

2009

2009-2010 Regular Sessions

I N S E N A T E

February 10, 2009

Introduced by Sens. GOLDEN, ALESI, DeFRANCISCO, O. JOHNSON, LANZA, LARKIN, LAVALLE, PADAVAN, SEWARD, VOLKER, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law, in relation to criminal history review of child care providers

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

1 Section 1. Subdivision 3 of section 390-b of the social services law,
2 as added by chapter 416 of the laws of 2000, is amended to read as
3 follows:
4 3. Notwithstanding any other provision of law to the contrary, after
5 reviewing any criminal history record information provided by the divi-
6 sion of criminal justice services, of an individual who is subject to a
7 criminal history record check pursuant to this section, the office of
8 children and family services and the provider shall take the following
9 actions:
10 (a) (i) Where the criminal history record of an applicant to be an
11 operator of a child day care center, school age child care program,
12 group family day care home, family day care home, or any person over the
13 age of eighteen residing in such a home, reveals a felony conviction [at
14 any time for a sex offense, crime against a child, or a crime involving
15 violence, or a felony conviction within the past five years for a drug-
16 related offense, the office of children and family services shall deny
17 the application unless the office determines, in its discretion, that
18 approval of the application will not in any way jeopardize the health,
19 safety or welfare of the children in the center, program or home] FOR AN
20 OFFENSE DEFINED IN ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED TWENTY-FIVE,
21 ONE HUNDRED THIRTY, ONE HUNDRED THIRTY-FIVE, TWO HUNDRED THIRTY-FIVE OR
22 TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, OR AN OFFENSE COMMITTED UNDER
23 A FORMER PROVISION OF THE PENAL LAW WHICH WOULD CONSTITUTE A VIOLATION

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

LBD08266-01-9

1 OF THE AFORESAID ARTICLES OF THE PENAL LAW OR ANY OFFENSE COMMITTED IN
2 ANOTHER JURISDICTION WHICH WOULD CONSTITUTE A VIOLATION OF THE AFORESAID
3 ARTICLES OF THE PENAL LAW; or

4 (ii) Where the criminal history record of an applicant to be an opera-
5 tor of a child day care center, school age child care program, group
6 family day care home, family day care home, or any person over the age
7 of eighteen residing in such a home, reveals a conviction for a crime
8 other than one set forth in subparagraph (i) of this paragraph, the
9 office of children and family services may deny the application,
10 consistent with article twenty-three-A of the correction law; or

11 (iii) Where the criminal history record of an applicant to be an oper-
12 ator of a child day care center, school age child care program, group
13 family day care home, family day care home, or any other person over the
14 age of eighteen residing in such a home, reveals a charge for any crime,
15 the office of children and family services shall hold the application in
16 abeyance until the charge is finally resolved.

17 (b) (i) Where the criminal history record of a current operator of a
18 child day care center, school age child care program, group family day
19 care home, family day care home, or any other person over the age of
20 eighteen residing in such a home, reveals a conviction for a crime set
21 forth in subparagraph (i) of paragraph (a) of this subdivision, the
22 office of children and family services shall conduct a safety assessment
23 of the program and take all appropriate steps to protect the health and
24 safety of the children in the program. The office of children and family
25 services shall deny, [limit, suspend,] revoke, reject or terminate a
26 license or registration based on such a conviction[, unless the office
27 determines, in its discretion, that continued operation of the center,
28 program or home will not in any way jeopardize the health, safety or
29 welfare of the children in the center, program or home];

30 (ii) Where the criminal history record of a current operator of a
31 child day care center, school age child care program, group family day
32 care home, family day care home, or any other person over the age of
33 eighteen residing in such a home, reveals a conviction for a crime other
34 than one set forth in subparagraph (i) of paragraph (a) of this subdivi-
35 sion, the office of children and family services shall conduct a safety
36 assessment of the program and take all appropriate steps to protect the
37 health and safety of the children in the program. The office may deny,
38 limit, suspend, revoke, reject or terminate a license or registration
39 based on such a conviction, consistent with article twenty-three-A of
40 the correction law;

41 (iii) Where the criminal history record of a current operator of a
42 child day care center, school age child care program, group family day
43 care home, family day care home, or any other person over the age of
44 eighteen residing in such a home, reveals a charge for any crime, the
45 office of children and family services shall conduct a safety assessment
46 of the program and take all appropriate steps to protect the health and
47 safety of the children in the program. The officemay suspend a license
48 or registration based on such a charge where necessary to protect the
49 health and safety of the children in the program.

50 (c) (i) Where the criminal history record of an applicant to be an
51 employee or volunteer at a child day care center or school age child
52 care program reveals a conviction for a crime set forth in subparagraph
53 (i) of paragraph (a) of this subdivision, the office of children and
54 family services shall direct the provider to deny the application
55 [unless the office determines, in its discretion, that approval of the

1 application will not in any way jeopardize the health, safety or welfare
2 of the children in the center or program];

3 (ii) Where the criminal history record of an applicant to be an
4 employee or volunteer at a child day care center or school age child
5 care program reveals a conviction for a crime other than one set forth
6 in subparagraph (i) of paragraph (a) of this subdivision, the office of
7 children and family services may, consistent with article twenty-three-A
8 of the correction law, direct the provider to deny the application;

9 (iii) Where the criminal history record of an applicant to be an
10 employee or volunteer at a child day care center or school age child
11 care program reveals a charge for any crime, the office of children and
12 family services shall hold the application in abeyance until the charge
13 is finally resolved.

14 (d) (i) Where the criminal history record of a current employee or
15 volunteer at a child day care center or school age child care program
16 reveals a conviction for a crime set forth in subparagraph (i) of para-
17 graph (a) of this subdivision, the office of children and family
18 services shall conduct a safety assessment of the program and take all
19 appropriate steps to protect the health and safety of the children in
20 the program. The office shall direct the provider to terminate the
21 employee or volunteer based on such a conviction[, unless the office
22 determines, in its discretion, that the continued presence of the
23 employee or volunteer in the center or program will not in any way jeop-
24 ardize the health, safety or welfare of the children in the center or
25 program];

26 (ii) Where the criminal history record of a current employee or volun-
27 teer at a child day care center or school age child care program reveals
28 a conviction for a crime other than one set forth in subparagraph (i) of
29 paragraph (a) of this subdivision, the office of children and family
30 services shall conduct a safety assessment of the program and take all
31 appropriate steps to protect the health and safety of the children in
32 the program. The office may direct the provider to terminate the employ-
33 ee or volunteer based on such a conviction, consistent with article
34 twenty-three-A of the correction law;

35 (iii) Where the criminal history record of a current employee or
36 volunteer at a child day care center or school age child care program
37 reveals a charge for any crime, the office of children and family
38 services shall conduct a safety assessment of the program and take all
39 appropriate steps to protect the health and safety of the children in
40 the program.

41 (e) (i) Where the criminal history record of an applicant to be an
42 employee, assistant or volunteer at a group family day care home or
43 family day care home reveals a conviction for a crime set forth in
44 subparagraph (i) of paragraph (a) of this subdivision, the office of
45 children and family services shall direct the provider to deny the
46 application [unless the office determines, in its discretion, that
47 approval of the application will not in any way jeopardize the health,
48 safety or welfare of the children in the home];

49 (ii) Where the criminal history record of an applicant to be an
50 employee, assistant or volunteer at a group family day care home or
51 family day care home reveals a conviction for a crime other than one set
52 forth in subparagraph (i) of paragraph (a) of this subdivision, the
53 office of children and family services may, consistent with article
54 twenty-three-A of the correction law, direct the provider to deny the
55 application;

1 (iii) Where the criminal history record of an applicant to be an
2 employee, assistant or volunteer at a group family day care home or
3 family day care home reveals a charge for any crime, the office of chil-
4 dren and family services shall hold the application in abeyance until
5 the charge is finally resolved.

6 (f) (i) Where the criminal history record of a current employee,
7 assistant or volunteer at a group family day care home or family day
8 care home reveals a conviction for a crime set forth in subparagraph (i)
9 of paragraph (a) of this subdivision, the office of children and family
10 services shall conduct a safety assessment of the program and take all
11 appropriate steps to protect the health and safety of the children in
12 the home. The office of children and family services shall direct the
13 provider to terminate the employee, assistant or volunteer based on such
14 a conviction[, unless the office determines, in its discretion, that the
15 continued presence of the employee, assistant or volunteer in the home
16 will not in any way jeopardize the health, safety or welfare of the
17 children in the home];

18 (ii) Where the criminal history record of a current employee, assist-
19 ant or volunteer at a group family day care home or family day care home
20 reveals a conviction for a crime other than one set forth in subpara-
21 graph (i) of paragraph (a) of this subdivision, the office of children
22 and family services shall conduct a safety assessment of the home and
23 take all appropriate steps to protect the health and safety of the chil-
24 dren in the home. The office may direct the provider to terminate the
25 employee, assistant or volunteer based on such a conviction, consistent
26 with article twenty-three-A of the correction law;

27 (iii) Where the criminal history record of a current employee, assist-
28 ant or volunteer at a group family day care home or family day care home
29 reveals a charge for any crime, the office of children and family
30 services shall conduct a safety assessment of the home and take all
31 appropriate steps to protect the health and safety of the children in
32 the home.

33 (g) Advise the provider that the individual has no criminal history
34 record.

35 S 2. This act shall take effect immediately.