

7194

I N S E N A T E

April 6, 2016

Introduced by Sen. SERINO -- (at request of the Office for the Aging) --
read twice and ordered printed, and when printed to be committed to
the Committee on Aging

AN ACT to amend the elder law and the executive law, in relation to the
review of criminal history information by the state office for the
aging of prospective volunteers and paid employees

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

1 Section 1. The elder law is amended by adding a new section 224 to
2 read as follows:
3 S 224. REVIEW OF CRIMINAL HISTORY INFORMATION CONCERNING PROSPECTIVE
4 VOLUNTEERS AND EMPLOYEES. 1. THE OFFICE FOR THE AGING SHALL BE AUTHOR-
5 IZED TO RECEIVE FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES CRIMINAL
6 HISTORY INFORMATION, AS SUCH TERM IS DEFINED IN PARAGRAPH (C) OF SUBDI-
7 VISION ONE OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW,
8 AND INFORMATION FROM THE FEDERAL BUREAU OF INVESTIGATION RESULTING FROM
9 A NATIONAL CRIMINAL HISTORY RECORD CHECK, ON EACH PROSPECTIVE EMPLOYEE
10 OR VOLUNTEER WHOSE DUTIES WILL INVOLVE THE PROVISION OF DIRECT SERVICES
11 TO OLDER ADULTS THROUGH PROGRAMS ADMINISTERED BY THE OFFICE, INCLUDING
12 BUT NOT LIMITED TO COORDINATORS AND VOLUNTEERS PROVIDING DIRECT SERVICES
13 UNDER THE LONG TERM CARE OMBUDSMAN PROGRAM.
14 2. ACCESS TO AND THE USE OF CRIMINAL HISTORY INFORMATION SHALL BE
15 GOVERNED BY THE PROVISIONS OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE
16 EXECUTIVE LAW.
17 S 2. Paragraph (c) of subdivision 1 of section 845-b of the executive
18 law, as amended by chapter 769 of the laws 2005, is amended to read as
19 follows:
20 (c) "Criminal history information" means a record of pending criminal
21 charges, criminal convictions which are not vacated or reversed, and
22 certificates filed pursuant to subdivision two of section seven hundred
23 five of the correction law, and which the division is authorized to
24 maintain pursuant to subdivision six of section eight hundred thirty-
25 seven of this article. For the purposes of criminal history information
26 checks authorized pursuant to article twenty-eight-E of the public

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

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1 health law OR SECTION TWO HUNDRED TWENTY-FOUR OF THE ELDER LAW, criminal
2 history information shall also include information from the federal
3 bureau of investigation as a result of a national criminal history
4 record check.

5 S 3. Subdivision 2 of section 845-b of the executive law, as amended
6 by section 5 of part F of chapter 501 of the laws of 2012, is amended to
7 read as follows:

8 2. Where a provider is authorized or required to request a check of
9 criminal history information by an authorized agency pursuant to section
10 16.33 or 31.35 of the mental hygiene law, article twenty-eight-E of the
11 public health law [or], subdivision one of section three hundred seven-
12 ty-eight-a of the social services law, OR SECTION TWO HUNDRED
13 TWENTY-FOUR OF THE ELDER LAW, such provider shall proceed pursuant to
14 the provisions of this section and in a manner consistent with the
15 provisions of article twenty-three-A of the correction law, subdivisions
16 fifteen and sixteen of section two hundred ninety-six of this chapter
17 and all other applicable laws.

18 S 4. Paragraph (a) of subdivision 3 of section 845-b of the executive
19 law, as amended by chapter 769 of the laws of 2005, is amended to read
20 as follows:

21 (a) A provider authorized to request a check of criminal history
22 information pursuant to subdivision two of this section shall designate
23 one authorized person who shall request a check of criminal history
24 information on behalf of such provider pursuant to this section and
25 review the results of such check. Only such authorized person or his or
26 her designee and the subject individual to whom such criminal history
27 information relates shall have access to such information; provided,
28 however, that criminal history information received by a provider may be
29 disclosed to other persons who are directly participating in any deci-
30 sion in regard to such subject individual; and provided, further, that
31 such other persons shall also be subject to the confidentiality require-
32 ments and all other provisions of this section. In the case of requests
33 made pursuant to article twenty-eight-E of the public health law OR
34 SECTION TWO HUNDRED TWENTY-FOUR OF THE ELDER LAW, only information
35 authorized for disclosure under applicable federal laws shall be trans-
36 mitted to the provider. Each provider shall specifically identify to the
37 authorized agency in writing, in advance of disclosure, the authorized
38 person and each other such agent or employee of the provider who is
39 authorized to have access to the results of a check of criminal history
40 information pursuant to this section. Any person who willfully permits
41 the release of any confidential criminal history information contained
42 in the report to persons not permitted by this section to receive such
43 information shall be guilty of a misdemeanor.

44 S 5. Paragraphs (a) and (b) of subdivision 4 of section 845-b of the
45 executive law, as amended by chapter 331 of the laws of 2006, are
46 amended to read as follows:

47 (a) The authorized agency shall pay the processing fee imposed pursu-
48 ant to subdivision eight-a of section eight hundred thirty-seven of this
49 article, and in the case of the authorized agency pursuant to article
50 twenty-eight-E of the public health law OR SECTION TWO HUNDRED
51 TWENTY-FOUR OF THE ELDER LAW, any fee imposed by the federal bureau of
52 investigation, and shall promptly submit the fingerprints and the proc-
53 essing fee to the division for its full search and retain processing,
54 and in the case of the authorized agency pursuant to article twenty-
55 eight-E of the public health law OR SECTION TWO HUNDRED TWENTY-FOUR OF
56 THE ELDER LAW, the division shall immediately forward the fingerprints

1 to the federal bureau of investigation for a national criminal history
2 record check. The authorized agency may charge a provider a fee in
3 amount no greater than the fee established pursuant to law by the divi-
4 sion for processing such a criminal history information check, in such
5 amounts as may be established by the authorized agency and approved by
6 the director of the division of the budget, and in the case of the
7 authorized agency pursuant to article twenty-eight-E of the public
8 health law OR SECTION TWO HUNDRED TWENTY-FOUR OF THE ELDER LAW, a fee no
9 greater than any fee imposed by the federal bureau of investigation.
10 Nothing in this section shall prohibit the authorized agency or provider
11 from claiming the cost of such fees and related costs, including admin-
12 istrative costs, as a reimbursable cost under the medical assistance
13 program, Medicare or other payor, to the extent permitted by state and
14 federal law.

15 (b) The division shall promptly provide requested state criminal
16 history information to the authorized agency and, in accordance with
17 article twenty-eight-E of the public health law AND SECTION TWO HUNDRED
18 TWENTY-FOUR OF THE ELDER LAW, the department of health [is] AND THE NEW
19 YORK STATE OFFICE FOR THE AGING, RESPECTIVELY, ARE authorized also to
20 receive criminal history information from the federal bureau of investi-
21 gation, after the receipt of a request pursuant to this section if such
22 request is:

23 (i) made pursuant to a request by an authorized person on behalf of a
24 provider authorized to make such a request pursuant to subdivision two
25 of this section;

26 (ii) accompanied by the completed form described in this section; and

27 (iii) accompanied by fingerprints of the subject individual obtained
28 pursuant to this section.

29 S 6. Subdivision 8 of section 845-b of the executive law, as amended
30 by chapter 769 of the laws of 2005, is amended to read as follows:

31 8. A provider shall advise the authorized agency when a subject indi-
32 vidual is no longer subject to such check. The authorized agency shall
33 inform the division when a subject individual is no longer subject to
34 such check so that the division may terminate its retain processing with
35 regard to such individual. At least once a year, the authorized agency
36 shall be required to conduct a validation of the records maintained by
37 the division, including information obtained from the federal bureau of
38 investigation pursuant to article twenty-eight-E of the public health
39 law OR SECTION TWO HUNDRED TWENTY-FOUR OF THE ELDER LAW, and provide
40 such results to the authorized agency for purposes of updating the
41 permanent record of such criminal history information results.

42 S 7. This act shall take effect immediately.