

# STATE OF NEW YORK

4862--B

2019-2020 Regular Sessions

## IN SENATE

March 27, 2019

Introduced by Sens. MARTINEZ, BROOKS, GAUGHRAN, KAMINSKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to background checks and fingerprinting; and to amend the social services law, in relation to statewide central registry clearances by construction contractors

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

1 Section 1. Subdivision 3 of section 1125 of the education law, as  
2 amended by chapter 363 of the laws of 2018, is amended to read as  
3 follows:

4 3. "Employee" shall mean any person: (i) who is receiving compensation  
5 from a school or (ii) whose duties involve direct student contact and  
6 (a) who is receiving compensation from any person or entity that  
7 contracts with a school to provide transportation services to children,  
8 or (b) who is an employee of a contracted service provider or worker  
9 placed within the school under a public assistance employment program,  
10 pursuant to title nine-B of article five of the social services law, or  
11 (c) who is receiving compensation from any construction contractor, and  
12 consistent with the provisions of such title for the provision of  
13 services to such school, its students or employees, directly or through  
14 contract.

15 § 2. Paragraph (a) of subdivision 30 of section 305 of the education  
16 law, as amended by chapter 630 of the laws of 2006, is amended to read  
17 as follows:

18 (a) The commissioner, in cooperation with the division of criminal  
19 justice services and in accordance with all applicable provisions of  
20 law, shall promulgate rules and regulations to require the fingerprint-

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

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1 ing of prospective employees, as defined in section eleven hundred twenty-five of this chapter, of school districts, charter schools [~~and~~],  
2 boards of cooperative educational services, and construction contractors  
3 and authorizing the fingerprinting of prospective employees of nonpublic  
4 and private elementary and secondary schools, and for the use of information  
5 derived from searches of the records of the division of criminal  
6 justice services and the federal bureau of investigation based on the  
7 use of such fingerprints. The commissioner shall also develop a form for  
8 use by school districts, charter schools, boards of cooperative educational  
9 services, construction contractors, and nonpublic and private  
10 elementary and secondary schools in connection with the submission of  
11 fingerprints that contains the specific job title sought or the  
12 construction or maintenance project on which the individual will be  
13 working, and any other information that may be relevant to consideration  
14 of the applicant. The commissioner shall also create or expand the  
15 functionality of internet based systems to provide access to  
16 construction contractors upon application of the construction contractor  
17 to the commissioner to enable them to be able to review fingerprint  
18 results and subsequent arrest notifications based on the fingerprint and  
19 background check data by logging into a protected web portal, entering  
20 in the employee name and social security number, which would provide  
21 access to see the fingerprint results. The commissioner shall also  
22 establish a form for the recordation of allegations of child abuse in an  
23 educational setting, as required pursuant to section eleven hundred  
24 twenty-six of this chapter. No person who has been fingerprinted pursuant  
25 to section three thousand four-b of this chapter or pursuant to  
26 section five hundred nine-cc or twelve hundred twenty-nine-d of the  
27 vehicle and traffic law and whose fingerprints remain on file with the  
28 division of criminal justice services shall be required to undergo fingerprinting  
29 for purposes of a new criminal history record check. This  
30 subdivision and the rules and regulations promulgated pursuant thereto  
31 shall not apply to a school district within a city with a population of  
32 one million or more.

34 § 3. The opening paragraph of paragraph (b) of subdivision 30 of  
35 section 305 of the education law, as amended by chapter 630 of the laws  
36 of 2006, is amended to read as follows:

37 The commissioner, in cooperation with the division of criminal justice  
38 services, shall promulgate a form to be provided to all such prospective  
39 employees of school districts, charter schools, boards of cooperative  
40 educational services, construction contractors and nonpublic and private  
41 elementary and secondary schools that elect to fingerprint and seek  
42 clearance for prospective employees that shall:

43 § 4. Paragraph (d) of subdivision 30 of section 305 of the education  
44 law, as amended by chapter 630 of the laws of 2006, is amended to read  
45 as follows:

46 (d) The commissioner shall develop forms to be provided to all school  
47 districts, charter schools, boards of cooperative educational services,  
48 construction contractors and to all nonpublic and private elementary and  
49 secondary schools that elect to fingerprint their prospective employees,  
50 to be completed and signed by prospective employees when conditional  
51 appointment or emergency conditional appointment is offered.

52 § 5. Subdivision 31 of section 305 of the education law, as added by  
53 chapter 380 of the laws of 2001, is amended to read as follows:

54 31. The commissioner shall direct that each school district, charter  
55 school, [~~and~~] private elementary and secondary school, and construction  
56 contractor appoint a designated educational official for the purposes

1 set forth in section 380.90 of the criminal procedure law, subdivision  
2 seventeen of section 301.2 and subdivision three of section 380.1 of the  
3 family court act. In addition, the commissioner shall promulgate rules  
4 and regulations, in consultation with the office of court adminis-  
5 tration, to facilitate electronic access by the courts to the names and  
6 addresses of such designated educational officials.

7 § 6. Subdivision 1 of section 3035 of the education law, as amended by  
8 chapter 630 of the laws of 2006, is amended to read as follows:

9 1. [The] Prior to the awarding of a contract to perform services, the  
10 commissioner shall submit to the division of criminal justice services  
11 two sets of fingerprints of prospective employees as defined in subdivi-  
12 sion three of section eleven hundred twenty-five of this chapter  
13 received from a school district, charter school or board of cooperative  
14 educational services, construction contractors and of prospective  
15 employees received from nonpublic and private elementary and secondary  
16 schools pursuant to title two of this chapter, and the division of crim-  
17 inal justice services processing fee imposed pursuant to subdivision  
18 eight-a of section eight hundred thirty-seven of the executive law and  
19 any fee imposed by the federal bureau of investigation. The division of  
20 criminal justice services and the federal bureau of investigation shall  
21 forward such criminal history record to the commissioner in a timely  
22 manner. For the purposes of this section, the term "criminal history  
23 record" shall mean a record of all convictions of crimes and any pending  
24 criminal charges maintained on an individual by the division of criminal  
25 justice services and the federal bureau of investigation. All such crim-  
26 inal history records sent to the commissioner pursuant to this subdivi-  
27 sion shall be confidential pursuant to the applicable federal and state  
28 laws, rules and regulations, and shall not be published or in any way  
29 disclosed to persons other than the commissioner, unless otherwise  
30 authorized by law.

31 § 7. Subdivision 3 of section 3035 of the education law, as amended by  
32 section 7 of chapter 630 of the laws of 2006, is amended to read as  
33 follows:

34 3. (a) Clearance. (i) After receipt of a criminal history record from  
35 the division of criminal justice services and the federal bureau of  
36 investigation the commissioner shall promptly notify the appropriate  
37 school district, charter school, board of cooperative educational  
38 services, construction contractors or nonpublic or private elementary or  
39 secondary school whether the prospective employee to which such report  
40 relates is cleared for employment or for access to the proposed project  
41 to perform construction and/or maintenance work based upon his or her  
42 criminal history. All determinations to grant or deny clearance for  
43 employment pursuant to this paragraph shall be performed in accordance  
44 with subdivision sixteen of section two hundred ninety-six of the execu-  
45 tive law and article twenty-three-A of the correction law. When the  
46 commissioner denies a prospective employee clearance for employment,  
47 such prospective employee shall be afforded notice and the right to be  
48 heard and offer proof in opposition to such determination in accordance  
49 with the regulations of the commissioner.

50 (ii) Notwithstanding any other provisions of law to the contrary,  
51 information regarding the results of the investigation of current or  
52 prospective employees of construction contractors and subsequent changes  
53 in status related to such employees shall be transmitted via an inter-  
54 net-based system made available to construction contractors upon appli-  
55 cation of the construction contractor to the commissioner where, by  
56 logging into a protected web portal and entering in the employee name

1 and social security number, and construction contractors would be able  
2 to access fingerprint results, whether the employee first completed a  
3 form provided to them by the construction contractors, or received a  
4 form previously from a school district, charter school or board of coop-  
5 erative educational services. Nothing in this section shall require an  
6 employee who has already submitted their fingerprints to the commis-  
7 sioner to have to submit them again, so long as they were not destroyed.

8 (b) Conditional clearance. When the commissioner receives a request  
9 for a determination on the conditional clearance of a prospective  
10 employee, the commissioner, after receipt of a criminal history record  
11 from the division of criminal justice services, shall promptly notify  
12 the prospective employee and the appropriate school district, charter  
13 school, board of cooperative educational services, construction contrac-  
14 tors or nonpublic or private elementary or secondary school that the  
15 prospective employee to which such report relates is conditionally  
16 cleared for employment or work on a construction or maintenance project  
17 based upon his or her criminal history or that more time is needed to  
18 make the determination. If the commissioner determines that more time is  
19 needed, the notification shall include a good faith estimate of the  
20 amount of additional time needed. Such notification shall be made within  
21 fifteen business days after the commissioner receives the prospective  
22 employee's fingerprints. All determinations to grant or deny conditional  
23 clearance for employment pursuant to this paragraph shall be performed  
24 in accordance with subdivision sixteen of section two hundred ninety-six  
25 of the executive law and article twenty-three-A of the correction law.

26 § 8. Subdivision 3 of section 3035 of the education law, as amended by  
27 section 8 of chapter 630 of the laws of 2006, is amended to read as  
28 follows:

29 3. After receipt of a criminal history record from the division of  
30 criminal justice services and the federal bureau of investigation the  
31 commissioner shall promptly notify the appropriate school district,  
32 charter school, board of cooperative educational services, construction  
33 contractor, or nonpublic or private elementary or secondary school  
34 whether the prospective employee to which such report relates is cleared  
35 for employment or for access to a proposed project site to perform  
36 construction and/or maintenance work based upon his or her criminal  
37 history. All determinations to grant or deny clearance for employment or  
38 ability to work on a proposed project pursuant to this subdivision shall  
39 be performed in accordance with subdivision sixteen of section two  
40 hundred ninety-six of the executive law and article twenty-three-A of  
41 the correction law. When the commissioner denies a prospective employee  
42 clearance for employment, such prospective employee shall be afforded  
43 notice and the right to be heard and offer proof in opposition to such  
44 determination in accordance with the regulations of the commissioner.

45 § 9. Section 1125 of the education law is amended by adding a new  
46 subdivision 11 to read as follows:

47 11. "Construction contractor" shall mean any individual or entity  
48 seeking permission either through a bid or otherwise to perform  
49 construction and/or maintenance work on facilities occupied at any point  
50 by students of the school district, charter school, board of cooperative  
51 educational services, or nonpublic school.

52 § 10. Subdivision 3 of section 424-a of the social services law, as  
53 amended by section 14-a of part H of chapter 56 of the laws of 2019, is  
54 amended to read as follows:

55 3. For purposes of this section, the term "provider" or "provider  
56 agency" shall mean: an authorized agency; the office of children and

1 family services; juvenile detention facilities subject to the certifi-  
2 cation of the office of children and family services; programs estab-  
3 lished pursuant to article nineteen-H of the executive law; non-residen-  
4 tial or residential programs or facilities licensed or operated by the  
5 office of mental health or the office for people with developmental  
6 disabilities except family care homes; including head start programs  
7 which are funded pursuant to title V of the federal economic opportunity  
8 act of nineteen hundred sixty-four, as amended; early intervention  
9 service established pursuant to section twenty-five hundred forty of the  
10 public health law; preschool services established pursuant to section  
11 forty-four hundred ten of the education law; construction contractors as  
12 defined in subdivision eleven of section eleven hundred twenty-five of  
13 the education law; special act school districts as enumerated in chapter  
14 five hundred sixty-six of the laws of nineteen hundred sixty-seven, as  
15 amended; programs and facilities licensed by the office of alcoholism  
16 and substance abuse services; residential schools which are operated,  
17 supervised or approved by the education department; health homes, or any  
18 subcontractor of such health homes, who contracts with or is approved or  
19 otherwise authorized by the department of health to provide health home  
20 services to all those enrolled pursuant to a diagnosis of a develop-  
21 mental disability as defined in subdivision twenty-two of section 1.03  
22 of the mental hygiene law and enrollees who are under twenty-one years  
23 of age under section three hundred sixty-five-1 of this chapter, or any  
24 entity that provides home and community based services to enrollees who  
25 are under twenty-one years of age under a demonstration program pursuant  
26 to section eleven hundred fifteen of the federal social security act;  
27 publicly-funded emergency shelters for families with children, provided,  
28 however, for purposes of this section, when the provider or provider  
29 agency is a publicly-funded emergency shelter for families with chil-  
30 dren, then all references in this section to the "potential for regular  
31 and substantial contact with individuals who are cared for by the agen-  
32 cy" shall mean the potential for regular and substantial contact with  
33 children who are served by such shelter; and any other facility or  
34 provider agency, as defined in subdivision four of section four hundred  
35 eighty-eight of this chapter, in regard to the employment of staff, or  
36 use of providers of goods and services and staff of such providers,  
37 consultants, interns and volunteers.

38 § 11. Paragraph (a) of subdivision 2 of section 390-a of the social  
39 services law, as amended by chapter 416 of the laws of 2000, is amended  
40 to read as follows:

41 (a) review and evaluate the backgrounds of and information supplied by  
42 any person applying to be a child day care center or school-age child  
43 care program employee or volunteer or group family day care assistant, a  
44 provider of family day care or group family day care, or a director of a  
45 child day care center, head start day care center or school-age child  
46 care program or a construction contractor, or a construction contrac-  
47 tor's employee who services any of these entities. Such procedures shall  
48 include but not be limited to the following requirements: that the  
49 applicant set forth his or her employment history, provide personal and  
50 employment references; submit such information as is required for  
51 screening with the statewide central register of child abuse and  
52 maltreatment in accordance with the provisions of section four hundred  
53 twenty-four-a of this article; sign a sworn statement indicating wheth-  
54 er, to the best of his or her knowledge, he or she has ever been  
55 convicted of a crime in this state or any other jurisdiction; and  
56 provide his or her fingerprints for submission to the division of crimi-

1 nal justice services in accordance with the provisions of section three  
2 hundred ninety-b of this title. Notwithstanding the provisions of this  
3 paragraph, where a program has people working on their premises through  
4 a construction contractor as defined in subdivision eleven of section  
5 eleven hundred twenty-five of the education law and such construction  
6 contractor has properly performed checks on its employees as a provider  
7 or provider agency under section four hundred twenty-four-a of this  
8 chapter, then such program does not need to run the check itself on the  
9 construction contractor employees working on their site;

10 § 12. This act shall take effect immediately; provided however that:  
11 (a) the amendments to section 1125 of the education law made by section  
12 one of this act shall take effect on the same date and in the same  
13 manner as chapter 363 of the laws of 2018, takes effect; (b) the amend-  
14 ments to paragraph (d) of subdivision 30 of section 305 of the education  
15 law made by section four of this act shall not affect the repeal of such  
16 paragraph and shall be deemed repealed therewith; and (c) the amendments  
17 to subdivision 3 of section 3035 of the education law made by section  
18 seven of this act shall be subject to the expiration and reversion of  
19 such subdivision, pursuant to section 12 of chapter 147 of the laws of  
20 2001, as amended, when upon such date the provisions of section eight of  
21 this act shall take effect.