§ 390-b. Criminal history review and background clearances of child care providers, generally.

1. Notwithstanding any other provision of law to the contrary, and subject to rules and regulations of the office of children and family services and, where applicable, the division of criminal justice services, the following clearances shall be conducted for entities specified in subdivision two of this section in the time and manner as required by this section:

(a) a criminal history record check with the division of criminal justice services;

(b) a search of the criminal history repository in each state other than New York where such person resides or resided during the preceding five years, if applicable unless such state's criminal history record information will be provided as part of the results or the clearance conducted pursuant to paragraph (c) of this subdivision;

(c) a national criminal record check with the federal bureau of investigation; the division of criminal justice services is directed to submit fingerprints to the federal bureau of investigation for the purpose of a nationwide criminal history record check, pursuant to and consistent with public law 113-186 to determine whether such persons shall have a criminal history in any state or federal jurisdiction;

(d) a search of the New York state sex offender registry;

(e) a search of any state sex offender registry or repository in each state other than New York where such person resides or resided during the preceding five years, if applicable unless such state's sex offender registry information will be provided as part of the clearance conducted pursuant to paragraph (f) of this subdivision;

(f) a search of the national sex offender registry using the national crime and information center, established under the Adam Walsh child protection and safety act of 2006 (42 U.S.C. 16901 et seq.);

(g) a database check of the statewide central register of child abuse and maltreatment in accordance with section four hundred twenty-four-a of this article; and

(h) a search of a state-based child abuse or neglect repository of any state other than New York where such person resides or resided during the preceding five years; if applicable.

1-a. For purposes of this section, and in accordance with federal law, the term "enrolled legally-exempt provider" shall refer to a person who meets the definition of "enrolled legally-exempt provider" as defined in paragraph (g) of subdivision one of section three hundred ninety of this title and who is not an individual who is related to all children for whom child care services are provided.

2. In relation to any child day care program and any enrolled legally-exempt provider:

(a) the clearances required pursuant to paragraphs (a), (c), (d) and (g) of subdivision one of this section shall be conducted for:

(i) every prospective volunteer with the potential for unsupervised contact with children in care;

(ii) every applicant to become an enrolled legally-exempt provider;

(iii) every prospective employee, director or operator of such a program or provider; and

(iv) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided in a family or group family setting; and

(v) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided who are not related in any way to all children receiving services as or will be provided by an enrolled legally exempt provider;

(b) notwithstanding any other provision of law to the contrary, prior to October first, two thousand twenty, all clearances listed in subdivision one of this section that have not previously been conducted pursuant to paragraph (a) of this subdivision and for which on-going criminal history results are not already provided, shall be conducted in accordance with a schedule developed by the office of children and family services, for all:

(i) existing volunteers with the potential for unsupervised contact with children in care;

(ii) existing caregivers for an enrolled legally exempt provider;

(iii) existing employees, directors and operators of any such program or provider; and

(iv) every individual eighteen years of age and over residing or who

begins to reside in a home where services are or will be provided in a family or group family setting; and

(v) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided who are not related in any way to all children receiving services as or will be provided by an enrolled legally exempt provider;

(c) notwithstanding any other provision of law to the contrary, the clearances required pursuant to this section other than those for which on-going criminal history results are provided, shall be conducted for a person listed in subparagraphs (i), (ii), (iii) and (iv) of paragraph (b) of this subdivision at least once every five years in accordance with a schedule developed by the office of children and family services.

3. (a) Notwithstanding any other provision of law to the contrary, in relation to the clearances required pursuant to this section, an individual or a program or provider shall be deemed ineligible, as such term is defined in paragraph (b) of this subdivision, if such individual:

(i) refuses to consent to such clearance;

(ii) knowingly makes a materially false statement in connection with such a clearance;

(iii) is registered, or is required to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh child protection and safety act of 2006 (42 U.S.C. 16901 et seq.); or

(iv) has been convicted of a crime enumerated in subparagraph (E) or clauses (i) through (viii) of subparagraph (D) of paragraph (1) of subdivision (C) of 42 U.S.C. 9858f.

(b) For purpose of this subdivision, the term "ineligible" shall mean:

(i) the individual who engaged in conduct listed in paragraph (a) of this subdivision shall not be permitted to:

(1) operate, direct, be the caregiver for, or be employed by a child day care program or an enrolled legally-exempt provider; or

(2) be a volunteer with the potential for unsupervised contact with children in a child day care program or with an enrolled legally-exempt provider; or

(3) be an enrolled legally exempt provider; or

(ii) in relation to child day care programs or any enrolled legally-exempt providers, where child care is, or is proposed to be provided, to a child in a home setting where such child does not reside, such program or provider shall not be eligible to operate or to be enrolled to serve children receiving child care subsidies pursuant to title five-C of this article, if an individual over the age of eighteen who is not related in any way to all children for whom child care services are or will be provided, resides in the household where child care is, or is proposed to be provided, engaged in conduct listed in paragraph (a) of this subdivision.

3-a. (a) In relation to child day care programs and any enrolled legally-exempt provider, when a clearance conducted pursuant to this section reveals that any existing operator, director, caregiver, or person over the age of eighteen who is not related in any way to all children for whom child care services are or will be provided, that resides in a home where child care is provided in a home setting where the child does not reside has been convicted of a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program, and may deny, limit, suspend, revoke or reject such program's license or registration or terminate or reject such program's enrollment, as applicable, unless the office of children and family services, determines in its discretion, that continued operation by the child day care program or enrolled legally-exempt provider will not in any way jeopardize the health, safety or welfare of the children cared for in the program or by the provider.

(b) In relation to child day care programs and any enrolled legally-exempt provider, when a clearance conducted pursuant to this section reveals that any existing employee or volunteer with the potential for unsupervised contact with children has been convicted of a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law,

the office of children of family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office of children and family services may direct the program or provider to terminate the employee or volunteer based on such a conviction, consistent with article twenty-three-A of the correction law.

(c) (i) In relation to any child day care programs and any enrolled legally-exempt providers, where a clearance conducted pursuant to this section reveals a conviction for a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, for any prospective employee or volunteer, the office of children and family services may direct that such person not be hired, as applicable, based on such a conviction, consistent with article twenty-three-A of the correction law.

(ii) In relation to any child day care program and any enrolled legally-exempt provider, when a clearance conducted pursuant to this section reveals a conviction for a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, for any prospective caregiver seeking enrollment, or applicant to be a director or operator, the office of children and family services may deny the application or enrollment, consistent with article twenty-three-A of the correction law.

(d) (i) Where a clearance conducted pursuant to this section reveals that an applicant to be the operator or director of a child day care program, or applicant to be a caregiver, or anyone who is not related in any way to all children for whom child care services will be provided, resides in the home over the age of eighteen where child day care is proposed to be provided to children in a home-based setting has been charged with a crime, the office of children and family services shall hold the application in abeyance until the charge is finally resolved.

(ii) Where a clearance conducted pursuant to this section reveals that the current operator or director of a child day care program, or any person over the age of eighteen who is not related in any way to all children for whom child care services will be provided, that resides in

a home where child day care is provided has been charged with a crime, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of children in the program. The office of children and family services may suspend a license or registration or terminate enrollment based on such a charge when necessary to protect the health and safety of children in the program.

(iii) Where a clearance conducted pursuant to this section reveals that an existing caregiver, volunteer or an existing employee of an enrolled legally-exempt provider or any person over the age of eighteen that resides in a home where the child care is provided by an enrolled legally-exempt provider in a home setting where the child does not reside, has been charged with a crime, the office of children and family services shall take one or more of the following steps:

(A) Conduct a safety assessment; or

(B) Take all appropriate steps to protect the health and safety of children in the program.

(iv) Where a clearance conducted pursuant to this section reveals that an applicant to be an employee or volunteer with the potential for unsupervised contact with children of a child day care program or enrolled legally-exempt provider has been charged with a crime, the office shall hold the application in abeyance until the charge is finally resolved.

(v) Where a clearance conducted pursuant to this section reveals that a current employee, or current volunteer with the potential for unsupervised contact with children of a child day care program has been charged with a crime, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program.

3-b. All persons who are subjected to a criminal history and background clearance and safety assessment pursuant to this section who the office of children and family services determines: (i) should be denied enrollment, employment, or the ability to volunteer pursuant to a background clearance analysis performed by the office of children and family services, and (ii) where such denial is not based on an offense listed in paragraph (a) of subdivision three of this section, shall have

the ability to request a de novo review of the article twenty-three-a of the correction law determination in an administrative hearing before an administrative law judge, to be held and completed before the present employer is notified of such clearance determination. Such person shall have reasonable notice concerning the determination, and information regarding how to request a hearing to review that determination, and an opportunity to provide any additional information that such person deems relevant to such determination. Such person may choose to be heard in person, by video conference if reasonably available, or through submission of written materials. Where such request is made, the office of children and family services shall also have an opportunity to be heard.

4. Prior to making a determination to deny an application pursuant to subdivision three of this section, the office of children and family services shall afford the applicant an opportunity to explain, in writing, why the application should not be denied.

5. Notwithstanding any other provision of law to the contrary, the office of children and family services, upon receipt of a criminal history record from the division of criminal justice services, may request, and is entitled to receive, information pertaining to any crime contained in such criminal history record from any state or local law enforcement agency, district attorney, parole officer, probation officer or court for the purposes of determining whether any ground relating to such criminal conviction or pending criminal charge exists for denying a license, registration, application or employment.

6. The office of children and family services shall pay any required processing fee for a criminal history or sex offender clearance pursuant to this section. The office of children and family services shall promptly submit fingerprints obtained pursuant to this section and such processing fee to the division of criminal justice services.

7. Where the office of children and family services or its designee denies or directs a child day care or an enrolled legally-exempt provider to deny an application based on the criminal history record;

(a) the provider must notify the applicant that such record is the basis of the denial; and (b) the office of children and family services shall also notify as the case may be, such current or prospective operator, director, employee, assistant, legally exempt provider, volunteer with the potential for unsupervised contact with children or other person eighteen years of age or older, who resides in the home where care is provided, other than the child's home, that the criminal record check was the basis for the denial of clearance and shall provide such individual with a copy of the results of the national criminal record check upon which such denial was based together with a written statement setting forth the reasons for such denial, as well as a copy of article twenty-three-A of the correction law and inform such individual of his or her right to seek correction of any incorrect information contained in such national record check provided by the federal bureau of investigation.

8. Any safety assessment required pursuant to this section shall include a review of the duties of the individual, the extent to which such individual may have contact with children in the program or household and the status and nature of the criminal charge or conviction. Where the office of children and family services performs the safety assessment, it shall thereafter take all appropriate steps to protect the health and safety of children receiving care in the child day care center, school age child care program, family day care home or group family day care home.

9. (a) Any criminal history record provided by the division of criminal justice services, and any summary of the criminal history record provided by the office of children and family services to a person that receives a clearance pursuant to this section, is confidential and shall not be available for public inspection; provided, however, nothing herein shall prevent the office of children and family services from disclosing criminal history information or the individual from disclosing his or her criminal history information at any administrative or judicial proceeding relating to the denial or revocation of an application, employment, license or registration. The subject of a criminal history review conducted pursuant to this section

shall be entitled to receive, upon written request, a copy of the summary of the criminal history record. Unauthorized disclosure of such records or reports shall be subject to civil penalties in accordance with the provisions of subdivision eleven of section three hundred ninety of this title.

(b) The office of children and family services shall not release the content of the results of the nationwide criminal history record check conducted by the federal bureau of investigation in accordance with this subdivision to any non-public entity.

10. A child day care or enrolled legally-exempt provider shall advise the office of children and family services when an individual who is subject to criminal history record review in accordance with subdivision one or two of this section is no longer subject to such review. The office of children and family services shall inform the division of criminal justice services when an individual who is subject to criminal history review is no longer subject to such review so that the division of criminal justice services may terminate its retain processing with regard to such person. At least once a year, the office of children and family services will be required to conduct a validation of the records maintained by the division of criminal justice services.

11. Child day care centers which are not subject to the provisions of section three hundred ninety of this title shall not be subject to the provisions of this section, provided however, that the city of New York shall require that such child day care centers meet the requirements of any federal laws and regulations pertaining to the child care development and block grant and the related federally approved plans of the state of New York.

12. A child care support center certified pursuant to section three hundred ninety-n of this title shall be authorized to request clearances for substitute caregivers in accordance with this section. Substitute caregivers shall be considered "prospective employees" of a child day care program under subparagraph (iii) of paragraph (a) of subdivision two of this section.