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

6276

2011-2012 Regular Sessions

I N A S S E M B L Y

March 11, 2011

Introduced by M. of A. HEVESI -- read once and referred to the Committee on Correction

AN ACT to amend the correction law and the executive law, in relation to search of certain conviction records

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

Section 1. Paragraph (c) of subdivision 2-a of section 168-p of the correction law, as added by chapter 361 of the laws of 2004, is amended to read as follows:

(c) For purposes of this subdivision AND SECTION EIGHT HUNDRED THIRTY-SEVEN-S OF THE EXECUTIVE LAW, "youth services organization" shall mean a formalized program operated by a corporation pursuant to subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law that functions primarily to: (a) provide children the opportunity to participate in adult-supervised sporting activities; or (b) match children or groups of children with adult volunteers for the purpose of providing children with positive role models to enhance their development.

S 2. The executive law is amended by adding a new section 837-s to read as follows:

S 837-S. SEARCH OF CERTAIN CONVICTION RECORDS BY SPECIFIED NON-PROFIT AND NOT-FOR-PROFIT YOUTH SERVICES ORGANIZATIONS. 1. DEFINITIONS. AS USED IN THIS SECTION:

(A) "AUTHORIZED OFFICIAL" MEANS ONE PERSON, DESIGNATED BY A YOUTH SERVICES ORGANIZATION IN A WRITTEN NOTIFICATION FILED WITH THE DIVISION, WHO HAS ACCESS TO AND RESPONSIBILITY FOR MAINTAINING THE CONFIDENTIALITY OF CRIMINAL HISTORY INFORMATION PROVIDED PURSUANT TO THIS SECTION.

(B) "SPECIFIED OFFENSE" MEANS CONVICTION FOR A CRIME DEFINED AS A "SEX OFFENSE" PURSUANT TO PARAGRAPHS (A), (B), (C) OR (E) OF SUBDIVISION TWO OR A "SEXUALLY VIOLENT OFFENSE" PURSUANT TO PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW.

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

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(C) "YOUTH SERVICES ORGANIZATION" SHALL HAVE THE SAME MEANING AS SET FORTH IN PARAGRAPH (C) OF SUBDIVISION TWO-A OF SECTION ONE HUNDRED SIXTY-EIGHT-P OF THE CORRECTION LAW.

2. ANY PERSON WHO APPLIES FOR A VOLUNTEER OR PAID POSITION WITH ANY YOUTH SERVICES ORGANIZATION MAY BE REQUIRED BY SUCH ORGANIZATION TO AUTHORIZE THE SUBMISSION OF HIS OR HER NAME AND OTHER AUTHORIZED IDENTIFYING INFORMATION TO THE DIVISION WHICH, UPON REQUEST OF SUCH ORGANIZATION, SHALL SEARCH ITS FILES FOR RECORDS INDICATING WHETHER THE PERSON STANDS CONVICTED OF A SPECIFIED OFFENSE. WHEN REQUESTING SUCH AUTHORIZATION, THE AUTHORIZED OFFICIAL OF SUCH AN ORGANIZATION SHALL PROVIDE WRITTEN NOTICE TO THE APPLICANT THAT A SEARCH MAY BE CONDUCTED OF CRIMINAL HISTORY INFORMATION MAINTAINED BY THE DIVISION. IF THE APPLICANT DESIRES TO PROCEED, HE OR SHE MAY THEN COMPLETE A SEARCH AUTHORIZATION FORM PROVIDED BY THE DIVISION FOR THIS PURPOSE.

3. (A) ALL SUCH SEARCHES CONCERNING THE APPLICATION FOR A VOLUNTEER OR PAID POSITION AT A YOUTH SERVICES ORGANIZATION SHALL BE CONDUCTED UNDER THE PROVISIONS OF SUBDIVISION SIX OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THIS ARTICLE WITHOUT THE ASSESSMENT OF ANY FEE TO THE APPLICANT OR ORGANIZATION AND SHALL PERTAIN SOLELY TO ASCERTAINING WHETHER THE APPLICANT STANDS CONVICTED OF A SPECIFIED OFFENSE, AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION.

(B) THE RESULTS OF SUCH SEARCH SHALL BE COMMUNICATED IN WRITING, WITHIN TEN BUSINESS DAYS OF RECEIPT OF THE REQUEST, TO THE AUTHORIZED OFFICIAL FROM WHOM THE SEARCH REQUEST ORIGINATED AND SHALL BE KEPT CONFIDENTIAL BY THE AUTHORIZED OFFICIAL EXCEPT AS PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION. THE RESULTS OF THE SEARCH SHALL NOT DIVULGE ANY OTHER INFORMATION RELATING TO THE CRIMINAL HISTORY OF THE APPLICANT.

(C) AT THE TIME IT ADVISES THE APPLICANT OF THE RESULTS OF THE SEARCH, THE AUTHORIZED OFFICIAL SHALL PROVIDE A COPY OF THE SEARCH RESULTS TO THE APPLICANT AND SHALL ALSO ADVISE THE APPLICANT OF THE RIGHTS TO CHALLENGE AND APPEAL THE INFORMATION CONTAINED IN SUCH RECORD OF CONVICTION, AS PROVIDED IN THE RULES AND REGULATIONS OF THE DIVISION.

4. WHENEVER THERE IS REASONABLE CAUSE TO BELIEVE THAT ANY PERSON OR GROUP OF PERSONS IS ENGAGED IN A PATTERN OR PRACTICE OF MISUSE OF THE SEARCH FOR SPECIFIED OFFENSE CONVICTION RECORDS BY A YOUTH SERVICES ORGANIZATION, THE ATTORNEY GENERAL, ANY DISTRICT ATTORNEY OR ANY PERSON AGGRIEVED BY THE MISUSE OF SUCH SEARCH PROCEDURES IS AUTHORIZED TO BRING A CIVIL ACTION IN THE APPROPRIATE COURT REQUESTING THE REMEDIES, INCLUDING THE CIVIL PENALTIES, SET FORTH IN SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-P OF THE CORRECTION LAW. SUCH REMEDIES SHALL BE INDEPENDENT OF ANY OTHER REMEDIES OR PROCEDURES THAT MAY BE AVAILABLE TO AN AGGRIEVED PARTY UNDER OTHER PROVISIONS OF LAW.

S 3. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that effective immediately the division of criminal justice services may and hereby is authorized to promulgate any rules and regulations consistent with this act as may be necessary to assure the effective implementation of this act.