S T A T E O F N E W Y O R K

2009

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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:

Section 1. Subdivision 3 of section 390-b of the social services law, as added by chapter 416 of the laws of 2000, is amended to read as follows:

3. Notwithstanding any other provision of law to the contrary, after reviewing any criminal history record information provided by the division of criminal justice services, of an individual who is subject to a criminal history record check pursuant to this section, the office of children and family services and the provider shall take the following actions:

(a) (i) Where the criminal history record of an applicant to be an operator of a child day care center, school age child care program, group family day care home, family day care home, or any person over the age of eighteen residing in such a home, reveals a felony conviction [at any time for a sex offense, crime against a child, or a crime involving violence, or a felony conviction within the past five years for a drug-related offense, the office of children and family services shall deny the application unless the office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of the children in the center, program or home] FOR AN OFFENSE DEFINED IN ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED TWENTY-FIVE, ONE HUNDRED THIRTY, ONE HUNDRED THIRTY-FIVE, TWO HUNDRED THIRTY-FIVE OR TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, OR AN OFFENSE COMMITTED UNDER 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.

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

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

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

(b) (i) Where the criminal history record of a current operator of a child day care center, school age child care program, group family day care home, family day care home, or any other person over the age of eighteen residing in such a home, reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of this subdivision, 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. The office of children and family services shall deny, [limit, suspend,] revoke, reject or terminate a license or registration based on such a conviction[, unless the office determines, in its discretion, that continued operation of the center, program or home will not in any way jeopardize the health, safety or welfare of the children in the center, program or home];

(ii) Where the criminal history record of a current operator of a child day care center, school age child care program, group family day care home, family day care home, or any other person over the age of eighteen residing in such a home, reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of this subdivision, 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. The office may deny, limit, suspend, revoke, reject or terminate a license or registration based on such a conviction, consistent with article twenty-three-A of the correction law;

(iii) Where the criminal history record of a current operator of a child day care center, school age child care program, group family day care home, family day care home, or any other person over the age of eighteen residing in such a home, reveals a charge for any crime, 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. The office may suspend a license or registration based on such a charge where necessary to protect the health and safety of the children in the program.

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

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

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

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

(d) (i) Where the criminal history record of a current employee or volunteer at a child day care center or school age child care program reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of this subdivision, 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. The office shall direct the provider to terminate the employee or volunteer based on such a conviction[, unless the office determines, in its discretion, that the continued presence of the employee or volunteer in the center or program will not in any way jeopardize the health, safety or welfare of the children in the center or program];

(ii) Where the criminal history record of a current employee or volunteer at a child day care center or school age child care program reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of this subdivision, 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. The office may direct the provider to terminate the employee or volunteer based on such a conviction, consistent with article twenty-three-A of the correction law;

(iii) Where the criminal history record of a current employee or volunteer at a child day care center or school age child care program reveals a charge for any crime, 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.

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

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

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

(f) (i) Where the criminal history record of a current employee, assistant or volunteer at a group family day care home or family day care home reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of this subdivision, 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 home. The office of children and family services shall direct the provider to terminate the employee, assistant or volunteer based on such a conviction[, unless the office determines, in its discretion, that the continued presence of the employee, assistant or volunteer in the home will not in any way jeopardize the health, safety or welfare of the children in the home];

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

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

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

S 2. This act shall take effect immediately.