

STATE OF NEW YORK

8817

IN SENATE

April 20, 2022

Introduced by Sen. ORTT -- 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 background clearances for employees and volunteers of mentoring programs

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

1 Section 1. Section 390-e of the social services law, as added by chap-
2 ter 459 of the laws of 2006, is amended to read as follows:

3 § 390-e. Criminal history review and/or background clearances; mentor-
4 ing programs. 1. For the purposes of this section, the following words
5 shall have the following meanings:

6 (a) "Prospective employee" shall mean a person being considered for
7 employment by a mentoring program.

8 (b) "Prospective mentor" shall mean an individual who is currently
9 applying to volunteer to help a child or a group of children in a
10 mentoring program for a period of time. Such help shall include, but not
11 be limited to, being a positive role model for youth, building relation-
12 ships with youth, and providing youth with academic assistance and expo-
13 sure to new experiences and examples of opportunity that enhance the
14 ability of children to become responsible adults.

15 (c) "Mentoring program" shall mean a formalized program, operated by a
16 corporation which has been incorporated pursuant to subparagraph five of
17 paragraph (a) of section one hundred two of the not-for-profit corpo-
18 ration law or pursuant to subparagraph four of paragraph (a) of section
19 one hundred two of the business corporation law, or operated by an
20 educational institution or school district, that matches youth with
21 adult volunteers with the purpose of providing such youth with positive
22 role models to enhance their development.

23 (d) "Office" shall mean the office of children and family services.

24 (e) "Background clearance" shall mean (i) a search of the New York
25 state sex offender registry; and (ii) a database check of the statewide
26 central register of child abuse and maltreatment in accordance with
27 section four hundred twenty-four-a of this article.

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

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1 2. Mentoring programs may perform a criminal history record check
2 and/or background clearance on all prospective employees and mentors.

3 3. Notwithstanding any other provision of law to the contrary, subject
4 to the rules and regulations of the division of criminal justice
5 services and the office of children and family services, mentoring
6 programs may apply for a criminal history record check with the division
7 of criminal justice services and/or background clearances with the
8 office of children and family services regarding any prospective employ-
9 ee or any prospective mentor who may engage in unsupervised activities
10 with youth or in activities with youth in a setting without constant
11 agency or parental oversight. Each mentoring program that chooses to
12 complete such criminal background checks and/or background clearances on
13 prospective employees or on prospective mentors shall establish a policy
14 for completing criminal background checks and/or background clearances
15 on such prospective employees or mentors. Such policy shall apply one
16 uniform standard for the completion of criminal background checks and/or
17 background clearances for all prospective employees and one uniform
18 standard for the completion of criminal background checks and/or back-
19 ground clearances for all prospective mentors. Any mentoring program
20 that chooses to complete criminal background checks and/or background
21 clearances on both prospective employees and prospective mentors may
22 utilize the same uniform process for the completion of the criminal
23 background checks and/or background clearances on prospective employees
24 and prospective mentors or they may choose one uniform process for
25 prospective employees and another uniform process for prospective
26 mentors.

27 4. Every mentoring program that chooses to apply for a criminal histo-
28 ry background check with the division of criminal justice services shall
29 obtain a set of fingerprints from each individual for whom a criminal
30 background check is to be completed and such other information as is
31 required by the office and the division of criminal justice services.
32 For each prospective employee or mentor for whom the mentoring program
33 completes a criminal background check, the mentoring program shall
34 provide the applicant with blank fingerprint cards and a description of
35 how the completed fingerprint card will be used upon submission to the
36 mentoring program. The mentoring program shall promptly transmit such
37 fingerprint card and the processing fee to the office. The office shall
38 promptly submit the fingerprint card and the processing fee, imposed
39 pursuant to subdivision eight-a of section eight hundred thirty-seven of
40 the executive law, to the division of criminal justice services for its
41 full search and retain processing.

42 5. Upon receipt of a criminal history record from the division of
43 criminal justice services and/or background clearance from the office of
44 children and family services, the office shall promptly provide to the
45 mentoring program the criminal history record and/or background clear-
46 ance information, if any, with respect to the prospective employee or
47 mentor, or a statement that the individual has no criminal history
48 record.

49 6. Upon receipt of the results of a criminal background check and/or
50 background clearance pursuant to this section, the mentoring program
51 shall determine whether or not the prospective employee or mentor shall
52 be offered employment or the opportunity to volunteer with the program.
53 Such determination shall be made in accordance with the criteria estab-
54 lished in section seven hundred fifty-two of the correction law.

55 7. Upon the request of any person previously convicted of one or more
56 criminal offenses who has been denied employment pursuant to subdivision

1 six of this section, the mentoring program shall provide, within thirty
2 days of such request, a written statement setting forth the reasons for
3 such denial. Any such person denied employment pursuant to subdivision
4 six of this section shall be afforded the opportunities for enforcement
5 available pursuant to section seven hundred fifty-five of the correction
6 law.

7 8. Notwithstanding the provisions of this section, with the exception
8 of a sex offense or a crime against a child, a custodial parent or guar-
9 dian may sign a waiver authorizing a mentor to work with his or her
10 child regardless of a criminal charge or crime related to a mentor. Such
11 process shall only be initiated upon the consent of the prospective
12 mentor, and be on a form and of a content to be developed by the office.
13 Where applicable, a mentoring program may notify a custodial parent or
14 guardian of his or her waiver right, but a waiver shall only be author-
15 ized by a custodial parent or guardian.

16 9. Any criminal history record and/or background clearance provided to
17 a mentoring program pursuant to this section shall be confidential
18 pursuant to the applicable federal and state laws, rules and regu-
19 lations, and shall not be published or in any way disclosed to persons
20 other than authorized personnel, unless otherwise authorized by law.

21 10. Every mentoring program shall provide each custodial parent or
22 guardian of every child participating in its mentoring program with a
23 description of the kind of criminal background checks and/or background
24 clearances conducted by the mentoring program on its prospective employ-
25 ees and mentors. Such description shall include identification of the
26 source utilized to obtain criminal background histories and/or back-
27 ground clearances on prospective employees and mentors, a list of crimes
28 that would lead the program to deny employment or the opportunity to
29 volunteer as a prospective employee or mentor, and any other process
30 utilized to determine whether or not a prospective employee or mentor
31 with a conviction record shall be offered employment or the opportunity
32 to volunteer. Such description shall clearly state whether or not
33 prospective employees or mentors may be hired or offered the opportunity
34 to volunteer despite the existence of a conviction history.

35 § 2. This act shall take effect immediately.