



March 28, 2007

Re: Safe Mentoring Act

**New York State
Office of
Children &
Family
Services**

Eliot Spitzer
Governor

Gladys Carrión, Esq.
Commissioner

Dear Mentoring Partners:

The Office of Children and Family Services (Office) is advising you of a change in New York State law, which allows certain mentoring programs to conduct criminal history background checks on prospective employees and/or mentors. We request your assistance in advising other organizations that operate mentoring programs of this change. The new law, Chapter 459 of the Laws of 2006, is entitled the Safe Mentoring Act. It becomes effective April 1, 2007. A copy of the Act is enclosed for your information.

Capital View Office Park

52 Washington Street
Rensselaer, NY
12144-2796

This letter describes the procedures mentoring programs must follow to obtain approval to conduct criminal history background checks under the Act. Please review this material in regard to any mentoring programs your organization may operate or affiliate with. Please provide them with a copy of this letter and the enclosures.

The Act allows certain mentoring programs the option to conduct criminal history background checks through the Office and the Division of Criminal Justice Services (DCJS) on prospective employees and/or mentors who may engage in activities with youth that are unsupervised or in a setting without constant agency or parental oversight.

However, the Act does not mandate that mentoring programs conduct any criminal history background checks. The decision to seek authorization to complete criminal history background checks is solely within the discretion of the mentoring program. The law does not permit programs authorized to do mentoring to conduct criminal background checks on existing employees and/or mentors who were hired by the program, or matched with a youth, before April 1, 2007.

Application Process:

The Office has developed an application for those mentoring programs that wish to conduct criminal background checks on prospective employees and/or mentors. A copy of the application is enclosed.



An Equal Opportunity Employer

There are several requirements that an organization must meet in order for a mentoring program to be authorized to conduct criminal history background checks under the Act including the following:

1. The mentoring program must be operated by one of the following:
 - A corporation formed under section 102(a)(5) the Not-for-Profit Corporation Law;
 - A corporation formed under section 102(a)(4) of the Business Corporation Law §102(a)(4); or
 - An educational institution or a school district.
 - A mentoring program operated by a business or not-for-profit corporation, must submit to the Office a copy of its original certificate of incorporation and any certificate of amendment that changed the name of the corporation.
 - A mentoring program operated by an educational institution must submit to the Office a copy of the charter issued to the educational institution by the Board of Regents.
 - A mentoring program operated by a school district must submit to the Office a letter or memorandum on the school district letterhead, signed by an authorized district official, to verify that the program is operated by the school district.

2. The organization operating the mentoring program must attest that it has a formalized program that matches youth with adult volunteers for the purpose of providing positive role models to enhance development and submit materials that document the existence of such a formalized program.

3. The organization operating the mentoring program must attest that:
 - It will comply with the statutory requirements of the Safe Mentoring Act including:
 - a. that the mentoring program has an internal policy or policies describing who will be subject to the criminal history background check; and
 - b. that criteria exist that may be used to determine whether to allow an individual with a criminal history to be employed by the authorized mentoring program or act as a mentor consistent with the requirements of Article 23-A of the Corrections Law (see below for more details).

Upon receipt of the application and other required information, the Office will review the materials to determine if the mentoring program meets the criteria set forth in the new law.

Process to be Followed:

If a mentoring program makes the decision to seek approval from the Office to conduct criminal history background checks, it must:

1. Develop an internal policy as to who will be screened and the criteria that will be used to determine whether to allow an individual with a criminal history to be employed by the mentoring program or act as a mentor.
 - The mentoring program must develop a mentoring policy.
 - a. They may create one policy that will cover both prospective employees of the mentoring program and/or prospective mentors. If the program decides to have one policy for both, the criteria for determining who will be employed and who will be a mentor must be the same for all prospective employees and mentors.
 - b. It may create separate policies, one for prospective employees of the mentoring program and one for prospective mentors. If the program decides to have separate policies for employees and prospective mentors, the criteria for determining who will be employed must be the same for all prospective employees and the criteria for determining who will be a mentor must be the same for all prospective mentors.
 - The decision to develop one policy, or separate policies, is within the sole discretion of each mentoring program.
 - It is important to note that if the program decides to conduct criminal history background checks on prospective employees and/or prospective mentors, all prospective employees and/or mentors must be subject to that requirement. The program cannot make exceptions for persons who have been subject to criminal history background checks for another purpose. For example, if the organization operating the mentoring program also operated a day care program, a person who worked in the day care program would have had a criminal history background check conducted in connection with his or her day care employment. If that person also applied to be an employee of the mentoring program or a mentor, a separate criminal history background check would be required in connection with that application.

2. Once a policy, or policies, has been developed and approved by a mentoring program, the policy, or policies, must be shared with parents or guardians of the children to be mentored. This allows the parents or guardians of the mentees to review the criteria that will permit an individual to become an employee of the mentoring program and/or prospective mentor so the parents or guardians can decide whether they wish to use the mentoring program. (Please note that the Act requires mentoring programs to provide parents or guardians of the children to be mentored with a description of the kind of criminal background check conducted by the mentoring program on its prospective employees and mentors, whether or not those background checks are conducted pursuant to the process established in the Act.)

3. Submit a completed application and the required document to the Office at:

**NYS Office of Children and Family Services
52 Washington Street, Room 313 South
Rensselaer, NY 12144**

4. If the Office approves the mentoring program for purposes of conducting criminal history background checks, the Office's Distribution Center will provide an initial supply of fingerprint cards and mailing envelopes for its use. (The authorized mentoring program may contact the Office's Distribution Center via fax at (518) 432-8230 to obtain additional fingerprint cards and mailing envelopes.)

5. Completed fingerprint cards and the required \$75 processing fee for each card must be sent to the Office using the supplied postage paid business envelopes.
 - Payment must be made by certified check or money order made payable to the New York State Office of Children and Family Services.
 - Upon receipt of the completed fingerprint cards and fees, the Office will forward the fingerprint cards and fees to the Division of Criminal Justice Services (DCJS) for processing.
 - DCJS will process the fingerprint cards and fees and send the resulting criminal history report to the Office.
 - Once the Office receives the criminal history report, the Office will forward the report to the inquiring authorized mentoring program.

6. After receiving and reviewing the criminal history report, the authorized mentoring program must make a determination, in accordance with Article 23-A of the Corrections Law and its internal policy, as to whether the prospective employee should be hired or the prospective mentor should be allowed to become an actual mentor. The Office has enclosed a copy of Article 23-A of the Corrections Law with this letter.

- If the program decides to deny a prospective mentor based on his or her criminal history record and the prospective mentor was not convicted of a sex offense or a crime against a child, the program may, if its internal policy so provides, ask the prospective mentor if he or she consents to the mentoring program asking the custodial parent or guardian of the prospective mentee child if he or she would like the prospective mentor to be a mentor to the child despite the existence of a criminal record.
- If the prospective mentor consents, the mentoring program may notify the custodial parent/guardian of the mentee of the option to sign a waiver authorizing the prospective mentor to work with the child despite the existence of a criminal record.
- The Office has developed a waiver form for use by programs authorized to do mentoring when the custodial parent/guardian would like to authorize the prospective mentor to work with the mentee despite the existence of a criminal record.
- The Office will provide a supply of copies of the waiver form to the authorized mentoring program upon initial approval. Mentoring programs are advised to keep a supply of waiver forms on hand for future use.
- Please note that if the mentoring program is uncertain whether a conviction involves a sex offense or a crime against a child, it should contact DCJS for clarification.

7. The Office will keep all active employees and mentor volunteers on whom a criminal history record check is conducted on search and retain status with DCJS which means:

- If an employee or mentor is arrested after the initial criminal history summary has been provided to the authorized mentoring program, the Office will receive a report of the arrest on the employee or mentor.
- After receiving the report of the arrest, the Office will forward the report to the mentoring program.
- The mentoring program, after receiving and reviewing the arrest notice, may then take any action permitted by Article

23-A of the Corrections Law and its internal policy related to the employee or mentor.

Finally, mentoring programs authorized to conduct criminal history checks **must** notify the Office immediately when an employee or mentor on whom a criminal history record check was conducted ceases to be employed by the mentoring agency or be an active mentor, so the Office can contact DCJS and inform them to cease providing the Office with search and retain arrest information on this individual. The Office has developed an expungement form to be used by mentoring programs to notify the Office when a mentor is no longer associated with a mentoring program. The Office will provide a supply of copies of the expungement form to the authorized mentoring program upon initial approval.

In closing, we appreciate your support in assisting the Office in informing mentoring programs of this important statutory change. If you, or any of the mentoring programs that you work with, have any questions on the statute or related policies, please feel free to contact the Office and we will be glad to address your concerns and answer your questions. Thank you again for your anticipated cooperation.

Sincerely,

Nancy W. Martinez, Director
Strategic Planning and Policy Development

Enclosures