

# STATE OF NEW YORK

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645

2017-2018 Regular Sessions

## IN ASSEMBLY

January 9, 2017

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Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Codes

AN ACT to amend 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:

1 Section 1. Paragraph (i) of subdivision 3 of section 130.05 of the  
2 penal law, as added by section 2 of part G of chapter 501 of the laws of  
3 2012, is amended and a new paragraph (j) is added to read as follows:

4 (i) a resident or inpatient of a residential facility operated,  
5 licensed or certified by (i) the office of mental health; (ii) the  
6 office for people with developmental disabilities; or (iii) the office  
7 of alcoholism and substance abuse services, and the actor is an employee  
8 of the facility not married to such resident or inpatient. For purposes  
9 of this paragraph, "employee" means either: an employee of the agency  
10 operating the residential facility, who knows or reasonably should know  
11 that such person is a resident or inpatient of such facility and who  
12 provides direct care services, case management services, medical or  
13 other clinical services, habilitative services or direct supervision of  
14 the residents in the facility in which the resident resides; or an officer  
15 or other employee, consultant, contractor or volunteer of the residential  
16 facility, who knows or reasonably should know that the person is  
17 a resident of such facility and who is in direct contact with residents  
18 or inpatients; provided, however, that the provisions of this paragraph  
19 shall only apply to a consultant, contractor or volunteer providing  
20 services pursuant to a contractual arrangement with the agency operating  
21 the residential facility or, in the case of a volunteer, a written  
22 agreement with such facility, provided that the person received written  
23 notice concerning the provisions of this paragraph; provided further,

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

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1 however, "employee" shall not include a person with a developmental  
2 disability who is or was receiving services and is also an employee of a  
3 service provider and who has sexual contact with another service recipi-  
4 ent who is a consenting adult who has consented to such contact[~~redacted~~]; or

5 (j) an individual with a developmental disability receiving services  
6 from a program or facility operated, certified or authorized by, or  
7 funded through, contract by the office for people with developmental  
8 disabilities where the actor is not married to such individual and is an  
9 employee, intern, consultant, contractor or volunteer of such program or  
10 facility where the individual receives services.

11 § 2. This act shall take effect immediately.