

1608

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. ZEBROWSKI, BENEDETTO, CARROZZA, JAFFEE -- Multi-Sponsored by -- M. of A. BARRA, BOYLAND, GORDON, HOOPER, KOON, MAISEL, REILLY, TITONE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the social services law and the executive law, in relation to permitting free of charge access to certain conviction records by chapters of Big Brothers/Big Sisters of America, Inc.

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

1 Section 1. The social services law is amended by adding a new section
2 378-b to read as follows:
3 S 378-B. ACCESS TO CONVICTION RECORDS BY NEW YORK STATE CHAPTERS OF
4 BIG BROTHERS/BIG SISTERS OF AMERICA, INC. 1. ANY NEW YORK CHAPTER OF
5 BIG BROTHERS/BIG SISTERS OF AMERICA, INC., WHICH IS A VOLUNTARY ORGAN-
6 IZATION ORGANIZED UNDER THE NOT-FOR-PROFIT CORPORATION LAW, MAY OBTAIN
7 FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES, THE NEW YORK STATE
8 CONVICTION RECORD OR THE FEDERAL BUREAU OF INVESTIGATION CONVICTION
9 RECORD FOR A VOLUNTEER OR PROSPECTIVE VOLUNTEER, FREE OF CHARGE,
10 SUBJECT TO THE FOLLOWING RESTRICTIONS:
11 A. SUCH CHAPTERS SHALL OBTAIN SUCH CONVICTION RECORD ONLY FOR VOLUN-
12 TEERS OR PROSPECTIVE VOLUNTEERS WHO HAVE DIRECT CONTACT WITH CHILDREN
13 SERVED BY SUCH CHAPTER;
14 B. SUCH CHAPTER SHALL DESIGNATE ONE INDIVIDUAL TO REQUEST, RECEIVE AND
15 REVIEW SUCH CONVICTION RECORD, AND ONLY SUCH DESIGNATED PERSON SHALL
16 HAVE ACCESS TO SUCH RECORD. SUCH CHAPTER SHALL REGISTER SUCH DESIGNATED
17 INDIVIDUAL WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES; AND
18 C. SUCH DESIGNATED AND REGISTERED INDIVIDUAL IN EACH SUCH CHAPTER
19 SHALL MARK SUCH CONVICTION RECORD "CONFIDENTIAL" UPON RECEIPT, AND SHALL
20 MAINTAIN AT ALL TIMES SUCH CONVICTION RECORD IN A SECURE PLACE IN ORDER

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

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1 TO INSURE CONFIDENTIALITY. A PERSON WHO VIOLATES THE CONFIDENTIALITY
2 REQUIRED BY THIS SUBDIVISION SHALL BE GUILTY OF A CLASS E FELONY.

3 2. BEFORE REQUESTING SUCH CONVICTION RECORD FROM THE DIVISION OF CRIM-
4 INAL JUSTICE SERVICES, SUCH CHAPTER SHALL:

5 A. INFORM ANY VOLUNTEER OR PROSPECTIVE VOLUNTEER THAT A REQUEST FOR A
6 CONVICTION RECORD AND A REVIEW THEREOF IS REQUIRED IN ORDER FOR SUCH
7 VOLUNTEER TO CONTINUE IN THE SAME VOLUNTEER CAPACITY OR FOR SUCH
8 PROSPECTIVE VOLUNTEER TO BE ACCEPTED BY SUCH CHAPTER;

9 B. INFORM SUCH VOLUNTEER OR PROSPECTIVE VOLUNTEER THAT BEFORE SUCH
10 CHAPTER MAKES A REQUEST FOR CONVICTION RECORDS, SUCH VOLUNTEER OR
11 PROSPECTIVE VOLUNTEER HAS THE RIGHT TO OBTAIN AND REVIEW HIS OR HER OWN
12 CONVICTION RECORD, PURSUANT TO THE PROCEDURES OF THE DIVISION OF CRIMI-
13 NAL JUSTICE SERVICES;

14 C. OBTAIN THE INFORMED SIGNATURE OF SUCH VOLUNTEER OR PROSPECTIVE
15 VOLUNTEER ON A FORM PROVIDED BY THE DIVISION OF CRIMINAL JUSTICE
16 SERVICES WHICH INDICATES THAT SUCH VOLUNTEER OR PROSPECTIVE VOLUNTEER
17 HAS:

18 I. BEEN INFORMED OF THE RIGHT TO REVIEW HIS OR HER OWN RECORDS;

19 II. EXERCISED OR WAIVED SUCH RIGHT TO REVIEW HIS OR HER OWN RECORDS;

20 III. BEEN INFORMED OF THE REASON FOR SUCH REQUEST FOR HIS OR HER
21 CONVICTION RECORD; AND

22 IV. CONSENTED TO SUCH REQUEST; AND

23 D. OBTAIN FINGERPRINTS FROM SUCH VOLUNTEER OR PROSPECTIVE VOLUNTEER,
24 PURSUANT TO THE PROCEDURES OF THE DIVISION OF CRIMINAL JUSTICE SERVICES.

25 3. A PROSPECTIVE VOLUNTEER MAY WITHDRAW FROM THE APPLICATION PROCESS,
26 WHETHER OR NOT HE OR SHE HAS HAD ACCESS TO HIS OR HER CONVICTION RECORD
27 AND WHETHER OR NOT SUCH RECORD HAS BEEN RECEIVED BY SUCH CHAPTER, WITH-
28 OUT PREJUDICE. IF THE CONVICTION RECORD OF SUCH PROSPECTIVE VOLUNTEER
29 HAS BEEN RECEIVED BY SUCH CHAPTER, THE PERSON DESIGNATED BY SUCH CHAPTER
30 TO HAVE ACCESS TO CONVICTION RECORDS SHALL DESTROY SUCH RECORD.

31 4. THE CONVICTION RECORD OF A VOLUNTEER SHALL BE DESTROYED BY THE
32 PERSON DESIGNATED BY SUCH CHAPTER TO HAVE ACCESS TO CONVICTION RECORDS
33 WHEN SUCH VOLUNTEER NO LONGER HAS DIRECT CONTACT WITH CHILDREN SERVED BY
34 SUCH CHAPTER.

35 5. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROVIDE A RESPONSE
36 TO A NEW YORK STATE CHAPTER OF BIG BROTHERS/BIG SISTERS WITHIN FIFTEEN
37 BUSINESS DAYS OF THE RECEIPT OF ANY REQUEST BY SUCH CHAPTER FOR A NEW
38 YORK STATE CONVICTION RECORD AND/OR FEDERAL BUREAU OF INVESTIGATION
39 CONVICTION RECORD IF:

40 A. SUCH REQUEST IS MADE BY SUCH CHAPTER'S DESIGNATED INDIVIDUAL WHO IS
41 REGISTERED WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES;

42 B. SUCH REQUEST IS ACCOMPANIED BY A FORM SIGNED BY THE VOLUNTEER OR
43 PROSPECTIVE VOLUNTEER, WHO IS THE SUBJECT OF SUCH REQUEST, CONSENTING TO
44 THE PROVISION OF SUCH RECORD; AND

45 C. SUCH REQUEST IS ACCOMPANIED BY THE VOLUNTEER'S OR PROSPECTIVE
46 VOLUNTEER'S FINGERPRINTS, OBTAINED PURSUANT TO THE PROCEDURES OF THE
47 DIVISION OF CRIMINAL JUSTICE SERVICES.

48 6. THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL
49 PROMULGATE THE RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE
50 PROVISIONS OF THIS SECTION INCLUDING, BUT NOT LIMITED TO, RULES AND
51 REGULATIONS PROVIDING FOR A HEARING FOR A VOLUNTEER OR PROSPECTIVE
52 VOLUNTEER BEFORE REPRESENTATIVES OF SUCH DIVISION AND THE OFFICE OF
53 CHILDREN AND FAMILY SERVICES FOR PURPOSES OF VERIFYING THE ACCURACY OF
54 HIS OR HER CONVICTION RECORD AND FOR ACCESS BY SUCH PERSONS TO PERTINENT
55 DOCUMENTS RELATED THERETO.

1 7. FOR PURPOSES OF THIS SECTION, "CONVICTION RECORD" SHALL MEAN ANY
2 RECORD MAINTAINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES OR THE
3 FEDERAL BUREAU OF INVESTIGATION OF CONVICTIONS OF A CRIME IN VIOLATION
4 OF THE PENAL LAW OF THIS OR ANY OTHER STATE.

5 S 2. Subdivision 8-a of section 837 of the executive law, as amended
6 by chapter 561 of the laws of 2006, is amended to read as follows:

7 8-a. Charge a fee when, pursuant to statute or the regulations of the
8 division, it conducts a search of its criminal history records and
9 returns a report thereon in connection with an application for employ-
10 ment or for a license or permit. The division shall adopt and may, from
11 time to time, amend a schedule of such fees which shall be in amounts
12 determined by the division to be reasonably related to the cost of
13 conducting such searches and returning reports thereon but, in no event,
14 shall any such fee exceed twenty-five dollars and an additional
15 surcharge of fifty dollars. The comptroller is hereby authorized to
16 deposit such fees into the general fund, provided, however, that the
17 monies received by the division of criminal justice services for payment
18 of the additional surcharge shall be deposited in equal amounts to the
19 general fund and to the fingerprint identification and technology
20 account. Notwithstanding the foregoing, the division shall not request
21 or accept any fee for searching its records and supplying a criminal
22 history report pursuant to section two hundred fifty-one-b of the gener-
23 al business law relating to participating in flight instruction at any
24 aeronautical facility, flight school or institution of higher learning
25 OR WHEN IT RETURNS A NEW YORK STATE CONVICTION REPORT AND/OR A FEDERAL
26 BUREAU OF INVESTIGATION CONVICTION REPORT THEREON AS REQUIRED BY SECTION
27 THREE HUNDRED SEVENTY-EIGHT-B OF THE SOCIAL SERVICES LAW.

28 S 3. This act shall take effect on the one hundred twentieth day after
29 it shall have become a law.