

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. MORAHAN -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to establishing a mental retardation and developmental disabilities and mental health worker registry

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

1 Section 1. The mental hygiene law is amended by adding a new section
2 16.34 to read as follows:
3 S 16.34 MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES REGISTRY.
4 1. EVERY PROVIDER OF SERVICES REQUIRED TO REQUEST CRIMINAL HISTORY
5 INFORMATION CONCERNING CERTAIN PROSPECTIVE EMPLOYEES AND VOLUNTEERS
6 PURSUANT TO THE PROVISIONS OF SECTION 16.33 OF THIS ARTICLE SHALL ALSO
7 BE REQUIRED TO SUBMIT TO THE OFFICE A SUMMARY REPORT IN A FORM APPROVED
8 BY THE OFFICE OF THE TERMINATION FOR CAUSE OF ANY EMPLOYEE OR VOLUNTEER
9 WHO WAS SUBJECT TO A CRIMINAL HISTORY BACKGROUND CHECK UNDER SECTION
10 16.33 OF THIS ARTICLE AND WHO IS TERMINATED AS A RESULT OF A FINDING
11 THAT SUCH EMPLOYEE OR VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTED
12 ABUSE OR NEGLECT OF A CLIENT.
13 2. IF SUCH EMPLOYEE OR VOLUNTEER VOLUNTARILY RESIGNS DURING THE
14 PENDENCY OF AN INVESTIGATION OF AN INCIDENT INVOLVING NEGLECT OR ABUSE
15 OF A CLIENT AND IF SUCH INVESTIGATION DETERMINES THAT SUCH EMPLOYEE OR
16 VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTED ABUSE OR NEGLECT OF A
17 CLIENT WHICH WOULD HAVE RESULTED IN TERMINATION, SUCH PROVIDER SHALL
18 FILE THE SUMMARY REPORT REQUIRED IN SUBDIVISION ONE OF THIS SECTION.
19 3. THE SUMMARY REPORT REQUIRED TO BE FILED UNDER SUBDIVISION ONE OF
20 THIS SECTION SHALL BE SUBMITTED TO THE OFFICE WITHIN THIRTY DAYS OF THE
21 TERMINATION OR, IF THE EMPLOYEE OR VOLUNTEER RESIGNS, THIRTY DAYS AFTER
22 THE COMPLETION OF THE INVESTIGATION. THE SUMMARY REPORT SHALL INCLUDE

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

1 THE NAME, HOME ADDRESS, SOCIAL SECURITY NUMBER OF THE EMPLOYEE OR VOLUN-
2 TEER AND A BRIEF DESCRIPTION OF THE CONDUCT INVOLVED IN THE INCIDENT IN
3 A FORM APPROVED BY THE OFFICE.

4 4. WHEN THE OFFICE RECEIVES A SUMMARY REPORT REGARDING AN EMPLOYEE OR
5 VOLUNTEER, THE OFFICE SHALL MAINTAIN SUCH REPORT TOGETHER WITH THE CRIM-
6 INAL HISTORY INFORMATION PREVIOUSLY OBTAINED REGARDING SUCH EMPLOYEE OR
7 VOLUNTEER.

8 5. IF THE OFFICE RECEIVES A REQUEST FOR CRIMINAL HISTORY INFORMATION
9 FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER FOR WHOM THE OFFICE HAS PREVI-
10 OUSLY RECEIVED A SUMMARY REPORT, THE OFFICE SHALL FURNISH A COPY OF ANY
11 SUMMARY REPORTS AND ANY WRITTEN RESPONSE FROM THE EMPLOYEE OR VOLUNTEER
12 REFERRED TO IN SUBDIVISION EIGHT OF THIS SECTION TO: (A) THE PROVIDER
13 THAT REQUESTED THE CRIMINAL HISTORY INFORMATION WITH RESPECT TO SUCH
14 PROSPECTIVE EMPLOYEE OR VOLUNTEER AND (B) ANY OTHER PROVIDER THAT PREVI-
15 OUSLY REQUESTED CRIMINAL HISTORY INFORMATION PERTAINING TO SUCH EMPLOYEE
16 OR VOLUNTEER EXCEPT IF SUCH PROVIDER HAS NOTIFIED THE OFFICE THAT SUCH
17 EMPLOYEE OR VOLUNTEER IS NO LONGER SUBJECT TO A CHECK PURSUANT TO THE
18 PROVISIONS OF SUBDIVISION EIGHT OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF
19 THE EXECUTIVE LAW.

20 6. THE OFFICE SHALL PROVIDE THE SUMMARY REPORT TO THE AUTHORIZED
21 PERSON AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION EIGHT
22 HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

23 7. THE SUMMARY REPORT PROVIDED BY THE OFFICE TO A PROVIDER SHALL BE
24 SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF SUBDIVISION SEVEN OF
25 SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

26 8. THE OFFICE SHALL PROVIDE EACH EMPLOYEE OR VOLUNTEER ABOUT WHOM THE
27 OFFICE RECEIVES A SUMMARY REPORT HEREUNDER WITH WRITTEN NOTIFICATION
28 THAT SUCH EMPLOYEE OR VOLUNTEER HAS THE RIGHT TO OBTAIN AND REVIEW THE
29 SUMMARY REPORT AND SUBMIT A BRIEF WRITTEN STATEMENT IN RESPONSE TO THE
30 SUMMARY REPORT PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE
31 OFFICE. IF THE OFFICE RECEIVES SUCH WRITTEN STATEMENT, THE OFFICE SHALL
32 TRANSMIT SUCH WRITTEN STATEMENT TO ANY PROVIDER TOGETHER WITH THE SUMMA-
33 RY REPORT PROVIDED PURSUANT TO THIS SECTION.

34 9. THE PROVISIONS OF SUBDIVISION NINE OF SECTION EIGHT HUNDRED FORTY-
35 FIVE-B OF THE EXECUTIVE LAW REGARDING LIMITATIONS OF CIVIL AND CRIMINAL
36 LIABILITY AND LIMITATIONS UPON ACTIONS FOR DAMAGES SHALL APPLY WITH
37 RESPECT TO THE SUMMARY REPORTS DISCLOSED BY THE OFFICE TO PROVIDERS TO
38 THE SAME EXTENT AND IN THE SAME MANNER THAT SUCH PROVISIONS APPLY TO
39 CRIMINAL HISTORY INFORMATION PROVIDED UNDER SECTION EIGHT HUNDRED
40 FORTY-FIVE-B OF THE EXECUTIVE LAW.

41 S 2. The mental hygiene law is amended by adding a new section 31.36
42 to read as follows:

43 S 31.36 MENTAL HEALTH REGISTRY.

44 1. EVERY PROVIDER OF SERVICES REQUIRED TO REQUEST CRIMINAL HISTORY
45 INFORMATION CONCERNING CERTAIN PROSPECTIVE EMPLOYEES AND VOLUNTEERS
46 PURSUANT TO THE PROVISIONS OF SECTION 31.35 OF THIS ARTICLE SHALL ALSO
47 BE REQUIRED TO SUBMIT TO THE OFFICE OF MENTAL HEALTH, HEREINAFTER
48 REFERRED TO AS THE OFFICE, A SUMMARY REPORT IN A FORM APPROVED BY THE
49 OFFICE OF THE TERMINATION FOR CAUSE OF ANY EMPLOYEE OR VOLUNTEER WHO WAS
50 SUBJECT TO A CRIMINAL HISTORY BACKGROUND CHECK UNDER SECTION 31.35 OF
51 THIS ARTICLE AND WHO IS TERMINATED AS A RESULT OF A FINDING THAT SUCH
52 EMPLOYEE OR VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTED ABUSE OR
53 NEGLECT OF A CLIENT.

54 2. IF SUCH EMPLOYEE OR VOLUNTEER VOLUNTARILY RESIGNS DURING THE
55 PENDENCY OF AN INVESTIGATION OF AN INCIDENT INVOLVING NEGLECT OR ABUSE
56 OF A CLIENT AND IF SUCH INVESTIGATION DETERMINES THAT SUCH EMPLOYEE OR

1 VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTED ABUSE OR NEGLECT OF A
2 CLIENT WHICH WOULD HAVE RESULTED IN TERMINATION, SUCH PROVIDER SHALL
3 FILE THE SUMMARY REPORT REQUIRED IN SUBDIVISION ONE OF THIS SECTION.

4 3. THE SUMMARY REPORT REQUIRED TO BE FILED UNDER SUBDIVISION ONE OF
5 THIS SECTION SHALL BE SUBMITTED TO THE OFFICE WITHIN THIRTY DAYS OF THE
6 TERMINATION OR, IF THE EMPLOYEE OR VOLUNTEER RESIGNS, THIRTY DAYS AFTER
7 THE COMPLETION OF THE INVESTIGATION. THE SUMMARY REPORT SHALL INCLUDE
8 THE NAME, HOME ADDRESS, SOCIAL SECURITY NUMBER OF THE EMPLOYEE OR VOLUN-
9 TEER AND A BRIEF DESCRIPTION OF THE CONDUCT INVOLVED IN THE INCIDENT IN
10 A FORM APPROVED BY THE OFFICE.

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12 VOLUNTEER, THE OFFICE SHALL MAINTAIN SUCH REPORT TOGETHER WITH THE CRIM-
13 INAL HISTORY INFORMATION PREVIOUSLY OBTAINED REGARDING SUCH EMPLOYEE OR
14 VOLUNTEER.

15 5. IF THE OFFICE RECEIVES A REQUEST FOR CRIMINAL HISTORY INFORMATION
16 FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER FOR WHOM THE OFFICE HAS PREVI-
17 OUSLY RECEIVED A SUMMARY REPORT, THE OFFICE SHALL FURNISH A COPY OF ANY
18 SUMMARY REPORTS AND ANY WRITTEN RESPONSE FROM THE EMPLOYEE OR VOLUNTEER
19 REFERRED TO IN SUBDIVISION EIGHT OF THIS SECTION TO: (A) THE PROVIDER
20 THAT REQUESTED THE CRIMINAL HISTORY INFORMATION WITH RESPECT TO SUCH
21 PROSPECTIVE EMPLOYEE OR VOLUNTEER AND (B) ANY OTHER PROVIDER THAT PREVI-
22 OUSLY REQUESTED CRIMINAL HISTORY INFORMATION PERTAINING TO SUCH EMPLOYEE
23 OR VOLUNTEER EXCEPT IF SUCH PROVIDER HAS NOTIFIED THE OFFICE THAT SUCH
24 EMPLOYEE OR VOLUNTEER IS NO LONGER SUBJECT TO A CHECK PURSUANT TO THE
25 PROVISIONS OF SUBDIVISION EIGHT OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF
26 THE EXECUTIVE LAW.

27 6. THE OFFICE SHALL PROVIDE THE SUMMARY REPORT TO THE AUTHORIZED
28 PERSON AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION EIGHT
29 HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

30 7. THE SUMMARY REPORT PROVIDED BY THE OFFICE TO A PROVIDER SHALL BE
31 SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF SUBDIVISION SEVEN OF
32 SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

33 8. THE OFFICE SHALL PROVIDE EACH EMPLOYEE OR VOLUNTEER ABOUT WHOM THE
34 OFFICE RECEIVES A SUMMARY REPORT HEREUNDER WITH WRITTEN NOTIFICATION
35 THAT SUCH EMPLOYEE OR VOLUNTEER HAS THE RIGHT TO OBTAIN AND REVIEW THE
36 SUMMARY REPORT AND SUBMIT A BRIEF WRITTEN STATEMENT IN RESPONSE TO THE
37 SUMMARY REPORT PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE
38 OFFICE. IF THE OFFICE RECEIVES SUCH WRITTEN STATEMENT, THE OFFICE SHALL
39 TRANSMIT SUCH WRITTEN STATEMENT TO ANY PROVIDER TOGETHER WITH THE SUMMA-
40 RY REPORT PROVIDED PURSUANT TO THIS SECTION.

41 9. THE PROVISIONS OF SUBDIVISION NINE OF SECTION EIGHT HUNDRED FORTY-
42 FIVE-B OF THE EXECUTIVE LAW REGARDING LIMITATIONS OF CIVIL AND CRIMINAL
43 LIABILITY AND LIMITATIONS UPON ACTIONS FOR DAMAGES SHALL APPLY WITH
44 RESPECT TO THE SUMMARY REPORTS DISCLOSED BY THE OFFICE TO PROVIDERS TO
45 THE SAME EXTENT AND IN THE SAME MANNER THAT SUCH PROVISIONS APPLY TO
46 CRIMINAL HISTORY INFORMATION PROVIDED UNDER SECTION EIGHT HUNDRED
47 FORTY-FIVE-B OF THE EXECUTIVE LAW.

48 S 3. This act shall take effect on the first of January next succeed-
49 ing the date on which it shall have become a law; provided, however,
50 that effective immediately the commissioner of mental retardation and
51 developmental disabilities and the commissioner of mental health may
52 adopt, amend, suspend or repeal rules or regulations and take other
53 actions prior to and in preparation for the timely implementation of
54 this act on its effective date.