

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 Assem-
bly, 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

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

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

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

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

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

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

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

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

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

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

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

37 § 2. This act shall take effect immediately.