

## GOVERNOR'S PROGRAM BILL

2008

## MEMORANDUM

AN ACT to amend the mental hygiene law, the executive law and the penal law, in relation to licensing guidelines, procedures and requirements for the acquisition and possession of a firearm and ballistic identification

**Purpose of Bill:**

This bill would enhance New York's ability to reduce gun violence, without infringing on the rights of law-abiding gun owners, by: (1) allowing relevant mental health records to be included in the National Instant Criminal Background Check System (NICS); (2) mandating that certain crime scene ballistic evidence be submitted to the State Police for comparison with the Combined Ballistic Identification System (CoBIS); (3) updating and clarifying the State's gun licensing laws; and (4) providing for increased security at gun shops.

**Summary of Provisions:**

Section 1 of the bill adds a new Mental Hygiene Law § 7.09(j) to give the Commissioner of the Office of Mental Health (OMH) broad authority to collect and transmit records for purposes of responding to queries to the NICS index. It also requires the Commissioner to establish a relief from disabilities program as is mandated by the NICS Improvement Amendments Act of 2007. Section 2 of the bill adds a new Mental Hygiene Law § 13.09(f) to give similar authority and a similar mandate to the Commissioner of the Office of Mental Retardation and Developmental Disabilities (OMRDD).

Section 3 of the bill adds a new Mental Hygiene Law § 31.11(5) to require facilities licensed, funded or administered by OMH to provide relevant mental health records to OMH for transmission to the Criminal Justice Information System (CJIS) for inclusion in NICS. Section 4 of the bill amends the version of Mental Hygiene Law § 33.13(b) that could become effective on June 30, 2010 to allow OMH to continue to obtain this information from private facilities.

Section 5 of the bill amends Mental Hygiene Law § 33.13(c)(13) to permit the Commissioners of OMH and OMRDD to release identifying information regarding mental health patients or clients to DCJS for purposes of transmitting that information to CJIS.

Section 6 of the bill adds a new Mental Hygiene Law § 33.13(c)(14) that alternatively will permit the Commissioners of OMH and OMRDD to transmit the relevant mental health records directly to the CJIS for NICS purposes.

Section 7 of the bill adds a new Executive Law § 230(6) to require state and local law enforcement agencies to submit crime scene ballistic evidence related to a homicide, attempted homicide or conspiracy to commit a homicide case to the Division of State Police for comparison to the gun sale ballistic images contained in the Combined Ballistic Identification System (CoBIS).

Section 8 of the bill makes various amendments to Penal Law § 400.00 to:

- expand statewide a firearms safety training requirement similar to one that is currently in effect in Westchester County, and add the Air Force to the list of services from which honorably discharged veterans are exempt from the safety course requirement;
- provide that no person may be employed by a gun dealer who does not meet the requirements of new Penal Law § 400.00(12-b), which establishes certain background check and licensing requirements for such employees who are required to handle and sell firearms as part of their duties;
- delete the provision authorizing licenses for antique pistols, and add a provision authorizing licenses for sporting, hunting or target shooting;
- provide that the addresses of license holders will no longer be public records;
- clarify that personal firearms licenses issued in the City of New York are valid throughout the State, and clarify that a gunsmith or dealer's license is valid to possess weapons when traveling to and from gun shows and exhibitions;
- remove the requirement that a coupon and certain statements be attached to or written on a license;
- provide for the issuance of a license to a gun shop employee that does not describe a specific firearm that the licensee is authorized to possess;
- update the purchase coupon system by providing that the licensing officer shall issue a purchase coupon that will be retained by the dealer after sale, and simplify the process of notifying the State Police of a change of residence of a license holder;
- clarify that the term "serious offense," when used as a basis for license revocation, has the same meaning as defined in Penal Law § 265.00;

- delete redundant references to cancellation of licenses, and make clear that a licensing officer may suspend a license rather than revoke it;
- provide that when a firearms dealer provides a gun to a person under the authority of that person's status as a peace officer, and is therefore required to verify that the purchaser is a peace officer, the verification shall include the fact that the person is a kind of peace officer exempt from licensing statutes;
- authorize the State Police to issue rules and regulations as are reasonably necessary to ensure that gunsmiths, dealers and their employees are operating safely and to conduct inspections of gunsmiths and dealers in order to detect safety and security violations; and
- clarify that licensed and certified employees of gun dealers, as well as licensed gunsmiths and dealers, are authorized to dispose of firearms.

Section 9 of the bill adds a new Penal Law § 400.00(12-b) to require gun shop employees who handle and dispose of firearms to meet certain qualifications, including either undergoing a criminal background check or possessing a valid firearm's license, and requires non-licensed employees to obtain such a license within six months of starting employment or by January 1, 2009, whichever is later. It also requires all gun shop employees to receive, from their employers, a certificate of employment evidencing that the employee is eligible to handle firearms.

Section 10 of the bill adds a new Penal Law § 400.00(9) to prohibit possession of duplicate licenses except by gun dealers, gunsmiths and certain peace officers.

Section 11 of the bill amends Penal Law § 400.01 to clarify that retired members of the State Police may apply to their local licensing officer as an alternative to applying to the Superintendent of State Police for a firearms license, and removes the language concerning the Superintendent renewing a firearms license. Section 11 also removes duplicative language while providing that applicants must apply within 60 days of retirement and that such permits do not expire.

Section 12 of the bill contains the effective date.

#### **Existing Law:**

The National Instant Criminal Background Check System (NICS) contains records concerning convictions, mental health adjudications and other events that may disqualify a person from purchasing a handgun. Federal Firearms Licensees (FFLs) must check the NICS index before transferring a firearm to a customer. Currently, the NICS index contains only four mental health records from New York State.

General Business Law § 396-ff requires the Division of State Police to establish and operate a pistol and revolver ballistic database, known as the Combined Ballistic

Identification System (CoBIS), which contains images taken from expended projectiles from all guns sold in the State since March 2001. Executive Law § 230(4) requires the Division of State Police to develop and maintain a criminal gun clearinghouse as a central repository of information regarding all guns coming into the possession of any law enforcement agency that are believed to have been used in the commission of a crime.

Possession of a handgun is generally illegal in New York under Penal Law § 265.01(1) and other statutes, although Penal Law §§ 265.20(a)(3) and 400.00(17) create exemptions from criminal liability for persons to whom a license has been issued under Penal Law § 400.00, the basic licensure statute, or Penal Law § 400.01, the licensure statute for retired sworn members of the State Police.

Under Penal Law § 400.00(1) and (12), gunsmiths and dealers in firearms must be licensed in order to engage in such businesses, and must maintain certain records regarding transactions involving firearms. Such records must be open for inspection by certain peace and police officers. Nothing in the existing licensing provisions requires that employees in gun shops be licensed or subject to a criminal history record check.

### **Statement in Support**

This bill has four major components:

#### **1. The NICS Improvement Amendments Act**

On April 16, 2007, a student with a history of mental illness shot and killed 32 people on the campus of the Virginia Polytechnic Institute and State University in Blacksburg, Virginia, wounded 23 others, and then killed himself. In response to this and other recent shootings by persons with a history of mental illness, Congress passed, and the President signed, the "NICS Improvement Amendments Act of 2007." This Act, which amends the Brady Handgun Violence Prevention Act of 1993, is designed to increase the number of records concerning disqualifying events that states transmit to the NICS directory, in order to prevent handgun purchases by persons who are prohibited from possessing such weapons under federal law.

The Brady Handgun Violence Prevention Act of 1993 required Federal Firearms Licensees (FFLs) to request background checks on prospective firearms purchasers and established the National Instant Criminal Background Check System (NICS). NICS is administered by the federal Criminal Justice Information System (CJIS) division of the Department of Justice and contains records concerning certain events, such as criminal convictions and mental health adjudications and findings that may disqualify a person from purchasing a handgun. Authorized local and state law enforcement entities may voluntarily contribute such records to CJIS for entry into the NICS index. FFLs must contact NICS before transferring a firearm to a customer in order to ascertain whether a record in the index prohibits the transfer of the firearm to the customer.

To date, OMH has not routinely provided mental health records to the NICS index, even though it is unlawful for a person to possess a handgun if he or she has been “adjudicated as a mental defective” or “committed to a mental institution.” There are two primary reasons for the State’s inability to provide these records to the NICS index. First, Mental Hygiene Law § 33.13 contains strong confidentiality protections for mental health records, and no provision of section 33.13 permits OMH to disclose mental health information to CJIS for inclusion in NICS. Second, there are 131 private facilities in New York State that provide some form of mental health treatment. OMH currently does not have access to records of these facilities that may disqualify a person from possessing a handgun.

The NICS background check system is only effective in preventing improper handgun purchases if the records contained in the NICS index are accurate and complete. Moreover, the 2007 NICS Improvement Amendments Act provides financial incentives to those states that increase the number of mental health and other records that are sent to the NICS index, and can result in the reduction or elimination of certain federal funding to those states that fail to increase their transmittal of records to the index.

By authorizing OMH to obtain the relevant mental health records from private hospitals and by lifting confidentiality restrictions for the limited purpose of allowing transmission of the relevant records to CJIS, this bill will help to prevent handgun purchases by persons who are disqualified from possessing such weapons as a result of their mental health histories. Without these changes, New York cannot improve the State’s transmission of these records to the NICS index, and will risk the loss of important federal funding under the NICS Improvement Amendments Act.

This bill gives state agencies great flexibility in creating effective and efficient systems to enable the State to implement the NICS Improvement Act. Working together and with DCJS, OMH and OMRDD will have the authority to develop systems that will allow them to send relevant records directly to CJIS, or to do so through a single data platform administered by DCJS.

The bill also requires the Commissioners of OMH and OMRDD to develop a relief from disabilities program by which a person who is disqualified from purchasing a handgun as a result of a mental health adjudication or commitment can seek to have that disqualification removed. This type of record-expungement program is mandated if the State is to be eligible for federal grant money to implement the NICS improvements.

## **2. Gun Dealer Safety**

Even if the NICS database is made more complete and accurate, criminals will still be able to obtain and use handguns to commit their crimes as long as there continues to be an underground market for illegal firearms. Such firearms may be diverted to the illegal market through “straw purchasers,” or through thefts of firearms from licensed gun dealers.

While no system can entirely prevent the diversion of firearms to the illegal marketplace, New York can adopt measures that will improve safety and security at gun shops in ways that will not infringe upon a lawful citizen's right to purchase and possess firearms. Significantly, this bill would require employees who handle, possess and sell guns at a gun shop to obtain a gun license, thereby ensuring that they have undergone a background check and are properly trained in gun safety. Under the bill, a non-licensed person may be hired initially by a gun dealer, but must first undergo a criminal history record check and must eventually obtain a gun license. It is illogical that under current law a person who is disqualified from personally purchasing or possessing a firearm may nonetheless handle, possess and sell firearms as an employee of a gun dealer. Wal-Mart, the nation's largest seller of firearms, recently has voluntarily agreed to conduct background checks on its employees who handle guns.

This bill also will ensure that gun shops are operating safely and in a manner that will help to prevent the theft of firearms, and that gun shop employees are properly trained in gun safety and on the laws regulating the purchase and sale of firearms. Under the bill, gun shops will be subject to reasonable regulation by the Division of State Police to ensure that dealers are taking reasonable measures to secure firearms on their premises and to ensure that those firearms are not diverted to the illegal market. The bill also clarifies the circumstances under which gunshops will be subject to inspection by the State Police to ensure compliance with the safety and security regulations.

### **3. CoBIS Enhancements**

When guns are used in crimes, it is important for law enforcement to have all of the necessary tools to investigate the crime and identify the perpetrator. The Division of State Police, in its Combined Ballistic Identification System (CoBIS) is fortunate to have almost 200,000 computerized ballistic images from firearms that have been sold in this State since March 2001. Comparing these images to ballistic evidence recovered at crime scenes can assist law enforcement to connect the crime scene evidence to the point of sale evidence, providing investigative leads that can potentially be used to identify the perpetrator of a crime.

This bill would require state and local law enforcement agencies to submit relevant crime scene ballistic evidence related to a homicide, an attempted homicide and a conspiracy to commit a homicide to the State Police for comparison with CoBIS. As they can under current law, such agencies may continue to submit similar evidence to the State Police for investigation of other types of offenses.

### **4. Updating Gun Licensing Requirements**

Law-abiding citizens in New York have the right to purchase and own firearms if they meet licensing requirements. Unfortunately, the existing licensure provisions are outdated and cumbersome, and have been a source of confusion and inconsistent application. This bill would clarify and update many of these provisions, including giving licensing officials the express authority to issue licenses restricted to the purposes

of sporting, hunting or target shooting – which some officials are already doing – and will make for a more consistent approach to gun licensing throughout the State. It would also remove an unnecessary requirement that a person obtain a license to possess an antique pistol, when it is no longer illegal to possess such a pistol in New York State.

The bill also would help to ensure that lawful gun owners are aware of basic safety rules by requiring, as part of the licensing process, that the owner has successfully completed a basic gun safety course. It should be a precondition for obtaining a gun license that the applicant receives proper safety training, yet this requirement now applies only in Westchester County. This bill would extend this sensible approach to the rest of the State by requiring every applicant to successfully complete a course that meets or exceeds the standards of the home firearms safety course approved by the National Rifle Association, or a similar course identified and approved by the Superintendent of State Police.

This bill also would protect the privacy of persons granted a license, by removing a provision that made the addresses of such persons a public record.

Other problems with the gun licensing statutes also are corrected in this bill, including:

- clarifying that while permits issued outside of New York City are not valid in New York City, the reverse is not true;
- clarifying that firearms dealers are authorized to possess firearms while traveling to and from gun shows and exhibits;
- revising and updating the “coupon” system to reflect modern practice involving non-paper licensing;
- removing unnecessary requirements regarding registering firearms by an “identification mark,” inclusion of references and reasons for issuance on a non-resident’s license, and notification of the Superintendent of State Police about a licensee’s address change;
- clarifying that the term “serious offense,” which would prohibit issuance of a license, has the same meaning as in Penal Law § 265.00;
- providing a less stringent sanction of “suspension,” rather than the redundant sanction of “cancellation” of a license;
- requiring verification that a person who is requesting a firearm without a license is not only a peace officer, but is also the type of peace officer who is authorized to possess a weapon;
- clarifying who may possess a duplicate license; and

- clarifying the procedure for the Superintendent of State Police to issue a permit to a retired member of the State Police.

The State of New York has a strong interest in using its police powers to reduce criminal activity in the state, including crimes involving the use of firearms, and at the same time must ensure that those law-abiding citizens who wish to purchase guns are able to do so and can safely use and possess them. The protections set forth in this bill will greatly enhance law-enforcement efforts, without infringing on the rights of legitimate gun owners.

**Budget Implications:**

This bill will help New York State comply fully with the NICS Improvement Amendments Act of 2007, and thereby avoid the possible future loss of federal funding. DOH and OMRDD will incur some costs in implementing the NICS improvements, and those costs would be more substantial if the Department of Justice requires states to report many years of historical mental health data to CJIS, but some of these costs will be offset if the State qualifies for and receives any federal grants provided for in the NICS Improvement Amendments Act, assuming that Congress appropriates money for this grant program.

**Effective Date:**

The revisions to the licensing provisions made by section 8 of this bill would become effective immediately; the remaining provisions in the bill would become effective on November 1, 2008.