

2171

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

Introduced by Sens. GOLDEN, DeFRANCISCO, JOHNSON, LAVALLE -- read twice
and ordered printed, and when printed to be committed to the Committee
on Children and Families

AN ACT to amend the social services law, in relation to criminal history
review of child care providers

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

1 Section 1. Subdivision 3 of section 390-b of the social services law,
2 as added by chapter 416 of the laws of 2000, is amended to read as
3 follows:
4 3. Notwithstanding any other provision of law to the contrary, after
5 reviewing any criminal history record information provided by the divi-
6 sion of criminal justice services, of an individual who is subject to a
7 criminal history record check pursuant to this section, the office of
8 children and family services and the provider shall take the following
9 actions:
10 (a) (i) Where the criminal history record of an applicant to be an
11 operator of a child day care center, school age child care program,
12 group family day care home, family day care home, or any person over the
13 age of eighteen residing in such a home, reveals a felony conviction [at
14 any time for a sex offense, crime against a child, or a crime involving
15 violence, or a felony conviction within the past five years for a drug-
16 related offense, the office of children and family services shall deny
17 the application unless the office determines, in its discretion, that
18 approval of the application will not in any way jeopardize the health,
19 safety or welfare of the children in the center, program or home] FOR AN
20 OFFENSE DEFINED IN ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED TWENTY-FIVE,
21 ONE HUNDRED THIRTY, ONE HUNDRED THIRTY-FIVE, TWO HUNDRED THIRTY-FIVE OR
22 TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, OR AN OFFENSE COMMITTED UNDER
23 A FORMER PROVISION OF THE PENAL LAW WHICH WOULD CONSTITUTE A VIOLATION
24 OF THE AFORESAID ARTICLES OF THE PENAL LAW OR ANY OFFENSE COMMITTED IN

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

LBD04647-01-1

1 ANOTHER JURISDICTION WHICH WOULD CONSTITUTE A VIOLATION OF THE AFORESAID
2 ARTICLES OF THE PENAL LAW; or

3 (ii) Where the criminal history record of an applicant to be an opera-
4 tor of a child day care center, school age child care program, group
5 family day care home, family day care home, or any person over the age
6 of eighteen residing in such a home, reveals a conviction for a crime
7 other than one set forth in subparagraph (i) of this paragraph, the
8 office of children and family services may deny the application,
9 consistent with article twenty-three-A of the correction law; or

10 (iii) Where the criminal history record of an applicant to be an oper-
11 ator of a child day care center, school age child care program, group
12 family day care home, family day care home, or any other person over the
13 age of eighteen residing in such a home, reveals a charge for any crime,
14 the office of children and family services shall hold the application in
15 abeyance until the charge is finally resolved.

16 (b) (i) Where the criminal history record of a current operator of a
17 child day care center, school age child care program, group family day
18 care home, family day care home, or any other person over the age of
19 eighteen residing in such a home, reveals a conviction for a crime set
20 forth in subparagraph (i) of paragraph (a) of this subdivision, the
21 office of children and family services shall conduct a safety assessment
22 of the program and take all appropriate steps to protect the health and
23 safety of the children in the program. The office of children and family
24 services shall deny, [limit, suspend,] revoke, reject or terminate a
25 license or registration based on such a conviction[, unless the office
26 determines, in its discretion, that continued operation of the center,
27 program or home will not in any way jeopardize the health, safety or
28 welfare of the children in the center, program or home];

29 (ii) Where the criminal history record of a current operator of a
30 child day care center, school age child care program, group family day
31 care home, family day care home, or any other person over the age of
32 eighteen residing in such a home, reveals a conviction for a crime other
33 than one set forth in subparagraph (i) of paragraph (a) of this subdivi-
34 sion, the office of children and family services shall conduct a safety
35 assessment of the program and take all appropriate steps to protect the
36 health and safety of the children in the program. The office may deny,
37 limit, suspend, revoke, reject or terminate a license or registration
38 based on such a conviction, consistent with article twenty-three-A of
39 the correction law;

40 (iii) Where the criminal history record of a current operator of a
41 child day care center, school age child care program, group family day
42 care home, family day care home, or any other person over the age of
43 eighteen residing in such a home, reveals a charge for any crime, the
44 office of children and family services shall conduct a safety assessment
45 of the program and take all appropriate steps to protect the health and
46 safety of the children in the program. The office may suspend a license
47 or registration based on such a charge where necessary to protect the
48 health and safety of the children in the program.

49 (c) (i) Where the criminal history record of an applicant to be an
50 employee or volunteer at a child day care center or school age child
51 care program reveals a conviction for a crime set forth in subparagraph
52 (i) of paragraph (a) of this subdivision, the office of children and
53 family services shall direct the provider to deny the application
54 [unless the office determines, in its discretion, that approval of the
55 application will not in any way jeopardize the health, safety or welfare
56 of the children in the center or program];

(ii) Where the criminal history record of an applicant to be an employee or volunteer at a child day care center or school age child care program reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services may, consistent with article twenty-three-A of the correction law, direct the provider to deny the application;

(iii) Where the criminal history record of an applicant to be an employee or volunteer at a child day care center or school age child care program reveals a charge for any crime, the office of children and family services shall hold the application in abeyance until the charge is finally resolved.

(d) (i) Where the criminal history record of a current employee or volunteer at a child day care center or school age child care program reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office shall direct the provider to terminate the employee or volunteer based on such a conviction[, unless the office determines, in its discretion, that the continued presence of the employee or volunteer in the center or program will not in any way jeopardize the health, safety or welfare of the children in the center or program];

(ii) Where the criminal history record of a current employee or volunteer at a child day care center or school age child care program reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office may direct the provider to terminate the employee or volunteer based on such a conviction, consistent with article twenty-three-A of the correction law;

(iii) Where the criminal history record of a current employee or volunteer at a child day care center or school age child care program reveals a charge for any crime, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program.

(e) (i) Where the criminal history record of an applicant to be an employee, assistant or volunteer at a group family day care home or family day care home reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall direct the provider to deny the application [unless the office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of the children in the home];

(ii) Where the criminal history record of an applicant to be an employee, assistant or volunteer at a group family day care home or family day care home reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services may, consistent with article twenty-three-A of the correction law, direct the provider to deny the application;

(iii) Where the criminal history record of an applicant to be an employee, assistant or volunteer at a group family day care home or family day care home reveals a charge for any crime, the office of chil-

1 dren and family services shall hold the application in abeyance until
2 the charge is finally resolved.

3 (f) (i) Where the criminal history record of a current employee,
4 assistant or volunteer at a group family day care home or family day
5 care home reveals a conviction for a crime set forth in subparagraph (i)
6 of paragraph (a) of this subdivision, the office of children and family
7 services shall conduct a safety assessment of the program and take all
8 appropriate steps to protect the health and safety of the children in
9 the home. The office of children and family services shall direct the
10 provider to terminate the employee, assistant or volunteer based on such
11 a conviction[, unless the office determines, in its discretion, that the
12 continued presence of the employee, assistant or volunteer in the home
13 will not in any way jeopardize the health, safety or welfare of the
14 children in the home];

15 (ii) Where the criminal history record of a current employee, assist-
16 ant or volunteer at a group family day care home or family day care home
17 reveals a conviction for a crime other than one set forth in subpara-
18 graph (i) of paragraph (a) of this subdivision, the office of children
19 and family services shall conduct a safety assessment of the home and
20 take all appropriate steps to protect the health and safety of the chil-
21 dren in the home. The office may direct the provider to terminate the
22 employee, assistant or volunteer based on such a conviction, consistent
23 with article twenty-three-A of the correction law;

24 (iii) Where the criminal history record of a current employee, assist-
25 ant or volunteer at a group family day care home or family day care home
26 reveals a charge for any crime, the office of children and family
27 services shall conduct a safety assessment of the home and take all
28 appropriate steps to protect the health and safety of the children in
29 the home.

30 (g) Advise the provider that the individual has no criminal history
31 record.

32 S 2. This act shall take effect immediately.