

# STATE OF NEW YORK

9593

## IN ASSEMBLY

March 17, 2022

Introduced by M. of A. PAULIN, DICKENS, ENGLEBRIGHT, GALEF, GOTTFRIED, GRIFFIN, THIELE, DeSTEFANO, McDONOUGH, MIKULIN, MONTESANO -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law, in relation to including legally-exempt providers in criminal history review and background clearances of child care providers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 2, 3, 3-a, 7 and 10 of section 390-b of the social services law, subdivisions 2, 3 and 3-a as added by section 9, subdivision 7 as amended by section 11 and subdivision 10 as amended by section 12 of part H of chapter 56 of the laws of 2019 and paragraphs (a), (b) and (c) of subdivision 3-a as amended by chapter 92 of the laws of 2021, are amended and a new subdivision 1-b is added to read as follows:

1-b. For purposes of this section, the term "legally-exempt provider" means a program in a facility, other than a residence, in which child care is provided on a regular basis and is not required to be licensed by or registered with the office or licensed by the city of New York. Legally-exempt providers include, but are not limited to:

(a) nursery schools and programs for pre-school-aged children operated by non-profit agencies or organizations or private proprietary agencies which provide services for three or less hours per day;

(b) child care programs caring for not more than six school-age children during non-school hours. For purposes of this subparagraph, "school-aged children" means children under thirteen years of age who are enrolled in kindergarten or a higher grade;

(c) child care programs caring for toddlers from eighteen months to thirty-six months of age for three or less hours per day; and

(d) child care programs caring for infants up to eighteen months of age for three or less hours per day.

2. In relation to any child day care program ~~and~~, any enrolled legally-exempt provider, and any legally-exempt provider:

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

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(a) the clearances required pursuant to paragraphs (a), (c), (d) and (g) of subdivision one of this section shall be conducted for:

(i) every prospective volunteer with the potential for unsupervised contact with children in care;

(ii) every applicant to become an enrolled legally-exempt provider;

(iii) every prospective employee, director or operator of such a program or provider; and

(iv) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided in a family or group family setting; and

(v) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided who are not related in any way to all children receiving services as or will be provided by an enrolled legally exempt provider or a legally-exempt provider;

(b) notwithstanding any other provision of law to the contrary, prior to October first, two thousand twenty, all clearances listed in subdivision one of this section that have not previously been conducted pursuant to paragraph (a) of this subdivision and for which on-going criminal history results are not already provided, shall be conducted in accordance with a schedule developed by the office of children and family services, for all:

(i) existing volunteers with the potential for unsupervised contact with children in care;

(ii) existing caregivers for an enrolled legally exempt provider;

(iii) existing employees, directors and operators of any such program or provider; and

(iv) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided in a family or group family setting; and

(v) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided who are not related in any way to all children receiving services as or will be provided by an enrolled legally exempt provider or a legally-exempt provider;

(c) notwithstanding any other provision of law to the contrary, the clearances required pursuant to this section other than those for which on-going criminal history results are provided, shall be conducted for a person listed in subparagraphs (i), (ii), (iii) and (iv) of paragraph (b) of this subdivision at least once every five years in accordance with a schedule developed by the office of children and family services.

3. (a) Notwithstanding any other provision of law to the contrary, in relation to the clearances required pursuant to this section, an individual or a program or provider shall be deemed ineligible, as such term is defined in paragraph (b) of this subdivision, if such individual:

(i) refuses to consent to such clearance;

(ii) knowingly makes a materially false statement in connection with such a clearance;

(iii) is registered, or is required to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh child protection and safety act of 2006 (42 U.S.C. 16901 et seq.); or

(iv) has been convicted of a crime enumerated in subparagraph (E) or clauses (i) through (viii) of subparagraph (D) of paragraph (1) of subdivision (C) of 42 U.S.C. 9858f.

(b) For purpose of this subdivision, the term "ineligible" shall mean:

(i) the individual who engaged in conduct listed in paragraph (a) of this subdivision shall not be permitted to:

(1) operate, direct, be the caregiver for, or be employed by a child day care program ~~[or]~~, an enrolled legally-exempt provider or a legally-exempt provider; or

(2) be a volunteer with the potential for unsupervised contact with children in a child day care program ~~[or]~~, with an enrolled legally-exempt provider or a legally-exempt provider; or

(3) be an enrolled legally exempt provider or a legally-exempt provider; or

(ii) in relation to child day care programs ~~[or]~~, any enrolled legally-exempt providers or any legally-exempt providers, where child care is, or is proposed to be provided, to a child in a home setting where such child does not reside, such program or provider shall not be eligible to operate or to be enrolled to serve children receiving child care subsidies pursuant to title five-C of this article, if an individual over the age of eighteen who is not related in any way to all children for whom child care services are or will be provided, resides in the household where child care is, or is proposed to be provided, engaged in conduct listed in paragraph (a) of this subdivision.

3-a. (a) In relation to child day care programs ~~[and]~~, any enrolled legally-exempt provider or any legally-exempt provider, when a clearance conducted pursuant to this section reveals that any existing operator, director, caregiver, or person over the age of eighteen who is not related in any way to all children for whom child care services are or will be provided, that resides in a home where child care is provided in a home setting where the child does not reside has been convicted of a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program, and may deny, limit, suspend, revoke or reject such program's license or registration or terminate or reject such program's enrollment, as applicable, unless the office of children and family services, determines in its discretion, that continued operation by the child day care program or enrolled legally-exempt provider or legally-exempt provider will not in any way jeopardize the health, safety or welfare of the children cared for in the program or by the provider.

(b) In relation to child day care programs ~~[and]~~, any enrolled legally-exempt provider or any legally-exempt provider, when a clearance conducted pursuant to this section reveals that any existing employee or volunteer with the potential for unsupervised contact with children has been convicted of a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, the office of children of family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office of children and family services may direct the program or provider to terminate the employee or volunteer based on such a conviction, consistent with article twenty-three-A of the correction law.

(c) (i) In relation to any child day care programs ~~[and]~~, any enrolled legally-exempt providers or any legally-exempt providers, where a clear-

1 ance conducted pursuant to this section reveals a conviction for a crime  
2 other than one set forth in subparagraph (iv) of paragraph (a) of subdi-  
3 vision three of this section, and unless such crime is eligible for  
4 expungement pursuant to section 160.50 of the criminal procedure law,  
5 for any prospective employee or volunteer, the office of children and  
6 family services may direct that such person not be hired, as applicable,  
7 based on such a conviction, consistent with article twenty-three-A of  
8 the correction law.

9 (ii) In relation to any child day care program [~~and~~], any enrolled  
10 legally-exempt provider or any legally-exempt provider, when a clearance  
11 conducted pursuant to this section reveals a conviction for a crime  
12 other than one set forth in subparagraph (iv) of paragraph (a) of subdi-  
13 vision three of this section, and unless such crime is eligible for  
14 expungement pursuant to section 160.50 of the criminal procedure law,  
15 for any prospective caregiver seeking enrollment, or applicant to be a  
16 director or operator, the office of children and family services may  
17 deny the application or enrollment, consistent with article  
18 twenty-three-A of the correction law.

19 (d) (i) Where a clearance conducted pursuant to this section reveals  
20 that an applicant to be the operator or director of a child day care  
21 program, or applicant to be a caregiver, or anyone who is not related in  
22 any way to all children for whom child care services will be provided,  
23 resides in the home over the age of eighteen where child day care is  
24 proposed to be provided to children in a home-based setting has been  
25 charged with a crime, the office of children and family services shall  
26 hold the application in abeyance until the charge is finally resolved.

27 (ii) Where a clearance conducted pursuant to this section reveals that  
28 the current operator or director of a child day care program, or any  
29 person over the age of eighteen who is not related in any way to all  
30 children for whom child care services will be provided, that resides in  
31 a home where child day care is provided has been charged with a crime,  
32 the office of children and family services shall conduct a safety  
33 assessment of the program and take all appropriate steps to protect the  
34 health and safety of children in the program. The office of children and  
35 family services may suspend a license or registration or terminate  
36 enrollment based on such a charge when necessary to protect the health  
37 and safety of children in the program.

38 (iii) Where a clearance conducted pursuant to this section reveals  
39 that an existing caregiver, volunteer or an existing employee of an  
40 enrolled legally-exempt provider or a legally-exempt provider or any  
41 person over the age of eighteen that resides in a home where the child  
42 care is provided by an enrolled legally-exempt provider or a legally-ex-  
43 empt provider in a home setting where the child does not reside, has  
44 been charged with a crime, the office of children and family services  
45 shall take one or more of the following steps:

46 (A) Conduct a safety assessment; or

47 (B) Take all appropriate steps to protect the health and safety of  
48 children in the program.

49 (iv) Where a clearance conducted pursuant to this section reveals that  
50 an applicant to be an employee or volunteer with the potential for unsu-  
51 pervised contact with children of a child day care program [~~or~~],  
52 enrolled legally-exempt provider or a legally-exempt provider has been  
53 charged with a crime, the office shall hold the application in abeyance  
54 until the charge is finally resolved.

55 (v) Where a clearance conducted pursuant to this section reveals that  
56 a current employee, or current volunteer with the potential for unsuper-

1 vised contact with children of a child day care program has been charged  
2 with a crime, the office of children and family services shall conduct a  
3 safety assessment of the program and take all appropriate steps to  
4 protect the health and safety of the children in the program.

5 7. Where the office of children and family services or its designee  
6 denies or directs a child day care or an enrolled legally-exempt provid-  
7 er to deny an application based on the criminal history record; (a) the  
8 provider must notify the applicant that such record is the basis of the  
9 denial; and (b) the office of children and family services shall also  
10 notify as the case may be, such current or prospective operator, direc-  
11 tor, employee, assistant, legally exempt provider, legally-exempt  
12 provider, or volunteer with the potential for unsupervised contact with  
13 children or other person eighteen years of age or older, who resides in  
14 the home where care is provided, other than the child's home, that the  
15 criminal record check was the basis for the denial of clearance and  
16 shall provide such individual with a copy of the results of the national  
17 criminal record check upon which such denial was based together with a  
18 written statement setting forth the reasons for such denial, as well as  
19 a copy of article twenty-three-A of the correction law and inform such  
20 individual of his or her right to seek correction of any incorrect  
21 information contained in such national record check provided by the  
22 federal bureau of investigation.

23 10. A child day care ~~[or]~~,<sup>+</sup> enrolled legally-exempt provider or legal-  
24 ly-exempt provider shall advise the office of children and family  
25 services when an individual who is subject to criminal history record  
26 review in accordance with subdivision one or two of this section is no  
27 longer subject to such review. The office of children and family  
28 services shall inform the division of criminal justice services when an  
29 individual who is subject to criminal history review is no longer  
30 subject to such review so that the division of criminal justice services  
31 may terminate its retain processing with regard to such person. At least  
32 once a year, the office of children and family services will be required  
33 to conduct a validation of the records maintained by the division of  
34 criminal justice services.

35 § 2. This act shall take effect immediately.