

STATE OF NEW YORK

5071--B

2005-2006 Regular Sessions

IN SENATE

April 18, 2005

Introduced by Sen. SPANO -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Social Services, Children and Families in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to safe mentoring practice

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

- 1 Section 1. Short title. This act shall be known and may be cited as
2 the "safe mentoring act".
3 § 2. The social services law is amended by adding a new section 390-e
4 to read as follows:
5 § 390-e. Criminal history review; mentoring programs. 1. For the
6 purposes of this section, the following words shall have the following
7 meanings:
8 (a) "Prospective employee" shall mean a person being considered for
9 employment by a mentoring program.
10 (b) "Prospective mentor" shall mean an individual who is currently
11 applying to volunteer to help a child or a group of children in a
12 mentoring program for a period of time. Such help shall include, but not
13 be limited to, being a positive role model for youth, building relation-
14 ships with youth, and providing youth with academic assistance and expo-
15 sure to new experiences and examples of opportunity that enhance the
16 ability of children to become responsible adults.
17 (c) "Mentoring program" shall mean a formalized program, operated by a
18 corporation which has been incorporated pursuant to subparagraph five of
19 paragraph (a) of section one hundred two of the not-for-profit corpo-
20 ration law or pursuant to subparagraph four of paragraph (a) of section

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

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1 one hundred two of the business corporation law, or operated by an
2 educational institution or school district, that matches youth with
3 adult volunteers with the purpose of providing such youth with positive
4 role models to enhance their development.

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

6 2. Mentoring programs may perform a criminal history record check on
7 all prospective employees and mentors.

8 3. Notwithstanding any other provision of law to the contrary, subject
9 to the rules and regulations of the division of criminal justice
10 services, mentoring programs may apply for a criminal history record
11 check with the division of criminal justice services regarding any
12 prospective employee or any prospective mentor who may engage in unsu-
13 pervised activities with youth or in activities with youth in a setting
14 without constant agency or parental oversight. Each mentoring program
15 that chooses to complete such criminal background checks on prospective
16 employees or on prospective mentors shall establish a policy for
17 completing criminal background checks on such prospective employees or
18 mentors. Such policy shall apply one uniform standard for the completion
19 of criminal background checks for all prospective employees and one
20 uniform standard for the completion of criminal background checks for
21 all prospective mentors. Any mentoring program that chooses to complete
22 criminal background checks on both prospective employees and prospective
23 mentors may utilize the same uniform process for the completion of the
24 criminal background checks on prospective employees and prospective
25 mentors or they may choose one uniform process for prospective employees
26 and another uniform process for prospective 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, the office shall promptly provide to the
44 mentoring program the criminal history record, if any, with respect to
45 the prospective employee or mentor, or a statement that the individual
46 has no criminal history record.

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

53 7. Upon the request of any person previously convicted of one or more
54 criminal offenses who has been denied employment pursuant to subdivision
55 six of this section, the mentoring program shall provide, within thirty
56 days of such request, a written statement setting forth the reasons for

1 such denial. Any such person denied employment pursuant to subdivision
2 six of this section shall be afforded the opportunities for enforcement
3 available pursuant to section seven hundred fifty-five of the correction
4 law.

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

14 9. Any criminal history record provided to a mentoring program pursu-
15 ant to this section shall be confidential pursuant to the applicable
16 federal and state laws, rules and regulations, and shall not be
17 published or in any way disclosed to persons other than authorized
18 personnel, unless otherwise authorized by law.

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

33 § 3. This act shall take effect on the first of April next succeeding
34 the date on which it shall have become a law, provided that any rules
35 and regulations necessary to implement the provisions of this act on its
36 effective date are authorized and directed to be completed on or before
37 such date.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S5071B

SPONSOR: SPANO

TITLE OF BILL: An act to amend the social services law, in relation
to safe mentoring practice

PURPOSE OR GENERAL IDEA OF BILL: To protect children in mentoring
programs by requiring that mentors and mentoring supervisors who spend
unsupervised time with children submit to criminal background checks.

SUMMARY OF SPECIFIC PROVISIONS:

Creates Article 7-A of the Social Services law as follows:

* Section 435-c requires that certain mentoring supervisors and mentors must submit to a criminal background check; provides guidance for the state Office of Children and Family Services (OCFS) and the state Division of Criminal Justice Services (DCJS) with regard to accessing and processing such information; and specifies what employment and volunteer decisions must be made based on the information received.

EFFECTS OF PRESENT LAW WHICH THIS BILL WOULD ALTER: There is currently no statutory requirement that staff or volunteers in mentoring programs submit to criminal background checks. As such, no existing law is altered.

JUSTIFICATION: Mentoring is the fastest growing youth service in the United States. It is estimated that over 2,500 mentoring programs are operating in New York State, reaching in excess of 50,000 children each year. While mentoring is one of the only child services that involves adults working with children in an unsupervised, one-on-one environment, there is currently no state law that required these individuals to be screened for any prior criminal history that would make them unfit to work with children. To correct this oversight, this legislation would apply standards modeled after those currently in use for schoolteachers, childcare workers, bus drivers and other jobs that place adults in positions of authority over young children.

PRIOR LEGISLATIVE HISTORY:

A.7326-B of 2005.

FISCAL IMPLICATIONS FOR STATE & LOCAL GOVERNMENTS:

Minimal costs to the state to administer the certification program, to be covered by fees paid by applicants.

EFFECTIVE DATE:

April 1 of the year following its enactment.
