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

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2011-2012 Regular Sessions

I N A S S E M B L Y

June 14, 2011

Introduced by M. of A. ORTIZ -- (at request of the Office for People with Developmental Disabilities) -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law and the penal law, in relation to disqualification of employment for certain criminal history information and deeming an individual with a developmental disability is incapable of giving consent

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

Section 1. The mental hygiene law is amended by adding a new section 13.40 to read as follows:

S 13.40 DISQUALIFICATION FOR CERTAIN CRIMINAL HISTORY INFORMATION.

NOTWITHSTANDING ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW AND ANY OTHER LAW TO THE CONTRARY, THE OFFICE SHALL DENY OR DISAPPROVE AN APPLICATION FOR EMPLOYMENT OR VOLUNTEER SERVICE FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER OF THE OFFICE OR OF A PROVIDER OF SERVICES THAT CONTRACTS WITH OR IS APPROVED OR OTHERWISE AUTHORIZED BY THE OFFICE TO PROVIDE SERVICES, WHERE CRIMINAL HISTORY INFORMATION RECEIVED PURSUANT TO A CRIMINAL HISTORY RECORD CHECK CONCERNING THE PROSPECTIVE EMPLOYEE OR VOLUNTEER REVEALS A CONVICTION FOR:

(A) ANY OFFENSE PURSUANT TO ARTICLE ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW;

(B) ANY OFFENSE PURSUANT TO ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW;

(C) ANY FELONY OFFENSE PURSUANT TO ARTICLE ONE HUNDRED TWENTY OF THE PENAL LAW;

(D) ANY OFFENSE PURSUANT TO ARTICLE ONE HUNDRED FIFTY OF THE PENAL LAW;

(E) ENDANGERING THE WELFARE OF A CHILD PURSUANT TO SECTION 260.10 OF THE PENAL LAW;

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

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(F) ENDANGERING THE WELFARE OF AN INCOMPETENT OR PHYSICALLY DISABLED PERSON PURSUANT TO SECTION 260.25 OF THE PENAL LAW;

(G) ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE SECOND DEGREE PURSUANT TO SECTION 260.32 OF THE PENAL LAW;

(H) ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE FIRST DEGREE PURSUANT TO SECTION 260.34 OF THE PENAL LAW;

(I) ANY OFFENSE PURSUANT TO ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW;

(J) KIDNAPPING IN THE FIRST DEGREE PURSUANT TO SECTION 135.25 OF THE PENAL LAW;

(K) KIDNAPPING IN THE SECOND DEGREE PURSUANT TO SECTION 135.20 OF THE PENAL LAW;

(L) ROBBERY IN THE SECOND DEGREE PURSUANT TO SECTION 160.10 OF THE PENAL LAW;

(M) ROBBERY IN THE FIRST DEGREE PURSUANT TO SECTION 160.15 OF THE PENAL LAW;

(N) ANY ATTEMPT TO COMMIT ANY OF THE CRIMES REFERENCED IN THIS SECTION; OR

(O) ANY COMPARABLE OFFENSE IN ANY OTHER JURISDICTION.

S 2. Paragraph (h) of subdivision 3 of section 130.05 of the penal law, as amended by chapter 264 of the laws of 2003, is amended and a new paragraph (i) is added to read as follows:

(h) a client or patient and the actor is a health care provider or mental health care provider charged with rape in the third degree as defined in section 130.25, criminal sexual act in the third degree as defined in section 130.40, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, or sexual abuse in the third degree as defined in section 130.55, and the act of sexual conduct occurs during a treatment session, consultation, interview, or examination[.]; OR

(I) AN INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY RECEIVING SERVICES FROM A PROGRAM OR FACILITY OPERATED, CERTIFIED OR AUTHORIZED BY, OR FUNDED THROUGH, CONTRACT BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WHERE THE ACTOR IS NOT MARRIED TO SUCH INDIVIDUAL AND IS AN EMPLOYEE, INTERN, CONSULTANT, CONTRACTOR OR VOLUNTEER OF SUCH PROGRAM OR FACILITY WHERE THE INDIVIDUAL RECEIVES SERVICES.

S 3. This act shall take effect immediately.