STATE OF NEW YORK

3436

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

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, 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:

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

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

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

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

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

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

(e) "Background clearance" shall mean (i) a search of the New York state sex offender registry; and (ii) a database check of the statewide

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

LBD04771-01-3

central register of child abuse and maltreatment in accordance with section four hundred twenty-four-a of this article.

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

3. Notwithstanding any other provision of law to the contrary, subject to the rules and regulations of the division of criminal justice services and the office of children and family services, mentoring programs may apply for a criminal history record check with the division of criminal justice services and/or background clearances with the office of children and family services regarding any prospective employee or any prospective mentor who may engage in unsupervised activities with youth or in activities with youth in a setting without constant agency or parental oversight. Each mentoring program that chooses to complete such criminal background checks and/or background clearances on prospective employees or on prospective mentors shall establish a policy for completing criminal background checks and/or background clearances on such prospective employees or mentors. Such policy shall apply one uniform standard for the completion of criminal background checks and/or background clearances for all prospective employees and one uniform standard for the completion of criminal background checks and/or background clearances for all prospective mentors. Any mentoring program that chooses to complete criminal background checks and/or background clearances on both prospective employees and prospective mentors may utilize the same uniform process for the completion of the criminal background checks and/or background clearances on prospective employees and prospective mentors or they may choose one uniform process for prospective employees and another uniform process for prospective mentors.

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

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

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

7. Upon the request of any person previously convicted of one or more criminal offenses who has been denied employment pursuant to subdivision six of this section, the mentoring program shall provide, within thirty days of such request, a written statement setting forth the reasons for such denial. Any such person denied employment pursuant to subdivision six of this section shall be afforded the opportunities for enforcement available pursuant to section seven hundred fifty-five of the correction law.

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

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

10. Every mentoring program shall provide each custodial parent or guardian of every child participating in its mentoring program with a description of the kind of criminal background checks **and/or background clearances** conducted by the mentoring program on its prospective employees and mentors. Such description shall include identification of the source utilized to obtain criminal background histories **and/or background clearances** on prospective employees and mentors, a list of crimes that would lead the program to deny employment or the opportunity to volunteer as a prospective employee or mentor, and any other process utilized to determine whether or not a prospective employee or mentor with a conviction record shall be offered employment or the opportunity to volunteer. Such description shall clearly state whether or not prospective employees or mentors may be hired or offered the opportunity to volunteer despite the existence of a conviction history.

§ 2. This act shall take effect immediately.