

4768

2011-2012 Regular Sessions

I N S E N A T E

April 20, 2011

Introduced by Sen. McDONALD -- 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 people with 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 PEOPLE WITH 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  
23 THE NAME, HOME ADDRESS, SOCIAL SECURITY NUMBER OF THE EMPLOYEE OR VOLUN-

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

LBD10488-01-1

1 TEER AND A BRIEF DESCRIPTION OF THE CONDUCT INVOLVED IN THE INCIDENT IN  
2 A FORM APPROVED BY THE OFFICE.

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

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

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

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

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

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

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

42 S 31.36 MENTAL HEALTH REGISTRY.

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

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

1 CLIENT WHICH WOULD HAVE RESULTED IN TERMINATION, SUCH PROVIDER SHALL  
2 FILE THE SUMMARY REPORT REQUIRED IN SUBDIVISION ONE OF THIS SECTION.

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

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

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

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

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

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34 THAT SUCH EMPLOYEE OR VOLUNTEER HAS THE RIGHT TO OBTAIN AND REVIEW THE  
35 SUMMARY REPORT AND SUBMIT A BRIEF WRITTEN STATEMENT IN RESPONSE TO THE  
36 SUMMARY REPORT PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE  
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39 RY REPORT PROVIDED PURSUANT TO THIS SECTION.

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

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