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2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. C. JOHNSON, AUBERTINE, DIAZ, ONORATO, PARKER, SAMPSON, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law and the social services law, in relation to permitting 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. Legislative findings and intent. The legislature finds and
2 declares that the volunteers who are friends of and role-models for
3 children through chapters of Big Brothers/Big Sisters of America, Inc.
4 provide an important and necessary service to the children of New York
5 state. The legislature further finds that it is vitally important for
6 chapters of Big Brothers/Big Sisters of America, Inc., to screen volun-
7 teers in order to determine whether prospective or current volunteers
8 have been convicted of any crimes involving children. In this manner,
9 the risk should be diminished of having persons in volunteer positions
10 directly interacting with children who are also persons with a history
11 of abusing children, either physically or sexually. It is the intent of
12 the legislature to support the already extensive volunteer screening
13 process employed by chapters of Big Brothers/Big Sisters of America,
14 Inc., by making available, upon request, to such chapters the conviction
15 records of all volunteers and prospective volunteers who have or will
16 have any contact with children through such chapters. It is also the
17 intent of the legislature that in providing for access to the conviction
18 records of volunteers or prospective volunteers who have or will have
19 any contact with children through such chapters, the legislature will
20 demonstrate its support for the provisions of the National Child
21 Protection Act of 1993 allowing background checks for individuals with
22 responsibility for the safety and well-being of children.

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

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

3 8-a. Charge a fee when, pursuant to statute or the regulations of the
4 division, it conducts a search of its criminal history records and
5 returns a report thereon in connection with an application for employ-
6 ment or for a license or permit OR RETURNS A NEW YORK STATE CONVICTION
7 REPORT AND/OR A FEDERAL BUREAU OF INVESTIGATION CONVICTION REPORT THERE-
8 ON AS REQUIRED BY SECTION THREE HUNDRED SEVENTY-EIGHT-B OF THE SOCIAL
9 SERVICES LAW. The division shall adopt and may, from time to time,
10 amend a schedule of such fees which shall be in amounts determined by
11 the division to be reasonably related to the cost of conducting such
12 searches and returning reports thereon but, in no event, shall any such
13 fee exceed twenty-five dollars and an additional surcharge of fifty
14 dollars. The comptroller is hereby authorized to deposit such fees into
15 the general fund, provided, however, that the monies received by the
16 division of criminal justice services for payment of the additional
17 surcharge shall be deposited in equal amounts to the general fund and to
18 the fingerprint identification and technology account. Notwithstanding
19 the foregoing, the division shall not request or accept any fee for
20 searching its records and supplying a criminal history report pursuant
21 to section two hundred fifty-one-b of the general business law relating
22 to participating in flight instruction at any aeronautical facility,
23 flight school or institution of higher learning.

24 S 3. The social services law is amended by adding a new section 378-b
25 to read as follows:

26 S 378-B. ACCESS TO CONVICTION RECORDS BY NEW YORK STATE CHAPTERS OF
27 BIG BROTHERS/BIG SISTERS OF AMERICA, INC. 1. ANY NEW YORK CHAPTER OF
28 BIG BROTHERS/BIG SISTERS OF AMERICA, INC., WHICH IS A VOLUNTARY ORGAN-
29 IZATION ORGANIZED UNDER THE NOT-FOR-PROFIT CORPORATION LAW, MAY OBTAIN
30 FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES, THE NEW YORK STATE
31 CONVICTION RECORD OR THE FEDERAL BUREAU OF INVESTIGATION CONVICTION
32 RECORD FOR A VOLUNTEER OR PROSPECTIVE VOLUNTEER, SUBJECT TO THE FOLLOW-
33 ING RESTRICTIONS:

34 A. SUCH CHAPTERS SHALL OBTAIN SUCH CONVICTION RECORD ONLY FOR VOLUN-
35 TEERS OR PROSPECTIVE VOLUNTEERS WHO HAVE DIRECT CONTACT WITH CHILDREN
36 SERVED BY SUCH CHAPTER;

37 B. SUCH CHAPTER SHALL DESIGNATE ONE INDIVIDUAL TO REQUEST, RECEIVE AND
38 REVIEW SUCH CONVICTION RECORD, AND ONLY SUCH DESIGNATED PERSON SHALL
39 HAVE ACCESS TO SUCH RECORD. SUCH CHAPTER SHALL REGISTER SUCH DESIGNATED
40 INDIVIDUAL WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES;

41 C. SUCH DESIGNATED AND REGISTERED INDIVIDUAL IN EACH SUCH CHAPTER
42 SHALL MARK SUCH CONVICTION RECORD "CONFIDENTIAL" UPON RECEIPT, AND SHALL
43 MAINTAIN AT ALL TIMES SUCH CONVICTION RECORD IN A SECURE PLACE IN ORDER
44 TO INSURE CONFIDENTIALITY. A PERSON WHO VIOLATES THE CONFIDENTIALITY
45 REQUIRED BY THIS SUBDIVISION SHALL BE GUILTY OF A CLASS E FELONY; AND

46 D. SUCH CHAPTER SHALL PAY THE FEE DETERMINED PURSUANT TO SUBDIVISION
47 EIGHT-A OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW FOR
48 THE RECEIPT OF A NEW YORK STATE CONVICTION RECORD AND/OR THE FEE DETER-
49 MINED PURSUANT TO THE CHILD PROTECTION ACT OF 1993 FOR THE RECEIPT OF A
50 FEDERAL BUREAU OF INVESTIGATION CONVICTION RECORD.

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

53 A. INFORM ANY VOLUNTEER OR PROSPECTIVE VOLUNTEER THAT A REQUEST FOR A
54 CONVICTION RECORD AND A REVIEW THEREOF IS REQUIRED IN ORDER FOR SUCH
55 VOLUNTEER TO CONTINUE IN THE SAME VOLUNTEER CAPACITY OR FOR SUCH
56 PROSPECTIVE VOLUNTEER TO BE ACCEPTED BY SUCH CHAPTER;

1 B. INFORM SUCH VOLUNTEER OR PROSPECTIVE VOLUNTEER THAT BEFORE SUCH
2 CHAPTER MAKES A REQUEST FOR CONVICTION RECORDS, SUCH VOLUNTEER OR
3 PROSPECTIVE VOLUNTEER HAS THE RIGHT TO OBTAIN AND REVIEW HIS OR HER OWN
4 CONVICTION RECORD, PURSUANT TO THE PROCEDURES OF THE DIVISION OF CRIMI-
5 NAL JUSTICE SERVICES;

6 C. OBTAIN THE INFORMED SIGNATURE OF SUCH VOLUNTEER OR PROSPECTIVE
7 VOLUNTEER ON A FORM PROVIDED BY THE DIVISION OF CRIMINAL JUSTICE
8 SERVICES WHICH INDICATES THAT SUCH VOLUNTEER OR PROSPECTIVE VOLUNTEER
9 HAS:

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

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

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

14 IV. CONSENTED TO SUCH REQUEST; AND

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

17 3. A PROSPECTIVE VOLUNTEER MAY WITHDRAW FROM THE APPLICATION PROCESS,
18 WHETHER OR NOT HE OR SHE HAS HAD ACCESS TO HIS OR HER CONVICTION RECORD
19 AND WHETHER OR NOT SUCH RECORD HAS BEEN RECEIVED BY SUCH CHAPTER, WITH-
20 OUT PREJUDICE. IF THE CONVICTION RECORD OF SUCH PROSPECTIVE VOLUNTEER
21 HAS BEEN RECEIVED BY SUCH CHAPTER, THE PERSON DESIGNATED BY SUCH CHAPTER
22 TO HAVE ACCESS TO CONVICTION RECORDS SHALL DESTROY SUCH RECORD.

23 4. THE CONVICTION RECORD OF A VOLUNTEER SHALL BE DESTROYED BY THE
24 PERSON DESIGNATED BY SUCH CHAPTER TO HAVE ACCESS TO CONVICTION RECORDS
25 WHEN SUCH VOLUNTEER NO LONGER HAS DIRECT CONTACT WITH CHILDREN SERVED BY
26 SUCH CHAPTER.

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

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

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

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

40 6. THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL
41 PROMULGATE THE RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE
42 PROVISIONS OF THIS SECTION INCLUDING, BUT NOT LIMITED TO, RULES AND
43 REGULATIONS PROVIDING FOR A HEARING FOR A VOLUNTEER OR PROSPECTIVE
44 VOLUNTEER BEFORE REPRESENTATIVES OF SUCH DIVISION AND THE OFFICE OF
45 CHILDREN AND FAMILY SERVICES FOR PURPOSES OF VERIFYING THE ACCURACY OF
46 HIS OR HER CONVICTION RECORD AND FOR ACCESS BY SUCH PERSONS TO PERTINENT
47 DOCUMENTS RELATED THERETO.

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

52 S 4. This act shall take effect on the one hundred twentieth day after
53 it shall have become a law.