

# STATE OF NEW YORK

1366

2019-2020 Regular Sessions

## IN ASSEMBLY

January 15, 2019

Introduced by M. of A. SANTABARBARA -- read once and referred to the  
Committee on Children and Families

AN ACT to amend the social services law and the executive law, in  
relation to day care for children

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. The social services law is amended by adding a new section  
2 378-b to read as follows:

3 § 378-b. Certificates and licenses; record access; prohibitions. 1.  
4 Notwithstanding the provisions of any law, rule or regulation to the  
5 contrary, no license, permit, certificate or registration shall be  
6 issued by the department or any authorized agency to an applicant to  
7 operate a child day care center, head start day care center program  
8 funded pursuant to title V of the federal economic opportunity act of  
9 1964, school age child care program, group family day care home, family  
10 day care home, nor where granted, shall any such license, permit,  
11 certificate or registration be renewed for any such entity, if the  
12 applicant and/or operator thereof shall have been convicted of a violent  
13 felony offense as defined in section 70.02 of the penal law, or shall  
14 have been convicted of a misdemeanor or felony as defined in articles  
15 one hundred twenty, one hundred twenty-five, one hundred thirty, one  
16 hundred thirty-five, two hundred five, two hundred twenty, two hundred  
17 twenty-one, two hundred thirty, two hundred thirty-five, two hundred  
18 forty-five, two hundred fifty-five, two hundred sixty, two hundred  
19 sixty-three and two hundred sixty-five of the penal law.

20 2. No such entity shall employ any assistant or employee, nor shall it  
21 accept any person for volunteer activity in any such entity, if such  
22 assistant, employee or volunteer has been convicted of any offense as  
23 enumerated in subdivision one of this section. Every such entity, as  
24 enumerated in subdivision one of this section, may obtain, with the  
25 consent of the volunteer or prospective volunteer or employee or

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

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1 prospective employee of such entity, the conviction records maintained  
2 by the division of criminal justice services pertaining to such volun-  
3 teer or prospective volunteer or employee or prospective employee;  
4 provided, however, that conviction records shall be requested only for  
5 volunteers or prospective volunteers, employees or prospective employees  
6 who have direct contact, as determined by such entity, with children  
7 served by such entity. The fee for such record shall be paid by such  
8 entity.

9 3. The conviction record shall be marked "confidential" upon receipt  
10 by the person who has requested such records. Only such person shall  
11 have access to such conviction record, and such conviction record shall  
12 at all times be maintained in a secure place in order to insure such  
13 confidentiality. A person who wilfully violates the confidentiality  
14 required by this subdivision shall be guilty of a class E felony.

15 4. Prior to requesting a conviction record of a volunteer or prospec-  
16 tive volunteer or employee or prospective employee from the division of  
17 criminal justice services, a representative of such entity shall inform  
18 any such person who works directly with children in any activities  
19 authorized by such entity that a request for a conviction record and  
20 review thereof is required in order for such person to continue in the  
21 same capacity or for such prospective volunteer or employee to be  
22 accepted by such entity. Such person shall sign a form provided by the  
23 division of criminal justice services stating that such person has been  
24 informed of the reason for a request for his or her conviction record  
25 and consents to such request. Such form shall accompany each request for  
26 a conviction record made by the person of such entity requesting the  
27 record.

28 5. After being informed of the requirement for such entity to obtain  
29 his or her conviction record and before such person gives consent to the  
30 provision of such record to such entity, a person may have access to his  
31 or her conviction record as maintained by the division of criminal  
32 justice services pursuant to the procedures of such division. Such  
33 person shall be provided with all necessary information regarding access  
34 to such records by a representative of such entity. Such person shall  
35 also be provided by such division with information regarding procedures  
36 for such person to verify the accuracy of such records. Such person  
37 shall notify such entity if he or she wishes to have access to his or  
38 her conviction record prior to giving consent to such entity's request  
39 for such record.

40 6. A prospective volunteer or employee may withdraw from the applica-  
41 tion process, whether or not he or she has had access to his or her  
42 conviction record and whether or not such record has been received by  
43 such entity, without prejudice. If the conviction record of such person  
44 has been received by such entity, the person designated by such entity  
45 to have access to conviction records shall destroy such record if the  
46 prospective volunteer or employee is not hired and/or accepted by such  
47 entity or withdraws from the application process.

48 7. The conviction record of such a person shall be destroyed by the  
49 person designated by such entity to have access to conviction records  
50 when such volunteer or employee no longer has direct contact with chil-  
51 dren served by such entity.

52 8. The provisions of this section shall not, however, be applicable to  
53 any person who has a minor child under the care and supervision of such  
54 entity where he or she volunteers or is employed or seeks employment.

55 9. The division of criminal justice services shall respond to any  
56 request for a conviction record which is accompanied by a form signed by

1 the subject of such request consenting to the provision of such record  
2 made pursuant to this section within fourteen days after such inquiry is  
3 received. The commissioner of such division shall promulgate rules and  
4 regulations providing for a hearing for a prospective volunteer or  
5 volunteer or employee or prospective employee before representatives of  
6 such division and the department for purposes of verifying the accuracy  
7 of his or her conviction record and for access by such persons to perti-  
8 nent documents related thereto.

9 10. For purposes of this section, "conviction record" shall mean any  
10 record maintained by the division of criminal justice services of  
11 convictions of a crime in violation of the penal law or any other law of  
12 another jurisdiction which, if committed in this state, would constitute  
13 a crime.

14 § 2. Subdivision 8-a of section 837 of the executive law, as amended  
15 by chapter 561 of the laws of 2006, is amended to read as follows:

16 8-a. Charge a fee when, pursuant to statute or the regulations of the  
17 division, it conducts a search of its criminal history records and  
18 returns a report thereon in connection with an application for employ-  
19 ment or for a license or permit or returns a conviction report thereon  
20 as required by section three hundred seventy-eight-b of the social  
21 services law. The division shall adopt and may, from time to time,  
22 amend a schedule of such fees which shall be in amounts determined by  
23 the division to be reasonably related to the cost of conducting such  
24 searches and returning reports thereon but, in no event, shall any such  
25 fee exceed twenty-five dollars and an additional surcharge of fifty  
26 dollars. The comptroller is hereby authorized to deposit such fees into  
27 the general fund, provided, however, that the monies received by the  
28 division of criminal justice services for payment of the additional  
29 surcharge shall be deposited in equal amounts to the general fund and to  
30 the fingerprint identification and technology account. Notwithstanding  
31 the foregoing, the division shall not request or accept any fee for  
32 searching its records and supplying a criminal history report pursuant  
33 to section two hundred fifty-one-b of the general business law relating  
34 to participating in flight instruction at any aeronautical facility,  
35 flight school or institution of higher learning.

36 § 3. This act shall take effect on the one hundred twentieth day after  
37 it shall have become a law provided, however, that the commissioner of  
38 the division of criminal justice services shall promulgate rules and  
39 regulations prior to such effective date necessary to implement the  
40 provisions of this act.