingerprints to the division of criminal justice services and shall not retain such fingerprints or any copy thereof. Copies of photographs and palmprints taken pursuant to this section shall be kept confidential and only in the exclusive possession of such law enforcement agency, separate and apart from files of adults.

§ 306.2. Fingerprinting; duties of the division of criminal justice services

1. Upon receipt of fingerprints taken pursuant to section 306.1, the division of criminal justice services shall retain such fingerprints distinctly identifiable from adult criminal records except as provided in section 354.1, and shall not release such fingerprints to a federal depository or to any person except as authorized by this act. The division shall promulgate regulations to protect the confidentiality of such fingerprints and related in-

formation and to prevent access thereto, by, and the distribution thereof to, persons not authorized by law.

2. Upon receipt of such fingerprints, the division of criminal justice services shall classify them and search its records for information concerning an adjudication or pending matter involving the person arrested. The division shall promptly transmit to such forwarding officer or agency a report containing any information on file with respect to such person's previous adjudications and pending matters or a report stating that the person arrested has no previous record according to its files.

3. Upon receipt of a report of the division of criminal justice services pursuant to this section, the recipient office or agency must promptly transmit two copies of such report to the family court in which the proceeding may be originated and two copies thereof to the presentment agency who shall furnish a copy thereof to counsel for the respondent or to the respondent's law guardian.

Added L.1982, c. 920, § 1; amended L.1983, c. 398, § 8.

§ 354.1. Retention and destruction of fingerprints of persons alleged to be juvenile delinquents

1. If a person whose fingerprints, palmprints or photographs were taken pursuant to section 306.1 or was initially fingerprinted as a juvenile offender and the action is subsequently removed to a family court pursuant to article seven hundred twenty-five of the criminal procedure law is adjudicated to be a juvenile delinquent for a felony, the family court shall forward or cause to be forwarded to the division of criminal justice services notification of such adjudication and such related information as may be required by such division, provided, however, in the case of a person eleven or twelve years of age such notification shall be provided only if the act upon which the adjudication is based would constitute a class A or B felony.

2. If a person whose fingerprints, palmprints or photographs were taken pursuant to section 306.1 or was initially fingerprinted as a juvenile offender and the action is subsequently removed to family court pursuant to article seven hundred twenty-five of the criminal procedure law has had all petitions disposed of by the family court in any manner other than an adjudication of juvenile delinquency for a felony, but in the case of acts committed when such person was eleven or twelve years of age

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which would constitute a class A or B felony only, the family court shall enter an order directing that all such fingerprints, palmprints, photographs, and copies thereof, and all information relating to such allegations obtained by the division of criminal justice services pursuant to section 306.1 shall be destroyed forthwith. Such order shall be served by the clerk of the court upon the commissioner of the division of criminal justice services and upon the heads of all police departments and law enforcement agencies having copies of such records, who shall implement the order without unnecessary delay.

3. If the appropriate presentment agency does not originate a proceeding under section 310.1 for a case in which the potential respondent's fingerprints were taken pursuant to section 306.1, the presentment agency shall serve a certification of such action upon the division of criminal justice services, and upon the appropriate police department or law enforcement agency.

4. If, following the taking into custody of a person alleged to be a juvenile delinquent and the taking and forwarding to the division of criminal justice services of such person's fingerprints but prior to referral to the probation department or to the family court, an officer or agency, elects not to proceed further, such officer or agency shall serve a certification of such election upon the division of criminal justice services.

5. Upon certification pursuant to subdivision twelve of section 308.1 or subdivision three or four of this section, the department or agency shall destroy forthwith all fingerprints, palmprints, photographs, and copies thereof, and all other information obtained in the case pursuant to section 306.1. Upon receipt of such certification, the division of criminal justice services and all police departments and law enforcement agencies having copies of such records shall destroy them.

6. If a person fingerprinted pursuant to section 306.1 and subsequently adjudicated a juvenile delinquent for a felony, but in the case of acts committed when such a person was eleven or twelve years of age which would constitute a class A or B felony only, is subsequently convicted of a crime, all fingerprints and related information obtained by the division of criminal justice services pursuant to such section and not destroyed pursuant to subdivisions two, five and seven or subdivision eleven of section 308.1 shall become part of such division's permanent adult criminal record for that person, notwithstanding section 381.2 or 381.3.

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7. When a person fingerprinted pursuant to section 306.1 and subsequently adjudicated a juvenile delinquent for a felony, but in the case of acts committed when such person was eleven or twelve years of age which would constitute a class A or B felony only, reaches the age of twenty-one, or has been discharged from placement under this act for at least three years, whichever occurs later, and has no criminal convictions or pending criminal actions which ultimately terminate in a criminal conviction, all fingerprints, palmprints, photographs, and related information and copies thereof obtained pursuant to section 306.1 in the possession of the division of criminal justice services, any police department, law enforcement agency or any other agency shall be destroyed forthwith. The division of criminal justice services shall notify the agency or agencies which forwarded fingerprints to such division pursuant to section 806.1 of their obligation to destroy those records in their possession. In the case of a pending criminal action which does not terminate in a criminal conviction, such records shall be destroyed forthwith upon such determination.

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§ 72. Application for licenses

Any person, firm, partnership, company or corporation intending to conduct the business of private investigator or the business of watch, guard or patrol agency, and any person, firm, partnership, company or corporation intending to conduct the business of furnishing or supplying information as to the personal character of any person or firm, or as to the character or kind of the business and occupation of any person, firm or corporation, society or association or any person or group of persons, or intending to own, conduct, manage or maintain a bureau or agency for the above mentioned purposes, or while engaged in other lawful business activities also intending to engage in any one or more of the activities set forth in section seventy-one except exclusively as to the financial rating, standing, and credit responsibility of persons, firms, companies or corporations or as to personal habits and financial responsibility of applicants for insurance indemnity bonds or commercial credit or of claimants under insurance policies shall, for each such bureau or agency and for each and every sub-agency, office and branch office to be owned, conducted, managed or maintained by such person, firm, partnership, company or corporation for the conduct of such business, file in the office of the department of state a written application, on forms provided by the department containing such information and documentation, including fingerprints, as the secretary of state may require by rule and regulation.

1. If the applicant is a person, the application shall be subscribed by such person, and if the applicant is a firm or partnership the application shall be subscribed by each individual composing or

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intending to compose such firm or partnership. The application shall state the full name, age, residences within the past three years, present and previous occupations of each person or individual so signing the same, that each person or individual is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States and shall also specify the name of the city, town or village, stating the street and number, if the premises have a street and number, and otherwise such apt description as will reasonably indicate the location thereof, where is to be located the principal place of business and the bureau, agency, sub-agency, office or branch office for which the license is desired, and such further facts as may be required by the department of state to show the good character, competency and integrity of each person or individual so signing such application. Each person or individual signing such application shall, together with such application, submit to the department of state, his photograph, taken within six months prior thereto in duplicate, in passport size and also two sets of fingerprints of his two hands recorded in such manner as may be specified by the secretary of state or the secretary of state's authorized representative. Before approving such application it shall be the duty of the secretary of state or the secretary of state's authorized representative to forward one copy of such fingerprints to the division of criminal justice services. Upon receipt of such fingerprints, such division shall forward to the secretary of state a report with respect to the applicant's previous criminal history, if any, or a statement that the applicant has no previous criminal history according to its files. If additional copies of fingerprints are required the applicant shall furnish them upon request. The secretary shall reveal the name of the applicant to the chief of police and the district attorney of the applicant's residence and of the proposed place of business and shall request of them a report concerning the applicant's character in the event they shall have information concerning it. The secretary shall take such other steps as may be necessary to investigate the honesty, good character and integrity of each applicant. Every such applicant for a license as private investigator shall establish to the satisfaction of the secretary of state (a) if the applicant be a person, or, (b) in the case of a firm, company, partnership or corporation, at least one member of such firm, partnership, company or corporation, has been regularly employed, for a period of not less than three years, undertaking such investigations as those described as performed by a private investigator in subdivision one of section seventy-one of this article, as a sheriff, police officer in a city or county police department, or the division of state police, investigator in an agency of the state, county, or United States government, or employee of a licensed private investigator, or has

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had an equivalent position and experience. However, employment as a watchman, guard or private patrolman shall not be considered employment as a "private investigator" for purposes of this section. Every such applicant for a license as watch, guard or patrol agency shall establish to the satisfaction of the secretary of state (a) if the applicant be a person, or, (b) in the case of a firm, company, partnership or corporation, at least one member of such firm, partnership, company or corporation, has been regularly employed, for a period of not less than two years, performing such duties or providing such services as described as those performed or furnished by a watch, guard or patrol agency in subdivision two of section seventy-one of this article, as a sheriff, police officer in a city or county police department, or employee of an agency of the state, county or United States government, or licensed private investigator or watch, guard or patrol agency, or has had an equivalent position and experience; qualifying experience shall have been completed within such period of time and at such time prior to the filing of the application as shall be satisfactory to the secretary of state. The person or member meeting the experience requirement under subdivision one of this section and the person responsible for the operation and management of each bureau, agency, sub-agency, office or branch office of the applicant shall provide sufficient proof of having taken and passed a written examination prescribed by the secretary of state to test their understanding of their rights, duties and powers as a private investigator and/or watchman, guard or private patrolman, depending upon the work to be performed under the license. In the case of an application subscribed by a resident of the state of New York such application shall be approved, as to each resident person or individual so signing the same, but not less than five reputable citizens of the community in which such applicant resides or transacts business, or in which it is proposed to own, conduct, manage or maintain the bureau, agency, sub-agency, office or branch office for which the license is desired, each of whom shall subscribe and affirm as true, under the penalties of perjury, that he has personally known the said person or individual for a period of at least five years prior to the filing of such application, that he has read such application and believes each of the statements made therein to be true, that such person is honest, of good character and competent, and not related or connected to the person so certifying by blood or marriage. In the case of an application subscribed by a non-resident of the state of New York such application shall be approved, as to each non-resident person or individual so signing the same by not less than five reputable citizens of the community in which such applicant resides. The certificate of approval shall be signed by

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such reputable citizens and duly verified and acknowledged by them before an officer authorized to take oaths and acknowledgment of deeds. All provisions of this section, applying to corporations, shall also apply to joint-stock associations, except that each such joint-stock association shall file a duly certified copy of its certificate of organization in the place of the certified copy of its certificate of incorporation herein required.

2. If the applicant is a corporation, the application shall be subscribed by the president, secretary, treasurer, and all other officers and directors working for such corporation within the state of New York, and shall specify the name of the corporation, the date and place of its incorporation, the location of its principal place of business, and the name of the city, town or village, stating the street and number, if the premises have a street and number, and otherwise such apt description as will reasonably indicate the location thereof, where is to be located the bureau, agency, sub-agency, office or branch office for which the license is desired, the amount of the corporation's outstanding paid up capital stock and whether paid in cash or property, and, if in property, the nature of the same, and shall be accompanied by a duly certified copy of its certificate of incorporation. Each and every requirement as to character of subdivision one of this section as to a person or individual member of a firm or partnership shall apply to the president, secretary, treasurer and all other officers and directors working for such corporation within the state of New York and each such officer and director, his successor and successors shall prior to entering upon the discharge of his duties subscribe a like statement, approved in like manner, as is by said subdivision one prescribed in the case of a person or individual member of a firm or partnership.

3. Each person subscribing an application pursuant to this section shall affirm that the statements therein are true under the penalties of perjury.

4. The secretary of state may deny, suspend or revoke the license of a corporation if, at any time, ten per centum or more of the corporate stock is held by a person who cannot meet the character standard set for an individual licensee.

PART FOUR—ADMINISTRATIVE PROVISIONS

**TITLE W—PROVISIONS RELATING TO FIREARMS, FIREWORKS,
PORNOGRAPHY EQUIPMENT AND VEHICLES USED IN THE
TRANSPORTATION OF GAMBLING RECORDS**

**ARTICLE 400—LICENSING AND OTHER PROVISIONS
RELATING TO FIREARMS**

Rules of the City of New York

Ferry terminals and vessels, see 34 RCNY § 1-02.
Prohibited assault weapons, see 38 RCNY Chapter 17.

Law Review Commentaries

To keep and bear arms: The sovereign prerogative of distributing power. Massaro. 64
N.Y.S.B.J. 6 (1992).

§ 400.00 Licenses to carry, possess, repair and dispose of firearms

1. Eligibility. No license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true. No license shall be issued or renewed except for an applicant (a) of good moral character; (b) who has not been convicted anywhere of a felony or a serious offense; (c) who has stated whether he has ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness; and (d) concerning whom no good cause exists for the denial of the license. No person shall engage in the business of gunsmith or dealer in firearms unless licensed pursuant to this section. An applicant to engage in such business shall also be a citizen of the United States, more than twenty-one years of age and maintain a place of business in the city or county where the license is issued. For such business, if the applicant is a firm or partnership, each member thereof shall comply with all of the requirements set forth in this subdivision and if the applicant is a corporation, each officer thereof shall so comply. For purposes of this subdivision, the term serious offense shall include a willful failure to obey a lawful order of protection issued under article eight of the family court act or section 530.12 of the criminal procedure law, where such willful failure involves the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of this chapter, or the use or threatened use of a deadly weapon or dangerous instrument, as those terms are defined in subdivisions twelve and thirteen of section 10.00 of this chapter.

2. Types of licenses. A license for gunsmith or dealer in firearms shall be issued to engage in such business. A license for a pistol or revolver shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper; (c) have and carry concealed while so employed by a messenger employed by a banking institution or express company; (d) have and carry concealed by a justice of the supreme court in the first or second judicial departments, or by a judge of the New York city civil court or the New York city criminal court; (e) have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a commissioner of correction of the city or any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, provided that application is made therefor by such commissioner, warden, superintendent or head keeper; (f) have and carry concealed, without regard to employment or place of possession, by any person when

proper cause exists for the issuance thereof; and (g) have, possess, collect and carry antique pistols which are defined as follows: (i) any single shot, muzzle loading pistol with a matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before 1898, which is not designed for using rimfire or conventional centerfire fixed ammunition; and (ii) any replica of any pistol described in clause (i) hereof if such replica—

(1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

3. Applications. (a) Applications shall be made and renewed, in the case of a license to carry or possess a pistol or revolver, to the licensing officer in the city or county, as the case may be, where the applicant resides, is principally employed or has his principal place of business as merchant or storekeeper; and, in the case of a license as gunsmith or dealer in firearms, to the licensing officer where such place of business is located. Blank applications shall, except in the city of New York, be approved as to form by the superintendent of state police. An application shall state the full name, date of birth, residence, present occupation of each person or individual signing the same, whether or not he is a citizen of the United States, whether or not he complies with each requirement for eligibility specified in subdivision one of this section and such other facts as may be required to show the good character, competency and integrity of each person or individual signing the application. An application shall be signed and verified by the applicant. Each individual signing an application shall submit one photograph of himself and a duplicate for each required copy of the application. Such photographs shall have been taken within thirty days prior to filing the application. In case of a license as gunsmith or dealer in firearms, the photographs submitted shall be two inches square, and the application shall also state the previous occupation of each individual signing the same and the location of the place of such business, or of the bureau, agency, subagency, office or branch office for which the license is sought, specifying the name of the city, town or village, indicating the street and number and otherwise giving such apt description as to point out reasonably the location thereof. In such case, if the applicant is a firm, partnership or corporation, its name, date and place of formation, and principal place of business shall be stated. For such firm or partnership, the application shall be signed and verified by each

individual composing or intending to compose the same, and for such corporation, by each officer thereof.

(b) Application for an exemption under paragraph seven-b of subdivision a of section 265.20 of this chapter. Each applicant desiring to obtain the exemption set forth in paragraph seven-b of subdivision a of section 265.20 of this chapter shall make such request in writing of the licensing officer with whom his application for a license is filed, at the time of filing such application. Such request shall include a signed and verified statement by the person authorized to instruct and supervise the applicant, that has met with the applicant and that he has determined that, in his judgment, said applicant does not appear to be or poses a threat to be, a danger to himself or to others. He shall include a copy of his certificate as an instructor in small arms, if he is required to be certified, and state his address and telephone number. He shall specify the exact location by name, address and telephone number where such instruction will take place. Such licensing officer shall, no later than ten business days after such filing, request the duly constituted police authorities of the locality where such application is made to investigate and ascertain any previous criminal record of the applicant pursuant to subdivision four of this section. Upon completion of this investigation, the police authority shall report the results to the licensing officer without unnecessary delay. The licensing officer shall no later than ten business days after the receipt of such investigation, determine if the applicant has been previously denied a license, been convicted of a felony, or been convicted of a serious offense, and either approve or disapprove the applicant for exemption purposes based upon such determinations. If the applicant is approved for the exemption, the licensing officer shall notify the appropriate duly constituted police authorities and the applicant. Such exemption shall terminate if the application for the license is denied, or at any earlier time based upon any information obtained by the licensing officer or the appropriate police authorities which would cause the license to be denied. The applicant and appropriate police authorities shall be notified of any such terminations.

4. Investigation. Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted police authorities of the locality where such application is made. For that purpose, the records of the appropriate office of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police authority. In order to ascertain any previous criminal record, the investigating

officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed and verified. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card supplied for that purpose by the federal bureau of investigation. When completed, one standard card shall be forwarded to and retained by the division of criminal justice services in the executive department, at Albany. A search of the files of such division and written notification of the results of the search to the investigating officer shall be made without unnecessary delay. Thereafter, such division shall notify the licensing officer and the executive department, division of state police, Albany, of any criminal record of the applicant filed therein subsequent to the search of its files. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the investigating police authority. The failure or refusal of the federal bureau of investigation to make the fingerprint check provided for in this section shall not constitute the sole basis for refusal to issue a permit pursuant to the provisions of this section. Of the remaining two fingerprint cards, one shall be filed with the executive department, division of state police, Albany, within ten days after issuance of the license, and the other remain on file with the investigating police authority. No such fingerprints may be inspected by any person other than a peace officer, who is acting pursuant to his special duties, or a police officer, except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police authority shall report the results to the licensing officer without unnecessary delay.

4-a. Processing of license applications. Applications for licenses shall be accepted for processing by the licensing officer at the time of presentment. Except upon written notice to the applicant specifically stating the reasons for any delay, in each case the licensing officer shall act upon any application for a license pursuant to this section within six months of the date of presentment of such an application to the appropriate authority. Such delay may only be for good cause and with respect to the applicant. In acting upon an application, the licensing officer shall either deny the application for reasons specifically and concisely stated in writing or grant the application and issue the license applied for.

6. License: validity. Any license issued pursuant to this section shall be valid notwithstanding the provisions of any local law or ordinance. No license shall be transferable to any other person or premises. A license to carry or possess a pistol or revolver, not otherwise limited as to place or time of possession, shall be effective throughout the state, except that the same shall not be valid within the city of New York unless a special permit granting validity is issued by the police commissioner of that city. Such license to carry or possess shall be valid within the city of New York in the absence of a permit issued by the police commissioner of that city, provided that (a) the firearms covered by such license have been purchased from a licensed dealer within the city of New York and are being transported out of said city forthwith and immediately from said dealer by, the licensee in a locked container during a continuous and uninterrupted trip; or provided that (b) the firearms covered by such license are being transported by the licensee in a locked container and the trip through the city of New York is continuous and uninterrupted; or provided that (c) the firearms covered by such license are carried by armored car security guards transporting money or other valuables, in, to, or from motor vehicles commonly known as armored cars, during the course of their employment; or provided that (d) the licensee is a retired police officer as police officer is defined pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law or a retired federal law enforcement officer, as defined in section 2.15 of the criminal procedure law, who has been issued a license by an authorized licensing officer as defined in subdivision ten of section 265.00 of this chapter; provided, further, however, that if such license was not issued in the city of New York it must be marked "Retired Police Officer" or "Retired Federal Law Enforcement Officer", as the case may be, and, in the case of a retired officer the license shall be deemed to permit only police or federal law enforcement regulations weapons. A license as gunsmith or dealer in firearms shall not be valid outside the city or county, as the case may be, where issued.

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8. License: exhibition and display. Every licensee while carrying a pistol or revolver shall have on his person a license to carry the same. Every person licensed to possess a pistol or revolver on particular premises shall have the license for the same on such premises. Upon demand, the license shall be exhibited for inspection to any peace officer, who is acting pursuant to his special duties, or police officer. A license as gunsmith or dealer in firearms shall be prominently displayed on the licensed premises. A gunsmith or dealer of firearms may conduct business temporarily at a location other than the location specified on the license if such temporary location is the location for a gun show or event sponsored by any national, state, or local organization, or any affiliate of any such organization devoted to the collection, competitive use or other sporting use of firearms. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or other disposition and shall be entered in the permanent records of the gunsmith or dealer of firearms and retained on the location specified on the license. Nothing in this section shall authorize any licensee to conduct business from any motorized or towed vehicle. A separate fee shall not be required of a licensee with respect to business conducted under this subdivision. Any inspection or examination of inventory or records under this section at such temporary location shall be limited to inventory consisting of, or records related to, firearms held or disposed at such temporary locations. Failure of any licensee to so exhibit or display his license, as the case may be, shall be presumptive evidence that he is not duly licensed.

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him, give notice in writing of such change to the executive department, division of state police, at Albany.

10. License: expiration and renewal. Any license for gunsmith or dealer in firearms and, in the city of New York and the counties of Nassau and Suffolk, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall expire not more than three years after the date of issuance. Elsewhere than in the city of New York and the counties of Nassau and Suffolk, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not previously revoked or cancelled, shall be in force and effect until revoked as herein provided. Any license not previously cancelled or revoked shall remain in full force and effect for thirty days beyond the stated expiration date on such license. Any application to renew a license that has not previously expired, been revoked or cancelled shall thereby extend the term of the license until disposition of the application by the licensing officer. In the case of a license for gunsmith or dealer in firearms, in counties having a population of less than two hundred thousand inhabitants, photographs and fingerprints shall be submitted on original applications and upon renewal thereafter only at six year intervals. Upon satisfactory proof that a currently valid original license has been despoiled, lost or otherwise removed from the possession of the licensee and upon application containing an additional photograph of the licensee, the licensing officer shall issue a duplicate license.

11. License: revocation. The conviction of a licensee anywhere of a felony or serious offense shall operate as a revocation of the license. A license may be revoked and cancelled at any time in the city of New York, and in the counties of Nassau and Suffolk, by the licensing officer, and elsewhere than in the city of New York by any judge or justice of a court of record. The official revoking a license shall give written notice thereof without unnecessary delay to the executive department, division of state police, Albany, and shall also notify immediately the duly constituted police authorities of the locality. For purposes of this subdivision, the term serious offense shall include a willful failure to obey a lawful order of protection issued under article eight of the family court act or section 530.12 of the criminal procedure law, where such willful failure involves the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of this chapter, or the use or threatened use of a deadly weapon or dangerous instrument, as those terms are defined in subdivisions twelve and thirteen of section 10.00 of this chapter.

12. Records required of gunsmiths and dealers in firearms. Any person licensed as gunsmith or dealer in firearms shall keep a record book approved as to form, except in the city of New York, by the superintendent of state police. In the record book shall be entered at the time of every transaction involving a firearm the date, name, age, occupation and residence of any person from whom a firearm is received or to whom a firearm is delivered, and the calibre, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such firearm. Before delivering a firearm to any person, the licensee shall require him to produce either a license valid under this section to carry or possess the same, or proof of lawful authority as an exempt person pursuant to section 265.20. In addition, before delivering a firearm to a peace officer, the licensee shall verify that person's status as a peace officer with the division of state police. After completing the foregoing, the licensee shall remove and retain the attached coupon and enter in the record book the date of such license, number, if any, and name of the licensing officer, in the case of the holder of a license to carry or possess, or the shield or other number, if any, assignment and department, unit or agency, in the case of an exempt person. The original transaction report shall be forwarded to the division of state police within ten days of delivering a firearm to any person, and a duplicate copy shall be kept by the licensee. The record book shall be maintained on the premises mentioned and described in the license and shall be open at all reasonable hours for inspection by any peace officer, acting pursuant to his special duties, or police officer. In the event of cancellation or revocation of the license for gunsmith or dealer in firearms, or discontinuance of business by a licensee, such record book shall be immediately surrendered to the licensing officer in the city of New York, and in the counties of Nassau and Suffolk, and elsewhere in the state to the executive department, division of state police.

12-a. State police regulations applicable to licensed gunsmiths engaged in the business of assembling or manufacturing firearms. The superintendent of state police is hereby authorized to issue such rules and regulations as he deems reasonably necessary to prevent the manufacture and assembly of unsafe firearms in the state. Such rules and regulations shall establish safety standards in regard to the manufacture and assembly of firearms in the state, including specifications as to materials and parts used, the proper storage and shipment of firearms, and minimum standards of quality control. Regulations issued by the state police pursuant to this subdivision shall apply to any person licensed as a gunsmith under this section engaged in the business of manufacturing or assembling firearms, and any violation thereof shall subject the licensee to revocation of license pursuant to subdivision eleven of this section.

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12-c.¹ Firearms records. (a) Every employee of a state or local agency, unit of local government, state or local commission, or public or private organization who possesses a firearm or machine-gun under an exemption to the licensing requirements under this chapter, shall promptly report in writing to his employer the make, model, calibre and serial number of each such firearm or machine-gun. Thereafter, within ten days of the acquisition or disposition of any such weapon, he shall furnish such information to his employer, including the name and address of the person from whom the weapon was acquired or to whom it was disposed.

(b) Every head of a state or local agency, unit of local government, state or local commission, public authority or public or private organization to whom an employee has submitted a report pursuant to paragraph (a) of this subdivision shall promptly forward such report to the superintendent of state police.

(c) Every head of a state or local agency, unit of local government, state or local commission, public authority, or any other agency, firm or corporation that employs persons who may lawfully possess firearms or machine-guns without the requirement of a license therefor, or that employs persons licensed to possess firearms or machine-guns, shall promptly report to the superintendent of state police, in the manner prescribed by him, the make, model, calibre and serial number of every firearm or machine-gun possessed by it on the effective date of this act for the use of such employees or for any other use. Thereafter, within ten days of the acquisition or disposition of any such weapon, such head shall report such information to the superintendent of the state police, including the name and address of the person from whom the weapon was acquired or to whom it was disposed.

✓13. Expenses. The expense of providing a licensing officer with blank applications, licenses and record books for carrying out the provisions of this section shall be a charge against the county, and in the city of New York against the city.

14. Fees. In the city of New York and the county of Nassau, the annual license fee shall be twenty-five dollars for gunsmiths and fifty dollars for dealers in firearms. In such city, the city council and in the county of Nassau the Board of Supervisors shall fix the fee to be charged for a license to carry or possess a pistol or revolver and provide for the disposition of such fees. Elsewhere in the state, the licensing officer shall collect and pay into the county treasury the following fees: for each license to carry or possess a pistol or revolver, not less than three dollars nor more than ten dollars as may be determined by the legislative body of the county; for each amendment thereto, three dollars, and five dollars in the county of Suffolk;¹ and for each license issued to a gunsmith or dealer in firearms, ten dollars. The fee for a duplicate

license shall be five dollars. The fee for processing a license transfer between counties shall be five dollars. The fee for processing a license or renewal thereof for a qualified retired police officer as defined under subdivision thirty-four of section 1.20 of the criminal procedure law shall be waived in all counties throughout the state.

15. Any violation by any person of any provision of this section is a class A misdemeanor.

16. Unlawful disposal. No person shall except as otherwise authorized pursuant to law dispose of any firearm unless he is licensed as gunsmith or dealer in firearms.

17. Applicability of section. The provisions of article two hundred sixty-five relating to illegal possession of a firearm, shall not apply to an offense which also constitutes a violation of this section by a person holding an otherwise valid license under the provisions of this section and such offense shall only be punishable as a class A misdemeanor pursuant to this section. In addition, the provisions of such article two hundred sixty-five shall not apply to the possession of a firearm in a place not authorized by law, by a person who holds an otherwise valid license or possession of a firearm by a person within a one year period after the stated expiration date of an otherwise valid license which has not been previously cancelled or revoked shall only be punishable as a class A misdemeanor pursuant to this section.

(L.1965, c. 1030; amended L.1967, c. 791, § 49; L.1971, c. 796; L.1971, c. 1097, §§ 82, 83; L.1973, c. 172, §§ 1-4; L.1973, c. 546, § 1; L.1973, c. 593, § 1; L.1974, c. 1041, §§ 10, 11; L.1974, c. 1042, § 2; L.1976, c. 584, § 1; L.1977, c. 480, § 1; L.1980, c. 233, §§ 15 to 17; L.1980, c. 843, §§ 47 to 50; L.1981, c. 175, § 5; L.1982, c. 71, § 1; L.1984, c. 739, § 1; L.1985, c. 778, § 2; L.1986, c. 539, § 1; L.1988, c. 437, § 1.)

¹ So in original. No subd. 12-b has been enacted.

² So in original. Probably should be a semi-colon.

Executive Law

ARTICLE 35—DIVISION OF CRIMINAL JUSTICE
SERVICES

Sec.

- 835. Definitions.
- 836. Division of criminal justice services; commissioner, organization and employees.
- 837. Functions, powers and duties of division.
- 837-a. Additional functions, powers and duties of the division.
- 837-b. Duties of courts and peace officers.
- 837-c. Processing requests submitted by police departments.

§ 835. Definitions

1. "Division" means the division of criminal justice services.
2. "Board" means the crime control planning board.
3. "Commissioner" means the commissioner of the division of criminal justice services.
4. "Council" means the municipal police training council.
5. "Federal acts" means the federal omnibus crime control and safe streets act of nineteen hundred sixty-eight,¹ the federal juvenile delinquency prevention and control act of nineteen hundred sixty-eight,² and any act or acts amendatory or supplemental thereto.
6. "Municipality" means any county, city, town, park commission, village, or police district in the state.
7. "Police officer" means a member of a police force or other organization of a municipality who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but shall not include any person serving as such solely by virtue of his occupying any other office or position, nor shall such term include a sheriff, under-sheriff, commissioner of police, deputy or assistant commissioner of police, chief of police, deputy or assistant chief of police or any person having an equivalent title who is appointed or employed by a municipality to exercise equivalent supervisory authority.
 - 7-a. "Police officer," for the purpose of the central state registry, means a person designated as such in subdivision thirty-four of section 1.20 of the criminal procedure law.
 - 7-b. "Peace officer" means a person designated as such in section 2.10 of the criminal procedure law.
8. "Police agency" means any agency or department of any municipality, commission, authority or other public benefit cor-

poration having responsibility for enforcing the criminal laws of the state.

9. "Qualified agencies" means courts in the unified court system, the administrative board of the judicial conference, probation departments, sheriffs' offices, district attorneys' offices, the state department of correctional services, the state division of probation, the department of correction of any municipality, the insurance frauds bureau of the state department of insurance, the temporary state commission of investigation and police forces and departments having responsibility for enforcement of the general criminal laws of the state.

10. "Criminal justice function" means the prevention, detection and investigation of the commission of an offense, the apprehension of a person for the alleged commission of an offense, the detention, release on recognizance or bail of a person charged with an offense prior to disposition of the charge, the prosecution and defense of a person charged with an offense, the detention, release on recognizance or bail of a person convicted of an offense prior to sentencing, the sentencing of offenders, probation, incarceration, parole, and proceedings in a court subsequent to a judgment of conviction relating thereto.

Formerly § 820, added L.1972, c. 399, § 1; renumbered § 835, and amended L.1973, c. 603, §§ 13, 14; L.1975, c. 839, § 1; L.1977, c. 306, § 1; L.1979, c. 482, § 2; L.1980, c. 843, § 3; L.1981, c. 720, § 2.

¹ 42 U.S.C.A. § 3701 et seq.

² 42 U.S.C.A. § 3801 et seq.

§ 836. Division of criminal justice services; commissioner, organization and employees

1. There shall be in the executive department a division of criminal justice services.

2. The head of the division shall be a commissioner, who shall be appointed by the governor, by and with the advice and consent of the senate, and hold office at the pleasure of the governor by whom he was appointed and until his successor is appointed and qualified. The commissioner shall be the chief executive officer of and in sole charge of the administration of the division. The commissioner shall receive an annual salary to be fixed by the governor within the amount available therefor by appropriation; and he shall be entitled to receive reimbursement for expenses actually and necessarily incurred by him in the performance of his duties.

3. The commissioner may, from time to time, create, abolish, transfer and consolidate bureaus and other units within the division not expressly established by law as he may determine necessary for the efficient operation of the division, subject to the approval of the director of the budget.

4. The commissioner may appoint such deputies, directors, assistants and other officers and employees, committees and consultants as he may deem necessary, prescribe their powers and duties, fix their compensation and provide for reimbursement of their expenses within the amounts appropriated therefor.

5. The commissioner may request and receive from any department, division, board, bureau, commission or other agency of the state or any political subdivision thereof or any public authority such assistance, information and data as will enable the division properly to carry out its functions, powers and duties.

6. The principal office of the division shall be in the county of Albany.

Formerly § 822, added L.1972, c. 399, § 1; renumbered § 836, L.1973, c. 603, § 13.

§ 837. Functions, powers and duties of division

The division shall have the following functions, powers and duties:

1. Advise and assist the governor in developing policies, plans and programs for improving the coordination, administration and effectiveness of the criminal justice system;

2. Make recommendations to agencies in the criminal justice system for improving their administration and effectiveness:

3. Act as the official state planning agency pursuant to the federal acts; in accordance therewith, prepare, evaluate and revise statewide crime control and juvenile delinquency prevention and control plans; receive and disburse funds from the federal government, for and on behalf of the board; and perform all necessary and appropriate staff services required by the board.

4. In cooperation with the state administrator of the unified court system as well as any other public or private agency,

(a) through the central data facility collect, analyze, evaluate and disseminate statistical and other information and data; and

(b) undertake research, studies and analyses and act as a central repository, clearinghouse and disseminator of research studies, in respect to criminal justice functions and any agency responsible for a criminal justice function, with specific attention to the effectiveness of existing programs and procedures for the efficient and just processing and disposition of criminal cases; and

(c) collect and analyze statistical and other information and data with respect to the number of crimes reported or known to police officers or peace officers, the number of persons arrested for the commission of offense, the offense for which the person was arrested, the county within which the arrest was made and the accusatory instrument filed, the disposition of the accusatory instrument including, but not limited to, as the case may be, dismissal, acquittal, the offense to which the defendant pled guilty, the offense the defendant was convicted of after trial, and the sentence.

(d) Supply data, upon request, to federal bureaus or departments engaged in collecting national criminal statistics.

(e) Accomplish all of the functions, powers and duties set forth in paragraphs (a), (b), (c) and (d) of this subdivision with respect to the processing and disposition of cases involving violent felony offenses specified in subdivision one of section 70.02 of the penal law.

5. Conduct studies and analyses of the administration or operations of any criminal justice agency when requested by the head of such agency, and make the results thereof available for the benefit of such agency;

5-a. Undertake to furnish or make available to the district attorneys of the state such supportive services and technical assistance as the commissioner and any one or more of the district attorneys shall agree are appropriate to promote the effective performance of his or their prosecutorial functions.

6. Establish, through electronic data processing and related procedures, a central data facility with a communication network serving qualified agencies anywhere in the state, so that they may, upon such terms and conditions as the commissioner, and the appropriate officials of such qualified agencies shall agree, contribute information and have access to information contained in the central data facility, which shall include but not

be limited to such information as criminal record, personal appearance data, fingerprints, photographs, and handwriting samples;

7. Receive, process and file fingerprints, photographs and other descriptive data for the purpose of establishing identity and previous criminal record;

8. Adopt appropriate measures to assure the security and privacy of identification and information data;

8-a. Charge a fee when, pursuant to statute or the regulations of the division, it conducts a search of its criminal history records and returns a report thereon in connection with an application for employment or for a license or permit. The division shall adopt and may, from time to time, amend a schedule of such fees which shall be in amounts determined by the division to be reasonably related to the cost of conducting such searches and returning reports thereon but, in no event, shall any such fee exceed fourteen dollars. Except as provided in section three hundred fifty-nine-e of the general business law, the fee shall be paid to the division by the applicant and shall accompany the applicant's fingerprint card or application form upon which the search request is predicated.

9. Accept, agree to accept and contract as agent of the state and for and on behalf of the board, with the approval of the governor, any grant, including federal grants, or any gift for any of the purposes of this article;

10. Accept, with the approval of the governor, as agent of the state, any gift, grant, devise or bequest, whether conditional or unconditional (notwithstanding the provisions of section eleven of the state finance law), including federal grants, for any of the purposes of this article. Any monies so received may be expended by the division to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state monies appropriated for the purposes of this article;

11. Enter into contracts with any person, firm, corporation, municipality, or governmental agency;

12. Make an annual report to the governor and legislature concerning its work during the preceding year, and such further interim reports to the governor, or to the governor and legislature, as it shall deem advisable, or as shall be required by the governor;

13. Adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of the functions, powers and duties of the division;

14. Do all other things necessary or convenient to carry out the functions, powers and duties expressly set forth in this article.

§ 837-a. Additional functions, powers and duties of the division

In addition to the functions, powers and duties otherwise provided by this article, the division shall:

1. Collect and analyze statistical and other information and data with respect to the number of persons charged with the commission of a felony, including, but not limited to, the felony provisions of articles twenty-seven, thirty-seven and forty, and titles twenty-seven and thirty-seven of article seventy-one of the environmental conservation law, article four of the insurance law, sections 176.15, 176.20, 176.25 and 176.30 of the penal law relative to insurance fraud, as such term is defined in section 176.05 of such law, by indictment or the filing of a superior court information, the felony with which the person was charged therein, the county within which the indictment or superior court information was filed, the disposition thereof including, but not limited to, as the case may be, dismissal, acquittal, the offense to which the defendant pleaded guilty, the offense the defendant was convicted of after trial, and the sentence.

2. Present to the governor, temporary president of the senate, minority leader of the senate, speaker of the assembly and the minority leader of the assembly a quarterly report containing the statistics and other information required by subdivision one hereof. The initial report required by this paragraph shall be for the period beginning September first, nineteen hundred seventy-three and ending December thirty-first, nineteen hundred seventy-three and shall be presented no later than January fifteen, nineteen hundred seventy-four. Thereafter, each quarterly report shall be presented no later than thirty days after the close of each quarter.

3. Present to the governor, temporary president of the senate, minority leader of the senate, speaker of the assembly, and the minority leader of the assembly a semi-annual report analyzing the processing and disposition of cases covered by the provisions of a chapter of the laws of nineteen hundred seventy-eight relating to the imposition of mandatory sentences of imprisonment and plea bargaining restrictions upon violent felony offenders, second violent felony offenders and persistent violent felony offenders. The report shall assess the effect of such law on the ability of the criminal justice system to deal with violent crime, and its impact on the resources of the criminal justice system, and shall make recommendations for any changes in such law which may be necessary to accomplish its objectives. The initial report required by this subdivision shall be for the period beginning September first, nineteen hundred seventy-eight and ending February twenty-eight, nineteen hundred seventy-nine and shall be presented no later than April first, nineteen hundred and seventy-nine. Thereafter, each semi-annual report shall be presented no later than thirty days after the close of the six-month period.

4. Collect, analyze and maintain all reports, statements and transcripts forwarded to the division concerning the reasons for imposition of a sentence other than an indeterminate sentence of imprisonment upon an armed felony offender as defined in subdivision forty-one of section 1.20 of the criminal procedure law; the reasons for the removal of an action involving a juvenile offender, as defined in subdivision forty-two of section 1.20 of the criminal procedure law, to the family court; and the reasons for a finding that a youth who has been convicted of an armed felony offense is to be treated as a youthful offender. Such reports, statements and transcripts shall be made available for public inspection except that in the case of a juvenile offender or a youthful offender, those portions which identify the offender shall be deleted. The commissioner may promulgate such rules and regulations with respect to the form of such reports, statements and transcripts.

5. Make certain that such statistical information relating to the commission of offenses in violation of article twenty-seven, thirty-seven or forty, or title twenty-seven or thirty-seven of article seventy-one of the environmental conservation law, article four of the insurance law, sections 176.15, 176.20, 176.25 and 176.30 of the penal law relative to insurance fraud, as such term is defined in section 176.05 of such law, is included and becomes a part of any and all published statistical studies on the occurrence of crime in this state or crime dispositions by the courts of this state or incarcerations in the correctional facilities of this state.

6. Present to the governor, temporary president of the senate, minority leader of the senate, speaker of the assembly and the minority leader of the assembly an annual report analyzing the disposal of property forfeited pursuant to the provisions of article thirteen-A of the civil practice law and rules and article four hundred eighty of the penal law. The initial report required by this subdivision shall be for the period beginning November first, nineteen hundred ninety and ending May thirty-first, nineteen hundred ninety-one and shall be presented no later than July first, nineteen hundred ninety-one. Thereafter, each annual report shall be presented no later than February first. The commissioner may promulgate rules and regulations with respect to the form of such report.

(As amended L.1987, c. 631, §§ 2, 3; L.1990, c. 655, § 17; L.1992, c. 480, § 5.)

§ 837-b. Duties of courts and peace officers

1. It is hereby made the duty of the state administrator of the unified court system; and of every sheriff, county or city commissioner of correction and head of every police department, state, county, or local, and also railroad, steamship, park, aqueduct and tunnel police and town constables, of every district attorney, of every probation agency; and of head of every institution or department, state, county and local, dealing with criminals and of every other officer, person or agency, dealing with crimes or criminals or with delinquency or delinquents, to transmit to the commissioner not later than the fifteenth day of each calendar month, or at such times as provided in the rules and regulations adopted by the commissioner, such information as may be necessary to enable him to comply with subdivision four of section eight hundred thirty-seven. Such reports shall be made upon forms which shall be supplied by the commissioner.

2. Such officers and agencies shall install and maintain records needed for reporting data required by the commissioner and shall give him or his accredited agents access to records for the purpose of inspection.

3. For every neglect to comply with the requirements of this section, the commissioner may apply to the supreme court for an order directed to such person responsible requiring compliance. Upon such application the court may issue such order as may be just, and a failure to comply with the order of the court shall be a contempt of court and punishable as such.

Added L.1974, c. 654, § 5; amended L.1974, c. 655, § 1; L.1975, c. 459, § 2.

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§ 837-c. Proceeding requests submitted by police departments

a. As used in this section, the term "police department" means any police department or sheriff's office of this state or any of its political subdivisions.

b. The police department may forward and the division shall receive, process and, subject to subdivision e of this section, retain fingerprints and such descriptive data as the division may require of persons applying for employment with such department.

c. It shall be the duty of the division to forward to the police department any arrest record involving any person described in subdivision b of this section.

d. It shall be the duty of the police department to notify the division if an applicant for employment by the police department has not been hired, or an employee has died, resigned, retired or been dismissed.

e. Upon receiving notification in accordance with subdivision d of this section, the division shall either return to the police department or destroy all documents forwarded to it pursuant to subdivision b of this section.

Added L.1977, c. 482, § 1.

* * *

Criminal Procedure Law (CPL)

**ARTICLE 160—FINGERPRINTING AND PHOTOGRAPHING
OF DEFENDANT AFTER ARREST—CRIMINAL IDENTI-
FICATION RECORDS AND STATISTICS**

Sec.

- 160.10 Fingerprinting; duties of police with respect thereto.
- 160.20 Fingerprinting; forwarding of fingerprints.
- 160.30 Fingerprinting; duties of division of criminal justice services.
- 160.40 Fingerprinting; transmission of report received by police.
- 160.50 Order upon termination of criminal action in favor of the accused.

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160.55 Order upon termination of criminal action by conviction for noncriminal offense.

160.60 Effect of termination of criminal actions in favor of the accused.

§ 160.10 Fingerprinting; duties of police with respect thereto

1. Following an arrest, or following the arraignment upon a local criminal court accusatory instrument of a defendant whose court attendance has been secured by a summons or an appearance ticket under circumstances described in sections 130.60 and 150.70, the arresting or other appropriate police officer or agency must take or cause to be taken fingerprints of the arrested person or defendant if an offense which is the subject of the arrest or which is charged in the accusatory instrument filed is:

- (a) A felony; or
- (b) A misdemeanor defined in the penal law; or
- (c) A misdemeanor defined outside the penal law which would constitute a felony if such person had a previous judgment of conviction for a crime; or
- (d) Loitering, as defined in subdivision three of section 240.35 of the penal law; or
- (e) Loitering for the purpose of engaging in a prostitution offense as defined in subdivision two of section 240.37 of the penal law.

2. In addition, a police officer who makes an arrest for any offense, either with or without a warrant, may take or cause to be taken the fingerprints of the arrested person if such police officer:

- (a) Is unable to ascertain such person's identity; or
- (b) Reasonably suspects that the identification given by such person is not accurate; or
- (c) Reasonably suspects that such person is being sought by law enforcement officials for the commission of some other offense.

3. Whenever fingerprints are required to be taken pursuant to subdivision one or permitted to be taken pursuant to subdivision two, the photograph and palmprints of the arrested person or the defendant, as the case may be, may also be taken.

4. The taking of fingerprints as prescribed in this section and the submission of available information concerning the arrested person or the defendant and the facts and circumstances of the crime charged must be in accordance with the standards established by the commissioner of the division of criminal justice services.

L.1970, c. 996, § 1; amended L.1971, c. 762, § 7; L.1972, c. 399, § 17; L.1976, c. 344, § 3.

§ 160.20 Fingerprinting; forwarding of fingerprints

Upon the taking of fingerprints of an arrested person or defendant as prescribed in section 160.10, the appropriate police officer or agency must without unnecessary delay forward two copies of such fingerprints to the division of criminal justice services.

§ 160.30 Fingerprinting; duties of division of criminal justice services

1. Upon receiving fingerprints from a police officer or agency pursuant to section 160.20 of this chapter, the division of criminal justice services must, except as provided in subdivision two of this section, classify them and search its records for information concerning a previous record of the defendant, including any adjudication as a juvenile delinquent pursuant to article three of the family court act, or as a youthful offender pursuant to article seven hundred twenty of this chapter, and promptly transmit to such forwarding police officer or agency a report containing all information on file with respect to such defendant's previous record, if any, or stating that the defendant has no previous record according to its files. Such a report, if certified, constitutes presumptive evidence of the facts so certified.

2. If the fingerprints so received are not sufficiently legible to permit accurate and complete classification, they must be returned to the forwarding police officer or agency with an explanation of the defects and a request that the defendant's fingerprints be retaken if possible.

§ 160.40 Fingerprinting; transmission of report received by police

1. Upon receipt of a report of the division of criminal justice services as provided in section 160.30, the recipient police officer or agency must promptly transmit such report or a copy thereof to the district attorney of the county and two copies thereof to the court in which the action is pending.

2. Upon receipt of such report the court shall furnish a copy thereof to counsel for the defendant or, if the defendant is not represented by counsel, to the defendant.

**§ 160.50 Order upon termination of criminal action in favor
of the accused**

~~§ 160.50~~ Subdivision 1 of section 160.50 of the criminal procedure law, as amended by chapter 905 of the laws of 1977, the opening paragraph and paragraph (c) as amended by chapter 142 of the laws of 1991 and paragraph (d) as amended by chapter 294 of the laws of 1986, is amended to read as follows:

1. Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision [two] three of this section, unless the district attorney upon motion with not less than five days notice to such person or his or her attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days notice to such person or his or her attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, the record of such action or proceeding shall be sealed and the clerk of the court wherein such criminal action

or proceeding was terminated shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated in favor of the accused, and unless the court has directed otherwise, that the record of such action or proceeding [has been] shall be sealed. Upon receipt of notification of such termination and sealing:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated, except a dismissal pursuant to section 170.56 or 210.46 of this chapter, and all duplicates and copies thereof, except a digital fingerprint image where authorized pursuant to paragraph (e) of this subdivision, shall forthwith be, at the discretion of the recipient agency, either destroyed or returned to such person, or to the attorney who represented [him] such person at the time of the termination of the action or proceeding, at the address given by such person or attorney during the action or proceeding, by the division of criminal justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proof, palmprint or fingerprints in its possession or under its control;

(b) any police department or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints and fingerprints, including those relating to actions or proceedings which were dismissed pursuant to section 170.56 or 210.46 of this chapter, shall forthwith formally request in writing that all such copies be destroyed or returned to the police department or law enforcement agency which transmitted or forwarded them, and [upon such return], if returned, such department or agency shall, at its discretion, either destroy or return them as provided herein, except that those relating to dismissals pursuant to section 170.56 or 210.46 of this chapter shall not be destroyed or returned by such department or agency;

(c) all official records and papers, including judgments and orders of a court but not including published court decisions or opinions or records and briefs on appeal, relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency; [and]

(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, 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 division of parole when the accused is on parole supervision as a result of conditional release or a 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; and

(e) where fingerprints subject to the provisions of this section have been received by the division of criminal justice services and have been filed by the division as digital images, such images may be retained, provided that a fingerprint card of the individual is on file with the division which was not sealed pursuant to this section or section 160.55 of this article.

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2. For the purposes of subdivision one of this section, a criminal action or proceeding against a person shall be considered terminated in favor of such person where:

(a) an order dismissing the entire accusatory instrument against such person pursuant to article four hundred seventy was entered; or

(b) an order to dismiss the entire accusatory instrument against such person pursuant to section 170.30, 170.50, 170.55, 170.56, 170.75, 180.70, 210.20 or 210.46 of this chapter or section 81.25 of the mental hygiene law was entered or deemed entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(c) a verdict of complete acquittal was made pursuant to section 330.10 of this chapter; or

(d) a trial order of dismissal of the entire accusatory instrument against such person pursuant to section 290.10 or 360.40 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(e) an order setting aside a verdict pursuant to section 330.30 or 370.10 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people and no new trial has been ordered; or

(f) an order vacating a judgment pursuant to section 440.10 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people, and no new trial has been ordered; or

(g) an order of discharge pursuant to article seventy of the civil practice law and rules was entered on a ground which invalidates the conviction and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(h) where all charges against such person are dismissed pursuant to section 190.75 of this chapter. In such event, the clerk of the court which empaneled the grand jury shall serve a certification of such disposition upon the division of criminal justice services and upon the appropriate police department or law enforcement agency which upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one; or

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(i) prior to the filing of an accusatory instrument in a local criminal court against such person, the prosecutor elects not to prosecute such person. In such event, the prosecutor shall serve a certification of such disposition upon the division of criminal justice services and upon the appropriate police department or law enforcement agency which, upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one.

(j) following the arrest of such person, the arresting police agency, prior to the filing of an accusatory instrument in a local criminal court but subsequent to the forwarding of a copy of the fingerprints of such person to the division of criminal justice services, elects not to proceed further. In such event, the head of the arresting police agency shall serve a certification of such disposition upon the division of criminal justice services which, upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one.

(k)(i) The accusatory instrument alleged a violation of article two hundred twenty or section 240.36 of the penal law, prior to the taking effect of article two hundred twenty-one of the penal law, or a violation of article two hundred twenty-one of the penal law; (ii) the sole controlled substance involved is marijuana; (iii) the conviction was only for a violation or violations; and (iv) at least three years have passed since the offense occurred.

(l) An order dismissing an action pursuant to section 215.40 of this chapter was entered.

3. A person in whose favor a criminal action or proceeding was terminated, as defined in paragraph (a) through (h) of subdivision two of this section, prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise. A person in whose favor a criminal action or proceeding was terminated, as defined in paragraph (i) or (j) of subdivision two of this section, prior to the effective date of this section, may apply to the appropriate prosecutor or police agency for a certification as described in said paragraph (i) or (j) granting to such person the relief set forth therein, and such certification shall be granted by such prosecutor or police agency.

Added L.1976, c. 877, § 1; amended L.1977, c. 835, §§ 1, 2; L.1977, c. 905, § 1; L.1980, c. 192, § 2; L.1981, c. 122, § 1.

**§ 160.55 Order upon termination of criminal action by conviction
for noncriminal offense**

§ 81.1. Subdivision 1 of section 160.55 of the criminal procedure law, as added by chapter 192 of the laws of 1980, the opening paragraph as amended by chapter 249 of the laws of 1992 and paragraph (d) as amended by chapter 294 of the laws of 1986, is amended to read as follows:

1. Upon the termination of a criminal action or proceeding against a person by the conviction of such person of a traffic infraction or a violation, other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, unless the district attorney upon motion with not less than five days notice to such person or his or her attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days notice to such person or his or her attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, the clerk of the court wherein such criminal action or proceeding was terminated shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated by such conviction. Upon receipt of notification of such termination:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated, and all duplicates and copies thereof, except a digital fingerprint image where authorized pursuant to paragraph (e) of this subdivision, shall forthwith be, at the discretion of the recipient agency, either destroyed or returned to such person, or to the attorney who represented [him] such person at the time of the termination of the action or proceeding, at the address given by such person or attorney during the action or proceeding, by the division of criminal justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proof, palmprints or fingerprints in its possession or under its control;

(b) any police department or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints and fingerprints,

shall forthwith formally request in writing that all such copies be destroyed or returned to the police department, or law enforcement agency which transmitted or forwarded them, and upon such return such department or agency shall, at its discretion, either destroy or return them as provided herein;

(c) all official records and papers relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency; (and)

(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, 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 division of parole 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; and

(e) where fingerprints subject to the provisions of this section have been received by the division of criminal justice services and have been filed by the division as digital images, such images may be retained, provided that a fingerprint card of the individual is on file with the division which was not sealed pursuant to this section or section 160.50 of this article.

2. A person against whom a criminal action or proceeding was terminated by such person's conviction of a traffic infraction or violation other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

3. This section shall not apply to an action terminated in a manner described in paragraph (k) of subdivision two of section 160.50 of this chapter.

Added L.1980, c. 192, § 1; amended L.1981, c. 249, §§ 1, 2.

§ 160.55 Order upon termination of criminal action by conviction for noncriminal offense

1. Upon the termination of a criminal action or proceeding against a person by the conviction of such person of a traffic infraction or a violation, other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, unless the district attorney upon motion with not less than five days notice to such person or his attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days notice to such person or his attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, the record of such action or proceeding shall be sealed and the clerk of the court wherein such criminal action or proceeding was terminated shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated by such conviction, and unless the court has directed otherwise, that the record of such action or proceeding has been sealed. Upon receipt of notification of such termination and sealing:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated, and all duplicates and copies thereof, shall forthwith be returned to such person, or to the attorney who represented him at the time of the termination of the action or proceeding, at the address given by such person or attorney during the action or proceeding, by the division of criminal justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proof, palmprints or fingerprints in its possession or under its control;

(b) any police department or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints and fingerprints, shall forthwith formally request in writing that all such copies be returned to the police department or law enforcement agency which transmitted or forwarded them, and upon such return such department or agency shall return them as provided herein;

(c) all official records and papers relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services shall be sealed and not made available to any person or public or private agency; and

(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, 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 division of parole 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.

2. A report of the termination of the action or proceeding by conviction of a traffic violation or a violation other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, shall be sufficient notice of sealing to the commissioner of the division of criminal justice services unless the report also indicates that the court directed that the record not be sealed in the interests of justice. Where the court has determined pursuant to subdivision one of this section that sealing is not in the interests of justice, the clerk of the court shall include notification of that determination in any report to such division of the disposition of the action or proceeding.

3. A person against whom a criminal action or proceeding was terminated by such person's conviction of a traffic infraction or violation other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

4. This section shall not apply to an action terminated in a manner described in paragraph (k) of subdivision two of section 160.50 of this chapter.

(Added L.1980, c. 192, § 1; amended L.1981, c. 249, §§ 1, 2; L.1982, c. 174, § 1; L.1986, c. 294, § 2; L.1991, c. 142, § 5.)

§ 160.60 Effect of termination of criminal actions in favor of the accused

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this chapter, the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest and prosecution. The arrest or prosecution shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling. Except where specifically required or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or prosecution.

Added L.1976, c. 877, § 2.

§ 170.56 Adjournment in contemplation of dismissal in cases involving marihuana

1. Upon or after arraignment in a local criminal court upon an information, a prosecutor's information or a misdemeanor complaint, where the sole remaining count or counts charge a violation or violations of section 221.05, 221.10, 221.15, 221.35 or 221.40 of the penal law and before the entry of a plea of guilty thereto or commencement of a trial thereof, the court, upon motion of a defendant, may order that all proceedings be suspended and the action adjourned in contemplation of dismissal, or upon a finding that adjournment would not be necessary or appropriate and the setting forth in the record of the reasons for such findings, may dismiss in furtherance of justice the accusatory instrument; provided, however, that the court may not order such adjournment in contemplation of dismissal or dismiss the accusatory instrument if: (a) the defendant has previously been granted such adjournment in contemplation of dismissal, or (b) the defendant has previously been granted a dismissal under this section, or (c) the defendant has previously been convicted of any offense involving controlled substances, or (d) the defendant has previously been convicted of a crime and the district attorney does not consent or (e) the defendant has previously been adjudicated a youthful offender on the basis of any act or acts involving controlled substances and the district attorney does not consent.

2. Upon ordering the action adjourned in contemplation of dismissal, the court must set and specify such conditions for the adjournment as may be appropriate, and such conditions may include placing the defendant under the supervision of any public or private agency. At any time prior to dismissal the court may modify the conditions or extend or reduce the term of the adjournment, except that the total period of adjournment shall not exceed twelve months. Upon violation of any condition fixed by the court, the court may revoke its order and restore the case to the calendar and the prosecution thereupon must proceed. If the case is not so restored to the calendar during the period fixed by the court, the

accusatory instrument is, at the expiration of such period, deemed to have been dismissed in the furtherance of justice.

3. Upon or after dismissal of such charges against a defendant not previously convicted of a crime, the court shall order that all official records and papers, relating to the defendant's arrest and prosecution, whether on file with the court, a police agency, or the New York state division of criminal justice services, be sealed and, except as otherwise provided in paragraph (d) of subdivision one of section 160.50 of this chapter, not made available to any person or public or private agency; except, such records shall be made available under order of a court for the purpose of determining whether, in subsequent proceedings, such person qualifies under this section for a dismissal or adjournment in contemplation of dismissal of the accusatory instrument.

4. Upon the granting of an order pursuant to subdivision three, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to the status he occupied before his arrest and prosecution.

(Added L.1971, c. 1042; amended L.1973, c. 276, § 22; L.1977, c. 360, § 9; L.1977, c. 905, § 2.)

§ 720.15 Youthful offender procedure; sealing of accusatory instrument; privacy of proceedings; preliminary instructions to jury¹

1. When an accusatory instrument against an apparently eligible youth is filed with a court, the court, with the defendant's consent, must order that it be filed as a sealed instrument, though only with respect to the public.

2. When a youth is initially arraigned upon an accusatory instrument, such arraignment and all proceedings in the action thereafter may, in the discretion of the court and with the defendant's consent, be conducted in private.

3. The provisions of subdivisions one and two of this section requiring or authorizing the accusatory instrument filed against a youth to be sealed, and the arraignment and all proceedings in the action to be conducted in private shall not apply in connection with a pending charge of committing any felony offense as defined in the penal law. The provisions of subdivision one requiring the accusatory instrument filed against a youth to be sealed shall not apply where such youth has previously been adjudicated a youthful offender or convicted of a crime.

(As amended L.1985, c. 774, § 1.)

Correction Law

§ 29. Department statistics

1. The department shall continue to collect, maintain, and analyze statistical and other information and data with respect to persons subject to the jurisdiction of the department, including but not limited to: (a) the number of such persons: placed in the custody of the department, assigned to a specific department program, accorded temporary release, paroled or conditionally released, paroled or conditionally released and declared delinquent, recommitted to a state correctional institution upon revocation of parole or conditional release, or discharge upon maximum expiration of sentence; (b) the criminal history of such persons; (c) the social, educational, and vocational circumstances of any such persons; and, (d) the institutional, parole and conditional release programs and behavior of such persons.

2. The commissioner of correctional services shall make rules as to the privacy of records, statistics and other information collected, obtained and maintained by the department, its institutions or the board of parole and information obtained in an official capacity by officers, employees or members thereof.

3. The commissioner of correctional services shall have access to records and criminal statistics collected by the division of criminal justice services and the commissioner of criminal justice services shall have

access to records and criminal statistics collected by the department of correctional services, as the commissioners of correctional services and criminal justice services shall mutually determine.

Added L.1974, c. 654, § 1.

Effective Date. L.1974, c. 654, § 16, provided in part that this section shall take effect May 30, 1974.

* * *

§ 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited

No application for any license or employment, to which the provisions of this article are applicable, shall be denied by reason of the applicant's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless:

(1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or

(2) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

Added L.1976, c. 931, § 5.

Effective Date. Section effective Jan. 1, 1977 pursuant to L.1976, c. 931, § 7.

§ 753. Factors to be considered concerning a previous criminal conviction; presumption

1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

(a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license or employment sought.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall cre-

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ate a presumption of rehabilitation in regard to the offense or offenses specified therein.

Added L.1976, c. 931, § 5.

Effective Date. Section effective
Jan. 1, 1977 pursuant to L.1976, c.
931, § 7.

§ 754. Written statement upon denial of license or employment

At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

Added L.1976, c. 931, § 5.

Effective Date. Section effective
Jan. 1, 1977 pursuant to L.1976, c.
931, § 7.

§ 755. Enforcement

1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.

2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York city commission on human rights.

Added L.1976, c. 931, § 5.

* * *

Social Services Law

§ 379-a. Access to conviction records by authorized agencies

Subject to rules and regulations of the division of criminal justice services, an authorized agency shall have access to conviction records maintained by state law enforcement agencies pertaining to persons who have applied for and are under active consideration for employment by such authorized agency in positions where such persons will be engaged directly in the care and supervision of children.

Added L.1976, c. 916, § 1.

Effective Date. Section effective
July 27, 1976, pursuant to L.1976, c.
916, § 2.

* * *

§ 87. Access to agency records

1. (a) Within sixty days after the effective date of this article, the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article, pertaining to the administration of this article.

(b) Each agency shall promulgate rules and regulations, in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

- i. the times and places such records are available;
- ii. the persons from whom such records may be obtained, and
- iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by statute.

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

(a) are specifically exempted from disclosure by state or federal statute;

(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;

(c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;

(d) are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

(e) are compiled for law enforcement purposes and which, if disclosed, would:

- i. interfere with law enforcement investigations or judicial proceedings;

- ii. deprive a person of a right to a fair trial or impartial adjudication;
- iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
- iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
 - (f) if disclosed would endanger the life or safety of any person;
 - (g) are inter-agency or intra-agency materials which are not:
 - i. statistical or factual tabulations or data;
 - ii. instructions to staff that affect the public;
 - iii. final agency policy or determinations; or
 - iv. external audits, including but not limited to audits performed by the comptroller and the federal government; or
 - (h) are examination questions or answers which are requested prior to the final administration of such questions.
 - (i) are computer access codes.

3. Each agency shall maintain:

- (a) a record of the final vote of each member in every agency proceeding in which the member votes;
- (b) a record setting forth the name, public office address, title and salary of every officer or employee of the agency; and
- (c) a reasonably detailed current list by subject matter, of all records in the possession of the agency, whether or not available under this article.

4. (a) Each state agency which maintains records containing trade secrets, to which access may be denied pursuant to paragraph (d) of subdivision two of this section, shall promulgate regulations in conformity with the provisions of subdivision five of section eighty-nine of this article pertaining to such records, including, but not limited to the following:

- (1) the manner of identifying the records or parts;
- (2) the manner of identifying persons within the agency to whose custody the records or parts will be charged and for whose inspection and study the records will be made available;
- (3) the manner of safeguarding against any unauthorized access to the records.

(b) As used in this subdivision the term "agency" or "state agency" means only a state department, board, bureau, division, council or office and any public corporation the majority of whose members are appointed by the governor.

(Added L.1977, c. 933, § 1; amended L.1981, c. 890, § 1; L.1982, c. 73, § 1; L.1983, c. 80, § 1; L.1984, c. 283, § 1; L.1987, c. 814, § 12.)

§ 88. Access to state legislative records

1. The temporary president of the senate and the speaker of the assembly shall promulgate rules and regulations for their respective houses in conformity with the provisions of this article, pertaining to the availability, location and nature of records, including, but not limited to:

(a) the times and places such records are available;

(b) the persons from whom such records may be obtained;

(c) the fees for copies of such records, which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

2. The state legislature shall, in accordance with its published rules, make available for public inspection and copying:

(a) bills and amendments thereto, fiscal notes, introducers' bill memoranda, resolutions and amendments thereto, and index records;

(b) messages received from the governor or the other house of the legislature, and home rule messages;

(c) legislative notification of the proposed adoption of rules by an agency;

(d) [Eff. until Jan. 1, 1989. See, also, par. (d) below.] members' code of ethics statements;

(d) [Eff. Jan. 1, 1989. See, also, par. (d) above.] transcripts or minutes, if prepared, and journal records of public sessions including meetings of committees and subcommittees and public hearings, with the records of attendance of members thereat and records of any votes taken;

(e) [Eff. until Jan. 1, 1989. See, also, par. (e) below.] transcripts or minutes, if prepared, and journal records of public sessions including meetings of committees and subcommittees and public hearings, with the records of attendance of members thereat and records of any votes taken;

(e) [Eff. Jan. 1, 1989. See, also, par. (e) above.] internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;

(f) [Eff. until Jan. 1, 1989. See, also, par. (f) below.] internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;

(f) [Eff. Jan. 1, 1989. See, also, par. (f) above.] administrative staff manuals and instructions to staff that affect members of the public;

(g) [Eff. until Jan. 1, 1989. See, also, par. (g) below.] administrative staff manuals and instructions to staff that affect members of the public;

(g) [Eff. Jan. 1, 1989. See, also, par. (g) above.] final reports and formal opinions submitted to the legislature;

(h) [Eff. until Jan. 1, 1989. See, also, par. (h) below.] final reports and formal opinions submitted to the legislature;

(h) [Eff. Jan. 1, 1989. See, also, par. (h) above.] final reports or recommendations and minority or dissenting reports and opinions of members of committees, subcommittees, or commissions of the legislature;

(i) [Eff. until Jan. 1, 1989. See, also, par. (i) below.] final reports or recommendations and minority or dissenting reports and opinions of members of committees, subcommittees, or commissions of the legislature;

(i) [Eff. Jan. 1, 1989. See, also, par. (i) above.] any other files, records, papers or documents required by law to be made available for public inspection and copying.

(j) [Repealed eff. Jan. 1, 1994] external audits conducted pursuant to section ninety-two of the legislative law and schedules issued pursuant to subdivision two of section ninety of the legislative law;

(k) [Eff. until Jan. 1, 1994] any other files, records, papers or documents required by law to be made available for public inspection and copying.

3. Each house shall maintain and make available for public inspection and copying: (a) a record of votes of each member in every session and every committee and subcommittee meeting in which the member votes;

(b) a record setting forth the name, public office address, title, and salary of every officer or employee; and

(c) a current list, reasonably detailed, by subject matter of any records required to be made available for public inspection and copying pursuant to this section.

(Added L.1977, c. 933, § 1; amended L.1987, c. 813, § 6; L.1987, c. 814, § 13.)

§ 89. General provisions relating to access to records; certain cases

The provisions of this section apply to access to all records, except as hereinafter specified:

1. (a) The committee on public access to records is continued and shall consist of the lieutenant governor or the delegate of such officer, the secretary of state or the delegate of such officer, whose office shall act as secretariat for the committee, the commissioner of the office of general services or the delegate of such officer, the director of the budget or the delegate of such officer, and seven other persons, none of whom shall hold any other state or local public office except the representative of local governments as set forth herein, to be appointed as follows: five by the governor, at least two of whom are or have been representatives of the news media, one of whom shall be a representative of local government who, at the time of appointment, is serving as a duly elected officer of a local government, one by the temporary president of the senate, and one by the speaker of the assembly. The persons appointed by the temporary president of the senate and the speaker of the assembly shall be appointed to serve, respectively, until the expiration of

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the terms of office of the temporary president and the speaker to which the temporary president and speaker were elected. The four persons presently serving by appointment of the governor for fixed terms shall continue to serve until the expiration of their respective terms. Thereafter, their respective successors shall be appointed for terms of four years. The member representing local government shall be appointed for a term of four years, so long as such member shall remain a duly elected officer of a local government. The committee shall hold no less than four meetings annually. The members of the committee shall be entitled to reimbursement for actual expenses incurred in the discharge of their duties.

(b) The committee shall:

i. furnish to any agency advisory guidelines, opinions or other appropriate information regarding this article;

ii. furnish to any person advisory opinions or other appropriate information regarding this article;

iii. promulgate rules and regulations with respect to the implementation of subdivision one and paragraph (c) of subdivision three of section eighty-seven of this article;

iv. request from any agency such assistance, services and information as will enable the committee to effectively carry out its powers and duties; and

v. report on its activities and findings, including recommendations for changes in the law, to the governor and the legislature annually, on or before December fifteenth.

2. (a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

i. disclosure of employment, medical or credit histories or personal references of applicants for employment;

ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;

iii. sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising purposes;

iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; or

v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency.

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:

i. when identifying details are deleted;

ii. when the person to whom a record pertains consents in writing to disclosure;

iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him.

3. Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgment of the receipt of such request and a statement of the approximate date when such request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with subdivision five of this section. Upon payment of, or offer to pay, the fee prescribed therefor, the entity shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such

record or that such record cannot be found after diligent search. Nothing in this article shall be construed to require any entity to prepare any record not possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight.

4. (a) Except as provided in subdivision five of this section, any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within seven business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. In addition, each agency shall immediately forward to the committee on public access to records a copy of such appeal and the determination thereon.

(b) Except as provided in subdivision five of this section, a person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.

(c) The court in such a proceeding may assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed, provided, that such attorney's fees and litigation costs may be recovered only where the court finds that:

- i. the record involved was, in fact, of clearly significant interest to the general public; and
- ii. the agency lacked a reasonable basis in law for withholding the record.

5. (a)(1) A person acting pursuant to law or regulation who, subsequent to the effective date of this subdivision, submits any information to any state agency may, at the time of submission, request that the agency except such information from disclosure under paragraph (d) of subdivision two of section eighty-seven of this article. Where the request itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure.

(2) The request for an exception shall be in writing and state the reasons why the information should be excepted from disclosure.

(3) Information submitted as provided in subparagraph one of this paragraph shall be excepted from disclosure and be maintained apart by the agency from all other records until fifteen days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction.

(b) On the initiative of the agency at any time, or upon the request of any person for a record excepted from disclosure pursuant to this subdivision, the agency shall:

(1) inform the person who requested the exception of the agency's intention to determine whether such exception should be granted or continued;

(2) permit the person who requested the exception, within ten business days of receipt of notification from the agency, to submit a written statement of the necessity for the granting or continuation of such exception;

(3) within seven business days of receipt of such written statement, or within seven business days of the expiration of the period prescribed for submission of such statement, issue a written determination granting, continuing or terminating such exception and stating the reasons therefor; copies of such determination shall be served upon the person,

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if any, requesting the record, the person who requested the exception, and the committee on public access to records.

(c) A denial of an exception from disclosure under paragraph (b) of this subdivision may be appealed by the person submitting the information and a denial of access to the record may be appealed by the person requesting the record in accordance with this subdivision:

(1) Within seven business days of receipt of written notice denying the request, the person may file a written appeal from the determination of the agency with the head of the agency, the chief executive officer or governing body or their designated representatives.

(2) The appeal shall be determined within ten business days of the receipt of the appeal. Written notice of the determination shall be served upon the person, if any, requesting the record, the person who requested the exception and the committee on public access to records. The notice shall contain a statement of the reasons for the determination.

(d) A proceeding to review an adverse determination pursuant to paragraph (c) of this subdivision may be commenced pursuant to article seventy-eight of the civil practice law and rules. Such proceeding must be commenced within fifteen days of the service of the written notice containing the adverse determination provided for in subparagraph two of paragraph (c) of this subdivision.

(e) The person requesting an exception from disclosure pursuant to this subdivision shall in all proceedings have the burden of proving entitlement to the exception.

(f) Where the agency denies access to a record pursuant to paragraph (d) of subdivision two of section eighty-seven of this article, the agency shall have the burden of proving that the record falls within the provisions of such exception.

(g) Nothing in this subdivision shall be construed to deny any person access, pursuant to the remaining provisions of this article, to any record or part excepted from disclosure upon the express written consent of the person who had requested the exception.

(h) As used in this subdivision the term "agency" or "state agency" means only a state department, board, bureau, division, council or office and any public corporation the majority of whose members are appointed by the governor.

6. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records.

Added L.1977, c. 933, § 1; amended L.1981, c. 890, §§ 2, 3; L.1981, c. 975, § 1; L.1982, c. 73, § 2.

* * *

§ 509-d. Qualification procedures for bus drivers, maintenance of files and availability to subsequent employers

(1) Before employing a new bus driver a motor carrier shall:

(i) require such person to pass a medical examination to drive a bus as provided in section five hundred nine-g of this article;

(ii) [Eff. until Jan. 1, 1994. See, also, par. (ii) below.] make an inquiry to the appropriate agency in every state in which the person resided or worked and/or held a driver's license or learner's permit during the preceding three years, for such person's motor vehicle driving record;

(ii) [Eff. Jan. 1, 1994, as amended by L.1993, c. 599. See, also, par. (ii) above.] obtain a driving record from the appropriate agency in every state in which the person resided or worked and/or held a driver's license or learner's permit during the preceding three years in a manner prescribed by the commissioner;

(iii) [Eff. until Jan. 1, 1994. See, also, par. (iii) below.] investigate the person's employment record during the preceding three years.

(iii) [Eff. Jan. 1, 1994, as amended by L.1993, c. 599. See, also, par. (iii) above.] investigate the person's employment record during the preceding three years in a manner prescribed by the commissioner.

(2) Investigations and inquiries of drivers of school buses; maintenance of file; availability to subsequent employer. (a) A motor carrier shall request the department to initiate a criminal history check for persons employed as drivers of school buses, as defined in paragraph (a) of subdivision one of section five hundred nine-a of this chapter, on September fourteenth, nineteen hundred eighty-five by such motor carrier, in accordance with regulations of the commissioner by requiring such school bus drivers to submit to the mandated fingerprinting procedure. The department of motor ve-

hicles at the request of the motor carrier shall initiate a criminal history check of all current school bus drivers of such motor carrier as well as those hired on or after September fifteenth, nineteen hundred eighty-five by requiring such drivers and applicants to submit to the mandated fingerprinting procedure as part of the school bus driver qualification procedure. Such fingerprinting procedure and the related fee as well as a procedure for the return of such fingerprints upon application of a person who has terminated employment as a school bus driver shall be established in accordance with regulations of the commissioner in consultation with the commissioner of the division of criminal justice services. The fee to be paid by or on behalf of the school bus driver or applicant shall be no more than five dollars over the cost to the commissioner for the criminal history check. No cause of action against the department, the division of criminal justice services, a motor carrier or political subdivision for damages related to the dissemination of criminal history records pursuant to this section shall exist when such department, division, motor carrier or political subdivision has reasonably and in good faith relied upon the accuracy and completeness of criminal history information furnished to it by qualified agencies.

(3) Each motor carrier shall retain the following records in each driver's file for a period of three years, in accordance with regulations established by the commissioner:

(i) a driver abstract of operating record provided by the department and the written information provided by the appropriate agency of another state for each twelve month period;

(ii) replies from the department regarding the driver's qualifications, as well as, any subsequent information concerning any pending criminal charges against such driver;

(iii) the initial qualifying medical examination form and the biennial medical examination form completed by the carrier's physician;

(iv) the annual defensive driving review forms completed pursuant to section five hundred nine-g of this article; and

(v) the completed biennial behind-the-wheel examination forms as required under section five hundred nine-g of this article.

(4) Each motor carrier shall notify the commissioner on the form and in the manner established by regulation of the commissioner, within ten days, of the date on which a bus driver commences employment, leaves the carrier's employ or is disqualified. Such notification shall be provided in accordance with regulations established by the commissioner and shall include any information the motor carrier has relative to the bus driver's disqualification, including any information regarding criminal charges pending against the driver for violations which would disqualify the driver if a conviction resulted.

(5) Each motor carrier shall furnish the department, by October fifteenth, nineteen hundred eighty-five, a list of all bus drivers employed on September fourteenth, nineteen hundred eighty-five in accordance with regulations established by the commissioner.

(6) Each motor carrier shall furnish the department within ten days of receipt, with a copy of each bus driver's out-of-state driving record it has obtained, if such driver resides in another state, or has been employed in such other state within the past three years.

(7) [Eff. Jan. 1, 1994.] Each motor carrier shall prepare a report setting forth: (a) the number of miles travelled by buses operated by such motor carrier in the preceding twelve months; (b) the number of convictions and accidents involving any driver employed by such motor carrier during the preceding twelve months, as reported to such carrier pursuant to section five hundred nine-f of this chapter; and (c) the number of convictions and accidents per ten thousand miles travelled. Such report shall be filed with the department as an attachment to the affidavit of compliance required by subdivision (c) of section five hundred nine-j of this chapter. and a copy of such report shall be made available by the carrier to any person upon request.
(As amended L.1986, c. 360, § 13; L.1993, c. 399, §§ 11, 12.)

§ 1229-d. School bus attendant

(1) "School bus attendant" shall mean a person employed or authorized by a school district to ride on a school bus as defined in paragraph (a) of subdivision one of section five hundred nine-a of this chapter for the purpose of maintaining order or rendering assistance to pupils with special needs.

(2) Screening of applicants for position of school bus attendant (a) a school district, pursuant to a policy statement or resolution adopted by such district, may review the qualifications of every applicant for the position of school bus attendant on school buses operated by or under contract to the district and determine at its discretion whether the applicant is suitable for qualification. In such cases, applicants may be made the subject of a criminal history check. Upon receipt of the fingerprints forwarded to them by such school district, the division of criminal justice services shall forward to such school district the criminal history review. A fee not to exceed the cost for the criminal history review shall be charged by the division of criminal justice services.

(b) In determining the qualifications of school bus attendants, a school district may use the criteria listed in subdivision two of section five hundred nine-cc of this chapter relative to criminal convictions.

(c) All inquiries made, and the use of any criminal record obtained, pursuant to this section shall be in accordance with section two hundred ninety-six of the executive law. In addition, the secondary dissemination of such information shall be limited to other authorized agencies, by express agreement between the school district and the division of criminal justice services. No cause of action against the school district or division of criminal justice services for damages related to the dissemination of criminal history records pursuant to this section shall exist when the school district or division of criminal justice services has reasonably and in good faith relied upon the accuracy and completeness of criminal history information furnished to it by qualified agencies.

Tax Law

Article 34. New York State Lottery for Education

Exhibit 2

New York State Tax Law Section 1605 sub 3

e. Before issuing a license to any applicant to sell lottery tickets through a computer terminal, the division shall require each applicant to file fingerprints with the division within ten days after filing of his application. The fingerprints so obtained shall be forthwith transmitted to the division of criminal justice services or any other state or federal government agency having facilities for checking fingerprints for the purpose of determining whether or not the applicant had previously been convicted of a crime, and such agency shall promptly report a finding of only such previous convictions, if any, to the division in writing.

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CHAPTER II

Identification and Informational Services

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PART 6050

RIGHT OF INDIVIDUAL TO REVIEW OWN RECORD; RIGHT TO CHALLENGE; APPEALS

Section 6050.1 Person's right to review own record. (a) A person, or a person's attorney who has been duly authorized in writing, upon satisfactory fingerprint identification, or other alternative method of identification deemed satisfactory by the Commissioner of the Division of Criminal Justice Services (commissioner), and payment of the required fee, may obtain a copy of the criminal history record data maintained by the Division of Criminal Justice Services (DCJS) pertaining to such person, and may challenge the completeness or accuracy of such data. Such criminal history data shall not contain identifying information and shall be transmitted to the address indicated on the request form.

(b) Payment for such information shall be made by postal money order or American Express or Traveler's Express money order, made payable to the "New York State Division of Criminal Justice Services." Remittance together with a completed fingerprint card and the completed request form shall be directed to DCJS, Revenue Processing Management Unit, Executive Park Tower, Stuyvesant Plaza, Albany, NY 12203. If a person is incarcerated in a local or State correctional facility, payment shall be made in a manner approved by the commissioner. The fee for a copy of the criminal history record data shall be \$25. Upon satisfactory proof of financial hardship, however, the commissioner, or her/his designee, may waive all, or a portion, of the fee. Factors to be considered when determining financial hardship may include, but not be limited to, indigence, available assets, eligibility for, and receipt of, State or Federal aid which is based on income or disability, or an unreasonable hardship worked by the payment of such fee.

6050.2 Person's right to challenge own record. (a) A person, or a person's attorney who has been duly authorized in writing, may challenge the completeness or

accuracy of criminal history record data pertaining to such person by executing a "Statement of Challenge," on forms provided by DCJS, indicating the precise nature of the alleged omission or error, and by filing such Statement of Challenge, by mail or otherwise, with DCJS. In support of the challenge, the person, or a person's attorney who has been duly authorized in writing, may submit any documentation she/he desires and must submit any relevant documentation required by DCJS, including but not limited to, an original or certified copy of a certificate of disposition.

(b) DCJS shall act upon challenges filed pursuant to subdivision (a) of this section within a reasonable time after receipt of all required documentation, including but not limited to, an original or certified copy of the certificate of disposition, in support of the person's claim. If the challenge is found to be substantiated by the Director of the Bureau of Identification and Criminal History Operations (BICHO), DCJS shall make the appropriate corrections in its criminal history record data. Upon making such corrections, or upon determining that a challenge is unsubstantiated, as the case may be, DCJS shall provide written notice to the person, or the person's attorney.

(c) After making corrections in its criminal history record data pursuant to a successful challenge, DCJS shall forward those same corrections to those authorized user agencies that were listed on the person's Statement of Challenge or have been requested in writing by the person and direct that such agencies' records be modified to conform with the corrected data.

6050.3 Person's right to appeal challenge found to be unsubstantiated. A person, or a person's attorney who has been duly authorized in writing, whose challenge has been found to be unsubstantiated by the director of BICHO pursuant to section 6050.2(b) of this Part may file a written notice of appeal of such determination with the commissioner, or her/his designee, within a reasonable time after receipt of such determination. Upon receipt of such notice, the director of BICHO shall promptly transmit to the commissioner, or her/his designee, copies of all records concerning the person along with all the papers and documents filed by the person, or a person's attorney who has been duly authorized in writing, in support of her/his challenge. The appeal shall be determined upon the records, papers and documents submitted, except that the commissioner, or her/his designee, may request the director of BICHO or the person to furnish such further data as she/he deems necessary for the determination of the appeal. A written notice of appeal to the commissioner, or her/his designee, shall be acted upon within a reasonable time after receipt of the written notice of appeal. The commissioner, or her/his designee, shall notify both the person and the director of BICHO of her/his decision in writing and, in the event such decision reverses or modifies that of the director of BICHO, shall require that the criminal history record data be corrected accordingly.

Section 6052.1 Access to conviction records in connection with employment of persons in care and supervision of children, pursuant to Social Services Law section 378-a. An *authorized agency*, as that term is defined in section 371, subdivision 10 of the Social Services Law, may have access to conviction records maintained by the State Division of Criminal Justice Services (DCJS), pursuant to section 378-a of the Social Services Law, upon compliance with all of the following:

- (a) An authorized agency shall submit to DCJS a certification from the State Board of Social Welfare evidencing that it is currently an authorized agency.
- (b) An authorized agency shall enter into a "use and dissemination agreement" with DCJS which shall contain the terms and conditions governing the access to the records maintained by DCJS and the permissible use and dissemination of conviction reports by the authorized agency.
- (c) Requests for conviction records shall be made on the letterhead of the authorized agency and shall be signed only by the head of such agency or by a person authorized in writing by the head of such agency to make such requests. A request shall state, with respect to each person whose conviction record is sought, that such person has applied for and is under active consideration for employment by such authorized agency in a position where such person will be engaged directly in the care and supervision of children.
- (d) A request may cover more than one person but it must be accompanied, with respect to each person whose conviction record is sought, by the fingerprints of the subject person on a fingerprint card issued by DCJS, along with the fee for the records search prescribed by DCJS regulations.

6150.4 Records exempt from disclosure. Notwithstanding the provisions of section 6150.3 above, the following types of records shall be exempt from public inspection and/or copying:

(a) Records which are specifically exempt from disclosure by State or Federal statute;

(b) Records constituting information the disclosure of which would result in an unwarranted invasion of personal privacy. An unwarranted invasion of personal privacy shall include, but not be limited to:

(1) disclosure of such personal matters as may have been reported in confidence to DCJS or any other State or local agency or municipality, and the publication of which is not relevant or essential to the ordinary work of DCJS;

(2) disclosure of employment, medical or credit histories or personal references of applicants for employment, unless the applicant has provided a written release permitting such disclosure;

(3) disclosure of items involving the medical or personal records of a client or patient in a hospital or medical facility;

(4) the sale or release of lists of names and addresses in possession of any agency or municipality if such lists are to be used for private, commercial or fund-raising purposes;

(5) disclosure of items of a personal nature which would result in economic or personal hardship to the subject party and when the publication of such records is not relevant or essential to the ordinary work of DCJS; and

(6) disclosure of information contained in the criminal history file, license and employment file and wanted and missing persons file, maintained by DCJS, including any and all information contained in such files;

(c) disclosure of information which if disclosed would impair present or imminent contract awards or collective bargaining negotiations;

(d) disclosure of information which constitutes trade secrets or is maintained for the regulation of commercial enterprise and would cause substantial injury to the competitive position of the subject enterprise;

(e) Investigatory files compiled for law enforcement purposes, including administrative and criminal law enforcement proceedings, and other information related to the operations of criminal justice agencies that are sensitive or confidential to such a degree that disclosure would not be in the interest of the public, in that disclosure would interfere with law enforcement investigations or judicial or administrative proceedings, deprive a person of the right to a fair trial or impartial adjudication, identify a confidential source or disclose confidential information relating to a criminal investigation or reveal criminal investigative techniques or procedures;

(f) Preliminary or interim communications related to the DCJS decisionmaking process, including but not limited to opinions, interpretations and evaluations prepared by staff or consultants which are not:

(1) statistical or factual tabulations;

(2) instructions to staff that affect the public; or

(3) final agency policy or determinations;

(g) Record of deliberations of any public boards or committees while in executive session.

6150.5 List of records. On behalf of DCJS, the records access officer shall maintain and make available for public inspection and copying a current list, by subject matter, of the types of records produced, filed, or first kept by DCJS whether or not available under this act. Such lists shall be in conformity with such regulations as may be promulgated by the State Committee on Public Access to Records.

UNCONSOLIDATED LAWS

Title 25

§ 8911. Application for license; fingerprints

1. Every application for a license shall be in writing, shall be addressed to the commission, shall be subscribed by the applicant, and affirmed by him as true under the penalties of perjury, and shall set forth such facts as the provisions hereof and the rules and regulations of the commission may require.

2. When an application is made for a license under this act, the commission shall cause the fingerprints of such applicant, or if such applicant be a corporation, of the officers of such corporation, to be taken in duplicate. One copy shall be filed in the office of the division of criminal justice services at Albany, and one shall remain on file in the office of the commission. No such fingerprint may be inspected by any person, other than a peace officer, except on order of a judge or justice of a court of record. The information obtained by any such fingerprint examination shall be for the guidance of the commission in the exercise of its discretion in granting or withholding the license.
(As amended L.1981, c. 603, § 9.)