

4861--A

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I N S E N A T E

April 26, 2013

Introduced by Sen. CARLUCCI -- (at request of the Commission on Quality of Care and Advocacy for Persons with Disabilities) -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the mental hygiene law and the social services law, in relation to making technical changes to the protection of people with special needs act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision (a) of section 31.35 of the mental hygiene law,
2 as amended by chapter 575 of the laws of 2004, is amended to read as
3 follows:
4 (a) Every provider of services who contracts with or is approved or
5 otherwise authorized by the office OF MENTAL HEALTH to provide services,
6 except (1) a department facility, (2) a hospital as defined in article
7 twenty-eight of the public health law, or (3) a licensed professional
8 under title eight of the education law who does not have employees or
9 volunteers who will have regular and substantial unsupervised or unre-
10 stricted physical contact with the clients of such provider, and every
11 applicant to be such a provider of services except (i) a department
12 facility, (ii) a hospital as defined in article twenty-eight of the
13 public health law, or (iii) a licensed professional under title eight of
14 the education law who does not have employees or volunteers who will
15 have regular and substantial unsupervised or unrestricted physical
16 contact with the clients of such provider, shall request that the
17 [office] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS
18 check, and upon such request [the office] SUCH JUSTICE CENTER shall
19 request and shall be authorized to receive from the division of criminal

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

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1 justice services criminal history information, as such phrase is defined
2 in paragraph (c) of subdivision one of section eight hundred
3 forty-five-b of the executive law, concerning each prospective operator,
4 employee or volunteer of such provider who will have regular and
5 substantial unsupervised or unrestricted physical contact with the
6 clients of such provider. For purposes of this section, "operator" shall
7 include any natural person with an ownership interest in the provider of
8 services.

9 S 2. Paragraph (e) of subdivision 4 of section 488 of the social
10 services law, as added by section 1 of part B of chapter 501 of the laws
11 of 2012, is amended to read as follows:

12 (e) the New York state school for the blind and the New York state
13 school for the deaf, which operate pursuant to articles eighty-seven and
14 eighty-eight of the education law; an institution for the instruction of
15 the deaf and the blind which has a residential component and is subject
16 to the visitation of the commissioner of education pursuant to article
17 eighty-five of the education law with respect to its day and residential
18 components; special act school districts serving students with disabili-
19 ties; or in-state private schools which have been approved by the
20 commissioner of education for special education services or programs,
21 and which have a residential program[, including a school approved on a
22 child-specific basis for emergency interim placements pursuant to
23 governing state regulations, with respect to its day and residential
24 components].

25 S 3. Subdivision 1 of section 378-a of the social services law, as
26 amended by section 4 of part F of chapter 501 of the laws of 2012, is
27 amended and a new subdivision 1-a is added to read as follows:

28 1. Every authorized agency which operates a residential program for
29 children LICENSED OR CERTIFIED BY THE OFFICE OF CHILDREN AND FAMILY
30 SERVICES, and the office of children and family services IN RELATION TO
31 ANY JUVENILE JUSTICE PROGRAM IT OPERATES, shall request that the justice
32 center for the protection of people with special needs check, and upon
33 such request, such justice center shall request and shall be authorized
34 to receive from the division of criminal justice services AND THE FEDER-
35 AL BUREAU OF INVESTIGATION criminal history information, as such phrase
36 is defined in paragraph (c) of subdivision one of section eight hundred
37 forty-five-b of the executive law concerning each prospective operator,
38 employee or volunteer of such A residential program who will have regu-
39 lar and substantial unsupervised or unrestricted physical contact with
40 children in such program. For the purposes of this section, "operator"
41 shall include any natural person with an ownership interest in the
42 authorized agency. Access to and the use of such information shall be
43 governed by the provisions of section eight hundred forty-five-b of the
44 executive law.

45 1-A. EXCLUDING THE AUTHORIZED AGENCIES AUTHORIZED TO REQUEST AND
46 RECEIVE CRIMINAL HISTORY INFORMATION PURSUANT TO SUBDIVISION ONE OF THIS
47 SECTION, AND SUBJECT TO THE RULES AND REGULATIONS OF THE DIVISION OF
48 CRIMINAL JUSTICE SERVICES, AN AUTHORIZED AGENCY DEFINED IN SUBDIVISION
49 TEN OF SECTION THREE HUNDRED SEVENTY-ONE OF THIS TITLE SHALL HAVE ACCESS
50 TO CRIMINAL HISTORY INFORMATION, AS SUCH PHRASE IS DEFINED IN PARAGRAPH
51 (C) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE
52 EXECUTIVE LAW, PERTAINING TO PERSONS WHO HAVE APPLIED FOR AND ARE UNDER
53 ACTIVE CONSIDERATION FOR EMPLOYMENT BY SUCH AUTHORIZED AGENCY IN POSI-
54 TIONS WHERE SUCH PERSONS WILL HAVE THE POTENTIAL FOR REGULAR AND
55 SUBSTANTIAL UNSUPERVISED AND UNRESTRICTED PHYSICAL CONTACT WITH CHILDREN
56 IN THE PROGRAM. UPON RECEIPT OF SUCH CRIMINAL HISTORY INFORMATION, THE

1 AUTHORIZED AGENCY SHALL PROVIDE THE PROSPECTIVE EMPLOYEE WITH A COPY OF
2 SUCH CRIMINAL HISTORY INFORMATION AND A COPY OF ARTICLE TWENTY-THREE-A
3 OF THE CORRECTION LAW AND INFORM SUCH PROSPECTIVE EMPLOYEE OF HIS OR HER
4 RIGHT TO SEEK CORRECTION OF ANY INCORRECT INFORMATION CONTAINED IN SUCH
5 CRIMINAL HISTORY INFORMATION PURSUANT TO THE REGULATIONS AND PROCEDURES
6 ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES. THE AUTHORIZED
7 AGENCY SHALL DESIGNATE ONE OR TWO PERSONS IN ITS EMPLOY WHO SHALL BE
8 AUTHORIZED TO REQUEST, RECEIVE AND REVIEW THE CRIMINAL HISTORY INFORMA-
9 TION PURSUANT TO THIS SUBDIVISION, AND ONLY SUCH PERSONS AND THE
10 PROSPECTIVE EMPLOYEE TO WHICH THE CRIMINAL HISTORY INFORMATION RELATES
11 SHALL HAVE ACCESS TO SUCH INFORMATION; PROVIDED, HOWEVER, THAT SUCH
12 CRIMINAL HISTORY INFORMATION MAY BE DISCLOSED TO OTHER PERSONNEL
13 EMPOWERED BY THE AGENCY TO MAKE DECISIONS CONCERNING PROSPECTIVE EMPLOY-
14 EES. THE AUTHORIZED AGENCY SHALL NOTIFY THE DIVISION OF CRIMINAL JUSTICE
15 SERVICES OF EACH PERSON AUTHORIZED TO HAVE ACCESS TO SUCH CRIMINAL
16 HISTORY INFORMATION PURSUANT TO THIS SUBDIVISION. EXCEPT AS OTHERWISE
17 PROVIDED IN THIS SUBDIVISION, SUCH CRIMINAL HISTORY INFORMATION SHALL BE
18 CONFIDENTIAL AND ANY PERSON WHO WILLFULLY PERMITS THE RELEASE OF SUCH
19 CONFIDENTIAL CRIMINAL HISTORY INFORMATION TO PERSONS NOT PERMITTED BY
20 THIS SUBDIVISION TO RECEIVE SUCH INFORMATION SHALL BE GUILTY OF A MISDE-
21 MEANOR.

22 S 4. This act shall take effect on the same date and in the same
23 manner as part A of chapter 501 of the laws of 2012, as amended, takes
24 effect, provided that section two of this act shall take effect on the
25 same date and in the same manner as part B of chapter 501 of the laws of
26 2012, as amended, takes effect and provided, further, that section three
27 of this act shall take effect on the same date and in the same manner as
28 part F of chapter 501 of the laws of 2012, as amended, takes effect.