

STATE OF NEW YORK

S. 7749

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SENATE - ASSEMBLY

June 17, 2012

IN SENATE -- Introduced by Sens. McDONALD, ALESİ, GOLDEN -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of A. Ortiz, Silver, Weisenberg, Paulin, Cymbrowitz, Abinanti) -- (at request of the Governor) -- read once and referred to the Committee on Mental Health

AN ACT to amend the executive law, the criminal procedure law, the correction law and the public health law, in relation to establishing the justice center for the protection of people with special needs; to repeal article 45 of the mental hygiene law, relating to the state commission on quality of care and advocacy for persons with disabilities; and establishing the justice center medical review board (Part A); to amend the social services law, in relation to the protection of vulnerable persons (Part B); to amend the county law and the mental hygiene law, in relation to reports of abuse or neglect of individuals in certain facilities and programs and repealing certain provisions of the mental hygiene law relating thereto; and to amend the mental hygiene law, in relation to reports of abuse and mistreatment of vulnerable persons in residential care and repealing certain provisions of such law relating thereto (Part C); to amend the social services law, in relation to the definition of abused and maltreated child; in relation to mandatory reporting; in relation to the state-wide central register of child abuse and maltreatment and access to such register; in relation to making technical corrections relating thereto; and repealing section 412-a, and other provisions of such law relating thereto (Part D); to amend the education law and the vehicle and traffic law, in relation to the protection of pupils in residential care from abuse, neglect and maltreatment (Part E); to amend the mental hygiene law, the executive law and the social services law, in relation to review of criminal history information concerning certain prospective providers, employees, and individuals credentialed by the office of alcoholism and substance abuse services (Part F); to amend the penal law, in relation to certain crimes of abuse, neglect or endangering the welfare of certain incompetent, physically disabled, or vulnerable persons (Part G); and to amend chapter 606 of the laws

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

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of 2011, amending the mental hygiene law relating to creating an abuse prevention notification system, in relation to creating an abuse prevention notification system; and to repeal chapter 6 of the laws of 2012, amending chapter 606 of the laws of 2011, amending the mental hygiene law relating to an abuse prevention notification system (Part H)

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

1 Section 1. This act shall be known and may be cited as the "protection
2 of people with special needs act".
3 § 2. This act enacts into law major components of legislation which
4 are necessary for the protection of persons who are vulnerable because
5 of their reliance on professional caregivers to help them overcome phys-
6 ical, cognitive and other challenges. Each component is wholly
7 contained within a Part identified as Parts A through H. The effective
8 date for each particular provision contained within each Part is set
9 forth in the last section of such Part. Any provision in any section
10 contained within a Part, including the effective date of the Part, which
11 makes reference to a section "of this act", when used in connection with
12 that particular component, shall be deemed to mean and refer to the
13 corresponding section of the Part in which it is found. Section four of
14 this act sets forth the general effective date of this act.

15

PART A

16 Section 1. Legislative findings and purpose. There is a recognized
17 need to strengthen and standardize the safety net for vulnerable
18 persons, adults and children alike, who are receiving care from New
19 York's human service agencies and programs. There are over 270,000 chil-
20 dren and adults with disabilities or other life circumstances that make
21 them vulnerable in residential facilities under the auspices of six
22 state agencies that operate, license or certify such programs. In addi-
23 tion, a significant number of persons rely on day programs operated,
24 licensed or certified by the state. Although all of these programs
25 share a common obligation to protect such persons, and keep them safe
26 from abuse and neglect, there are fundamental differences in how the
27 state agencies meet their obligations, as well as major gaps in over-
28 sight that may expose vulnerable persons to harm.

29 This legislation creates a set of uniform safeguards, to be imple-
30 mented by a justice center whose primary focus will be on the protection
31 of vulnerable persons. To bolster the ability of the state to respond
32 more effectively to abuse and neglect of vulnerable persons, without
33 creating additional burdens on local law enforcement, the justice center
34 will have concurrent authority with district attorneys to prosecute
35 abuse and neglect crimes committed against such persons.

36 The justice center also will develop a register that will contain the
37 names of individuals found responsible for egregious or repeated acts of
38 abuse or neglect. Before being placed on the register, such individuals
39 will have a right to challenge that finding, but once on the register
40 they will be barred from future employment in the care of vulnerable
41 persons. Employees found responsible for less serious acts shall be
42 subjected to progressive discipline, including retraining and other
43 actions necessary to facilitate their safe return to the workplace.

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1 To ensure that individuals who work with vulnerable persons are aware
2 of their obligations to assist such persons to lead safe, vital and
3 productive lives, the legislation requires the justice center to develop
4 a code of conduct for workers who have regular contact with vulnerable
5 persons. This code of conduct will serve as a guide to such workers by
6 containing the basic ethical standards to which all direct support work-
7 ers should subscribe and be held accountable.

8 The justice center will also operate a statewide hotline to which
9 certain mandated reporters will be required to report abuse, neglect and
10 significant incidents involving vulnerable persons being served in
11 certain residential and non-residential facilities and programs. It will
12 ensure that allegations of these reportable incidents are promptly
13 reported, that they are fully and effectively investigated, that those
14 individuals who are responsible are held accountable and that providers
15 implement corrective action plans to prevent future incidents.

16 Additionally, this legislation requires designation of an independent
17 agency charged with fulfilling the federal protection and advocacy and
18 client assistance programs to provide federal oversight of the state's
19 system of care for individuals with disabilities. This agency will also
20 conduct independent advocacy including but not limited to assistance in
21 obtaining supports and services, legal assistance, and responding to the
22 inquiries and complaints of individuals and their families relating to
23 quality of care.

24 Accordingly, the purpose of this legislation is to create a durable
25 set of consistent safeguards for all vulnerable persons that will
26 protect them against abuse, neglect and other conduct that may jeopard-
27 ize their health, safety and welfare, and to provide fair treatment to
28 the employees upon whom they depend.

29 § 2. Article 45 of the mental hygiene law is REPEALED.

30 § 3. The executive law is amended by adding a new article 20 to read
31 as follows:

32 ARTICLE 20

33 PROTECTION OF PEOPLE WITH SPECIAL NEEDS

34 Section 550. Definitions.

35 551. The justice center for the protection of people with
36 special needs.

37 552. Organization of the justice center.

38 553. Powers and duties of the justice center.

39 554. Codes of conduct.

40 555. Justice center medical review board; organization.

41 556. Functions, powers and duties of the board.

42 557. Reports to the justice center.

43 558. Access to records and facilities.

44 559. New York state interagency coordinating council for
45 services to persons who are deaf, deaf-blind, or hard of
46 hearing.

47 560. Annual report.

48 561. Advisory council.

49 562. Abuse and neglect notification.

50 § 550. Definitions. As used in this article, the following terms shall
51 have the following meanings:

52 1. "Executive director" shall mean the executive director of the
53 justice center for the protection of people with special needs.

54 2. "Mental hygiene facility" shall mean a facility as defined in
55 subdivision six of section 1.03 of the mental hygiene law and facilities
56 for the operation of which an operating certificate is required pursuant

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1 to article sixteen or thirty-one of the mental hygiene law and including
2 family care homes. "Mental hygiene facility" also means a secure treat-
3 ment facility as defined by article ten of the mental hygiene law.

4 3. "Reportable incident" shall have the same meaning as defined in
5 subdivision one of section four hundred eighty-eight of the social
6 services law.

7 4. "State oversight agency" shall mean the state agency that operates,
8 licenses or certifies an applicable facility or provider agency as
9 defined in subdivision four of section four hundred eighty-eight of the
10 social services law; provided however that such term shall only include
11 the following entities: the office of mental health, the office for
12 people with developmental disabilities, the office of alcoholism and
13 substance abuse services, the office of children and family services,
14 the department of health and the state education department. "State
15 oversight agency" does not include agencies that are certification agen-
16 cies pursuant to federal law or regulation. For purposes of this arti-
17 cle, "state oversight agency" shall include the justice center for the
18 protection of people with special needs.

19 5. "Vulnerable person" shall mean a person who, due to physical or
20 cognitive disabilities, or the need for services or placement, is
21 receiving services from a facility or provider agency as defined in
22 subdivision four of section four hundred eighty-eight of the social
23 services law.

24 6. "Individual with a disability," except as used in subdivision (b)
25 of section five hundred fifty-eight of this article, shall mean a person
26 with a disability as defined in subdivision twenty-one of section two
27 hundred ninety-two of this chapter.

28 § 551. The justice center for the protection of people with special
29 needs. 1. There is hereby created within the executive department a
30 justice center for the protection of people with special needs ("justice
31 center" or "center"). Such justice center shall be headed by an execu-
32 tive director, who shall be appointed by the governor, by and with the
33 advice and consent of the senate. The executive director may appoint
34 staff and perform such other functions for the efficient operation of
35 the justice center within the amounts made available therefor by appro-
36 priation.

37 2. The executive director shall recommend policies and procedures to
38 the state oversight agency for the protection of vulnerable persons,
39 including but not limited to policies and procedures: (a) for the
40 protection of vulnerable persons who reside in or receive services from
41 facilities or provider agencies as set forth in subdivision four of
42 section four hundred eighty-eight of the social services law; (b) relat-
43 ing to assuring, on behalf of the state, that vulnerable persons are
44 afforded care that is of a uniformly high standard; (c) relating to
45 assuring, on behalf of the state, that vulnerable persons are afforded
46 the opportunity to exercise all of the rights and responsibilities
47 accorded to residents of the state; and (d) to harmonize and improve the
48 procedures for and quality of investigations of reportable incidents
49 involving vulnerable persons within the different systems of care in the
50 state.

51 3. The executive director may, in consultation with the advisory coun-
52 cil, promulgate, adopt, amend or rescind rules and regulations necessary
53 to carry out the provisions of this article; provided, however, that
54 such rules and regulations shall be strictly limited in their applica-
55 tion to the means and methods of compliance with the provisions of this
56 article.

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1 § 552. Organization of the justice center. 1. The justice center shall
2 house the vulnerable persons' central register created in section four
3 hundred ninety-two of the social services law and shall perform all of
4 the necessary functions related to the receipt and acceptance of reports
5 of allegations of reportable incidents involving vulnerable persons, the
6 investigation of such accepted reports and the review of substantiated
7 findings of abuse or neglect, as defined in subdivision eleven of
8 section four hundred eighty-eight of the social services law, including
9 conducting any disciplinary proceedings for state employees resulting
10 from such substantiated findings (for state entities bound by collective
11 bargaining, the disciplinary process established through collective
12 bargaining shall govern). The justice center shall contain two separate
13 units, headed by two distinct deputies, one responsible for the prose-
14 cution of criminal matters and one for the resolution of non-criminal
15 matters. If, during an investigation, what appeared to be a non-criminal
16 matter warrants consideration for criminal charges, the matter shall be
17 promptly referred to the criminal unit. Information collected during
18 such investigations may only be shared between such units in accordance
19 with state and federal constitutional protections and laws and the
20 secrecy provisions contained in article one hundred ninety of the crimi-
21 nal procedure law, unless so ordered by a court in a pending proceeding.
22 2. (a) The justice center also shall employ a special prosecutor and
23 inspector general for the protection of people with special needs
24 ("special prosecutor"), who shall be appointed by the governor. Other
25 state agencies shall be required to make facilities available for office
26 space throughout the state and to assist when requested with respect to
27 the duties of the office. Pursuant to the provisions of this section,
28 such special prosecutor shall have the duty and power: (i) to investi-
29 gate and prosecute offenses involving abuse or neglect, as defined in
30 subdivision eleven of section four hundred eighty-eight of the social
31 services law, committed against vulnerable persons by custodians as
32 defined in subdivision two of section four hundred eighty-eight of the
33 social services law; and (ii) to cooperate with and assist district
34 attorneys and other local law enforcement officials in their efforts
35 against such abuse or neglect of vulnerable persons. Provided that noth-
36 ing herein shall interfere with the ability of district attorneys at any
37 time to receive complaints, investigate and prosecute any suspected
38 abuse or neglect or for any persons, whether a mandated reporter or not,
39 to report a complaint to a district attorney or other appropriate law
40 enforcement official. The special prosecutor may request and shall
41 receive, from any agency, department, division, board, bureau or commis-
42 sion of the state, or any political subdivision thereof, cooperation and
43 assistance in the performance of his or her duties, and may provide
44 technical and other assistance to any district attorney or law enforce-
45 ment official requesting assistance in the investigation or prosecution
46 of abuse or neglect of vulnerable persons.
47 (b) The special prosecutor is empowered to apply for search warrants
48 pursuant to article six hundred ninety of the criminal procedure law,
49 and, except in exigent circumstances, shall give prior notice of the
50 application to the district attorney of the county in which such a
51 warrant is to be executed, and in such exigent circumstances shall give
52 such notice as soon thereafter as is practicable; provided, however that
53 the failure to give notice of a search warrant application to a district
54 attorney shall not be a ground to suppress the evidence seized in
55 executing the warrant. He or she may designate an assistant to exercise
56 any of such powers.

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1 (c) The special prosecutor or one of his or her assistants may, after
2 consultation with the district attorney as to the time and place of such
3 attendance or appearance, attend in person any term of the county court
4 or supreme court having appropriate jurisdiction, including an extraor-
5 inary special or trial term of the supreme court when one is appointed
6 pursuant to section one hundred forty-nine of the judiciary law, or
7 appear before the grand jury thereof, for the purpose of managing and
8 conducting in such court or before such jury a criminal action or
9 proceeding concerned with an offense where any conduct constituting or
10 requisite to the completion of or in any other manner related to such
11 offense involved the abuse or neglect of a vulnerable person, as defined
12 in subdivision eleven of section four hundred eighty-eight of the social
13 services law. In such case, such special prosecutor or his or her
14 assistant so attending may exercise all the powers and perform all the
15 duties in respect of such actions or proceedings which the district
16 attorney would otherwise be authorized or required to exercise or
17 perform.

18 § 553. Powers and duties of the justice center. The justice center
19 shall have the following powers and duties:

20 1. To create and establish the statewide vulnerable persons' central
21 register, as set forth in section four hundred ninety-two of the social
22 services law, which shall include, but not be limited to:

23 (a) establishing procedures for the timely response to, and effective
24 investigation of, allegations of reportable incidents that are accepted
25 by the statewide vulnerable persons' central register;

26 (b) establishing procedures for the notification of appropriate
27 persons and entities with respect to reports and findings of reportable
28 incidents;

29 (c) representing the state in all administrative hearings and other
30 administrative proceedings relating to discipline of state employees and
31 adjudication of individuals charged with having committed or found to
32 have committed abuse or neglect, as defined in subdivision eleven of
33 section four hundred eighty-eight of the social services law (for state
34 entities bound by collective bargaining, the disciplinary process estab-
35 lished through collective bargaining shall govern);

36 (d) identifying a process for a coordinated approach to avoid dupli-
37 cation and provide for timely responses to allegations of reportable
38 incidents in dually licensed or co-located facilities and provider agen-
39 cies, which shall include designation of a lead agency primarily respon-
40 sible for carrying out the responsibilities of a facility or provider
41 agency pursuant to article eleven of the social services law, including
42 but not limited to incident management and reporting, provided that in
43 making any such designation or re-designation of such lead agency,
44 consideration shall be given to the following factors: the proportion of
45 services provided or recipients served in the dually licensed or co-lo-
46 cated facilities and provider agencies pursuant to each license or
47 certification granted by a state oversight agency, the recommendations
48 of the respective state oversight agencies that granted such licensure
49 or certification, and the designation or re-designation that would best
50 protect the health, safety and welfare of vulnerable persons served by
51 such facilities and provider agencies; provided, further that once
52 designated, a lead agency shall only be re-designated as necessary to
53 protect the health, safety and welfare of vulnerable persons served by
54 such facilities and provider agencies;

55 (e) where applicable, establishing uniform procedures for character
56 and competence reviews of provider agencies initially, and upon renewal

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1 of licenses and operating certificates requiring a review of performance
2 records regarding incident management, the role of the board of direc-
3 tors in maintaining oversight over agency performance in this area, and
4 the management of reportable incidents affecting the safety of vulner-
5 able persons, including cases of systemic problems; and
6 (f) establishing training curricula for employers and employees who
7 provide care and treatment to vulnerable persons, and those who are in
8 supervisory positions with respect to such employees, regarding their
9 obligations to report, investigate and prevent reportable incidents.
10 Training and curricula shall address topics, including but not limited
11 to: (i) how to identify and report reportable incidents; (ii) the
12 prevention of abuse and neglect; (iii) the duty to report reportable
13 incidents; (iv) how to adhere to applicable codes of conduct; (v) the
14 disciplinary process and employees' rights pursuant to this article; and
15 (vi) how supervisory staff and management can promote compliance with
16 this article by new and existing employees. Such training, which shall
17 be given on a periodic basis, shall include, but not be limited to, live
18 training and supplemental courses accessible via the internet. Prior to
19 implementation of this article, the justice center shall provide
20 adequate interactive training, which shall include live training to the
21 extent practicable. Employees may call the hotline established pursuant
22 to subdivision two of section four hundred ninety-two of the social
23 services law, and upon inquiry, be given advice and assistance in
24 complying with their obligations and duties pursuant to this article.

25 2. To maintain a central repository for data relating to the investi-
26 gation of all reportable incidents;

27 3. To establish procedures for review of reportable incidents, to
28 identify preventive and corrective actions and to develop and implement
29 such actions and plans of improvement subject to the requirements of any
30 federal oversight entity;

31 4. To develop standards and training curricula for investigators who
32 will be assigned to investigate reportable incidents involving vulner-
33 able persons, and to provide periodic training to such investigators.
34 Such standards, curricula and training shall address topics including,
35 but not limited to: (a) how to identify and investigate reportable inci-
36 dents; (b) the duty to report reportable incidents; (c) the requirements
37 of all codes of conduct; (d) all applicable disciplinary processes; and
38 (e) employees' rights pursuant to this article;

39 5. To review and evaluate the criminal history information for any
40 person applying to be an employee, volunteer or consultant for whom a
41 criminal background check is required by law as a condition of employ-
42 ment at any facilities or provider agencies as defined in subdivision
43 four of section four hundred eighty-eight of the social services law
44 that are operated, licensed or certified by the office of mental health,
45 the office for people with developmental disabilities and the office of
46 children and family services. Such review and evaluation shall include
47 but not be limited to a requirement that the applicant sign a sworn
48 statement whether, to the best of his or her knowledge, he or she has
49 ever been convicted of a crime in this state or any other jurisdiction;

50 6. To conduct periodic orientation, training and informational
51 programs upon appointment or reappointment, and as otherwise needed, to
52 assist the members of the boards of visitors of mental hygiene facili-
53 ties to fulfill their responsibilities pursuant to law;

54 7. (a) To visit, inspect and appraise the management of facilities or
55 provider agencies as defined in subdivision four of section four hundred
56 eighty-eight of the social services law providing services to vulnerable

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1 persons with specific attention to the safety, security and quality of
2 care provided to patients and residents;

3 (b) To provide staff and other necessary assistance upon request to
4 boards of visitors of department of mental hygiene facilities in
5 performing their duties pursuant to law;

6 (c) To receive and review periodic and annual reports of the boards of
7 visitors of each department of mental hygiene facility;

8 (d) To place such members of its staff as it deems appropriate as
9 monitors in any facility or provider agency as defined in subdivision
10 four of section four hundred eighty-eight of the social services law
11 which, in the judgment of the executive director, presents an imminent
12 danger to the health or safety of the patients, residents or employees
13 of such facility;

14 8. To accept, as agent of the state, any grant, including federal
15 grants, or any gift for any of the purposes of this article. Any moneys
16 so received may be expended by the justice center to effectuate any
17 purpose of this article, subject to the same limitations as to approval
18 of expenditures and audit as are prescribed for state moneys appropri-
19 ated for the purposes of this article;

20 9. To enter into contracts with any person, firm, corporation, munici-
21 pality or governmental agency for the performance of functions author-
22 ized by law;

23 10. To administer an adult home and residence for adults resident
24 advocacy program to assist residents, who have at any time received or
25 are receiving services from a mental hygiene provider, of adult homes
26 and residences for adults, as defined in section two of the social
27 services law, where at least twenty-five percent or twenty-five resi-
28 dents, whichever is less, have at any time received or are receiving
29 services from a mental hygiene provider which is licensed, operated or
30 funded by the office of mental health or office for people with develop-
31 mental disabilities, in understanding their legal rights, and to promote
32 and protect the rights of such residents.

33 11. To advise and assist vulnerable persons and individuals with disa-
34 bilities, family members, advocates, service providers and community
35 organizations in the formation of strategies to identify and meet the
36 needs of vulnerable persons and individuals with disabilities for
37 services, supports and advocacy;

38 12. To advise and assist the governor and public and private entities
39 in the development and implementation of state policies which meet the
40 needs of vulnerable persons and individuals with disabilities in a
41 manner that is respectful of the rights and choices of vulnerable
42 persons and individuals with disabilities;

43 13. To serve as a clearinghouse for information relating to services,
44 supports and advocacy for vulnerable persons and individuals with disa-
45 bilities and provide a statewide system of information and referral to
46 link persons seeking information and assistance with public and private
47 sector services, supports and advocacy which may be appropriate to meet
48 their needs;

49 14. To advise and assist the governor, state agencies, vulnerable
50 persons, individuals with disabilities and public and private sector
51 entities in the design and implementation of initiatives to increase
52 access to technology related assistance for vulnerable persons and indi-
53 viduals with disabilities;

54 15. To administer the surrogate decision-making committee program, as
55 authorized pursuant to article eighty of the mental hygiene law;

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1 16. To stimulate community interest in the problems experienced by
2 vulnerable persons and individuals with disabilities and promote public
3 awareness of resources available to such persons and individuals;

4 17. To advise and assist political subdivisions of the state in the
5 development of local programs for vulnerable persons and individuals
6 with disabilities;

7 18. To advise and assist educational institutions in the state in the
8 development of courses of study for persons engaged in public and
9 private programs for vulnerable persons and individuals with disabili-
10 ties;

11 19. To conduct or cause to be conducted such studies of the needs of
12 vulnerable persons and individuals with disabilities as may be appropri-
13 ate;

14 20. To do all other things necessary to carry out its functions,
15 powers and duties set forth in this article;

16 21. To receive and review reports required pursuant to section 16.19
17 of the mental hygiene law and take any action as required by law. The
18 justice center also shall assist the commissioner of the office for
19 people with developmental disabilities in developing and preparing
20 recommendations required by paragraph three of subdivision (d) of
21 section 16.19 of the mental hygiene law for submission to the governor,
22 temporary president of the senate and speaker of the assembly;

23 22. To prepare and disseminate an educational pamphlet, and serve as
24 an information clearinghouse, on the rights of parents and legal repre-
25 sentatives and advocates to access records and reports relating to
26 patient care and treatment and all other relevant documents from
27 programs and facilities that are licensed, certified or operated by the
28 offices of mental health, people with developmental disabilities, alco-
29 holism and substance abuse services, and children and family services,
30 and the department of health and the state education department. Such
31 pamphlet shall include a discussion of how to appeal a decision denying
32 a requested record or report;

33 23. To consult with the commissioner of education regarding the
34 promulgation of rules and regulations requiring that every school bus
35 driver and school bus attendant serving students with disabilities
36 receive training and instruction relating to the understanding of and
37 attention to the special needs of such students pursuant to subdivision
38 one of section thirty-six hundred fifty of the education law and subdi-
39 vision four of section twelve hundred twenty-nine-d of the vehicle and
40 traffic law;

41 24. To monitor and make recommendations regarding the quality of care
42 provided to inmates with serious mental illness, including those who are
43 in a residential mental health treatment unit or segregated confinement
44 in facilities operated by the department of corrections and community
45 supervision, and oversee compliance with paragraphs (d) and (e) of
46 subdivision six of section one hundred thirty-seven, and section four
47 hundred one of the correction law. Such responsibilities shall be
48 carried out in accordance with section four hundred one-a of the
49 correction law;

50 25. (a) To make a preliminary determination whether matters referred
51 to its attention, warrant investigation and, if so, conduct an investi-
52 gation of such scope and duration as it deems necessary and proper;

53 (b) Make findings concerning such matters referred to its attention
54 and, where it deems appropriate, make a report and recommendations,
55 which shall be provided to the commissioner and to the director of the
56 facility involved. Such commissioner and director shall each make a

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1 written response, within ninety days of receipt of such report, of
2 action taken regarding each of the recommendations in the report;

3 26. To review the cost effectiveness of mental hygiene programs and
4 procedures provided for by law with particular attention to efficiency,
5 effectiveness and economy in the management, supervision and delivery of
6 such programs. Such review may include but is not limited to: (a)
7 determining reasons for rising costs and possible means of controlling
8 them; (b) analyzing and comparing expenditures in mental hygiene to
9 determine the factors associated with variations in costs; and (c)
10 analyzing and comparing achievements in selected samples to determine
11 the factors associated with variations in program success and their
12 relationship to mental hygiene costs; and

13 27. In its discretion, to review the policies and practices relating
14 to the prevention of abuse or neglect in facilities or provider agen-
15 cies, including staffing patterns of various service models and the
16 supervision required to help ensure the safety of service recipients.

17 § 554. Codes of conduct. 1. The justice center shall adopt and amend,
18 as appropriate, codes of conduct for all custodians as defined in subdi-
19 vision two of section four hundred eighty-eight of the social services
20 law who have or will have regular and direct contact with vulnerable
21 persons who reside in or receive services from such facilities or
22 provider agencies. Such codes shall govern the conduct of such custo-
23 dians with respect to the safety, dignity and welfare of vulnerable
24 persons to whom they provide care. The justice center shall establish a
25 process by which each custodian is provided with a copy of the applica-
26 ble code of conduct and is required, at the time of his or her initial
27 employment, and at least annually thereafter, to acknowledge that he or
28 she has read and understands such code of conduct. Such process shall
29 also provide for the enforcement of such codes consistent with appropri-
30 ate collective bargaining agreements.

31 2. Minimum requirements for codes of conduct. Such codes of conduct
32 shall include, at a minimum: a. Provisions regarding the responsibility
33 of such custodians to support the emotional, physical and personal well-
34 being of the vulnerable persons they serve, including their protection
35 from abuse and neglect, and to seek guidance and advice to resolve
36 issues as needed when making decisions relating to the persons they
37 serve.

38 b. Provisions regarding the responsibility of such custodians to
39 assist the vulnerable persons they support to direct the course of their
40 own lives, honoring, where appropriate, their right to assume risk in a
41 safe manner and recognizing their potential for lifelong learning and
42 growth.

43 c. Provisions regarding the responsibility of custodians to partic-
44 ipate in available, appropriate training to maintain their competency
45 and skill-level, and to model and shape the behavior of their co-work-
46 ers.

47 d. Provisions regarding the responsibility of such custodians to
48 promote and practice justice, fairness and equity for the vulnerable
49 persons they support, uphold and respect their human and civil rights
50 and respect their human dignity and uniqueness.

51 e. Provisions regarding the responsibility of such custodians to
52 assist, where appropriate, the vulnerable persons they support in devel-
53 oping and maintaining relationships with families, friends and the
54 community-at-large.

55 f. Provisions regarding the responsibility of such custodians to
56 advocate with and/or on behalf of the vulnerable persons they support

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1 for their needs, interest, justice, inclusion and full community partic-
2 ipation.

3 g. Provisions requiring such custodians to report reportable incidents
4 as required in section four hundred ninety-one of the social services
5 law.

6 § 555. Justice center medical review board; organization. (a) There
7 shall be within the justice center a medical review board. The board
8 shall be composed of up to fifteen members, including specialists in
9 forensic pathology, psychiatry, internal medicine and addiction medicine
10 to be appointed by the governor. The governor shall designate one of the
11 members to serve as chair of the board. Members shall be appointed for
12 terms of three years, provided, however, that one-third of the members
13 first appointed shall be appointed for a one year term and one-third for
14 two year terms. Vacancies shall be filled in the same manner as original
15 appointments for the remainder of any unexpired term. Members shall
16 continue in office after the expiration of their terms until their
17 successors have been appointed and qualified. The governor may remove
18 any member of the board whenever in his or her judgment the public
19 interest may require such removal. In case of such removal, the governor
20 shall file with the department of state a statement indicating the cause
21 for such removal. Notwithstanding any provision of law to the contrary,
22 the chair of the board may appoint committees of five or more members of
23 the board and delegate in writing to any such committee the authority to
24 perform the functions, powers and duties of the board pursuant to
25 section five hundred fifty-six of this article.

26 (b) The members of the board shall receive no compensation for their
27 services but shall be reimbursed for their actual and necessary expenses
28 incurred in the performance of their duties.

29 (c) The board shall have an executive secretary and such officers and
30 employees as the executive director shall assign upon request of the
31 chair of the board, to assist it in the performance of its duties.

32 (d) All records of the proceedings and the deliberations of the
33 justice center medical review board shall not be subject to disclosure
34 under article thirty-one of the civil practice law and rules.

35 (e) The board or any committee appointed by the chair of the board
36 shall meet at the request of its chair or the executive director of the
37 justice center. Any member of the board who fails to attend three
38 consecutive meetings of the board or the committee to which such member
39 is assigned by the chair of the board, unless excused by the chair of
40 the board, shall be considered to have vacated his or her office unless
41 otherwise ordered by the governor. The term of any such person appointed
42 by the governor to fill such vacancy shall be governed by the provisions
43 of this section.

44 § 556. Functions, powers and duties of the board. The justice center
45 medical review board shall have the following functions, powers and
46 duties:

47 (a) make a preliminary determination whether the death of a patient or
48 resident in a residential facility within the meaning of subdivision
49 four of section four hundred eighty-eight of the social services law
50 that is operated, licensed or certified by an office of the department
51 of mental hygiene or the office of children and family services, which
52 has been brought to its attention is unusual or whether such death
53 reasonably appears to have resulted from other than natural causes and
54 warrants investigation;

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1 (b) investigate the causes of and circumstances surrounding such
2 unusual death or deaths from other than natural causes of patients or
3 residents in such facilities;

4 (c) visit and inspect any facility in which such a death has occurred;

5 (d) cause the body of the deceased to undergo such examinations
6 including an autopsy as in the opinion of the board are necessary to
7 determine the cause of death, irrespective of whether such examination
8 or autopsy shall have been previously performed;

9 (e) upon review of the cause of and circumstances surrounding the
10 death of any patient or resident, submit its report thereon to the exec-
11 utive director and, where appropriate, make recommendations to prevent
12 the recurrence of same to the appropriate commissioner of the department
13 of mental hygiene or the commissioner of children and family services
14 and to the director of the facility; and

15 (f) advise the executive director on medical issues relevant to the
16 functions, powers, and duties of the justice center including allega-
17 tions of abuse or neglect of a patient or resident referred to it.

18 § 557. Reports to the justice center. Every director or other person
19 in charge of a residential facility within the meaning of subdivision
20 four of section four hundred eighty-eight of the social services law
21 operated, licensed or certified by an office of the department of mental
22 hygiene or the office of children and family services, shall report
23 immediately to the executive director and the justice center medical
24 review board the death of a patient or resident of any such facility in
25 such manner and such form as the justice center shall prescribe, togeth-
26 er with an autopsy report, if any.

27 § 558. Access to records and facilities. (a) The justice center must
28 be granted access at any and all times to any facility or provider agen-
29 cy as defined in subdivision four of section four hundred eighty-eight
30 of the social services law, and, consistent with federal law, to all
31 books, records, and data pertaining to any such facility or provider
32 agency deemed necessary for carrying out the justice center's functions,
33 powers and duties. The justice center or any employee of the justice
34 center designated by the executive director may require from the offi-
35 cers or employees of such facility or provider agency or from the
36 commissioners of the state oversight agencies as defined in subdivision
37 four-a of such section four hundred eighty-eight of the social services
38 law, any information deemed necessary for the purpose of carrying out
39 the justice center's functions, powers and duties, including otherwise
40 confidential information and such entities shall be required to provide
41 such requested information. The executive director or any employee of
42 the justice center designated by the executive director may require from
43 any hospital, as defined under article twenty-eight of the public health
44 law, any information, report or record necessary for the purpose of
45 carrying out the functions, powers and duties of the justice center
46 related to the investigation of deaths and complaints of abuse or
47 neglect concerning vulnerable persons who have been treated at such
48 hospitals, and from any adult care facility as defined in subdivision
49 twenty-one of section two of the social services law, such information,
50 report or record, including access to such facility necessary for the
51 purpose of carrying out the functions, powers and duties of the justice
52 center related to the investigation of deaths concerning patients of
53 mental hygiene facilities who resided at such residential care facili-
54 ties at the time of their death or were former residents of such resi-
55 dential care facilities and the justice center determines that such
56 information, report or record is necessary for the completion of its

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1 investigation. Such hospitals and adult care facilities shall be
2 required to provide such requested information, reports, records and
3 access. The results of investigations involving such residents of adult
4 care facilities shall be provided promptly to the commissioner of the
5 department of health and shall be treated as a record or personal infor-
6 mation within the meaning of section ninety-six of the public officers
7 law and shall not be disclosed except in accordance with such section
8 ninety-six. Information, books, records or data which are confidential
9 as provided by law shall be kept confidential by the justice center and
10 any limitations on the release thereof imposed by law upon the party
11 furnishing the information, books, records or data shall apply to the
12 justice center except as may otherwise be provided by article eleven of
13 the social services law.

14 (b) (i) The governor shall designate an independent public or private
15 agency, hereinafter "independent agency", to conduct and coordinate the
16 protection and advocacy and client assistance programs, as established
17 by federal law to provide federal oversight of the state's system of
18 care for individuals with disabilities, as defined in federal laws and
19 to assist such persons with accessing vocational rehabilitation
20 services. For purposes of this subdivision, individuals with disabili-
21 ties shall have the same meaning as provided by federal laws. The agen-
22 cy designated must have professional experience in empowering, protect-
23 ing and advocating on behalf of individuals with disabilities. Such
24 agency shall be independent of any agency that provides treatment,
25 services or rehabilitation to individuals covered by such protection and
26 advocacy and client assistance programs. To the extent permitted by
27 federal law, the independent agency shall be governed by a board, a
28 majority of the members of which shall be individuals with disabilities,
29 parents, family members, guardians, advocates, or authorized represen-
30 tatives of individuals with disabilities.

31 (ii) The independent agency shall conduct and coordinate the
32 protection and advocacy and client assistance programs, as established
33 by federal law to provide oversight of the state's system of care for
34 individuals with disabilities and to assist such individuals with
35 accessing vocational and rehabilitation services, including but not
36 limited to:

37 (A) Providing information, referrals and technical assistance to
38 address the needs of individuals with disabilities;

39 (B) Pursuing legal, administrative and other appropriate remedies or
40 approaches to ensure the protection of and advocacy for the rights of
41 individuals with disabilities;

42 (C) Investigating incidents of abuse and neglect of individuals with
43 disabilities if the incidents are reported to the independent agency or
44 if there is probable cause to believe that the incidents occurred; and

45 (D) Establishing a grievance procedure for clients or prospective
46 clients of the system to ensure that individuals with disabilities have
47 full access to services of the system.

48 (iii) Pursuant to the requirements of federal law, upon receipt of a
49 complaint of an incident of abuse or neglect of an individual with a
50 disability, or if there is probable cause to believe that such an inci-
51 dent occurred, the independent agency shall have prompt access, at
52 reasonable times: to any facility or part thereof serving such individ-
53 ual that is operated, certified or licensed by any office or agency of
54 the state; to all books, records and data pertaining to such a facility;
55 to such individual with a disability in a location in which services,
56 supports and other assistance are provided to such individual; to

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1 records of a facility or provider agency concerning such individual; and
2 to any other records that are relevant to conducting an investigation.
3 The independent agency also shall have access to records of the justice
4 center as set forth in paragraph (f) of subdivision one and paragraph
5 (y) of subdivision two of section four hundred ninety-six of the social
6 services law.

7 (iv) All records and documents received by the independent agency
8 shall be received subject to any confidentiality requirements applicable
9 pursuant to state and federal law.

10 (v) The governor shall be authorized to re-designate the agency imple-
11 menting the protection and advocacy program and client assistance
12 programs only if there is good cause for the re-designation and in
13 accordance with federal requirements.

14 (vi) The independent agency may assist in the development of residen-
15 tial councils at facilities and programs.

16 (vii) To the extent consistent with federal law, the independent agen-
17 cy shall make copies of any of its reports available to the governor,
18 the temporary president of the senate and the speaker of the assembly.

19 (viii) The independent agency shall take affirmative steps to assure
20 that its programs and services are geographically representative of the
21 state and, to the extent practicable, ensure regional access, and
22 reflect the diversity of the state with respect to race and ethnicity.

23 (c) In the exercise of its functions, powers and duties, the executive
24 director and any employee designated by him or her is authorized to
25 issue and enforce a subpoena and a subpoena duces tecum, conduct hear-
26 ings, administer oaths and examine persons under oath, in accordance
27 with and pursuant to civil practice law and rules.

28 (d) In any case where a person in charge or control of such facility
29 or an officer or employee thereof shall fail to comply with the
30 provisions of subdivision (a) of this section, the justice center may
31 apply to the supreme court for an order directed to such person requir-
32 ing compliance therewith. Upon such application the court may issue such
33 order as may be just and a failure to comply with the order of the court
34 shall be a contempt of court and punishable as such.

35 § 559. New York State interagency coordinating council for services to
36 persons who are deaf, deaf-blind, or hard of hearing. 1. Subject to an
37 appropriation, the justice center shall have the central responsibility
38 for administering the provisions of this section and otherwise coordi-
39 nating the activities of the state interagency coordinating council for
40 services to persons who are deaf, deaf-blind, or hard of hearing with
41 respect to serving residents of the state who are deaf, deaf-blind, or
42 hard of hearing, in consultation with the office of children and family
43 services, the office for the aging, the public service commission, the
44 department of health, the department of labor, the department of educa-
45 tion, and other state agencies as appropriate. The council shall meet a
46 minimum of three times a year.

47 2. The following definitions describe the functional characteristics
48 of persons who are deaf, deaf-blind, or hard of hearing, as used in this
49 section.

50 (a) Deaf. Describes persons who have a profound hearing loss and who
51 primarily rely on visual communication, such as sign language, writing,
52 lip reading, and gestures, which may be used exclusively or in combina-
53 tion. Such persons generally use a form of American sign language as
54 their primary mode of communication. In addition, there is a group of
55 profoundly deaf individuals who communicate orally and may use sign
56 language to support their understanding of the spoken language. Hearing

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1 aids and other assistive technology may also be used to aid in communi-
2 cation.

3 (b) Deaf-blind. An individual with a concomitant hearing and visual
4 impairment, the combination of which causes such severe communication
5 and other developmental and educational problems that the individual
6 cannot be accommodated in programs for individuals who are solely deaf
7 or blind.

8 (c) Hard of hearing. A hard of hearing person is someone with a meas-
9 urable hearing loss and who self-identifies as being hard of hearing,
10 although audiologically he or she may have a profound hearing loss.
11 Additionally, this person typically uses his or her residual hearing,
12 speech and speech reading skills, and hearing aids to communicate; he or
13 she may rely on assistive listening devices to augment his or her abili-
14 ty to hear and speak.

15 3. Subject to an appropriation, the justice center shall have the
16 following powers and duties:

17 (a) To coordinate the activities of the state interagency coordinating
18 council and to promote, in cooperation with the appropriate state agen-
19 cies, the implementation of a comprehensive statewide program of coordi-
20 nated services for persons who are deaf, deaf-blind, or hard of hearing
21 that includes educational, medical, housing, transportation, technology
22 supports, personal care, family supports, day program services, and
23 other essential services that maximize existing resources and adminis-
24 trative mechanisms to address issues and legal obligations.

25 (b) To maintain data on the incidence of deafness, deaf-blindness, and
26 other hearing loss.

27 (c) To serve as a clearinghouse for information on services available
28 to persons who are deaf, deaf-blind, or hard of hearing, including, but
29 not limited to, resources that support the development and implementa-
30 tion of community-based services and rehabilitation.

31 (d) To disseminate general information on deafness and the unique
32 communication needs of persons who are deaf, deaf-blind, and hard of
33 hearing, and to inform the deaf, deaf-blind, and hard of hearing commu-
34 nities about available services and how such services can be accessed.

35 (e) To receive complaints in matters affecting the deaf, deaf-blind,
36 or hard of hearing communities and to refer such complaints to the
37 appropriate regulatory agencies where it deems necessary or appropriate.

38 (f) To conduct an ongoing evaluation of the needs of the deaf, deaf-
39 blind, and hard of hearing communities, including technology needs.

40 (g) To report to the governor and the legislature, on or before Novem-
41 ber first of each year, on matters which shall include, but not be
42 limited to:

43 (i) the status of current efforts to achieve the purposes of this
44 section, which will be updated in subsequent reports; and

45 (ii) recommendations for standards, policies, procedures, and strate-
46 gies necessary to assure communication accessibility and community-based
47 services, including needed statutory revisions.

48 4. (a) Subject to an appropriation, the state interagency coordinating
49 council for services to persons who are deaf, deaf-blind, or hard of
50 hearing is hereby established and shall consist of the following persons
51 to be appointed by the governor:

52 (i) seven agency heads or their designees, acting in an ex officio
53 capacity: the executive director of the justice center, who shall serve
54 as the chair of the state interagency coordinating council, the commis-
55 sioner of the office of children and family services, the director of
56 the office for aging, the chair of the public service commission, the

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1 commissioner of health, the commissioner of labor, and the commissioner
2 of education;

3 (ii) six persons who are residents of New York state and who shall be
4 persons who are deaf, deaf-blind, or hard of hearing, one of whom shall
5 be appointed on the nomination of the temporary president of the senate,
6 one of whom shall be appointed on the nomination of the speaker of the
7 assembly, one of whom shall be appointed on the nomination of the minor-
8 ity leader of the senate, and one of whom shall be appointed on the
9 nomination of the minority leader of the assembly; and

10 (iii) two persons who are residents of New York state and who are
11 representatives of the public and have a demonstrated expertise and
12 interest in the needs of persons who are deaf, deaf-blind, or hard of
13 hearing.

14 (b) Of the eight persons appointed pursuant to subparagraphs (ii) and
15 (iii) of paragraph (a) of this subdivision, two shall serve for a term
16 of one year, two shall serve for a term of two years, and two shall
17 serve for a term of three years, as determined by the governor. Subse-
18 quent appointments upon the expiration of term shall be for a term of
19 three years and shall be filled in the same manner as the original
20 appointment.

21 (c) The eight members of the state interagency coordinating council
22 described in subparagraphs (ii) and (iii) of paragraph (a) of this
23 subdivision shall receive no compensation for their services, but shall
24 be allowed their actual and necessary expenses incurred in the perform-
25 ance of their duties pursuant to this section, subject to the approval
26 of the justice center.

27 5. Subject to an appropriation, the state interagency coordinating
28 council is charged with recommending long range strategic objectives,
29 goals, and priorities for promoting the availability of a comprehensive
30 statewide program of coordinated services for persons who are deaf,
31 deaf-blind, or hard of hearing that is consistent with subdivision one
32 of this section. It shall also provide advice on the planning, coordi-
33 nation, and development of needed services and technology, including the
34 manner in which such services shall be funded or otherwise supported.

35 § 560. Annual report. The justice center shall make an annual report
36 to the governor and legislature concerning its work during the preceding
37 year. Such report shall be posted on the justice center's website and
38 shall be provided to the independent agency designated pursuant to
39 subdivision (b) of section five hundred fifty-eight of this article. It
40 shall include, but not be limited to, data regarding the number of
41 reports received by the vulnerable persons' central register, results of
42 investigations by types of facilities and programs, types of corrective
43 actions taken, results of its review of patterns and trends in the
44 reporting of and response to reportable incidents and its recommenda-
45 tions for appropriate preventive and corrective actions, and efforts
46 undertaken by such justice center to provide training pursuant to subdivi-
47 sion four of section five hundred fifty-three of this article.

48 § 561. Advisory council. 1. There shall be within the justice center
49 an advisory council consisting of no less than fifteen members to be
50 appointed by the governor, with the advice and consent of the senate.
51 Members shall be appointed on the basis of their professional and
52 personal knowledge in the care and treatment of and in the provision of
53 services, supports, and advocacy to and on behalf of service recipients,
54 as defined in subdivision nine of section four hundred eighty-eight of
55 the social services law, and individuals with disabilities, or their
56 active interest in the system of services for such service recipients or

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1 individuals with disabilities. In making such appointments, the governor
2 shall endeavor to ensure the overall membership of the council adequately
3 reflects the programs and services within the justice center's juris-
4 isdiction and that at least one-half of the members are individuals or
5 parents or relatives of individuals who are or have participated in or
6 are or have been recipients of programs and services within the justice
7 center's jurisdiction. The council shall include but shall not be limit-
8 ed to:

9 (a) members of boards of visitors appointed pursuant to articles seven
10 and thirteen of the mental hygiene law;

11 (b) consumer representatives, including current or former service
12 recipients of an applicable facility or provider agency;

13 (c) parents, relatives or guardians of such service recipients;

14 (d) providers of services to vulnerable persons;

15 (e) directors of facilities, community services or members of communi-
16 ty services boards;

17 (f) current and former consumers of services for individuals with
18 physical disabilities;

19 (g) members of organizations that advocate on behalf of vulnerable
20 persons and individuals with disabilities; and

21 (h) an employee of a facility or provider agency as defined in subdi-
22 vision four of section four hundred eighty-eight of the social services
23 law.

24 2. Members shall be appointed for terms of three years provided,
25 however, that of the members first appointed, one-third shall be
26 appointed for one-year terms and one-third shall be appointed for two-
27 year terms. A member may be removed by the governor for good cause after
28 notice and an opportunity to be heard on the charges. Vacancies shall be
29 filled in the same manner as original appointments for the remainder of
30 any unexpired term.

31 3. The governor shall designate one member of the council as its chair
32 to serve as such at the pleasure of the governor.

33 4. Council members shall not receive compensation, but each member
34 shall be entitled to receive his or her reasonable and necessary
35 expenses incurred in connection with his or her services as a member
36 within the amounts appropriated therefor.

37 5. The council shall have an executive secretary designated by the
38 executive director of the justice center. The executive director may
39 also assign such other employees of the justice center as the council
40 may from time to time require to assist it in the performance of its
41 duties.

42 6. The council shall advise and assist the justice center in develop-
43 ing policies, proposed regulations, plans and programs to carry out its
44 functions, powers and duties pursuant to this section. The council may
45 consider any matter related to improving the quality of life of citizens
46 of the state who have disabilities and shall advise the justice center
47 on any such matter.

48 7. The council shall meet at least four times a year. The council
49 shall meet at the request of its chair or the executive director of the
50 justice center.

51 § 562. Abuse and neglect notification. 1. Upon receiving a request for
52 criminal history information, pursuant to section eight hundred forty-
53 five-b of this chapter, for a prospective employee or volunteer of a
54 facility or provider licensed, operated, or certified by the office for
55 people with developmental disabilities, the justice center shall furnish
56 a summary of any substantiated reports in its possession regarding a

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1 finding of category two conduct pursuant to section four hundred nine-
 2 ty-three of the social services law, by a prospective employee or volun-
 3 teer, if all relevant hearings and appeals have been exhausted. The
 4 justice center shall provide such summary report to the authorized
 5 person as defined in paragraph (b) of subdivision one of section eight
 6 hundred forty-five-b of this chapter and at that same time furnish such
 7 documents to the prospective employee or volunteer at the address for
 8 such person listed on the request.

9 2. The summary report provided by the justice center to a provider of
 10 services pursuant to subdivision one of this section shall be received
 11 by the provider subject to the confidentiality provisions of subdivision
 12 seven of section eight hundred forty-five-b of this chapter.

13 § 4. Subdivision 32 of section 1.20 of the criminal procedure law, as
 14 amended by chapter 250 of the laws of 1974, is amended to read as
 15 follows:

16 32. "District attorney" means a district attorney, an assistant
 17 district attorney or a special district attorney, and, where appropri-
 18 ate, the attorney general, an assistant attorney general, a deputy
 19 attorney general ~~[or]~~, a special deputy attorney general, or the special
 20 prosecutor and inspector general for the protection of people with
 21 special needs or his or her assistants when acting pursuant to their
 22 duties in matters arising under article twenty of the executive law.

23 § 5. Subdivision 6 of section 401 of the correction law, as added by
 24 chapter 1 of the laws of 2008, is amended to read as follows:

25 6. The department shall ensure that the curriculum for new correction
 26 officers, and other new department staff who will regularly work in
 27 programs providing mental health treatment for inmates, shall include at
 28 least eight hours of training about the types and symptoms of mental
 29 illnesses, the goals of mental health treatment, the prevention of
 30 suicide and training in how to effectively and safely manage inmates
 31 with mental illness. Such training may be provided by the office of
 32 mental health or the ~~[New York state commission on quality of care and~~
 33 ~~advocacy for persons with disabilities]~~ justice center for the
 34 protection of people with special needs. All department staff who are
 35 transferring into a residential mental health treatment unit shall
 36 receive a minimum of eight additional hours of such training, and eight
 37 hours of annual training as long as they work in such a unit. The
 38 department shall provide additional training on these topics on an ongo-
 39 ing basis as it deems appropriate.

40 § 6. Section 401-a of the correction law, as added by chapter 1 of the
 41 laws of 2008, is amended to read as follows:

42 § 401-a. Oversight responsibilities of the ~~[New York state commission~~
 43 ~~on quality of care and advocacy for persons with disabilities]~~ justice
 44 center for the protection of people with special needs. 1. The ~~[New York~~
 45 ~~state commission on quality of care and advocacy for persons with disa-~~
 46 ~~bilities ("commission")]~~ justice center for the protection of people
 47 with special needs shall be responsible for monitoring the quality of
 48 mental health care provided to inmates pursuant to article forty-five of
 49 the mental hygiene law. The ~~[commission]~~ justice center shall have
 50 direct and immediate access to all areas where state prisoners are
 51 housed, and to clinical and department records relating to inmates'
 52 clinical conditions. The ~~[commission]~~ justice center shall maintain the
 53 confidentiality of all patient-specific information.

54 2. The ~~[commission]~~ justice center shall monitor the quality of care
 55 in residential mental health treatment programs and shall ensure compli-
 56 ance with paragraphs (d) and (e) of subdivision six of section one

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1 hundred thirty-seven of this chapter and section four hundred one of
2 this article. The ~~[commission]~~ justice center may recommend to the
3 department and the office of mental health that inmates in segregated
4 confinement pursuant to subdivision six of section one hundred thirty-
5 seven of this chapter be evaluated for placement in a residential mental
6 health treatment unit. It may also recommend ways to further the goal
7 of diverting and removing inmates with serious mental illness from
8 segregated confinement to residential mental health treatment units. The
9 ~~[commission]~~ justice center shall include in its annual report to the
10 governor and the legislature pursuant to ~~[subdivision (g) of]~~ section
11 ~~[45-07]~~ five hundred sixty of the ~~[mental hygiene]~~ executive law, a
12 description of the state's progress in complying with this article,
13 which shall be publicly available.

14 3. The ~~[commission]~~ justice center shall appoint an advisory committee
15 on psychiatric correctional care ("committee"), which shall be composed
16 of independent mental health experts and mental health advocates, and
17 may include family members of former inmates with serious mental
18 illness. Such committee shall advise the ~~[commission]~~ justice center on
19 its oversight responsibilities pursuant to this section ~~[and article~~
20 ~~forty five of the mental hygiene law]~~. The committee may also make
21 recommendations to the ~~[commission]~~ justice center regarding improve-
22 ments to prison-based mental health care. Nothing in this subdivision
23 shall be deemed to authorize members of the committee to have access to
24 a correctional or mental hygiene facility or any part of such a facili-
25 ty. Provided, however, newly appointed members of the advisory committee
26 shall be provided with a tour of a segregated confinement unit and a
27 residential mental health treatment unit, as selected by the commis-
28 sioner. Any such tour shall be arranged on a date and at a time selected by
29 the commissioner and upon such terms and conditions as are within the
30 sole discretion of the commissioner.

31 § 7. Paragraph (c) of subdivision 6 of section 2994-m of the public
32 health law, as added by chapter 8 of the laws of 2010, is amended to
33 read as follows:

34 (c) Nothing in this subdivision shall prohibit the ~~[state commission~~
35 ~~on quality of care and advocacy for persons with disabilities]~~ justice
36 center for the protection of people with special needs or any agency or
37 person within or under contract with the ~~[commission]~~ justice center
38 which provides protection and advocacy services from requiring any
39 information, report or record from a hospital in accordance with the
40 provisions of section ~~[45-09]~~ five hundred fifty-eight of the ~~[mental~~
41 ~~hygiene]~~ executive law.

42 § 8. Transfer of employees. Notwithstanding any other provision of
43 law, rule, or regulation to the contrary, upon the transfer of any func-
44 tions from the state commission on quality of care and advocacy for
45 persons with disabilities, the office of mental health, the office for
46 people with developmental disabilities, the office of alcoholism and
47 substance abuse services, the office of children and family services and
48 the department of health to the justice center for the protection of
49 people with special needs pursuant to this act, employees performing
50 those functions shall be transferred to such justice center pursuant to
51 subdivision two of section 70 of the civil service law. Employees
52 transferred pursuant to this section shall be transferred without
53 further examination or qualification and shall retain their respective
54 civil service classifications, status and collective bargaining unit
55 designations and collective bargaining agreements.

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1 § 9. Transfer of records. All books, papers, and property of the state
2 commission on quality of care and advocacy for persons with disabilities
3 shall be deemed to be in the possession of the executive director of the
4 justice center for the protection of people with special needs, and
5 shall continue to be maintained by such justice center.

6 § 10. Continuity of authority. For the purpose of succession of all
7 functions, powers, duties and obligations transferred and assigned to,
8 devolved upon and assumed by it pursuant to this act, the justice center
9 for the protection of people with special needs shall be deemed and held
10 to constitute the continuation of the state commission on quality of
11 care and advocacy for persons with disabilities.

12 § 11. Completion of unfinished business. Any business or other matter
13 undertaken or commenced by the state commission on quality of care and
14 advocacy for persons with disabilities, the office of mental health, the
15 office for people with developmental disabilities, the office of alco-
16 holism and substance abuse services, the office of children and family
17 services, the department of health and the state education department
18 pertaining to or connected with the functions, powers, obligations and
19 duties hereby transferred and assigned to the justice center for the
20 protection of people with special needs and pending on the effective
21 date of this act, may be conducted and completed by such justice center
22 in the same manner and under the same terms and conditions and with the
23 same effect as if conducted and completed by the state commission on
24 quality of care and advocacy for persons with disabilities.

25 § 12. Continuation of rules and regulations. All rules, regulations,
26 acts, orders, determinations, and decisions of the state commission on
27 quality of care and advocacy for persons with disabilities pertaining to
28 the functions and powers transferred and assigned pursuant to this act,
29 in force at the time of such transfer and assumption, shall continue in
30 full force and effect as rules, regulations, acts, orders, determi-
31 nations and decisions of the justice center for the protection of people
32 with special needs until duly modified or abrogated by the executive
33 director of such justice center.

34 § 13. Terms occurring in laws, contracts and other documents. Whenever
35 the state commission on quality of care and advocacy for persons with
36 disabilities, or the chairman thereof, is referred to or designated in
37 any law, contract or document pertaining to the functions, powers, obli-
38 gations and duties hereby transferred to and assigned to the justice
39 center for the protection of people with special needs, such reference
40 or designation shall be deemed to refer to such justice center, or the
41 executive director thereof, as applicable.

42 § 14. Existing rights and remedies preserved. No existing right or
43 remedy of any character shall be lost, impaired or affected by any
44 provisions of this act.

45 § 15. Pending actions and proceedings. No action or proceeding pending
46 at the time when this act shall take effect, brought by or against the
47 state commission on quality of care and advocacy for persons with disa-
48 bilities, or the chairman thereof, shall be affected by any provision of
49 this act, but the same may be prosecuted or defended in the name of the
50 executive director of the justice center for the protection of people
51 with special needs. In all such actions and proceedings, the executive
52 director of such justice center, upon application to the court, shall be
53 substituted as a party.

54 § 16. Transfer of appropriations heretofore made. All appropriations
55 or reappropriations heretofore made to the state commission on quality
56 of care and advocacy for persons with disabilities to the extent of

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1 remaining unexpended or unencumbered balance thereof, whether allocated
2 or unallocated and whether obligated or unobligated, are hereby trans-
3 ferred to and made available for use and expenditure by the justice
4 center for the protection of people with special needs subject to the
5 approval of the director of the budget for the same purposes for which
6 originally appropriated or reappropriated and shall be payable on vouch-
7 ers certified or approved by the executive director of such justice
8 center on audit and warrant of the comptroller. In addition to such
9 authority otherwise granted pursuant to law to interchange, transfer and
10 suballocate amounts appropriated for the office for people with develop-
11 mental disabilities, the office of mental health, the office of alcohol-
12 ism and substance abuse services, the department of health and the
13 office of children and family services, such amounts appropriated for
14 state operations for such agencies may also be interchanged, transferred
15 and suballocated for the purpose of planning, developing and/or imple-
16 menting the alignment of the operations within and between such agencies
17 sufficient to fulfill the purposes of this act for the state fiscal year
18 beginning April 1, 2012.

19 § 17. Transfer of assets and liabilities. All assets and liabilities
20 of the state commission on quality of care and advocacy for persons with
21 disabilities are hereby transferred to and assumed by the justice center
22 for the protection of people with special needs.

23 § 18. This act shall take effect June 30, 2013; provided, however,
24 that, effective immediately, any actions necessary for the implementa-
25 tion of this act on its effective date, and the addition, amendment or
26 repeal of any rule or regulation necessary for the implementation of
27 this act on its effective date, are authorized to be taken or made on or
28 before such date, and provided further that subdivision (b) of section
29 five hundred fifty-eight of the executive law, providing for re-designa-
30 tion of the protection and advocacy and client assistance programs, as
31 added by section three of this act, shall become effective upon filing
32 the governor's final notice of re-designation with the legislative bill
33 drafting commission.

34

PART B

35 Section 1. Article 11 of the social services law is renumbered article
36 12 and sections 484, 485 and 486 are renumbered sections 550, 551 and
37 552 and a new article 11 is added to read as follows:

ARTICLE 11PROTECTION OF PEOPLE WITH SPECIAL NEEDS

40 Section 488. Definitions.

41 489. Applicability.

42 490. Incident management programs.

43 491. Duty to report incidents.

44 492. Vulnerable persons' central register.

45 493. Abuse and neglect findings; consequences.

46 494. Amendments to and appeals of substantiated reports of
47 abuse or neglect.

48 495. Register of substantiated category one cases of abuse or
49 neglect.

50 496. Confidentiality.

51 497. Immunity from liability.

52 § 488. Definitions. As used in this article, the following terms shall
53 have the following meanings:

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1 1. "Reportable incident" shall mean the following conduct that a
2 mandated reporter is required to report to the vulnerable persons'
3 central register:

4 (a) "Physical abuse," which shall mean conduct by a custodian inten-
5 tionally or recklessly causing, by physical contact, physical injury or
6 serious or protracted impairment of the physical, mental or emotional
7 condition of a service recipient or causing the likelihood of such inju-
8 ry or impairment. Such conduct may include but shall not be limited to:
9 slapping, hitting, kicking, biting, choking, smothering, shoving, drag-
10 ging, throwing, punching, shaking, burning, cutting or the use of corpor-
11 al punishment. Physical abuse shall not include reasonable emergency
12 interventions necessary to protect the safety of any person.

13 (b) "Sexual abuse," which shall mean any conduct by a custodian that
14 subjects a person receiving services to any offense defined in article
15 one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law;
16 or any conduct or communication by such custodian that allows, permits,
17 uses or encourages a service recipient to engage in any act described in
18 articles two hundred thirty or two hundred sixty-three of the penal law.
19 For purposes of this paragraph only, a person with a developmental disa-
20 bility who is or was receiving services and is also an employee or
21 volunteer of a service provider shall not be considered a custodian if
22 he or she has sexual contact with another service recipient who is a
23 consenting adult who has consented to such contact.

24 (c) "Psychological abuse," which shall mean conduct by a custodian
25 intentionally or recklessly causing, by verbal or non-verbal conduct, a
26 substantial diminution of a service recipient's emotional, social or
27 behavioral development or condition, supported by a clinical assessment
28 performed by a physician, psychologist, psychiatric nurse practitioner,
29 licensed clinical or master social worker or licensed mental health
30 counselor, or causing the likelihood of such diminution. Such conduct
31 may include but shall not be limited to intimidation, threats, the
32 display of a weapon or other object that could reasonably be perceived
33 by a service recipient as a means for infliction of pain or injury, in a
34 manner that constitutes a threat of physical pain or injury, taunts,
35 derogatory comments or ridicule.

36 (d) "Deliberate inappropriate use of restraints," which shall mean the
37 use of a restraint when the technique that is used, the amount of force
38 that is used or the situation in which the restraint is used is delib-
39 erately inconsistent with a service recipient's individual treatment
40 plan or behavioral intervention plan, generally accepted treatment prac-
41 tices and/or applicable federal or state laws, regulations or policies,
42 except when the restraint is used as a reasonable emergency intervention
43 to prevent imminent risk of harm to a person receiving services or to
44 any other person. For purposes of this subdivision, a "restraint" shall
45 include the use of any manual, pharmacological or mechanical measure or
46 device to immobilize or limit the ability of a person receiving services
47 to freely move his or her arms, legs or body.

48 (e) "Use of aversive conditioning," which shall mean the application
49 of a physical stimulus that is intended to induce pain or discomfort in
50 order to modify or change the behavior of a person receiving services in
51 the absence of a person-specific authorization by the operating, licens-
52 ing or certifying state agency pursuant to governing state agency regu-
53 lations. Aversive conditioning may include but is not limited to, the
54 use of physical stimuli such as noxious odors, noxious tastes, blind-
55 folds, the withholding of meals and the provision of substitute foods in

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1 an unpalatable form and movement limitations used as punishment, includ-
2 ing but not limited to helmets and mechanical restraint devices.

3 (f) "Obstruction of reports of reportable incidents," which shall mean
4 conduct by a custodian that impedes the discovery, reporting or investi-
5 gation of the treatment of a service recipient by falsifying records
6 related to the safety, treatment or supervision of a service recipient,
7 actively persuading a mandated reporter from making a report of a
8 reportable incident to the statewide vulnerable persons' central regis-
9 ter with the intent to suppress the reporting of the investigation of
10 such incident, intentionally making a false statement or intentionally
11 withholding material information during an investigation into such a
12 report; intentional failure of a supervisor or manager to act upon such
13 a report in accordance with governing state agency regulations, policies
14 or procedures; or, for a mandated reporter who is a custodian as defined
15 in subdivision two of this section, failing to report a reportable inci-
16 dent upon discovery.

17 (g) "Unlawful use or administration of a controlled substance," which
18 shall mean any administration by a custodian to a service recipient of:
19 a controlled substance as defined by article thirty-three of the public
20 health law, without a prescription; or other medication not approved for
21 any use by the federal food and drug administration. It also shall
22 include a custodian unlawfully using or distributing a controlled
23 substance as defined by article thirty-three of the public health law,
24 at the workplace or while on duty.

25 (h) "Neglect," which shall mean any action, inaction or lack of atten-
26 tion that breaches a custodian's duty and that results in or is likely
27 to result in physical injury or serious or protracted impairment of the
28 physical, mental or emotional condition of a service recipient. Neglect
29 shall include, but is not limited to: (i) failure to provide proper
30 supervision, including a lack of proper supervision that results in
31 conduct between persons receiving services that would constitute abuse
32 as described in paragraphs (a) through (g) of this subdivision if
33 committed by a custodian; (ii) failure to provide adequate food, cloth-
34 ing, shelter, medical, dental, optometric or surgical care, consistent
35 with the rules or regulations promulgated by the state agency operating,
36 certifying or supervising the facility or provider agency, provided that
37 the facility or provider agency has reasonable access to the provision
38 of such services and that necessary consents to any such medical,
39 dental, optometric or surgical treatment have been sought and obtained
40 from the appropriate individuals; or (iii) failure to provide access to
41 educational instruction, by a custodian with a duty to ensure that an
42 individual receives access to such instruction in accordance with the
43 provisions of part one of article sixty-five of the education law and/or
44 the individual's individualized education program.

45 (i) "Significant incident" shall mean an incident, other than an inci-
46 dent of abuse or neglect, that because of its severity or the sensitiv-
47 ity of the situation may result in, or has the reasonably foreseeable
48 potential to result in, harm to the health, safety or welfare of a
49 person receiving services and shall include but shall not be limited to:

50 (1) conduct between persons receiving services that would constitute
51 abuse as described in paragraphs (a) through (g) of this subdivision if
52 committed by a custodian; or

53 (2) conduct on the part of a custodian, which is inconsistent with a
54 service recipient's individual treatment plan or individualized educa-
55 tional program, generally accepted treatment practices and/or applicable
56 federal or state laws, regulations or policies and which impairs or

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1 creates a reasonably foreseeable potential to impair the health, safety
2 or welfare of a person receiving services, including but not limited to:

3 (A) unauthorized seclusion, which shall mean the placement of a person
4 receiving services in a room or area from which he or she cannot, or
5 perceives that he or she cannot, leave at will;

6 (B) unauthorized use of time-out, which shall mean the use of a proce-
7 dure in which a person receiving services is removed from regular
8 programming and isolated in a room or area for the convenience of a
9 custodian, or as a substitute for programming but shall not include the
10 use of a time-out as an emergency intervention to protect the health or
11 safety of the individual or other persons;

12 (C) except as provided for in paragraph (g) of subdivision one of this
13 section, the administration of a prescribed or over-the-counter medica-
14 tion, which is inconsistent with a prescription or order issued for a
15 service recipient by a licensed, qualified health care practitioner, and
16 which has an adverse effect on a service recipient. For purposes of
17 this paragraph, "adverse effect" shall mean the unanticipated and unde-
18 sirable side effect from the administration of a particular medication
19 which unfavorably affects the well-being of a service recipient;

20 (D) inappropriate use of restraints, which shall mean the use of a
21 restraint when the technique that is used, the amount of force that is
22 used or the situation in which the restraint is used is inconsistent
23 with a service recipient's individual plan, generally accepted treatment
24 practices and/or applicable federal or state laws, regulations or poli-
25 cies. For the purposes of this subdivision, a "restraint" shall include
26 the use of any manual, pharmacological or mechanical measure or device
27 to immobilize or limit the ability of a person receiving services to
28 freely move his or her arms, legs or body; or

29 (3) any other conduct identified in regulations of the state oversight
30 agency, pursuant to guidelines or standards established by the executive
31 director.

32 2. "Custodian" means a director, operator, employee or volunteer of a
33 facility or provider agency; or a consultant or an employee or volunteer
34 of a corporation, partnership, organization or governmental entity which
35 provides goods or services to a facility or provider agency pursuant to
36 contract or other arrangement that permits such person to have regular
37 and substantial contact with individuals who are cared for by the facil-
38 ity or provider agency.

39 3. "Executive director" shall mean the executive director of the
40 justice center for the protection of people with special needs as estab-
41 lished by article twenty of the executive law.

42 4. "Facility" or "provider agency" shall mean:

43 (a) a facility or program in which services are provided and which is
44 operated, licensed or certified by the office of mental health, the
45 office for people with developmental disabilities or the office of alco-
46 holism and substance abuse services, including but not limited to
47 psychiatric centers, inpatient psychiatric units of a general hospital,
48 developmental centers, intermediate care facilities, community resi-
49 dences, group homes and family care homes, provided, however, that such
50 term shall not include a secure treatment facility as defined in section
51 10.03 of the mental hygiene law, or services provided in programs or
52 facilities that are operated by the office of mental health and located
53 in state correctional facilities under the jurisdiction of the depart-
54 ment of corrections and community supervision;

55 (b) any program or facility that is operated by the office of children
56 and family services for juvenile delinquents or juvenile offenders

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1 placed in the custody of the commissioner of such office and any resi-
2 dential programs or facilities licensed or certified by the office of
3 children and family services, excluding foster family homes and residen-
4 tial programs for victims of domestic violence;

5 (c) adult care facilities, which shall mean adult homes or enriched
6 housing programs licensed pursuant to article seven of this chapter: (i)
7 (A) that have a licensed capacity of eighty or more beds; and (B) in
8 which at least twenty-five percent of the residents are persons with
9 serious mental illness as defined by subdivision fifty-two of section
10 1.03 of the mental hygiene law; (ii) but not including an adult home or
11 enriched housing program which is authorized to operate fifty-five
12 percent or more of its total licensed capacity of beds as assisted
13 living program beds pursuant to section four hundred sixty-one-1 of this
14 chapter;

15 (d) overnight summer day and traveling summer day camps for children
16 with developmental disabilities as defined in regulations promulgated by
17 the commissioner of health; or

18 (e) the New York state school for the blind and the New York state
19 school for the deaf, which operate pursuant to articles eighty-seven and
20 eighty-eight of the education law; an institution for the instruction of
21 the deaf and the blind which has a residential component and is subject
22 to the visitation of the commissioner of education pursuant to article
23 eighty-five of the education law with respect to its day and residential
24 components; special act school districts serving students with disabili-
25 ties; or in-state private schools which have been approved by the
26 commissioner of education for special education services or programs,
27 and which have a residential program, including a school approved on a
28 child-specific basis for emergency interim placements pursuant to
29 governing state regulations, with respect to its day and residential
30 components.

31 4-a. "State oversight agency" shall mean the state agency that oper-
32 ates, licenses or certifies an applicable facility or provider agency;
33 provided however that such term shall only include the following enti-
34 ties: the office of mental health, the office for people with develop-
35 mental disabilities, the office of alcoholism and substance abuse
36 services, the office of children and family services, the department of
37 health and the state education department. "State oversight agency" does
38 not include agencies that are certification agencies pursuant to federal
39 law or regulation.

40 5. "Mandated reporter" shall mean a custodian or a human services
41 professional, but shall not include a service recipient.

42 5-a. "Human services professional" shall mean any: physician; regis-
43 tered physician assistant; surgeon; medical examiner; coroner; dentist;
44 dental hygienist; osteopath; optometrist; chiropractor; podiatrist;
45 resident; intern; psychologist; registered nurse; licensed practical
46 nurse; nurse practitioner; social worker; emergency medical technician;
47 licensed creative arts therapist; licensed marriage and family thera-
48 pist; licensed mental health counselor; licensed psychoanalyst; licensed
49 speech/language pathologist or audiologist; licensed physical therapist;
50 licensed occupational therapist; hospital personnel engaged in the
51 admission, examination, care or treatment of persons; Christian Science
52 practitioner; school official, which includes but is not limited to
53 school teacher, school guidance counselor, school psychologist, school
54 social worker, school nurse, school administrator or other school
55 personnel required to hold a teaching or administrative license or
56 certificate; social services worker; any other child care or foster care

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1 worker; mental health professional; person credentialed by the office of
2 alcoholism and substance abuse services; peace officer; police officer;
3 district attorney or assistant district attorney; investigator employed
4 in the office of a district attorney; or other law enforcement official.

5 6. "Physical injury" and "impairment of physical condition" shall mean
6 any confirmed harm, hurt or damage resulting in a significant worsening
7 or diminution of an individual's physical condition.

8 7. "Delegate investigatory entity" shall mean a facility or provider
9 agency, or any other entity authorized by the regulations of a state
10 oversight agency or the justice center for the protection of people with
11 special needs to conduct an investigation of a reportable incident.

12 8. "Justice center" shall mean the justice center for the protection
13 of people with special needs.

14 9. "Person receiving services," or "service recipient" shall mean an
15 individual who resides or is an inpatient in a residential facility or
16 who receives services from a facility or provider agency.

17 10. "Personal representative" shall mean a person authorized under
18 state, tribal, military or other applicable law to act on behalf of a
19 vulnerable person in making health care decisions or, for programs that
20 serve children under the jurisdiction of the state education department
21 or the office of children and family services, the service recipient's
22 parent, guardian or other person legally responsible for such person.

23 11. "Abuse or neglect" shall mean the conduct described in paragraphs
24 (a) through (h) of subdivision one of this section.

25 12. "Subject of the report" shall mean a custodian, as defined in
26 subdivision two of this section, who is reported to the vulnerable
27 persons' central register for the alleged abuse or neglect of a vulner-
28 able person as defined in subdivision eleven of this section.

29 13. "Other persons named in the report" shall mean and be limited to
30 the following persons who are named in a report to the vulnerable
31 persons' central register other than the subject of the report: the
32 service recipient whose care and treatment is the concern of a report to
33 the vulnerable persons' central register, and the personal represen-
34 tative, if any, as defined in subdivision ten of this section.

35 14. "Vulnerable persons' central register" shall mean the statewide
36 central register of reportable incidents involving vulnerable persons,
37 which shall operate in accordance with section four hundred ninety-two
38 of this article.

39 15. "Vulnerable person" shall mean a person who, due to physical or
40 cognitive disabilities, or the need for services or placement, is
41 receiving services from a facility or provider agency.

42 16. "Intentionally" and "recklessly" shall have the same meanings as
43 provided in subdivisions one and three of section 15.05 of the penal
44 law.

45 § 489. Applicability. The provisions of this article shall apply to
46 facilities and provider agencies provided, however, nothing in this
47 article shall be deemed to relieve any facility or provider agency or
48 custodian thereof covered by this article of its or their obligations to
49 comply with the requirements of federal laws or regulations to which
50 that facility, provider agency or custodian thereof is subject, includ-
51 ing any requirements that are a condition of federal financial partic-
52 ipation in medical assistance payments. To the extent that federal
53 requirements conflict with any of the provisions in this article, the
54 federal requirements shall supersede the conflicting provisions in this
55 article with respect to any such facility or provider agency.

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1 § 490. Incident management programs. 1. Each state oversight agency,
2 as defined in this article, shall promulgate regulations approved by the
3 justice center, that contain procedures and requirements consistent with
4 guidelines and standards developed by the justice center, addressing the
5 following issues relating to an incident management program; provided,
6 however, that regulations of the state education department need not be
7 approved by the justice center, but shall be developed in consultation
8 with the justice center:

9 (a) all reportable incidents are identified and reported in a timely
10 manner in accordance with this article;

11 (b) all reportable incidents are promptly investigated;

12 (c) individual reportable incidents, and incident patterns and trends,
13 are reviewed to identify and implement preventive and corrective
14 actions, which may include, but shall not be limited to, staff retrain-
15 ing or any appropriate disciplinary action allowed by law or contract,
16 as well as opportunities for improvement;

17 (d) patterns and trends in the reporting and response to allegations
18 of reportable incidents are reviewed and plans of improvement are timely
19 developed based on such reviews;

20 (e) information regarding individual reportable incidents, incident
21 patterns and trends, and patterns and trends in the reporting and
22 response to reportable incidents is shared, consistent with applicable
23 law, with the justice center, in the form and manner required by the
24 justice center and, for facilities or provider agencies that are not
25 state operated, with the applicable state oversight agency which shall
26 provide such information to the justice center; and

27 (f) incident review committees are established; provided, however,
28 that the regulations may authorize an exemption from this requirement,
29 when appropriate, based on the size of the facility or provider agency
30 or other relevant factors. Such committees shall be composed of members
31 of the governing body of the facility or provider agency and other
32 persons identified by the director of the facility or provider agency,
33 including some members of the following: direct support staff, licensed
34 health care practitioners, service recipients and representatives of
35 family, consumer and other advocacy organizations, but not the director
36 of the facility or provider agency. Such committee shall meet regularly
37 to: (i) review the timeliness, thoroughness and appropriateness of the
38 facility or provider agency's responses to reportable incidents; (ii)
39 recommend additional opportunities for improvement to the director of
40 the facility or provider agency, if appropriate; (iii) review incident
41 trends and patterns concerning reportable incidents; and (iv) make
42 recommendations to the director of the facility or provider agency to
43 assist in reducing reportable incidents. Members of the committee shall
44 be trained in confidentiality laws and regulations, and shall comply
45 with section seventy-four of the public officers law.

46 2. Notwithstanding any other provision of law, except as may be
47 provided by section 33.25 of the mental hygiene law, records, reports or
48 other information maintained by the justice center, state oversight
49 agencies, delegate investigatory entities, and facilities and provider
50 agencies regarding the deliberations of an incident review committee
51 shall be confidential, provided that nothing in this article shall be
52 deemed to diminish or otherwise derogate the legal privilege afforded to
53 proceedings, records, reports or other information relating to a quality
54 assurance function, including the investigation of an incident reported
55 pursuant to section 29.29 of the mental hygiene law, as provided in
56 section sixty-five hundred twenty-seven of the education law. For

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1 purposes of this section, a quality assurance function is a process for
2 systematically monitoring and evaluating various aspects of a program,
3 service or facility to ensure that standards of care are being met.

4 3. No member of an incident review committee performing a quality
5 assurance function shall be permitted or required to testify in a judi-
6 cial or administrative proceeding with respect to quality assurance
7 findings, recommendations, evaluations, opinions or actions taken,
8 except that this provision is not intended to relieve any state over-
9 sight agency, delegate investigatory entity, facility or provider agen-
10 cy, or an agent thereof, from liability arising from treatment of a
11 service recipient.

12 4. There shall be no monetary liability on the part of, and no cause
13 of action for damages shall arise against, any person on account of
14 participating in good faith and with reasonable care in the communi-
15 cation of information in the possession of such person to an incident
16 review committee, or on account of any recommendation or evaluation
17 regarding the conduct or practices of any custodian that is made in good
18 faith and with reasonable care.

19 5. With respect to the implementation of incident management plans in
20 residential schools or facilities located outside of New York state,
21 each state oversight agency shall require that: (a) the justice center,
22 the applicable state oversight agency and any local social services
23 district and/or local educational agency placing an individual with such
24 facility or school or state agency funding the placement of an individ-
25 ual or student be notified immediately of any allegation of abuse or
26 neglect involving that individual or student; (b) an investigation be
27 conducted by the justice center, or where that is not practicable, by a
28 state agency or other entity authorized or required to investigate
29 complaints of abuse or neglect under the laws of the state in which the
30 facility or school is located; and (c) the findings of such investi-
31 gation be forwarded to the justice center and each placing entity or
32 funding agency in New York state within ninety days. Failure to comply
33 with the requirements of this section shall be grounds for revocation or
34 suspension of the license or approval of the out of state facility or
35 school.

36 6. Records of facilities or provider agencies not otherwise subject to
37 article six of the public officers law shall be made available for
38 public inspection and copying, when such records relate to abuse and
39 neglect of vulnerable persons, to the same extent that those records
40 would be available from a state agency, as defined in such article.
41 Requests for such records shall be made in writing to the justice
42 center. The justice center may deny access to records of such facilities
43 or provider agencies, or portions thereof, that the justice center
44 determines would be exempt from disclosure by a state agency pursuant to
45 such article. The requesting party may appeal a denial of access to such
46 records to the executive director of the justice center. A requesting
47 party denied access to a record in such appeal determination may bring a
48 proceeding for review of such denial pursuant to article seventy-eight
49 of the civil practice law and rules. The executive director of the
50 justice center shall promulgate regulations, consistent with the
51 provisions of article six of the public officers law providing for the
52 prompt response to such requests. Facilities or provider agencies
53 covered by this subdivision shall cooperate with the justice center and
54 provide any records that the justice center deems subject to disclosure.

55 § 491. Duty to report incidents. 1. (a) Mandated reporters shall
56 report allegations of reportable incidents to the vulnerable persons'

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1 central register as established by section four hundred ninety-two of
2 this article and in accordance with the requirements set forth therein.

3 (b) Allegations of reportable incidents shall be reported immediately
4 to the vulnerable persons' central register upon discovery. For purposes
5 of this article, "discovery" occurs when the mandated reporter witnesses
6 a suspected reportable incident or when another person, including the
7 vulnerable person, comes before the mandated reporter in the mandated
8 reporter's professional or official capacity and provides the mandated
9 reporter with reasonable cause to suspect that the vulnerable person has
10 been subjected to a reportable incident. A report to the register shall
11 include the name, title and contact information of every person known to
12 the mandated reporter to have the same information as the mandated
13 reporter concerning the reportable incident. Nothing in this subdivi-
14 sion shall be construed to prohibit a mandated reporter from contacting
15 or reporting to law enforcement or emergency services before or after
16 reporting to the vulnerable persons' central register.

17 (c) The substance or content of any psychological, psychiatric, thera-
18 peutic, clinical or medical reports, evaluations or like materials or
19 information pertaining to the treatment of a patient or client of a
20 mandatory reporter who reports a reportable incident of such patient or
21 client pursuant to this article, must be provided by such mandatory
22 reporter upon request of the justice center for the protection of people
23 with special needs if such records are essential for a full investi-
24 gation of such allegation, notwithstanding any applicable privilege
25 which would otherwise bar the disclosure of such materials and records
26 pursuant to article forty-five of the civil practice law and rules or
27 other provision of law except applicable federal law governing the
28 disclosure of patient and related medical records.

29 2. Any person or official required to report allegations of reportable
30 incidents pursuant to this section may take or cause to be taken color
31 photographs of visible trauma and the face of the vulnerable person
32 named in the report and upon the consent of a person authorized to
33 consent to medical care for the vulnerable person, shall, if medically
34 indicated, cause to be performed a radiological examination of the
35 vulnerable person. Any photographs or radiological examinations taken
36 shall be provided to the justice center for use only for the purposes of
37 an investigation of a reportable incident.

38 3. (a) Any human services professional required by this article to
39 report a case of suspected abuse or neglect to the vulnerable persons'
40 central register who knowingly and willfully fails to do so shall be
41 guilty of a class A misdemeanor.

42 (b) A mandated reporter who knowingly and willfully fails to report a
43 case of suspected abuse or neglect to the vulnerable persons' central
44 register may be subject to termination, subject to any applicable
45 collective bargaining agreement. Any person or official required by
46 this article to report a case of suspected abuse or neglect to the
47 vulnerable persons' central register who knowingly and willfully fails
48 to do so shall be civilly liable for the damages proximately caused by
49 such failure.

50 4. A medical or other public or private institution, state agency,
51 school, facility or provider agency shall not take any retaliatory
52 personnel action, as such term is defined in paragraph (e) of subdivi-
53 sion one of section seven hundred forty of the labor law, against an
54 employee or agent because such employee or agent believes that he or she
55 has reasonable cause to suspect that a vulnerable person has been
56 subjected to a reportable incident and that employee or agent therefore

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1 makes a report in accordance with this section. A court of competent
2 jurisdiction may grant injunctive relief to any person determined to
3 have been subjected to such retaliation.

4 § 492. Vulnerable persons' central register. 1. There shall be estab-
5 lished in the justice center a statewide vulnerable persons' central
6 register. The register shall: (a) receive reports of allegations of
7 reportable incidents involving persons receiving services in facilities
8 or provider agencies subject to the requirements of this article; (b) as
9 warranted, refer reports alleging crimes to appropriate law enforcement
10 authorities; (c) notify appropriate persons and officials of received
11 and accepted reports; and (d) maintain an electronic database of each
12 report and the finding associated with each report. In accordance with
13 this section, the executive director shall establish standards and
14 procedures for the operation of the vulnerable persons' central regis-
15 ter.

16 2. (a) The vulnerable persons' central register shall be staffed by
17 persons with at least a baccalaureate or equivalent college degree in a
18 relevant field of study or at least two years of experience in the
19 direct provision of services, adult or child protective services, and
20 any other qualifications identified by the executive director. Direct
21 service provision shall include the care, investigation, assessment,
22 treatment, or case planning for persons in facilities or programs
23 covered by this article or equivalent facilities or programs. Vulner-
24 able persons' central register staff also shall have access to appropri-
25 ate law enforcement officers or others with law enforcement experience
26 who shall assist in screening reports that appear to allege criminal
27 offenses and help refer reports, as warranted, to appropriate law
28 enforcement authorities.

29 (b) The vulnerable persons' central register shall receive reports of
30 allegations of reportable incidents twenty-four hours per day, seven
31 days a week. Mandated reporters shall make such reports in accordance
32 with section four hundred ninety-one of this article; provided, however,
33 any person who has reasonable cause to suspect that a person receiving
34 services has been subjected to a reportable incident may make such a
35 report. In no event shall a report by a mandated reporter to the vulner-
36 able persons' central register eliminate the obligation of a mandated
37 reporter to report incidents in accordance with the applicable laws,
38 regulations and policy of the applicable state oversight agency.

39 (c) Reports of allegations of reportable incidents shall be submitted,
40 by a statewide, toll-free telephone number (a "hotline") or by electron-
41 ic transmission, in a manner and on forms prescribed by the executive
42 director. The information required on the reporting form shall include
43 but is not limited to: the name and contact information of the person or
44 persons making the report, if available, and, if the report is made by a
45 custodian, any other staff who have the same information; the name and
46 address of the facility or provider agency; the date, time, specific
47 location and description of the incident; the name and contact informa-
48 tion of the subject of the reportable incident, if known; the name of
49 the vulnerable person alleged to have been subjected to a reportable
50 incident; the names of personal representatives for the vulnerable
51 person who is alleged to have been subjected to a reportable incident,
52 if known; and any other information or documentation that the executive
53 director believes may be helpful. The inability of a person making a
54 report to identify a subject shall, in no circumstance, constitute cause
55 to reject such allegation for investigation or to fail to refer such

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1 allegation for corrective action. The hotline shall accept anonymous
2 calls.

3 3. (a) When any allegation that could reasonably constitute a report-
4 able incident is received by the register, the register shall accept and
5 immediately transmit notice of the report orally or electronically to
6 the appropriate state oversight agency and, as appropriate, to the
7 director or operator of that facility or provider agency.

8 (b) Whenever a telephone call or electronic transmission to the
9 vulnerable persons' central register alleges an act or circumstances
10 that may constitute a criminal offense or an immediate threat to a
11 vulnerable person's health, safety or welfare, the register shall
12 convey, by the most expedient means available, the information contained
13 in such call or transmission to the appropriate law enforcement agency
14 or district attorney and, to the extent necessary, the appropriate emer-
15 gency responder, and the state oversight agency.

16 (c) The justice center is responsible for commencing an investigation
17 of all allegations of reportable incidents that are accepted by the
18 vulnerable persons' central register. With respect to such an investi-
19 gation, the justice center shall:

20 (i) upon acceptance of a report of a reportable incident by the
21 vulnerable persons' central register, promptly commence an appropriate
22 investigation;

23 (ii) take all appropriate measures to protect the life and health of
24 the person who is the alleged victim of a reportable incident, which may
25 include working with the state oversight agency to take immediate steps
26 to remove the vulnerable person from his or her current facility or
27 program or to remove or suspend a subject from a facility or program,
28 subject to any applicable collective bargaining agreement, if the
29 justice center has reasonable cause to believe that the circumstances or
30 condition of the vulnerable person are such that continuing the vulner-
31 able person in his or her place of residence or program, or that contin-
32 uing such subject in his or her current facility or program, presents an
33 imminent danger to the vulnerable person's life or health;

34 (iii) determine whether the subject of the report is currently the
35 subject of an open or substantiated report in the vulnerable persons'
36 central register;

37 (iv) contact the statewide central register of child abuse and
38 maltreatment to determine whether the subject of the report has been or
39 is currently the subject of an indicated child abuse and maltreatment
40 report on file with the statewide central register of child abuse and
41 maltreatment;

42 (v) if it is discovered that the subject of a report has one or more
43 substantiated reports of abuse or neglect or indicated reports of child
44 abuse or maltreatment in the statewide central register of child abuse
45 and maltreatment and an investigation was or investigations were
46 conducted by a different state agency, or a local child protective
47 service, contact all known agencies or services who investigated such
48 previous report or reports to obtain information on such reports in
49 accordance with section four hundred ninety-six of this article;

50 (vi) notify the personal representative of the person alleged to have
51 been abused or neglected and, except in the case of a criminal investi-
52 gation, or if the executive director or his or her designee determines
53 that doing so would interfere with any ongoing investigation, notify the
54 subject or subjects of the report and any other persons named in the
55 report in writing of the existence of the report; provided, however,

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1 that such notification may be limited in accordance with subdivision (c)
2 of section 33.16 of the mental hygiene law;

3 (vii) if a report of a reportable incident to the vulnerable persons'
4 central register involves the death of a person, the justice center
5 shall give telephone notice and immediately send a copy of the report to
6 the appropriate district attorney and to the medical examiner or coron-
7 er. The medical examiner or coroner shall conduct a prompt investigation
8 and shall forward a preliminary written report of his or her findings
9 within sixty days of the date of death, absent extraordinary circum-
10 stances, and his or her final written report promptly, absent extraor-
11 dinary circumstances, to the appropriate district attorney, the appro-
12 priate law enforcement official, the state agency responsible for
13 overseeing the investigation, the justice center medical review board
14 and, if the death occurred in a hospital, the hospital;

15 (viii) submit reportable incident findings to the vulnerable persons'
16 central register in accordance with section four hundred ninety-three of
17 this article;

18 (ix) notify the applicable state oversight agency and the director or
19 operator, where appropriate, to develop a plan of prevention or remedi-
20 ation that the facility or program must implement in response to the
21 report's findings which must be approved and its implementation moni-
22 tored by the justice center or the state oversight agency, as appropri-
23 ate; and

24 (x) refer suspected cases of falsely reporting abuse or neglect in
25 violation of subdivision four of section 240.50 of the penal law to the
26 appropriate law enforcement agency or district attorney for investi-
27 gation and prosecution.

28 (d) Whenever a telephone call or electronic transmission to the
29 vulnerable persons' central register cannot be accepted as a report, but
30 the information provided alleges other potential wrongdoing at a facili-
31 ty or provider agency, the register shall forward the report to the
32 applicable state oversight agency for investigation and protective
33 actions, as needed, pursuant to section four hundred ninety-one of this
34 article.

35 4. The justice center shall maintain and keep up-to-date records of
36 all incidents reported, together with any additional information
37 obtained during an investigation of such a report and a record of the
38 final disposition of the report.

39 5. The vulnerable persons' central register shall maintain an elec-
40 tronic database of all accepted reports of reportable incidents. State
41 oversight agencies shall have access to information in the database,
42 limited to cases involving facilities or provider agencies under their
43 jurisdiction.

44 (a) A unique identifier shall be assigned to each report by the
45 vulnerable persons' central register.

46 (b) The register shall include the following information for each
47 report: a record of the final disposition of the report; the names and
48 identifying data; dates and circumstances of any person requesting or
49 receiving information from the register; whether the person making the
50 report authorized the disclosure of his or her name and personally iden-
51 tifiable information; and any other information that the executive
52 director, in consultation with the commissioners of the state oversight
53 agencies covered by this article, identifies as furthering the purposes
54 of this article and complying with state and federal regulations regard-
55 ing the security and confidentiality of individually identifying health
56 information.

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1 6. The justice center shall review such electronic database to identi-
2 fy incident patterns and trends, and implement preventive and corrective
3 actions, and to identify patterns and trends in the reporting and
4 response to allegations of reportable incidents and develop plans of
5 improvement based on such reviews.

6 7. (a) General information about the existence and purposes of the
7 vulnerable persons' central register and how to make a report to the
8 register shall be made available on the website of the justice center,
9 with links to such information provided on the websites of each of the
10 state oversight agencies covered by this article.

11 (b) The justice center, in collaboration with the state oversight
12 agencies covered by this article, shall develop and widely distribute
13 written information explaining the reporting requirements and processes
14 consistent with this article. In addition, upon a vulnerable person's
15 commencement of the receipt of services by a facility or a provider
16 agency, personal representatives shall be provided with such informa-
17 tion, and such information shall be made available upon request to any
18 person.

19 (c) The justice center, in collaboration with the state agencies oper-
20 ating, licensing or certifying facilities or the provider agencies
21 covered by this article, shall provide mandated reporters with written
22 information explaining the reporting requirements in accordance with
23 this article.

24 (d) The justice center shall develop and implement programs to public-
25 ly recognize and value the contributions of reporters of allegations of
26 reportable incidents whose actions prompt corrections and improvements
27 in the service system; provided, however, that the name and other
28 personally identifiable information of such reporter shall not be shared
29 unless such person authorizes disclosure.

30 8. In a case where a subject of a report of alleged abuse or neglect
31 resigns from his or her position or is terminated while under investi-
32 gation, the state operating agency or the applicable facility or provid-
33 er agency shall promptly report such resignation or termination to the
34 justice center. The investigation of the report shall continue despite
35 the resignation or termination of such subject.

36 § 493. Abuse and neglect findings; consequences. 1. Within sixty days
37 of the vulnerable persons' central register accepting a report of an
38 allegation of abuse or neglect, the justice center shall cause the find-
39 ings of the investigation to be entered into the vulnerable persons'
40 central register. The justice center may take additional time to enter
41 such findings into the vulnerable persons' central register; provided,
42 however, that the reasons for any delay must be documented and such
43 findings submitted as soon thereafter as practicably possible.

44 2. For substantiated reports of abuse or neglect in facilities or
45 provider agencies in receipt of medical assistance, such information
46 shall also be forwarded by the justice center to the office of the Medi-
47 caid inspector general when such abuse or neglect may be relevant to an
48 investigation of unacceptable practices as such practices are defined in
49 regulations of the office of the Medicaid inspector general.

50 3. (a) A finding shall be based on a preponderance of the evidence and
51 shall indicate whether: (i) the alleged abuse or neglect is substanti-
52 ated because it is determined that the incident occurred and the subject
53 of the report was responsible or, if no subject can be identified and an
54 incident occurred, that, the facility or provider agency was responsi-
55 ble; or (ii) the alleged abuse or neglect is unsubstantiated because it
56 is determined not to have occurred or the subject of the report was not

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1 responsible, or because it cannot be determined that the incident
2 occurred or that the subject of the report was responsible. A report
3 shall not be determined to be substantiated or unsubstantiated solely
4 because the subject of a report resigns during an investigation.

5 (b) In conjunction with the possible findings identified in paragraph
6 (a) of this subdivision, a concurrent finding may be made that a system-
7 ic problem caused or contributed to the occurrence of the incident.

8 (c) The justice center shall notify the subject of the report, the
9 facility or provider agency where the abuse or neglect was alleged to
10 have occurred, the applicable state oversight agency and other persons
11 named in the report, which includes the service recipient's parent,
12 guardian or other person legally responsible for such person, of the
13 findings of the investigation and, as applicable, the local social
14 services commissioner or school district that placed the individual in
15 the facility or provider agency, the office of children and family
16 services and any attorney for the individual whose appointment has been
17 continued by a family court judge during the term of an individual's
18 placement, in accordance with applicable state and federal laws and
19 regulations governing the use and disclosure of records. If the report
20 is substantiated, the justice center shall also notify the subject of
21 the report of his or her rights to request that the report be amended
22 and the procedure by which he or she may seek to amend the report in
23 accordance with section four hundred ninety-four of this article.

24 (d) A report that is found to be unsubstantiated shall be sealed imme-
25 diately.

26 4. Substantiated reports of abuse or neglect shall be categorized into
27 one or more of the following four categories, as applicable:

28 (a) Category one conduct is serious physical abuse, sexual abuse or
29 other serious conduct by custodians, which includes and shall be limited
30 to:

31 (i) intentionally or recklessly causing physical injury as defined in
32 subdivision nine of section 10.00 of the penal law, or death, serious
33 disfigurement, serious impairment of health or loss or impairment of the
34 function of any bodily organ or part, or consciously disregarding a
35 substantial and unjustifiable risk that such physical injury, death,
36 impairment or loss will occur;

37 (ii) a knowing, reckless or criminally negligent failure to perform a
38 duty that: results in physical injury that creates a substantial risk of
39 death; causes death or serious disfigurement, serious impairment of
40 health or loss or impairment of the function of any bodily organ or
41 part, a substantial and protracted diminution of a service recipient's
42 psychological or intellectual functioning, supported by a clinical
43 assessment performed by a physician, psychologist, psychiatric nurse
44 practitioner, licensed clinical or master social worker or licensed
45 mental health counselor; or is likely to result in either;

46 (iii) threats, taunts or ridicule that is likely to result in a
47 substantial and protracted diminution of a service recipient's psycho-
48 logical or intellectual functioning, supported by a clinical assessment
49 performed by a physician, psychologist, psychiatric nurse practitioner,
50 licensed clinical or master social worker or licensed mental health
51 counselor;

52 (iv) engaging in or encouraging others to engage in cruel or degrading
53 treatment, which may include a pattern of cruel and degrading physical
54 contact, of a service recipient, that results in a substantial and
55 protracted diminution of a service recipient's psychological or intel-
56 lectual functioning, supported by a clinical assessment performed by a

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1 physician, psychologist, psychiatric nurse practitioner, licensed clin-
2 ical or master social worker or licensed mental health counselor;
3 (v) engaging in or encouraging others to engage in any conduct in
4 violation of article one hundred thirty of the penal law with a service
5 recipient;
6 (vi) any conduct that is inconsistent with a service recipient's indi-
7 vidual treatment plan or applicable federal or state laws, regulations
8 or policies, that encourages, facilitates or permits another to engage
9 in any conduct in violation of article one hundred thirty of the penal
10 law, with a service recipient;
11 (vii) any conduct encouraging or permitting another to promote a sexu-
12 al performance, as defined in subdivision one of section 263.00 of the
13 penal law, by a service recipient, or permitting or using a service
14 recipient in any prostitution-related offense;
15 (viii) using or distributing a schedule I controlled substance, as
16 defined by article thirty-three of the public health law, at the work
17 place or while on duty;
18 (ix) unlawfully administering a controlled substance, as defined by
19 article thirty-three of the public health law to a service recipient;
20 (x) intentionally falsifying records related to the safety, treatment
21 or supervision of a service recipient, including but not limited to
22 medical records, fire safety inspections and drills and supervision
23 checks when the false statement contained therein is made with the
24 intent to mislead a person investigating a reportable incident and it is
25 reasonably foreseeable that such false statement may endanger the
26 health, safety or welfare of a service recipient;
27 (xi) knowingly and willfully failing to report, as required by para-
28 graph (a) of subdivision one of section four hundred ninety-one of this
29 article, any of the conduct in subparagraphs (i) through (ix) of this
30 paragraph upon discovery;
31 (xii) for supervisors, failing to act upon a report of conduct in
32 subparagraphs (i) through (x) of this paragraph as directed by regu-
33 lation, procedure or policy;
34 (xiii) intentionally making a materially false statement during an
35 investigation into a report of conduct described in subparagraphs (i)
36 through (x) of this paragraph with the intent to obstruct such investi-
37 gation; and
38 (xiv) intimidating a mandated reporter with the intention of prevent-
39 ing him or her from reporting conduct described in subparagraphs (i)
40 through (x) of this paragraph or retaliating against any custodian
41 making such a report in good faith.
42 (b) Category two is substantiated conduct by custodians that is not
43 otherwise described in category one, but conduct in which the custodian
44 seriously endangers the health, safety or welfare of a service recipient
45 by committing an act of abuse or neglect. Category two conduct under
46 this paragraph shall be elevated to category one conduct when such
47 conduct occurs within three years of a previous finding that such custo-
48 dian engaged in category two conduct. Reports that result in a category
49 two finding not elevated to a category one finding shall be sealed after
50 five years.
51 (c) Category three is abuse or neglect by custodians that is not
52 otherwise described in categories one and two. Reports that result in a
53 category three finding shall be sealed after five years.
54 (d) Category four shall be conditions at a facility or provider agency
55 that expose service recipients to harm or risk of harm where staff
56 culpability is mitigated by systemic problems such as inadequate manage-

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1 ment, staffing, training or supervision. Category four also shall
2 include instances in which it has been substantiated that a service
3 recipient has been abused or neglected, but the perpetrator of such
4 abuse or neglect cannot be identified.

5 5. (a) Category one findings shall result in permanent placement of
6 the subject of the report on the vulnerable persons' central register in
7 accordance with section four hundred ninety-five of this article.

8 (b) Except when a custodian has a category two finding elevated to a
9 category one finding pursuant to this section, a custodian with a cate-
10 gory two finding shall be subject to progressive discipline. (For state
11 entities bound by collective bargaining, such discipline established by
12 collective bargaining shall govern.) In conjunction with such discipli-
13 nary action, the facility or provider agency shall develop a plan for
14 training and any other actions to reduce the risk of recurrence of such
15 conduct. Such plan must be approved by and its implementation monitored
16 by the justice center or the state oversight agency, as appropriate.

17 (c) With respect to a category three or four finding, the justice
18 center shall require the facility or provider agency to develop and
19 implement a plan of prevention and remediation of the deficient condi-
20 tions. Such plan shall identify any systemic problem that led to the
21 determination of a category three or four finding and include suggested
22 corrective measures. Such plan must be approved by and its implementa-
23 tion monitored by the justice center or the state oversight agency, as
24 appropriate. In reviewing the continued qualifications of a facility or
25 provider agency for an operating certificate, the state oversight agency
26 shall evaluate such facility or provider agency's compliance with any
27 plans of prevention and remediation resulting from category three or
28 four reports and take appropriate enforcement action, which may include,
29 but not be limited to, closing intake to the facility or provider agency
30 or terminating operating certificates for prolonged or repeated failure
31 to correct identified problems in accordance with applicable state law
32 or regulation.

33 § 494. Amendments to and appeals of substantiated reports of abuse or
34 neglect. 1. (a) At any time subsequent to the completion of an investi-
35 gation of an allegation of abuse or neglect, but in no event later than
36 thirty days after the subject of the report is notified that the report
37 is substantiated, the subject may request that the vulnerable persons'
38 central register amend the findings of the report. If the register does
39 not amend the findings of the report in accordance with such request,
40 the subject shall have the right to be heard before an administrative
41 law judge, to determine whether the findings of the report should be
42 amended on the grounds that they are inaccurate or inconsistent with the
43 provisions in this article. The office shall establish an appeals proc-
44 ess by which the subject of the report is notified of the right to
45 appeal and the procedure by which he or she may challenge the determi-
46 nation that a report is substantiated, with a de novo standard of
47 review.

48 (b) If the administrative law judge determines that the justice center
49 failed to prove by a preponderance of the evidence the finding that the
50 subject committed the act or acts of abuse or neglect, the justice
51 center shall amend the record to reflect that such a finding was made,
52 and shall promptly notify the subject of the report and any other
53 persons or entities previously notified of the existence of the report
54 of the amended finding. Such report shall be sealed in accordance with
55 the standards set forth in section four hundred ninety-six of this arti-
56 cle.

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1 2. The justice center is authorized to make any appropriate order
2 respecting the amendment of such findings of a report to make it accu-
3 rate or consistent with the requirements of this article.

4 § 495. Register of substantiated category one cases of abuse or
5 neglect. 1. The justice center shall develop and maintain a register of
6 subjects of reports who have been found to have a substantiated category
7 one case of abuse or neglect, in accordance with paragraph (a) of subdi-
8 vision four of section four hundred ninety-three of this article, and
9 who have: (a) not requested an amendment of the findings of the report
10 in the time specified in subdivision one of section four hundred nine-
11 ty-four of this article; or (b) been heard pursuant to such subdivision
12 and all the findings of the report were not amended to be unsubstanti-
13 ated.

14 2. All facility and provider agencies, other providers of services to
15 vulnerable persons in programs licensed, certified or funded by any
16 state oversight agency and other provider and licensing agencies as
17 defined in subdivision three or four of section four hundred twenty-
18 four-a of this chapter shall check the register of substantiated category
19 one cases of abuse or neglect before determining whether to hire or
20 otherwise allow any person as an employee, administrator, consultant,
21 intern, volunteer or contractor who will have the potential for regular
22 and substantial contact with a service recipient or before approving an
23 applicant for a license, certificate, permit or other approval to
24 provide care to a service recipient. (For state entities bound by
25 collective bargaining, such action established by collective bargaining
26 shall govern.)

27 3. If a person is listed on the register of substantiated category one
28 cases of abuse or neglect, a facility or provider agency and all other
29 providers of services to vulnerable persons in programs licensed or
30 certified by any state oversight agency shall not hire such a person to
31 have regular and substantial contact with a service recipient in any
32 such facility or program. Other providers or licensing agencies as
33 defined in subdivision three or four of section four hundred twenty-
34 four-a of this chapter shall determine whether to hire or allow such a
35 person to have regular or substantial contact with a service recipient
36 in accordance with the provisions of subdivision five of section four
37 hundred twenty-four-a of this chapter.

38 4. A custodian shall be subject to immediate termination if he or she
39 is convicted of any crime as defined in subdivision six of section 10.00
40 of the penal law that relates directly to the abuse or neglect of a
41 vulnerable person, or is placed on the register of substantiated category
42 one cases of abuse or neglect. (For state entities bound by collective
43 bargaining, such action established by collective bargaining shall
44 govern.)

45 5. Placement on the register shall be permanent, unless the office is
46 officially notified of the individual's death.

47 6. Nothing in this article shall diminish the rights or remedies
48 otherwise available under law, regulation or appropriate collective
49 bargaining agreements of any facility or provider agency with respect to
50 the termination or discipline of employees.

51 § 496. Confidentiality. 1. Unless an investigation of a report
52 conducted pursuant to this article has been substantiated, all informa-
53 tion, including information identifying the subject of the report and
54 other persons named in the report, shall be sealed forthwith by the
55 vulnerable persons' central register, the state oversight agency and the
56 facility or provider agency. Such reports may only be unsealed and made

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1 available, consistent with any other applicable state or federal law,
2 to:

3 (a) the state agency operating, licensing or certifying a facility or
4 program for the purpose of monitoring or licensing such facility or
5 program;

6 (b) any state agency operating, licensing, or certifying a facility or
7 provider agency when investigating a report of suspected abuse or
8 neglect involving the subject of a previously sealed report accepted by
9 the vulnerable persons' central register;

10 (c) the subject of the report;

11 (d) a court of relevant jurisdiction or a law enforcement official
12 when such court or official verifies that the report is necessary to
13 conduct an active investigation or prosecution of a violation of subdivi-
14 sion four of section 240.50 of the penal law;

15 (e) the justice center medical review board, for the purposes of
16 preparing a fatality report pursuant to section five hundred fifty-six
17 of the executive law;

18 (f) the independent agency designated pursuant to subdivision (b) of
19 section five hundred fifty-eight of the executive law, provided that
20 such information is relevant to a matter within the legal authority of
21 such agency; or

22 (g) other persons named in the report, as defined in subdivision thir-
23 teen of section four hundred eighty-eight of this article which
24 includes, but is not limited to, the service recipient's parent, guardi-
25 an or other person legally responsible for such person; provided, howev-
26 er, that the names and other personally identifying information of
27 custodians and other service recipients shall not be included unless
28 such custodians and service recipients authorize disclosure. Notwith-
29 standing the prohibitions on non-redisclosure set forth in the closing
30 sentence of this subdivision, the service recipient, and such service
31 recipient's parent, guardian or other person legally responsible for
32 such service recipient may disclose information and reports made avail-
33 able pursuant to this paragraph to an attorney, who shall not further
34 disclose except as is necessary for use by such attorney in rendering
35 advice, assistance and representation.

36 When a report is unsealed, persons given access to it shall not redis-
37 close such reports except as necessary to conduct such appropriate
38 investigation or prosecution and shall request that the court redact any
39 copies of such reports produced in any court proceeding to remove the
40 names of those persons irrelevant to the proceeding such as the source
41 of the report, the name of the subject, and other persons named in the
42 reports; or that the court issue an order protecting the names of the
43 subjects and other persons named in the reports from public disclosure.

44 2. Reports made pursuant to this article and found to be substantiated
45 as well as any other information obtained, reports written or photo-
46 graphs taken concerning such reports in the possession of the justice
47 center, a state oversight agency, a delegate investigatory entity,
48 facility or provider agency covered by this article shall be confiden-
49 tial and shall not be disclosed to any other party unless authorized
50 pursuant to this section or any other applicable state or federal law.
51 In the event that other applicable state or federal law provisions are
52 more restrictive than the provisions of this section, the provisions of
53 such other state or federal law shall apply. In accordance with this
54 section, such information shall be made available only to:

55 (a) a person who is the subject of the report;

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- 1 (b) other persons named in the report, which includes, but is not
2 limited to, the service recipient's parent, guardian or other person
3 legally responsible for such person. Notwithstanding the prohibitions
4 on non-redisclosure set forth in subdivision four of this section, the
5 service recipient, and such service recipient's parent, guardian or
6 other person legally responsible for such service recipient may disclose
7 information and reports made available pursuant to this paragraph to an
8 attorney, who shall not further disclose except as is necessary for use
9 by such attorney in rendering advice, assistance and representation;
- 10 (c) the justice center;
- 11 (d) the applicable state oversight agency, the director or operator of
12 the applicable facility or provider agency and, as appropriate, the
13 local social services commissioner, the commissioner of the office of
14 children and family services, or the school district placing the service
15 recipient, or an agency providing adult protective services to the
16 service recipient;
- 17 (e) a physician who has before him or her a service recipient whom he
18 or she reasonably suspects may be or may have been abused or neglected;
- 19 (f) a court, upon a finding that the information in the record is
20 relevant to the determination of an issue before the court;
- 21 (g) a grand jury, upon a finding that the information in the record is
22 necessary for the determination of charges before the grand jury;
- 23 (h) any appropriate state legislative committee responsible for legis-
24 lation affecting vulnerable persons, provided, however, that no informa-
25 tion identifying or tending to identify the subjects of the report or
26 other persons named in the report shall be made available;
- 27 (i) any person engaged in a bona fide research purpose; provided,
28 however, that no information identifying or tending to identify the
29 subjects of the report or other persons named in the report shall be
30 made available to the researcher unless it is absolutely essential to
31 the research purpose and the justice center, after consultation with the
32 commissioner of the applicable state oversight agency, gives prior
33 approval;
- 34 (j) a facility or provider agency, other providers of services to
35 vulnerable persons in programs licensed or certified by any state over-
36 sight agency, or any other provider agency as defined in subdivision
37 three of section four hundred twenty-four-a of this chapter or a licens-
38 ing agency as defined in subdivision four of section four hundred twen-
39 ty-four-a of this chapter, in accordance with the provisions of subdivi-
40 sion two of section four hundred ninety-five of this article;
- 41 (k) a probation service regarding a person about whom it is conducting
42 an investigation pursuant to article three hundred ninety of the crimi-
43 nal procedure law, or a probation service or the department of
44 corrections and community supervision regarding a person to whom the
45 service or department is providing supervision pursuant to article sixty
46 of the penal law or article eight of the correction law, where the
47 service or department requests the information upon a certification that
48 such information is necessary to conduct its investigation, that there
49 is reasonable cause to believe that the subject of an investigation is
50 the subject of a substantiated report and that there is reasonable cause
51 to believe that such records are necessary to the investigation by the
52 probation service or the department, provided, however, that only
53 substantiated reports shall be furnished pursuant to this subdivision;
- 54 (l) a district attorney, an assistant district attorney or investi-
55 gator employed by the office of a district attorney, a sworn officer of
56 the division of state police, of the regional state park police, of a

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1 city police department, or of a county, town or village police depart-
2 ment or county sheriff's office or department upon written verification
3 that such information is necessary to conduct a criminal investigation
4 or criminal prosecution of a person, and that there is reasonable cause
5 to believe that such person is the subject of a report; provided, howev-
6 er, that only substantiated reports shall be furnished pursuant to this
7 subdivision;

8 (m) the New York city department of investigation; provided, however,
9 that no information identifying the subjects of the report or other
10 persons named in the report shall be made available to the department of
11 investigation unless such information is essential to an investigation
12 within the legal authority of the department of investigation and the
13 justice center or the applicable state oversight agency gives prior
14 approval;

15 (n) a provider or coordinator of services to which a facility or
16 provider agency or social services district has referred a service
17 recipient or a service recipient's family or to whom the service recipi-
18 ent or the recipient's family have referred themselves at the request of
19 such agency or social services district, when said service recipient is
20 reported to the vulnerable persons' central register as the vulnerable
21 person and when the records, reports or other information are necessary
22 to enable the provider or coordinator to establish and implement a plan
23 of service for the service recipient or the service recipient's family,
24 or to monitor the provision and coordination of services and the circum-
25 stances of the service recipient and the service recipient's family, or
26 to directly provide services in accordance with requirements established
27 by the applicable state oversight agency to the extent that the sharing
28 of such information is not otherwise prohibited by federal law;
29 provided, however, a provider or coordinator of services given access to
30 information concerning a service recipient pursuant to this paragraph
31 shall be authorized to redisclose such information to other persons or
32 agencies which also provide services to the service recipient or the
33 service recipient's family only if an agreement has been or will be
34 reached between the provider or coordinator of service and such facility
35 or provider agency, operating state agency or local district. An agree-
36 ment entered into pursuant to this paragraph shall include the specific
37 agencies and categories of individuals to whom redisclosure by the
38 provider or coordinator of services is authorized. Persons or agencies
39 given access to information pursuant to this paragraph may exchange such
40 information in order to facilitate the provision or coordination of
41 services to the service recipient or the service recipient's family;

42 (o) a disinterested person making an investigation pursuant to section
43 one hundred sixteen of the domestic relations law, provided that such
44 disinterested person shall only make this information available to the
45 judge before whom the adoption proceeding is pending;

46 (p) a criminal justice agency conducting an investigation of a missing
47 child or vulnerable adult where there is reason to suspect information
48 in a substantiated report under this article is needed to further such
49 investigation;

50 (q) the director or operator of the facility or provider agency and,
51 as appropriate, the local social services commissioner, commissioner of
52 the office of children and family services, or school district placing a
53 child in that program, the applicable executive agency, and, for any
54 report involving abuse or neglect of a child, any attorney appointed to
55 represent the child whose appointment has been continued by a family

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1 court judge during the term of the placement and subject to the limita-
2 tions contained in section four hundred ninety-five of this article;

3 (r) for any report alleging abuse or neglect of a child, a child
4 protective service of another state when such service certifies that the
5 records and reports are necessary in order to conduct a child abuse or
6 maltreatment investigation within its jurisdiction of the subject of the
7 report and shall only be used for purposes of conducting such investi-
8 gation and will not be redisclosed to any other person or agency;

9 (s) an attorney for a child, appointed pursuant to section one thou-
10 sand sixteen of the family court act, at any time such appointment is in
11 effect, in relation to any report in which the respondent in the
12 proceeding in which the attorney for the child is appointed is the
13 subject or another person named in the report, pursuant to sections one
14 thousand thirty-nine-a and one thousand fifty-two-a of the family court
15 act;

16 (t) officers and employees of the state comptroller, for purposes of a
17 duly authorized performance audit, provided that such comptroller shall
18 have certified to the keeper of such records that he or she has insti-
19 tuted procedures developed in consultation with the justice center to
20 limit access to service recipient-identifiable information to persons
21 requiring such information for purposes of the audit and that appropri-
22 ate controls and prohibitions are imposed on the dissemination of
23 service recipient-identifiable information contained in the conduct of
24 the audit.

25 (i) Information pertaining to the substance or content of any psycho-
26 logical, psychiatric, therapeutic, clinical or medical reports, evalu-
27 ations or like materials or information pertaining to such vulnerable
28 person or such person's family shall not be made available to such offi-
29 cers and employees unless disclosure of such information is absolutely
30 essential to the specific audit activity and the justice center gives
31 prior written approval.

32 (ii) Any failure to maintain the confidentiality of service reci-
33 pient-identifiable information shall subject such comptroller or officer
34 to denial of any further access to records until such time as the audit
35 agency has reviewed its procedures concerning controls and prohibitions
36 imposed on the dissemination of such information and has taken all
37 reasonable and appropriate steps to eliminate such lapses in maintaining
38 confidentiality to the satisfaction of the justice center. Such justice
39 center shall establish the grounds for denial of access to records
40 contained under this section and shall recommend as necessary a plan of
41 remediation to the audit agency. Except as provided in this section,
42 nothing in this subparagraph shall be construed as limiting the powers
43 of such comptroller or officer to access records which he or she is
44 otherwise authorized to audit or obtain under any other applicable
45 provision of law;

46 (u) an entity with appropriate legal authority in another state to
47 license, certify or otherwise approve prospective foster and adoptive
48 parents where disclosure of information regarding the prospective foster
49 or adoptive parents and other persons over the age of eighteen residing
50 in the home of such prospective parents is required by paragraph twenty
51 of subdivision (a) of section six hundred seventy-one of title forty-two
52 of the United States Code;

53 (v) a social services official who is investigating whether an adult
54 is in need of protective services in accordance with the provisions of
55 section four hundred seventy-three of this chapter or a child is in need
56 of child protective services pursuant to the provisions of title six of

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1 article six of this chapter, when such official has reasonable cause to
2 believe that such reports and information are needed to further the
3 present investigation;

4 (w) for reports alleging abuse or neglect of children, members of a
5 citizen review panel as established pursuant to section three hundred
6 seventy-one-b of this chapter; provided, however, such members shall not
7 disclose to any person or governmental official any identifying informa-
8 tion which the panel has been provided and shall not make public other
9 information unless otherwise authorized by statute;

10 (x) officers and employees of the education department and, where
11 applicable, the department of health, for the purpose of investigating
12 charges and maintaining professional discipline proceedings against the
13 professional license of the subject of the report pursuant to Title VIII
14 of the education law, and to employees of the education department for
15 the purpose of investigating charges and maintaining good moral charac-
16 ter proceedings against the teaching, school administrator or school
17 leader certificate or license of the subject of the report; and

18 (y) the independent agency designated pursuant to subdivision (b) of
19 section five hundred fifty-eight of the executive law, provided that
20 such information is relevant to a matter within the legal authority of
21 such agency.

22 3. (a) The executive director, in consultation with the applicable
23 state oversight agency may disclose information regarding the abuse or
24 neglect of a vulnerable person as set forth in this subdivision, and the
25 investigation thereof and any services related thereto, to persons other
26 than those authorized to receive records under subdivision two of this
27 section if otherwise permitted by applicable federal law and if he or
28 she determines that such disclosure shall not be contrary to the best
29 interests of the vulnerable person and any one of the following factors
30 are present:

31 (i) the subject of the report has been charged in an accusatory
32 instrument with committing a crime related to a report maintained in the
33 vulnerable persons' central register; or

34 (ii) the investigation of the abuse or neglect of the vulnerable
35 person or the provision of services by the facility or provider agency
36 has been publicly disclosed in a report required to be disclosed in the
37 course of their official duties, by a law enforcement agency or offi-
38 cial, a district attorney, any other state or local investigative agency
39 or official, or by judge of the unified court system; or

40 (iii) there has been a prior knowing, voluntary, public disclosure by
41 an individual concerning a report of abuse or neglect in which such
42 individual is named as the subject of the report; or

43 (iv) the vulnerable person named in the report has died or the report
44 involves the near fatality of a vulnerable person. For the purposes of
45 this section, "near fatality" means an act that results in the vulner-
46 able person being placed, as certified by a physician, in serious or
47 critical condition.

48 (b) For the purposes of this subdivision, only the following informa-
49 tion may be disclosed:

50 (i) the name of the abused or neglected vulnerable person;

51 (ii) the determination by the justice center and the findings upon
52 which such determination was based;

53 (iii) identification of services provided or actions, if any, taken
54 regarding the vulnerable person named in the report and his or her fami-
55 ly as a result of any such report or reports;

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1 (iv) whether any report of abuse or neglect regarding such vulnerable
2 person has been "substantiated" as maintained by the vulnerable persons'
3 central register;

4 (v) any actions taken by the state oversight agency or the facility or
5 provider agency in response to reports of abuse or neglect of the
6 vulnerable person to the vulnerable persons' central register, including
7 but not limited to actions taken after each and every report of abuse or
8 neglect of such person and the dates of such reports; and

9 (vi) any extraordinary or pertinent information concerning the circum-
10 stances of the abuse or neglect of the vulnerable person and the inves-
11 tigation thereof, where the executive director, in consultation with the
12 commissioner of the applicable state oversight agency determines such
13 disclosure is consistent with the public interest.

14 (c) Information may be disclosed pursuant to this subdivision as
15 follows:

16 (i) information released prior to the completion of the investigation
17 of a report shall be limited to a statement that a report is "under
18 investigation";

19 (ii) when there has been a prior disclosure pursuant to paragraph (a)
20 of this subdivision, information released in a case in which the inves-
21 tigation of the report has been completed but not substantiated, infor-
22 mation shall be limited to the statement that "the investigation has
23 been completed and the report has been unsubstantiated";

24 (iii) if the report has been "substantiated" then information may be
25 released pursuant to paragraph (a) of this subdivision.

26 (d) Any disclosure of information pursuant to this subdivision shall
27 be consistent with the provisions of paragraph (b) of this subdivision.
28 Such disclosure shall not identify or provide an identifying description
29 of the source of the report, and shall not identify the name of the
30 abused or neglected vulnerable person's siblings or children, the parent
31 or other person legally responsible for such person or any other members
32 of such person's household.

33 (e) In determining, pursuant to paragraph (a) of this subdivision,
34 whether disclosure will be contrary to the best interests of the vulner-
35 able person, the executive director shall consider the interest in
36 privacy of the vulnerable person and such person's siblings or children,
37 the parent or other person legally responsible for such person or any
38 other members of such person's household.

39 (f) Except as it applies directly to the cause of the abuse or neglect
40 of the vulnerable person, nothing in this subdivision shall be deemed to
41 authorize the release or disclosure of the substance or content of any
42 psychological, psychiatric, therapeutic, clinical or medical reports,
43 evaluations or like materials or information pertaining to such person
44 or such person's family. Any such information that applies directly to
45 the cause of the abuse or neglect of the vulnerable person may be
46 disclosed only if disclosure is not otherwise restricted by applicable
47 federal or state laws.

48 4. A person given access to the names or other information identifying
49 the subject of the report or other persons named in the report shall not
50 divulge or make public such identifying information unless he or she is
51 a district attorney or other law enforcement official and the purpose is
52 to initiate court action or the disclosure is necessary in connection
53 with the investigation or prosecution of the subject of the report for a
54 crime alleged to have been committed by the subject against another
55 person named in the report. Nothing in this section shall be construed
56 to permit any release, disclosure or identification of the names or

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1 identifying descriptions of persons who have reported suspected abuse or
2 neglect to the vulnerable persons' central register or the state over-
3 sight agency, facility or provider agency or other entity where such
4 persons are employed or with which they are associated without such
5 persons' written permission except to persons, officials, and agencies
6 enumerated in paragraphs (f), (g), (l), (m) and (v) of subdivision two
7 of this section. To the extent that persons or agencies are given
8 access to information pursuant to paragraphs (c), (d), (e), (k), (l),
9 (m), (n) and (p) of subdivision two of this section, such persons or
10 agencies may give and receive such information to each other in order to
11 facilitate an investigation conducted, or the provision of services, by
12 such persons or agencies.

13 5. Notwithstanding any contrary provision of this section, mental
14 hygiene legal service shall have access to all information, books,
15 records and data as provided for in subdivision (d) of section 47.03 of
16 the mental hygiene law.

17 § 497. Immunity from liability. Any person participating reasonably
18 and in good faith in making a report, taking photographs, conducting or
19 overseeing an investigation, operating the vulnerable persons' central
20 register or disclosing information in compliance with this article shall
21 have immunity from any liability, civil or criminal, that might other-
22 wise result by reason of such actions. For the purpose of any proceed-
23 ing, civil or criminal, the good faith of any such person required to
24 perform any of such functions in accordance with this article shall be
25 presumed, provided such person, was acting in discharge of his or her
26 duties and within the scope of his or her employment or responsibil-
27 ities, and that such liability did not result from the willful miscon-
28 duct or gross negligence of such person.

29 § 2. This act shall take effect June 30, 2013; provided, however,
30 that, effective immediately, any actions necessary for the implementa-
31 tion of this act on its effective date, and the addition, amendment or
32 repeal of any rule or regulation necessary for the implementation of
33 this act on its effective date, are authorized to be taken or made on or
34 before such date.

35

PART C

36 Section 1. Subdivisions 6 and 7 of section 677 of the county law,
37 subdivision 6 as amended by chapter 491 of the laws of 1987, subdivision
38 7 as added by chapter 477 of the laws of 1979 and paragraph (a) of
39 subdivision 7 as amended by chapter 330 of the laws of 1993, are amended
40 to read as follows:

41 6. The coroner, coroner's physician or medical examiner shall promptly
42 provide the chairman of the correction medical review board and the
43 commissioner of correctional services with copies of any autopsy report,
44 toxicological report or any report of any examination or inquiry
45 prepared with respect to any death occurring to an inmate of a correc-
46 tional facility as defined by subdivision three of section forty of the
47 correction law within his county; and shall promptly provide the execu-
48 tive director of the justice center for the protection of people with
49 special needs with copies of any autopsy report, toxicology report or
50 any report of any examination or inquiry prepared with respect to the
51 death of any service recipient occurring while he or she was a resident
52 in any facility operated, licensed or certified by any agency within the
53 department of mental hygiene, the office of children and family
54 services, the department of health or the state education department.

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1 If the toxicological report is prepared pursuant to any agreement or
2 contract with any person, partnership, corporation or governmental agency
3 with the coroner or medical examiner, such report shall be promptly
4 provided to the chairman of the correction medical review board ~~and~~
5 ~~to~~, the commissioner of correctional services or the executive director
6 of the justice center for people with special needs, as appropriate, by
7 such person, partnership, corporation or governmental agency.

8 7. (a) Upon the written request of the commissioner of mental health,
9 the commissioner of ~~mental-retardation-and~~ the office for persons with
10 developmental disabilities, the director of the mental hygiene legal
11 service, ~~[the chairman of the commission on quality of care for the~~
12 ~~mentally disabled]~~ the executive director of the justice center for the
13 protection of people with special needs or the director of a mental
14 hygiene facility, as defined in subdivision two of section [45-01] five
15 hundred fifty of the ~~mental-hygiene~~ executive law, at which the
16 deceased was a patient or resident, the coroner, coroner's physician or
17 medical examiner shall provide such person with a copy of all reports
18 and records, including, but not limited to, autopsy reports and toxico-
19 logical reports related to the deceased prepared by a person, partner-
20 ship, corporation or governmental agency pursuant to any agreement or
21 contract with the coroner or medical examiner with respect to the death
22 of a patient or resident receiving services ~~[for a mental disability]~~ at
23 such a mental hygiene facility.

24 (b) Upon the written request of the commissioner of mental health, or
25 commissioner of ~~mental-retardation-and~~ developmental disabilities, or
26 a director of a departmental facility as defined in section 1.03 of the
27 mental hygiene law, or the ~~chairman of the commission on quality of~~
28 ~~care for the mentally disabled]~~ executive director of the justice center
29 for the protection of people with special needs, the coroner, coroner's
30 physician or medical examiner shall transmit to the commissioner, or
31 such director, ~~[or chairman,]~~ or any member of the ~~mental-hygiene~~
32 justice center medical review board ~~[designated by the chairman of such~~
33 ~~commission]~~, original autopsy slides, tissue materials and specimens
34 taken from the body of a deceased patient or resident as defined in
35 paragraph (a) of this section. Such original materials may be used and
36 tested by such office of the department of mental hygiene, or such
37 director, and ~~mental-hygiene~~ justice center medical review board
38 pursuant to its authority under section ~~[45-17] five hundred fifty-six~~
39 of the ~~mental-hygiene~~ executive law. Such slides, materials and spec-
40 imens may be retained for a reasonable time, and shall be returned to
41 the office of the coroner or medical examiner in good condition allowing
42 for reasonable use for study and testing purposes.

43 § 2. Subdivisions (a) and (d) of section 7.09 of the mental hygiene
44 law, subdivision (a) as added by chapter 978 of the laws of 1977 and
45 subdivision (d) as added by chapter 477 of the laws of 1979, are amended
46 to read as follows:

47 (a) The commissioner shall exercise all powers vested in the office.
48 He may delegate any function, power, or duty assigned to him or to the
49 office of mental health to a director of a facility operated by such
50 office or to any other officer or employee of such office, unless other-
51 wise provided by law. He may enter into agreements with the executive
52 director of the justice center for the protection of people with special
53 needs or the other commissioners of the department in order to ensure
54 that programs and services are provided for all of the mentally disa-
55 bled.

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1 (d) The commissioner and directors of office facilities may request
2 and upon such request the coroner, coroner's physician or medical exam-
3 iner shall provide to such persons access to original autopsy slides,
4 tissue materials and specimens derived from any autopsy or inquiry with
5 respect to the death of a patient or resident in a mental hygiene facil-
6 ity, as defined in ~~[section 45.01 of this chapter]~~ subdivision two of
7 section five hundred fifty of the executive law. Such original materials
8 shall be preserved intact, except for unavoidable changes due to neces-
9 sary scientific testing, and shall be returned to the coroner, coroner's
10 physician or medical examiner.

11 § 3. Subdivision (b) of section 7.21 of the mental hygiene law, as
12 amended by chapter 558 of the laws of 2011, is amended to read as
13 follows:

14 (b) Such director shall have the responsibility of seeing that there
15 is humane treatment of the patients at his or her facility and shall
16 investigate, or cause to be investigated, every ~~[case of alleged patient~~
17 ~~abuse or mistreatment]~~ reportable incident in accordance with article
18 eleven of the social services law. Also in accordance with article elev-
19 en of the social services law, the director shall require allegations of
20 reportable incidents to be reported to the vulnerable persons' central
21 register, which shall screen and immediately forward reports that appear
22 to allege crimes to the appropriate law enforcement agency. The ~~[direc-~~
23 ~~tor]~~ vulnerable persons' central register shall notify immediately, and
24 in any event within three working days, the board of visitors of the
25 facility and the mental hygiene legal service located in the same judi-
26 cial department as the hospital, school, or institution of every
27 complaint of patient abuse or ~~[mistreatment]~~ neglect and shall inform
28 the board and the mental hygiene legal service of the results of his
29 investigation. ~~[If it appears that a crime may have been committed, the~~
30 ~~director shall give notice thereof to the district attorney or other~~
31 ~~appropriate law enforcement official as soon as possible, and in any~~
32 ~~event within three working days unless it appears that the crime~~
33 ~~includes an employee, intern, volunteer, consultant, contractor, or~~
34 ~~visitor and the alleged conduct caused physical injury or the patient~~
35 ~~was subject to unauthorized sexual contact, or if it appears the crime~~
36 ~~is endangering the welfare of an incompetent or physically disabled~~
37 ~~person pursuant to section 260.25 of the penal law, or if the crime was~~
38 ~~any felony under state or federal law, then the district attorney or~~
39 ~~other appropriate law enforcement official must be contacted immedi-~~
40 ~~ately, and in any event no later than twenty-four hours.]~~

41 § 4. Subdivisions (a) and (c) of section 13.09 of the mental hygiene
42 law, subdivision (a) as added by chapter 978 of the laws of 1977 and
43 subdivision (c) as added by chapter 477 of the laws of 1979, are amended
44 to read as follows:

45 (a) The commissioner shall exercise all powers vested in the office.
46 He or she may delegate any function, power, or duty assigned to him or
47 her or to the office to any officer or employee of the office, unless
48 otherwise provided by law. He or she may enter into agreements with
49 other commissioners of the department in order to ensure that programs
50 and services are provided for all of the mentally disabled.

51 (c) The commissioner and directors of office facilities may request
52 and upon such request the coroner, coroner's physician or medical exam-
53 iner shall provide to such persons access to original autopsy slides,
54 tissue materials and specimens derived from any autopsy or inquiry with
55 respect to the death of a patient or resident in a mental hygiene facil-
56 ity, as defined in ~~[section 45.01 of this chapter]~~ subdivision two of

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1 section five hundred fifty of the executive law. Such original materials
2 shall be preserved intact, except for unavoidable changes due to neces-
3 sary scientific testing and shall be returned to the coroner, coroner's
4 physician or medical examiner.

5 § 5. Subdivision (b) of section 13.21 of the mental hygiene law, as
6 amended by section 3 of part J of chapter 56 of the laws of 2012, is
7 amended to read as follows:

8 (b) Such directors shall have the responsibility of seeing that there
9 is humane treatment of individuals with developmental disabilities
10 receiving services in settings operated, licensed, certified, funded or
11 approved by this office and shall investigate, or cause to be investi-
12 gated, every reportable incident in accordance with article eleven of
13 the social services law. Also in accordance with article eleven of the
14 social services law, the director shall require allegations of report-
15 able incidents to be reported to the vulnerable persons' central regis-
16 ter, which shall screen and immediately forward reports that appear to
17 allege crimes to the appropriate law enforcement agency. [A director of
18 a state operations office] The vulnerable persons' central register
19 shall notify immediately, and in any event within three working days,
20 the board of visitors of the facility and the mental hygiene legal
21 service located in the same judicial department as the state operations
22 office of every complaint of patient abuse or mistreatment and shall
23 inform the board and the mental hygiene legal service of the results of
24 his or her investigation. ~~[If it appears that a crime may have been~~
25 ~~committed, such state operations director shall give notice thereof to~~
26 ~~the district attorney or other appropriate law enforcement official as~~
27 ~~soon as possible, and in any event within three working days unless it~~
28 ~~appears that the crime includes an employee, intern, volunteer, consult-~~
29 ~~ant, contractor, or visitor and the alleged conduct caused physical~~
30 ~~injury or the patient was subject to unauthorized sexual contact, or if~~
31 ~~it appears the crime is endangering the welfare of an incompetent or~~
32 ~~physically disabled person pursuant to section 260.25 of the penal law,~~
33 ~~or if the crime was any felony under state or federal law, then the~~
34 ~~district attorney or other appropriate law enforcement official must be~~
35 ~~contacted immediately, and in any event no later than twenty-four~~
36 ~~hours.]~~

37 § 6. Subdivision 2 of section 13.34 of the mental hygiene law is
38 REPEALED and subdivisions 3, 4, 5 and 6 are renumbered subdivisions 2,
39 3, 4 and 5.

40 § 7. Subdivisions 1 and 2 of section 13.34 of the mental hygiene law,
41 subdivision 1 as amended by section 16 of part J of chapter 56 of the
42 laws of 2012, subdivision 2 as amended by chapter 542 of the laws of
43 2011 and such subdivision as renumbered by section six of this act, are
44 amended to read as follows:

45 1. There shall be at each developmental center facility listed in
46 section 13.17 of this article, an ombudsman who shall be an employee of
47 the ~~[commission on quality of care and advocacy for persons with disa-~~
48 ~~bilities]~~ justice center for the protection of people with special needs
49 under article ~~[forty-five]~~ twenty of ~~[this chapter]~~ the executive law
50 and who shall be responsible for receiving and responding to any
51 complaints regarding ~~[individual clients]~~ individuals receiving services
52 residing in such facility. The ombudsman shall have the following powers
53 and duties:

54 i. to advise and consult with individuals receiving services, parents,
55 guardians, correspondents and other interested persons with respect to

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1 any complaints, or issues related to ~~[the conditions of clients' resi-~~
2 ~~dents]~~ individuals receiving services;
3 ii. to review and attempt to remedy specific complaints with responsi-
4 ble and appropriate staff;
5 iii. where it appears that care has not been rendered as required by
6 applicable standards to refer the complaint to the appropriate agency or
7 body for its attention;
8 iv. to receive and keep confidential any complaint, information or
9 inquiry from any source. The records of the ombudsman shall be confiden-
10 tial, and shall not be available to the public;
11 v. to advise and consult with the board of visitors served by the
12 ombudsman with respect to any complaints or issues relating to ~~[condi-~~
13 ~~tions of clients' residence]~~ individuals receiving services, treatment
14 and care and to regularly attend the meetings of such board; and
15 vi. to meet with the commissioner, or a representative of the commis-
16 sioner, on a quarterly basis regarding systemic issues in the ombuds-
17 man's jurisdiction.

18 2. The ombudsman shall be afforded initial training and orientation by
19 the ~~[commission on quality of care and advocacy for persons with disa-~~
20 ~~bilities]~~ justice center for the protection of people with special
21 needs.

22 § 8. Subdivision (b) of section 16.13 of the mental hygiene law is
23 REPEALED and a new subdivision (b) is added to read as follows:

24 (b) Making reports of allegations of reportable incidents in accord-
25 ance with article eleven of the social services law to the vulnerable
26 persons' central register, which shall screen and immediately forward
27 reports that appear to allege crimes to the appropriate law enforcement
28 agency.

29 § 9. Section 16.29 of the mental hygiene law, as amended by chapter 24
30 of the laws of 2007, subdivision (b) as amended by chapter 37 of the
31 laws of 2011, is amended to read as follows:

32 § 16.29 ~~[Child abuse and maltreatment in residential care]~~ Abuse,
33 neglect, and significant incidents involving vulnerable
34 persons.

35 (a) The commissioner, in consultation with the executive director of
36 the justice center for the protection of people with special needs,
37 shall promulgate regulations establishing standards for the protection
38 of [children in residential] service recipients in the care of facili-
39 ties and provider agencies operated, licensed or certified by the office
40 from [abuse and maltreatment] reportable incidents pursuant to article
41 eleven of the social services law, including procedures for:

42 (1) ~~[reviewing and evaluating the backgrounds of and information~~
43 ~~supplied by any person applying to be an employee, a volunteer or~~
44 ~~consultant,]~~ consistent with appropriate collective bargaining agree-
45 ments and applicable provisions of the civil service law[. Such review
46 and evaluation shall include but not be limited to the following
47 requirements: that the applicant set forth his or her employment histo-
48 ry, provide personal and employment references and relevant experiential
49 and educational information and, sign a sworn statement whether, to the
50 best of his or her knowledge, he or she has ever been convicted of a
51 crime in this state or any other jurisdiction], assisting the justice
52 center for the protection of people with special needs with its review
53 and evaluation of criminal background checks of prospective employees,
54 as set forth in subdivision five of section five hundred fifty-three of
55 the executive law;

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1 (2) establishing minimal experiential and educational qualifications
2 for employees that are consistent with appropriate collective bargaining
3 agreements and applicable provisions of the civil service law;

4 (3) assuring adequate and appropriate supervision of employees, volun-
5 teers and consultants;

6 (4) demonstrating that appropriate action is taken to assure the safe-
7 ty of ~~[the child who is reported to the state central register]~~ a
8 service recipient as well as other ~~[children]~~ persons in care, imme-
9 diately upon notification that a ~~[report of child abuse or maltreatment]~~
10 reportable incident has been made ~~[with respect to a child in a residen-~~
11 tial facility] in accordance with article eleven of the social services
12 law;

13 (4-a) consistent with applicable collective bargaining agreements,
14 assuring that an individual who has committed a category one offense, as
15 defined in paragraph (a) of subdivision four of section four hundred
16 ninety-three of the social services law, that is included on the vulner-
17 able persons' central register is not hired or otherwise used in any
18 position in which such individual would have regular and substantial
19 contact with a service recipient in any program operated, licensed or
20 certified by the office;

21 (5) removing a ~~[child]~~ service recipient when it is determined that
22 there is a risk to such ~~[child]~~ person if he or she continues to remain
23 in a ~~[residential]~~ facility; and

24 (6) taking appropriate preventive and remedial action, including legal
25 action, consistent with appropriate collective bargaining agreements and
26 applicable provisions of the civil service law. ~~[Such]~~ The commissioner
27 shall adopt standards [shall also establish as a priority] as estab-
28 lished by the justice center for the protection of people with special
29 needs, that:

30 (i) administrators, employees, volunteers and consultants receive
31 training in at least the following: ~~[child]~~ abuse prevention and iden-
32 tification, safety and security procedures, the principles of child
33 development, the characteristics of [children] persons in care and tech-
34 niques of group [and child] management including crisis intervention,
35 the laws, regulations and procedures governing the protection of [chil-
36 dren] vulnerable persons from [abuse and maltreatment] reportable inci-
37 dents, and other appropriate topics provided, however, that the office
38 may exempt administrators and consultants from such requirements upon
39 demonstration of substantially equivalent knowledge or experience; and

40 (ii) ~~[children]~~ service recipients receive instruction consistent with
41 their age, needs and circumstances as well as the needs and circum-
42 stances within the facility or program, in techniques and procedures
43 which will enable ~~[such children]~~ them to advocate and protect them-
44 selves from [abuse and maltreatment] reportable incidents.

45 The commissioner, in consultation with the executive director of the
46 justice center for the protection of people with special needs, shall
47 take all reasonable and necessary actions to assure that employees,
48 volunteers and consultants in ~~[residential care]~~ facilities operated or
49 overseen by the office are kept apprised on a current basis of all poli-
50 cies and procedures of the office relating to the protection of ~~[chil-~~
51 dren from abuse and maltreatment] vulnerable persons, and shall monitor
52 and supervise the provision of training to such administrators, employ-
53 ees, volunteers, children and consultants. Standards developed pursuant
54 to this subdivision shall, to the extent possible, be consistent with
55 those promulgated by other state agencies for such purposes.

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1 (b) The commissioner shall provide necessary assistance to the [state
2 ~~commission on quality of care and advocacy for persons with disabili-~~
3 ~~ties]~~ justice center for the protection of people with special needs in
4 the conduct of investigations pursuant to ~~[section 45.07 of this chap-~~
5 ~~ter]~~ article eleven of the executive law, shall consider its recommenda-
6 tions for appropriate preventive and remedial action including legal
7 actions, and shall provide or direct a residential facility licensed or
8 operated by the office for people with developmental disabilities to
9 provide written reports thereon to the ~~[commission]~~ justice center as to
10 the implementation of plans of prevention and remediation approved by
11 such office.

12 (c) The commissioner shall provide for the development and implementa-
13 tion of a plan of prevention and remediation with respect to ~~[an indi-~~
14 ~~cated]~~ a substantiated report of [child abuse or maltreatment] a report-
15 able incident. Such action shall include:

16 (i) within ten days of receipt of ~~[an indicated]~~ a substantiated
17 report of [child abuse or maltreatment] a reportable incident, develop-
18 ment and implementation of a plan of prevention and remediation to be
19 taken ~~[with respect to a custodian or the residential facility in order]~~
20 to assure the continued health ~~[and]~~ safety and welfare of ~~[children]~~
21 service recipients and to provide for the prevention of future acts of
22 ~~[abuse or maltreatment]~~ reportable incidents; and

23 (ii) development and implementation of a plan of prevention and reme-
24 diation, in the event an investigation of a report of an alleged ~~[child~~
25 ~~abuse or maltreatment determines that some credible evidence of abuse or~~
26 ~~maltreatment]~~ reportable incident exists and such ~~[abuse or maltreat-~~
27 ~~ment]~~ reportable incident may be attributed in whole or in part to
28 noncompliance by the facility with the provisions of this chapter or
29 regulations of the office applicable to the operation of such ~~[residen-~~
30 ~~tial]~~ facility. Any plan of prevention and remediation required to be
31 developed pursuant to this subdivision by a facility supervised by the
32 office shall be submitted to and approved by such office in accordance
33 with time limits established by regulations of such office. Implementa-
34 tion of the plan shall be monitored by such office. In reviewing the
35 continued qualifications of a residential facility or program for an
36 operating certificate, the office shall evaluate such facility's compli-
37 ance with plans of prevention and remediation developed and implemented
38 pursuant to this subdivision.

39 § 10. Section 31.30 of the mental hygiene law, as added by chapter 24
40 of the laws of 2007, is amended to read as follows:

41 § 31.30 ~~[Child abuse and maltreatment in residential care]~~ Abuse,
42 neglect, and significant incidents involving vulnerable
43 persons.

44 (a) The commissioner in consultation with the executive director of
45 the justice center for the protection of people with special needs,
46 shall promulgate regulations establishing standards for the protection
47 of ~~[children in residential]~~ service recipients in the care ~~[and~~
48 ~~maltreatment]~~ of facilities and provider agencies operated, licensed or
49 certified by the office from reportable incidents pursuant to article
50 eleven of the social services law, including procedures for:

51 1. ~~[reviewing and evaluating the backgrounds of and information~~
52 ~~supplied by any person applying to be an employee, a volunteer or~~
53 ~~consultant,]~~ consistent with appropriate collective bargaining agree-
54 ments and applicable provisions of the civil service law ~~[Such review~~
55 ~~and evaluation shall include, but not be limited to, the following~~
56 ~~requirements: that the applicant set forth his or her employment histo-~~

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1 ~~ry, provide personal and employment references and relevant experiential~~
2 ~~and educational information and, sign a sworn statement whether, to the~~
3 ~~best of his or her knowledge, he or she has ever been convicted of a~~
4 ~~crime in this state or any other jurisdiction], assisting the justice~~
5 ~~center for the protection of people with special needs with its review~~
6 ~~and evaluation of criminal background checks of prospective employees,~~
7 ~~as set forth in subdivision five of section five hundred fifty-three of~~
8 ~~the executive law;~~
9 2. establishing minimal experiential and educational qualifications
10 for employees that are consistent with appropriate collective bargaining
11 agreements and applicable provisions of the civil service law;
12 3. assuring adequate and appropriate supervision of employees, volun-
13 teers and consultants;
14 4. demonstrating that appropriate action is taken to assure the safety
15 of the ~~[child who is reported to the state central register]~~ service
16 recipient as well as other ~~[children]~~ persons in care, immediately upon
17 notification that a ~~[report of child abuse or maltreatment]~~ reportable
18 incident has been made ~~[with respect to a child's custodian in a resi-~~
19 ~~dential facility]~~ in accordance with article eleven of the social
20 services law;
21 4-a. consistent with applicable collective bargaining agreements
22 assuring that an individual who has committed a category one offense, as
23 defined in paragraph (a) of subdivision four of section four hundred
24 ninety-three of the social services law, that is included on the vulner-
25 able persons' central register is not hired or otherwise used in any
26 position in which such individual would have regular and substantial
27 contact with a service recipient in any program operated, licensed or
28 certified by the office;
29 5. removing a ~~[child]~~ service recipient when it is determined that
30 there is risk to such ~~[child]~~ person if he or she continues to remain in
31 a ~~[residential]~~ facility; and
32 6. taking appropriate preventive and remedial actions, including legal
33 action, consistent with appropriate collective bargaining agreements and
34 applicable provisions of the civil service law. ~~[Such]~~ The commissioner
35 shall adopt standards [shall also establish] as established by the
36 justice center for the protection of people with special needs, that:
37 (i) administrators, employees, volunteers and consultants receive
38 training in at least the following: ~~[child]~~ abuse prevention and iden-
39 tification, safety and security procedures, the principles of child
40 development, the characteristics of [children] persons in care and tech-
41 niques of group [and child] management including crisis intervention,
42 the laws, rules and regulations and procedures governing the protection
43 of [children] vulnerable persons from [abuse and maltreatment,] report-
44 able incidents and other appropriate topics; provided, however, that
45 [either] the office may exempt administrators and consultants from such
46 requirements upon demonstration of substantially equivalent knowledge or
47 experience; and
48 (ii) ~~[children]~~ service recipients receive instruction consistent with
49 their age, needs and circumstances as well as the needs and circum-
50 stances within the facility or program, in techniques and procedures
51 that will enable ~~[such children]~~ them to advocate and protect themselves
52 from [abuse and maltreatment] reportable incidents.
53 The commissioner, in consultation with the executive director of the
54 justice center for the protection of people with special needs, shall
55 take all reasonable and necessary actions to assure that employees,
56 volunteers or consultants in ~~[residential care]~~ facilities operated or

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1 ~~overseen by the office~~ are kept apprised on a current basis of all poli-
2 cies and procedures ~~[of the office]~~ relating to the protection of ~~[chil-~~
3 ~~dren from abuse and maltreatment]~~ vulnerable persons and shall monitor
4 and supervise the provision of training to such administrators, employ-
5 ees, volunteers, children and consultants. Standards developed pursuant
6 to this subdivision shall, to the extent possible, be consistent with
7 those promulgated by other state agencies for such purposes.

8 (b) The commissioner shall provide necessary assistance to the ~~[state~~
9 ~~commission on quality of care and advocacy for persons with disabili-~~
10 ~~ties]~~ justice center for the protection of people with special needs in
11 the conduct of investigations pursuant to ~~[section 45.07 of this chap-~~
12 ~~ter]~~ article eleven of the executive law, shall consider its recommenda-
13 tions for appropriate preventive and remedial action including legal
14 actions, and shall provide or direct a residential facility licensed or
15 operated by the office of mental health to provide written reports ther-
16 eon to such ~~[commission]~~ justice center as to the implementation of
17 plans of prevention and remediation.

18 (c) The commissioner shall provide for the development and implementa-
19 tion of a plan of prevention and remediation with respect to ~~[an indi-~~
20 ~~cated]~~ a substantiated report of [child abuse or maltreatment] a report-
21 able incident. Such action shall include:

22 1. within ten days of receipt of ~~[an indicated]~~ a substantiated report
23 of ~~[child abuse or maltreatment]~~ a reportable incident, development and
24 implementation of a plan of prevention and remediation to be taken ~~[with~~
25 ~~respect to a custodian or residential facility in order]~~ to assure the
26 continued health, safety, and ~~[safety]~~ welfare of ~~[children]~~ service
27 recipients and to provide for the prevention of future acts of ~~[abuse or~~
28 ~~maltreatment]~~ reportable incidents; and

29 2. development and implementation of a plan of prevention and remedi-
30 ation, in the event an investigation of a report of an alleged ~~[child~~
31 ~~abuse or maltreatment]~~ reportable incident determines that a ~~[such~~
32 ~~report [of child abuse or maltreatment is indicated] is substantiated~~
33 and such ~~[abuse or maltreatment]~~ reportable incident may be attributed
34 in whole or in part to noncompliance by the facility with provisions of
35 this chapter or regulations of the respective ~~[offices]~~ office applica-
36 ble to the operation of such ~~[residential]~~ facility. Any plan of
37 prevention and remediation required to be developed pursuant to this
38 subdivision by a facility supervised by ~~[either]~~ the office shall be
39 submitted to and approved by such office in accordance with time limits
40 established by rules and regulations of such office. Implementation of
41 the plan shall be monitored by such office or the justice center. In
42 reviewing the continued qualification of a residential facility or
43 program for an operating certificate, the office having supervisory
44 responsibilities shall evaluate such facility's compliance with plans of
45 prevention and remediation developed pursuant to this subdivision.

46 § 11. Subdivision (c) of section 33.02 of the mental hygiene law, as
47 amended by chapter 168 of the laws of 2010, is amended to read as
48 follows:

49 (c) The commissioners and the facility director shall ensure that a
50 notice of the rights included in regulations promulgated pursuant to
51 this section is posted in each ward or living area of every hospital
52 operated or licensed by the office of mental health and every develop-
53 mental center operated by the office for people with developmental disa-
54 bilities, and that such notice is provided to every individual resident
55 of any other residential facility or program operated or licensed by the
56 respective offices upon admission to such facility or program, upon

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1 limitation on any right, or at the individual's request. The notice
2 shall include the address and telephone numbers of the office of the
3 facility director or such person's designee responsible for receiving
4 questions or complaints, the board of visitors if applicable, the mental
5 hygiene legal service, the vulnerable persons' central register and the
6 ~~[commission on quality of care and advocacy for persons with disabili-~~
7 ~~ties]~~ justice center for the protection of people with special needs.

8 § 12. Section 33.06 of the mental hygiene law, as amended by chapter
9 37 of the laws of 2011, is amended to read as follows:

10 § 33.06 Reports of abuse ~~(or mistreatment)~~, neglect, and significant
11 incidents.

12 The executive director of the justice center for the protection of
13 people with special needs, in consultation with the commissioner of the
14 office of mental health, the commissioner of the office of alcoholism
15 and substance abuse services and the commissioner of the office for
16 people with developmental disabilities shall establish procedures or
17 mechanisms pursuant to article eleven of the social services law to
18 receive allegations or complaints of ~~[abuse or mistreatment of]~~ report-
19 able incidents involving individuals served by agencies and providers
20 licensed or operated by the offices, including receipt of anonymous
21 allegations or complaints. ~~[Such mechanisms shall include the operation~~
22 ~~of a toll-free number. Allegations or complaints received shall be eval-~~
23 ~~uated and, if necessary, referred for appropriate corrective action,~~
24 ~~consistent with laws, regulations and procedures established for the~~
25 ~~investigation, resolution and response to incident reports to ensure the~~
26 ~~care and safety of all patients. The inability of the person reporting~~
27 ~~the abuse to identify the alleged perpetrator shall, in no circumstance,~~
28 ~~constitute the sole cause to reject such allegation for investigation or~~
29 ~~fail to refer such allegation for corrective action. When an allegation~~
30 ~~of abuse or maltreatment of a child is made, the allegation shall be~~
31 ~~referred to the statewide central register of child abuse and maltreat-~~
32 ~~ment, established pursuant to section four hundred twenty-two of the~~
33 ~~social services law.]~~

34 § 13. Subdivision (a) of section 33.25 of the mental hygiene law, as
35 added by chapter 24 of the laws of 2007, is amended to read as follows:

36 (a) Records and documents pertaining to allegations and investigations
37 into ~~[patient abuse or mistreatment]~~ reportable incidents at a facility,
38 as defined in subdivision six of section 1.03 of this chapter, including
39 but not limited to all complaints and reports made pursuant to ~~[subdivi-~~
40 ~~sion (c) of section 45.07 and section 45.17 of this title]~~ article eleven
41 of the social services law, shall be released to a qualified person,
42 as defined in paragraph six of subdivision (a) of section 33.16 of this
43 article, upon a written request by such qualified person. Such records
44 and documents shall be made available by the appropriate office within
45 twenty-one days of the conclusion of its investigation, provided that
46 the names and other personally identifying information of other patients
47 and employees shall not be included unless such patients and employees
48 authorize disclosure.

49 § 14. This act shall take effect June 30, 2013.

50

PART D

51 Section 1. Paragraph (a) of subdivision 5 of section 20 of the social
52 services law, as amended by chapter 485 of the laws of 2006, is amended
53 to read as follows:

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1 (a) In the case of the death of a child whose care and custody or
 2 custody and guardianship has been transferred to an authorized agency,
 3 other than a vulnerable person as defined in article eleven of this
 4 chapter, or the death of a child for whom any local department of social
 5 services has an open child protective services or preventive services
 6 case, or in the case of a report made to the statewide central register
 7 of child abuse and maltreatment involving the death of a child, the
 8 office of children and family services shall (i) investigate or provide
 9 for an investigation of the cause of and circumstances surrounding such
 10 death, (ii) review such investigation, and (iii) prepare and issue a
 11 report on such death, except where a report is issued by an approved
 12 local or regional fatality review team in accordance with section four
 13 hundred twenty-two-b of this chapter.

14 § 2. Subdivision 5 of section 412 of the social services law, as
 15 amended by chapter 323 of the laws of 2008, is amended to read as
 16 follows:

17 5. "Other persons named in the report" shall mean and be limited to
 18 the following persons who are named in a report of child abuse or
 19 maltreatment other than the subject of the report: ~~{a}~~ the child who
 20 is reported to the statewide central register of child abuse and
 21 maltreatment; and such child's parent, guardian, or other person legally
 22 responsible for the child who has not been named in the report as
 23 allegedly responsible for causing injury, abuse or maltreatment to the
 24 child or as allegedly allowing such injury, abuse or maltreatment to be
 25 inflicted on such child; ~~or~~

26 ~~{b} other persons named in a report of an abused or neglected child in~~
 27 ~~residential care as defined in subdivision nine of section four hundred~~
 28 ~~twelve-a of this title;~~

29 § 2-a. Subdivisions 1, 2 and 4 of section 412 of the social services
 30 law, as amended by chapter 323 of the laws of 2008, are amended to read
 31 as follows:

32 1. An "abused child" means[+]

33 ~~{a}~~ a child under eighteen years of age ~~[not in "residential care,"~~
 34 ~~as defined in subdivision four of section four hundred twelve-a of this~~
 35 ~~title,~~ and who is defined as an abused child by the family court act[+]
 36 ~~or~~

37 ~~{b} a child under the age of eighteen years who is defined as an~~
 38 ~~abused child in residential care pursuant to subdivision one of section~~
 39 ~~four hundred twelve-a of this title];~~

40 2. A "maltreated child" includes[+]

41 ~~{a}~~ a child under eighteen years of age ~~[not in "residential care" as~~
 42 ~~defined in subdivision four of section four hundred twelve-a of this~~
 43 ~~title];~~

44 ~~{i}~~ (a) defined as a neglected child by the family court act, or

45 ~~{ii}~~ (b) who has had serious physical injury inflicted upon him or
 46 her by other than accidental means; ~~or~~

47 ~~{b} a child who is a neglected child in residential care as defined in~~
 48 ~~subdivision two of section four hundred twelve-a of this title;~~

49 4. "Subject of the report" means[+~~{a}~~] any parent of, guardian of, or
 50 other person eighteen years of age or older legally responsible for, as
 51 defined in subdivision (g) of section one thousand twelve of the family
 52 court act, a child reported to the statewide central register of child
 53 abuse and maltreatment who is allegedly responsible for causing injury,
 54 abuse or maltreatment to such child or who allegedly allows such injury,
 55 abuse or maltreatment to be inflicted on such child; or a director or an
 56 operator of, or employee or volunteer in, a home operated or supervised

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1 by an authorized agency, the office of children and family services, ~~(or~~
2 ~~an office of the department of mental hygiene]~~ or in a family day-care
3 home, a day-care center, a group family day care home, a school-age
4 child care program or a day-services program who is allegedly responsi-
5 ble for causing injury, abuse or maltreatment to a child who is reported
6 to the statewide central register of child abuse or maltreatment or who
7 allegedly allows such injury, abuse or maltreatment to be inflicted on
8 such child; ~~{or~~

9 ~~{b) a subject of a report of an abused or neglected child in residen-~~
10 ~~tial care as defined in subdivision eight of section four hundred~~
11 ~~twelve-a of this title;}~~

12 § 2-b. Section 412-a of the social services law is REPEALED.

13 § 3. Paragraphs (a) and (c) of subdivision 1 of section 413 of the
14 social services law, paragraph (a) as amended by chapter 91 of the laws
15 of 2011 and paragraph (c) as amended by chapter 366 of the laws of 2008,
16 are amended to read as follows:

17 (a) The following persons and officials are required to report or
18 cause a report to be made in accordance with this title when they have
19 reasonable cause to suspect that a child coming before them in their
20 professional or official capacity is an abused or maltreated child, or
21 when they have reasonable cause to suspect that a child is an abused or
22 maltreated child where the parent, guardian, custodian or other person
23 legally responsible for such child comes before them in their profes-
24 sional or official capacity and states from personal knowledge facts,
25 conditions or circumstances which, if correct, would render the child an
26 abused or maltreated child: any physician; registered physician assist-
27 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
28 osteopath; optometrist; chiropractor; podiatrist; resident; intern;
29 psychologist; registered nurse; social worker; emergency medical techni-
30 cian; licensed creative arts therapist; licensed marriage and family
31 therapist; licensed mental health counselor; licensed psychoanalyst;
32 hospital personnel engaged in the admission, examination, care or treat-
33 ment of persons; a Christian Science practitioner; school official,
34 which includes but is not limited to school teacher, school guidance
35 counselor, school psychologist, school social worker, school nurse,
36 school administrator or other school personnel required to hold a teach-
37 ing or administrative license or certificate; social services worker;
38 director of a children's overnight camp, summer day camp or traveling
39 summer day camp, as such camps are defined in section thirteen hundred
40 ninety-two of the public health law; day care center worker; school-age
41 child care worker; provider of family or group family day care; ~~[employ-~~
42 ~~ee or volunteer in a residential care facility defined in subdivision~~
43 ~~four of section four hundred twelve-a of this title]~~ or any other child
44 care or foster care worker; mental health professional; substance abuse
45 counselor; alcoholism counselor; all persons credentialed by the office
46 of alcoholism and substance abuse services; peace officer; police offi-
47 cer; district attorney or assistant district attorney; investigator
48 employed in the office of a district attorney; or other law enforcement
49 official.

50 (c) A medical or other public or private institution, school, facility
51 or agency shall not take any retaliatory personnel action, as such term
52 is defined in paragraph (e) of subdivision one of section seven hundred
53 forty of the labor law, against an employee because such employee
54 believes that he or she has reasonable cause to suspect that a child is
55 an abused or maltreated child and that employee therefore makes a report
56 in accordance with this title. No school, school official, child care

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1 provider, foster care provider, residential care facility provider,
2 hospital, medical institution provider or mental health facility provid-
3 er shall impose any conditions, including prior approval or prior
4 notification, upon a member of their staff specifically required to
5 report under this title. At the time of the making of a report, or at
6 any time thereafter, such person or official may exercise the right to
7 request, pursuant to paragraph (A) of subdivision four of section four
8 hundred twenty-two of this title, the findings of an investigation made
9 pursuant to this title ~~[or section 45.07 of the mental hygiene law]~~.

10 § 3-a. Section 415 of the social services law, as amended by chapter
11 323 of the laws of 2008, is amended to read as follows:

12 § 415. Reporting procedure. Reports of suspected child abuse or
13 maltreatment made pursuant to this title shall be made immediately by
14 telephone or by telephone facsimile machine on a form supplied by the
15 commissioner of the office of children and family services. Oral reports
16 shall be followed by a report in writing within forty-eight hours after
17 such oral report. Oral reports shall be made to the statewide central
18 register of child abuse and maltreatment unless the appropriate local
19 plan for the provision of child protective services provides that oral
20 reports should be made to the local child protective service. In those
21 localities in which oral reports are made initially to the local child
22 protective service, the child protective service shall immediately make
23 an oral or electronic report to the statewide central register. Written
24 reports shall be made to the appropriate local child protective service
25 except that written reports involving children ~~[in residential care, as~~
26 ~~defined in subdivision four of section four hundred twelve-a of this~~
27 ~~title, or]~~ being cared for in a home operated or supervised by an
28 authorized agency~~[,]~~ or the office of children and family services~~[, or~~
29 ~~an office of the department of mental hygiene,]~~ shall be made to the
30 statewide central register of child abuse and maltreatment which shall
31 transmit the reports to the agency responsible for investigating the
32 report, in accordance with ~~[paragraph (a) or (c) of subdivision eleven~~
33 ~~of section four hundred twenty-two or]~~ section four hundred
34 twenty-four-b of this title~~[, as applicable]~~. Written reports shall be
35 made in a manner prescribed and on forms supplied by the commissioner of
36 the office of children and family services and shall include the follow-
37 ing information: the names and addresses of the child and his or her
38 parents or other person responsible for his or her care, if known, and,
39 as the case may be, the name and address of the ~~[residential care facil-~~
40 ~~ity or]~~ program in which the child ~~[resides or]~~ is receiving care; the
41 child's age, sex and race; the nature and extent of the child's inju-
42 ries, abuse or maltreatment, including any evidence of prior injuries,
43 abuse or maltreatment to the child or, as the case may be, his or her
44 siblings; the name of the person or persons alleged to be responsible
45 for causing the injury, abuse or maltreatment, if known; family composi-
46 tion, where appropriate; the source of the report; the person making the
47 report and where he or she can be reached; the actions taken by the
48 reporting source, including the taking of photographs and x-rays,
49 removal or keeping of the child or notifying the medical examiner or
50 coroner; and any other information which the commissioner of the office
51 of children and family services may, by regulation, require, or the
52 person making the report believes might be helpful, in the furtherance
53 of the purposes of this title. Notwithstanding the privileges set forth
54 in article forty-five of the civil practice law and rules, and any other
55 provision of law to the contrary, mandated reporters who make a report
56 which initiates an investigation of an allegation of child abuse or

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1 maltreatment are required to comply with all requests for records made
2 by a child protective service relating to such report, including records
3 relating to diagnosis, prognosis or treatment, and clinical records, of
4 any patient or client that are essential for a full investigation of
5 allegations of child abuse or maltreatment pursuant to this title;
6 provided, however, that disclosure of substance abuse treatment records
7 shall be made pursuant to the standards and procedures for disclosure of
8 such records delineated in federal law. Written reports from persons or
9 officials required by this title to report shall be admissible in
10 evidence in any proceedings relating to child abuse or maltreatment.

11 § 4. Section 418 of the social services law, as amended by chapter 485
12 of the laws of 2006, is amended to read as follows:

13 § 418. Mandatory reporting to and post-mortem investigation of deaths
14 by medical examiner or coroner. Any person or official required to
15 report cases of suspected child abuse or maltreatment, including workers
16 of the local child protective service~~(, as well as an employee of or~~
17 ~~official of a state agency responsible for the investigation of a report~~
18 ~~of abuse or maltreatment of a child in residential care,~~) who has
19 reasonable cause to suspect that a child died as a result of child abuse
20 or maltreatment shall report that fact to the appropriate medical exam-
21 iner or coroner. The medical examiner or coroner shall accept the
22 report for investigation and shall issue a preliminary written report of
23 his or her finding within sixty days of the date of death, absent
24 extraordinary circumstances, and his or her final written report prompt-
25 ly, absent extraordinary circumstances, to the police, the appropriate
26 district attorney, the local child protective service, the office of
27 children and family services, and, if the institution making the report
28 is a hospital, the hospital. The office of children and family services
29 shall promptly provide a copy of the preliminary and final reports to
30 the statewide central register of child abuse and maltreatment.

31 § 5. The section heading, the opening paragraph and subdivision 1 of
32 section 421 of the social services law, the section heading and the
33 opening paragraph as amended by chapter 718 of the laws of 1986 and
34 subdivision 1 as amended by chapter 504 of the laws of 1988, are amended
35 to read as follows:

36 Responsibility of the ~~[department]~~ office. The ~~[department]~~ office
37 shall: 1. in conjunction with local departments, both jointly and indi-
38 vidually, within the appropriation available, conduct a continuing
39 publicity and education program for local department staff, persons and
40 officials required to report including district attorneys, assistant
41 district attorneys, police officers, peace officers, investigators
42 employed in the office of a district attorney, and any other appropriate
43 persons to encourage the fullest degree of reporting of suspected child
44 abuse or maltreatment. Such program shall be developed and implemented
45 in coordination with those established pursuant to section 31.06 of the
46 mental hygiene law, section twenty-eight hundred five-n of the public
47 health law, section thirty-two hundred nine-a of the education law
48 ~~[and]~~, sections two hundred fourteen-a and eight hundred forty of the
49 executive law and article eleven of this chapter. The program shall
50 include but not be limited to responsibilities, obligations and powers
51 under this title and chapter as well as the diagnosis of child abuse and
52 maltreatment, the procedures of the child protective service, the family
53 court and other duly authorized agencies and the prevention, treatment
54 and remediation of abuse and maltreatment of children in residential
55 care.

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1 § 6. Subparagraph (r) of paragraph (A) of subdivision 4 of section
2 422 of the social services law is REPEALED, and the opening paragraph,
3 subparagraph (j) and the first undesignated paragraph of paragraph (A)
4 of subdivision 4 of section 422 of the social services law, as amended
5 by chapter 12 of the laws of 1996, are amended to read as follows:

6 Reports made pursuant to this title as well as any other information
7 obtained, reports written or photographs taken concerning such reports
8 in the possession of the ~~[department,]~~ office or local departments~~[-or~~
9 ~~the commission on quality of care for the mentally disabled,]~~ shall be
10 confidential and shall only be made available to:

11 (j) ~~[the state commission on quality of care for the mentally disabled~~
12 ~~in connection with an investigation being conducted by the commission~~
13 ~~pursuant to article forty-five of the mental hygiene law]~~ the justice
14 center for the protection of people with special needs or a delegate
15 investigatory entity in connection with an investigation being conducted
16 under article eleven of this chapter;

17 After a child, other than a child in residential care, who is reported
18 to the central register of abuse or maltreatment reaches the age of
19 eighteen years, access to a child's record under subparagraphs (a) and
20 (b) of this paragraph shall be permitted only if a sibling or off-spring
21 of such child is before such person and is a suspected victim of child
22 abuse or maltreatment. In addition, a person or official required to
23 make a report of suspected child abuse or maltreatment pursuant to
24 section four hundred thirteen of this chapter shall receive, upon
25 request, the findings of an investigation made pursuant to this title
26 ~~[or section 45.07 of the mental hygiene law]~~. However, no information
27 may be released unless the person or official's identity is confirmed by
28 the ~~[department]~~ office. If the request for such information is made
29 prior to the completion of an investigation of a report, the released
30 information shall be limited to whether the report is "indicated",
31 "unfounded" or "under investigation", whichever the case may be. If the
32 request for such information is made after the completion of an investi-
33 gation of a report, the released information shall be limited to whether
34 the report is "indicated" or "unfounded", whichever the case may be. A
35 person given access to the names or other information identifying the
36 subjects of the report, or other persons named in the report, except the
37 subject of the report or other persons named in the report, shall not
38 divulge or make public such identifying information unless he or she is
39 a district attorney or other law enforcement official and the purpose is
40 to initiate court action or the disclosure is necessary in connection
41 with the investigation or prosecution of the subject of the report for a
42 crime alleged to have been committed by the subject against another
43 person named in the report. Nothing in this section shall be construed
44 to permit any release, disclosure or identification of the names or
45 identifying descriptions of persons who have reported suspected child
46 abuse or maltreatment to the statewide central register or the agency,
47 institution, organization, program or other entity where such persons
48 are employed or the agency, institution, organization or program with
49 which they are associated without such persons' written permission
50 except to persons, officials, and agencies enumerated in subparagraphs
51 (e), (f), (h), (j), (l), (m) and (v) of this paragraph.

52 § 7. The opening paragraph, subparagraph (iii) of paragraph (a) and
53 paragraph (b) of subdivision 5 and subdivision 6 of section 422 of the
54 social services law, the opening paragraph, subparagraph (iii) of para-
55 graph (a) and paragraph (b) of subdivision 5 as amended by chapter 555

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1 of the laws of 2000 and subdivision 6 as amended by chapter 323 of the
2 laws of 2008, are amended to read as follows:

3 Unless an investigation of a report conducted pursuant to this title
4 ~~[or subdivision (c) of section 45.07 of the mental hygiene law]~~ deter-
5 mines that there is some credible evidence of the alleged abuse or
6 maltreatment, all information identifying the subjects of the report and
7 other persons named in the report shall be legally sealed forthwith by
8 the central register and any local child protective services or the
9 state agency which investigated the report. Such unfounded reports may
10 only be unsealed and made available:

11 (iii) to a local child protective service, the office of children and
12 family services, or all members of a local or regional multidisciplinary
13 investigative team~~[, the commission on quality of care for the mentally~~
14 ~~disabled, or the department of mental hygiene,] or the justice center~~
15 for the protection of people with special needs when investigating a
16 subsequent report of suspected abuse, neglect or maltreatment involving
17 a subject of the unfounded report, a child named in the unfounded
18 report, or a child's sibling named in the unfounded report pursuant to
19 this article or article eleven of this chapter;

20 (b) Persons given access to unfounded reports pursuant to subparagraph
21 (v) of paragraph (a) of this subdivision shall not redisclose such
22 reports except as necessary to conduct such appropriate investigation or
23 prosecution and shall request of the court that any copies of such
24 reports produced in any court proceeding be redacted to remove the names
25 of the subjects and other persons named in the reports or that the court
26 issue an order protecting the names of the subjects and other persons
27 named in the reports from public disclosure. The local child protective
28 service or state agency shall not indicate the subsequent report solely
29 based upon the existence of the prior unfounded report or reports.
30 Notwithstanding section four hundred fifteen of this title, section one
31 thousand forty-six of the family court act, or, except as set forth
32 herein, any other provision of law to the contrary, an unfounded report
33 shall not be admissible in any judicial or administrative proceeding or
34 action; provided, however, an unfounded report may be introduced into
35 evidence: (i) by the subject of the report where such subject is a
36 respondent in a proceeding under article ten of the family court act or
37 is a plaintiff or petitioner in a civil action or proceeding alleging
38 the false reporting of child abuse or maltreatment; or (ii) in a crimi-
39 nal court for the purpose of prosecuting a violation of subdivision
40 ~~[three] four~~ of section ~~[240.55] 240.50~~ of the penal law. Legally sealed
41 unfounded reports shall be expunged ten years after the receipt of the
42 report. ~~[Whenever the office of children and family services determines~~
43 ~~that there is some credible evidence of abuse or maltreatment as a~~
44 ~~result of an investigation of a report conducted pursuant to subdivision~~
45 ~~(c) of section 45.07 of the mental hygiene law, the office of children~~
46 ~~and family services shall notify the commission on quality of care for~~
47 ~~the mentally disabled.]~~

48 6. In all other cases, the record of the report to the statewide
49 central register shall be expunged ten years after the eighteenth birth-
50 day of the youngest child named in the report. In the case of a child in
51 residential care ~~[as defined in subdivision four of section four hundred~~
52 ~~twelve-a of this title,]~~ the record of the report to the statewide
53 central register shall be expunged ten years after the reported child's
54 eighteenth birthday. In any case and at any time, the commissioner of
55 the office of children and family services may amend any record upon

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1 good cause shown and notice to the subjects of the report and other
2 persons named in the report.

3 § 7-a. Subdivisions 10 and 11 of section 422 of the social services
4 law are REPEALED, and subdivision 9 and 14, subdivision 9 as amended by
5 chapter 634 of the laws of 1988, subdivision 14 as added by chapter 477
6 of the laws of 1989, are amended to read as follows:

7 9. Written notice of any expungement or amendment of any record, made
8 pursuant to the provisions of this title, shall be served forthwith upon
9 each subject of such record, other persons named in the report, the
10 commissioner, and, as appropriate, the applicable local child protective
11 service, the ~~[commission on quality of care for the mentally disabled,~~
12 ~~the division for youth]~~ justice center for the protection of people
13 with special needs, department of education, office of mental health,
14 office ~~(of mental retardation and)~~ for people with developmental disa-
15 bilities, the local social services commissioner or school district
16 placing the child, any ~~[law guardian]~~ attorney for the child appointed
17 to represent the child whose appointment has been continued by a family
18 court judge during the term of a child's placement, and the director or
19 operator of a residential care facility or program. The local child
20 protective service or the state agency which investigated the report,
21 upon receipt of such notice, shall take the appropriate similar action
22 in regard to its child abuse and maltreatment register and records and
23 inform, for the same purpose, any other agency which received such
24 record.

25 14. The ~~[department]~~ office shall refer suspected cases of falsely
26 reporting child abuse and maltreatment in violation of subdivision
27 ~~[three]~~ four of section ~~[240-55]~~ 240.50 of the penal law to the appro-
28 priate law enforcement agency or district attorney.

29 § 7-b. Subdivision 1 of section 422-b of the social services law, as
30 amended by chapter 485 of the laws of 2006, is amended to read as
31 follows:

32 1. A fatality review team may be established at a local or regional
33 level, with the approval of the office of children and family services,
34 for the purpose of investigating the death of any child whose care and
35 custody or custody and guardianship has been transferred to an author-
36 ized agency, other than a vulnerable child as defined in article eleven
37 of this chapter, any child for whom child protective services has an
38 open case, any child for whom the local department of social services
39 has an open preventive services case, and in the case of a report made
40 to the statewide central register of child abuse and maltreatment
41 involving the death of a child. A fatality review team may also investi-
42 gate any unexplained or unexpected death of any child under the age of
43 eighteen.

44 § 7-c. Subdivision 8 of section 424 of the social services law, as
45 amended by chapter 477 of the laws of 1989, is amended to read as
46 follows:

47 8. refer suspected cases of falsely reporting child abuse and
48 maltreatment in violation of subdivision ~~[three]~~ four of section
49 ~~[240-55]~~ 240.50 of the penal law to the appropriate law enforcement
50 agency or district attorney;

51 § 8. Subdivisions 3, 4, 5 and 6 of section 424-a of the social
52 services law, subdivision 3 as amended by chapter 578 of the laws of
53 1997, subdivision 4 as amended by chapter 465 of the laws of 1992,
54 subdivision 5 as added by chapter 677 of the laws of 1985, paragraph (a)
55 of subdivision 5 as amended by chapter 634 of the laws of 1988 and

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1 subdivision 6 as amended by chapter 587 of the laws of 1997, are amended
2 and a new subdivision 7 is added to read as follows:

3 3. For purposes of this ~~[chapter]~~ section, the term "provider" or
4 "provider agency" shall mean an authorized agency, the ~~[division for~~
5 youth] office of children and family services, juvenile detention facil-
6 ities subject to the certification of such ~~[division]~~ office, programs
7 established pursuant to article nineteen-H of the executive law, non-re-
8 sidential or residential programs or facilities licensed or operated by
9 the office of mental health or the office ~~[of mental retardation and]~~
10 for people with developmental disabilities except family care homes,
11 licensed child day care centers, including head start programs which are
12 funded pursuant to title V of the federal economic opportunity act of
13 nineteen hundred sixty-four, as amended, early intervention service
14 established pursuant to section twenty-five hundred forty of the public
15 health law, preschool services established pursuant to section forty-
16 four hundred ten of the education law, school-age child care programs,
17 special act school districts as enumerated in chapter five hundred
18 sixty-six of the laws of nineteen hundred sixty-seven, as amended,
19 programs and facilities licensed by the office of alcoholism and
20 substance abuse services ~~[and]~~, residential schools which are operated,
21 supervised or approved by the education department, and any other facil-
22 ity or provider agency, as defined in subdivision four of section four
23 hundred eighty-eight of this chapter, in regard to the employment of
24 staff, or use of providers of goods and services and staff of such
25 providers, consultants, interns and volunteers.

26 4. For purposes of this ~~[chapter]~~ section, the term "licensing agency"
27 shall mean an authorized agency which has received an application to
28 become an adoptive parent or an authorized agency which has received an
29 application for a certificate or license to receive, board or keep any
30 child pursuant to the provisions of section three hundred seventy-six or
31 three hundred seventy-seven of this article or an authorized agency
32 which has received an application from a relative within the second
33 degree or third degree of consanguinity of the parent of a child or a
34 relative within the second degree or third degree of consanguinity of
35 the step-parent of a child or children, or the child's legal guardian
36 for approval to receive, board or keep such child or a state or local
37 governmental agency which receives an application to provide child day
38 care services in a child day care center, school-age child care program,
39 family day care home or group family day care home pursuant to the
40 provisions of section three hundred ninety of this article, or the
41 department of health and mental hygiene of the city of New York, when
42 such department receives an application for a certificate of approval to
43 provide ~~[family]~~ child day care services in a child day care center
44 pursuant to the provisions of the health code of the city of New York,
45 or the office of mental health or the office ~~[of mental retardation and]~~
46 for people with developmental disabilities when such office receives an
47 application for an operating certificate pursuant to the provisions of
48 the mental hygiene law to operate a family care home which will serve
49 children, or a state or local governmental official who receives an
50 application for a permit to operate a camp which is subject to the
51 provisions of article thirteen-A~~[7]~~ or thirteen-B ~~[or thirteen-G]~~ of the
52 public health law or the ~~[division for youth]~~ office of children and
53 family services which has received an application for a certificate to
54 receive, board or keep any child at a foster family home pursuant to
55 articles nineteen-G and nineteen-H of the executive law or any other
56 facility or provider agency, as defined in subdivision four of section

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1 four hundred eighty-eight of this chapter, in regard to any licensing or
2 certification function carried out by such facility or agency.

3 5. (a) The ~~[department]~~ office of children and family services, after
4 consultation with the ~~[division for youth, the department of mental~~
5 ~~hygiene, the commission on quality of care for the mentally disabled]~~
6 justice center for the protection of people with special needs, the
7 office of mental health, the office for people with developmental disa-
8 bilities, the office of alcoholism and substance abuse services, the
9 department of health, and the state education department shall develop
10 ~~[guidelines]~~ guidelines to be utilized by a provider agency, as defined
11 by subdivision three of this section, and a licensing agency, as defined
12 by subdivision four of this section, in evaluating persons about whom
13 inquiries are made to the ~~[department]~~ office pursuant to this section
14 who are the subjects of indicated reports of child abuse and maltreat-
15 ment, as defined by subdivision four of section four hundred twelve of
16 this chapter.

17 (b) The guidelines developed pursuant to subdivision one of this
18 section shall not ~~[supersede]~~ supersede similar guidelines developed by
19 local governmental agencies prior to January first, nineteen hundred
20 eighty-six.

21 6. A child care resource and referral program as defined in subdivi-
22 sion two of section four hundred ten-p of this article may inquire of
23 the ~~[department]~~ office of children and family services and the ~~[depart-~~
24 ~~ment]~~ office shall, upon receipt of such inquiry and subject to the
25 provisions of paragraph (e) of subdivision one of this section, inform
26 such program and the subject of such inquiry whether any person who has
27 requested and agreed to be included in a list of substitute child day
28 care caregivers for employment by registered or licensed day care
29 providers maintained by such program in accordance with regulations
30 promulgated by the ~~[department]~~ office, is the subject of an indicated
31 child abuse and maltreatment report on file with the statewide central
32 register of child abuse and maltreatment. Inquiries made to the ~~[depart-~~
33 ~~ment]~~ office by such programs pursuant to this subdivision shall be made
34 no more often than once in any six month period and no less often than
35 once in any twelve month period. Notwithstanding any provision of law to
36 the contrary, a child care resource and referral program may redisclose
37 such information only if the purpose of such redisclosure is to respond
38 to a request for such information by a registered or licensed provider
39 and only if after an individual included in the list of substitute child
40 day care caregivers for employment by registered or licensed day care
41 providers has consented to be referred for employment to such inquiring
42 agency. Upon such referral, the provisions related to notice and fair
43 hearing rights of this section shall otherwise apply. Inquiries made
44 pursuant to this subdivision shall be in lieu of the inquiry require-
45 ments set forth in paragraph (b) of subdivision one of this section.

46 7. Any facility, provider agency, or program that is required to
47 conduct an inquiry pursuant to section four hundred ninety-five of this
48 chapter shall first conduct the inquiry required under such section. If
49 the result of the inquiry under section four hundred ninety-five of this
50 chapter is that the person about whom the inquiry is made is on the
51 register of substantiated category one cases of abuse or neglect and the
52 facility or provider agency is required to deny the application in
53 accordance with article eleven of this chapter, the facility or provider
54 agency shall not be required to make an inquiry of the office under this
55 section.

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1 § 8-a. Paragraph (b) and subparagraph (iv) of paragraph (e) of subdivi-
2 vision 1 and paragraph (a) of subdivision 2 of section 424-a of the
3 social services law, paragraph (b) of subdivision 1 as amended by chap-
4 ter 677 of the laws of 1985, subparagraph (i) of paragraph (b) of subdivi-
5 vision 1 as amended by chapter 260 of the laws of 1991, subparagraph
6 (iv) of paragraph (e) of subdivision 1 as amended by chapter 323 of the
7 laws of 2008, and paragraph (a) of subdivision 2 as amended by chapter
8 441 of the laws of 1993, are amended to read as follows:

9 (b) (i) [A] Subject to the provisions of subdivision seven of this
10 section, a provider agency shall inquire of the [department] office and
11 the [department] office shall, subject to the provisions of paragraph
12 (e) of this subdivision, inform such agency and the subject of the
13 inquiry whether any person who is actively being considered for employ-
14 ment and who will have the potential for regular and substantial contact
15 with [children] individuals who are cared for by the agency, is the
16 subject of an indicated child abuse and maltreatment report on file with
17 the statewide central register of child abuse and maltreatment prior to
18 permitting such person to have unsupervised contact with [children] such
19 individuals. Such agency may inquire of the [department] office and the
20 [department] office shall inform such agency and the subject of the
21 inquiry whether any person who is currently employed and who has the
22 potential for regular and substantial contact with [children] individ-
23 uals who are cared for by such agency is the subject of an indicated
24 child abuse and maltreatment report on file with the statewide central
25 register of child abuse and maltreatment. A provider agency shall also
26 inquire of the [department] office and the [department] office shall
27 inform such agency and the subject of the inquiry whether any person who
28 is employed by an individual, corporation, partnership or association
29 which provides goods or services to such agency who has the potential
30 for regular and substantial contact with [children] individuals who are
31 cared for by the agency, is the subject of an indicated child abuse and
32 maltreatment report on file with the statewide central register of child
33 abuse and maltreatment prior to permitting such person to have unsuper-
34 vised contact with [children] such individuals. Inquiries made to the
35 [department] office pursuant to this subparagraph by a provider agency
36 on current employees shall be made no more often than once in any six
37 month period.

38 (ii) A provider agency may inquire of the [department] office and the
39 [department] office shall, upon receipt of such inquiry and subject to
40 the provisions of paragraph (e) of this subdivision, inform such agency
41 and the subject of the inquiry whether any person who is to be hired as
42 a consultant by such agency who has the potential for regular and
43 substantial contact with [children] individuals who are cared for by the
44 agency is the subject of an indicated child abuse and maltreatment
45 report on file with the statewide central register of child abuse and
46 maltreatment.

47 (iii) A provider agency may inquire of the [department] office and the
48 [department] office shall, upon receipt of such inquiry and subject to
49 the provisions of paragraph (e) of this subdivision, inform such agency
50 and the subject of the inquiry whether any person who has volunteered
51 his or her services to such agency and who will have the potential for
52 regular and substantial contact with [children] individuals who are
53 cared for by the agency, is the subject of an indicated child abuse and
54 maltreatment report on file with the statewide central register of child
55 abuse and maltreatment.

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1 (iv) The ~~[department]~~ office shall promulgate regulations which effec-
2 tuate the provisions of this paragraph.

3 (iv) If it is determined after a review by the office ~~[of children and~~
4 ~~family services]~~ of all records, reports and information in its
5 possession concerning the subject of the report that there is a ~~[fair]~~
6 preponderance of the evidence to find that the subject committed the act
7 or acts of child abuse or ~~[neglect]~~ maltreatment giving rise to the
8 indicated report, the office ~~[of children and family services]~~ shall
9 also determine whether such act or acts are relevant and reasonably
10 related to issues concerning the employment of the subject by a provider
11 agency or the subject being allowed to have regular and substantial
12 contact with ~~[children]~~ individuals cared for by a provider agency or
13 the approval or disapproval of an application which has been submitted
14 by the subject to a licensing agency, based on guidelines developed
15 pursuant to subdivision five of this section. If it is determined that
16 such act or acts are not relevant and related to such issues, the office
17 ~~[of children and family services]~~ shall be precluded from informing the
18 provider or licensing agency which made the inquiry to the office ~~[of~~
19 ~~children and family services]~~ pursuant to this section that the person
20 about whom the inquiry is made is the subject of an indicated report of
21 child abuse or maltreatment.

22 (a) Upon notification by the ~~[department]~~ office or by a child care
23 resource and referral program in accordance with subdivision six of this
24 section that any person who has applied to a licensing agency for a
25 license, certificate or permit or who seeks to become an employee of a
26 provider agency, or to accept a child for adoptive placement or who will
27 be hired as a consultant or used as a volunteer by a provider agency, or
28 that any other person about whom an inquiry is made to the ~~[department]~~
29 office pursuant to the provisions of this section is the subject of an
30 indicated report, the licensing or provider agency shall determine on
31 the basis of information it has available whether to approve such appli-
32 cation or retain the employee or hire the consultant or use the volun-
33 teer or permit an employee of another person, corporation, partnership
34 or association to have access to the ~~[children]~~ individuals cared for by
35 the provider agency, provided, however, that if such application is
36 approved, or such employee is retained or consultant hired or volunteer
37 used or person permitted to have access to the children cared for by
38 such agency the licensing or provider agency shall maintain a written
39 record, as part of the application file or employment record, of the
40 specific reasons why such person was determined to be appropriate to
41 receive a foster care or adoption placement or to provide day care
42 services, to be the director of a camp subject to the provisions of
43 article thirteen-A~~[7]~~ or thirteen-B ~~[or thirteen-G]~~ of the public health
44 law, to be employed, to be retained as an employee, to be hired as a
45 consultant, used as a volunteer or to have access to the ~~[children]~~
46 individuals cared for by the agency.

47 § 9. Section 424-b of the social services law, as amended by chapter
48 323 of the laws of 2008, is amended to read as follows:

49 § 424-b. Children in the care of certain public and private agencies.
50 Notwithstanding any inconsistent provisions of law, when a report of
51 child abuse or maltreatment involves a child being cared for in a home
52 operated or supervised by an authorized agency~~[7]~~ or the office of chil-
53 dren and family services, ~~[or an office of the department of mental~~
54 ~~hygiene]~~ such report shall be accepted and maintained by the office of
55 children and family services and shall be referred for the purposes of
56 conducting an investigation to the appropriate staff within the office

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1 of children and family services [~~or the appropriate office of the~~
2 ~~department of mental hygiene,~~] where the child is in the care of such
3 agency; and where the child is in a home operated or supervised by an
4 authorized agency, to the social services district wherein such home is
5 located. The [agency] office or social services district receiving such
6 referral shall undertake an appropriate investigation of the report, in
7 accordance with the terms and conditions set forth in [~~subdivisions one~~
8 ~~through eight of section four hundred twenty-four e of~~] this title. Any
9 person who is alleged to have abused or maltreated a child in a report
10 accepted and referred pursuant to this section shall be accorded the
11 procedural rights set forth in section four hundred twenty-two and in
12 subdivision six of section four hundred twenty-four of this title. Noth-
13 ing in this section shall impose any duty or responsibility on any child
14 protective service pursuant to section four hundred twenty-two, four
15 hundred twenty-four or any other provision of this article.

16 § 9-a. Sections 424-c and 424-d of the social services law are
17 REPEALED.

18 § 10. Subdivision 1 of section 425 of the social services law, as
19 amended by chapter 634 of the laws of 1988, is amended to read as
20 follows:

21 1. To effectuate the purposes of this title, the commissioner may
22 request and shall receive from departments, boards, bureaus, or other
23 agencies of the state, or any of its political subdivisions, or any duly
24 authorized agency, or any other agency providing services under the
25 local child protective services plan such assistance and data as will
26 enable the department and local child protective services to fulfill
27 their responsibilities properly. [~~In relation to an investigation of a~~
28 ~~report of abuse or maltreatment involving a child in residential care,~~
29 ~~such data may include, but need not be limited to, the case records of~~
30 ~~the child who allegedly was abused or maltreated and any other child who~~
31 ~~allegedly witnessed the abuse or maltreatment and, consistent with~~
32 ~~appropriate selective bargaining agreements and applicable provisions~~
33 ~~of the civil service law, those portions of the employment record of the~~
34 ~~subject of the report considered by the subject's employer to be rele-~~
35 ~~vant and reasonably related to the allegations being investigated by the~~
36 ~~department.] Nothing contained in this subdivision shall limit the~~
37 department's authority under sections three hundred seventy-two, four
38 hundred sixty-c and four hundred sixty-e of this chapter to access the
39 records of authorized agencies.

40 § 11. Section 426 of the social services law, as amended by chapter
41 676 of the laws of 1985, is amended to read as follows:

42 § 426. Annual reports. The commissioner shall prepare for inclusion in
43 the annual report required by subdivision (d) of section seventeen of
44 this chapter to be filed with the governor and the legislature prior to
45 December fifteenth of each year, a report on the operations of the state
46 central register of child abuse and maltreatment and the various local
47 child protective services. The report shall include a full statistical
48 analysis of the reports made to the central register together with a
49 report on the implementation of this title, his or her evaluation of
50 services offered under this chapter and his or her recommendations for
51 additional legislation to fulfill the purposes of this title. Such
52 report shall indicate the number of child abuse and maltreatment reports
53 and cases received by the statewide central register of child abuse and
54 maltreatment by each district in the preceding year, the number of such
55 cases determined to have been indicated and the number of such cases
56 determined to be unfounded by each district in the preceding year, the

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1 number of such cases which have not been indicated or unfounded within
2 the time period required by subdivision seven of section four hundred
3 twenty-four of this ~~[chapter]~~ article by each district in the preceding
4 year and the number of workers assigned to the child protective service
5 in each district in the preceding year. ~~[The report shall also contain~~
6 ~~data on the protection of children in residential care from abuse and~~
7 ~~maltreatment, including reports received, results of investigations by~~
8 ~~types of facilities and programs, types of corrective action taken, as~~
9 ~~well as efforts undertaken by the department, the division for youth~~
10 ~~and the state education department to provide training pursuant to stan-~~
11 ~~dards established by section four hundred sixty-two of this chapter,~~
12 ~~section five hundred one of the executive law and sections forty-four~~
13 ~~hundred three, forty-three hundred fourteen, forty-three hundred fifty-~~
14 ~~eight and forty-two hundred twelve of the education law.]~~

15 § 11-a. Section 426 of the social services law, as amended by chapter
16 377 of the laws of 2011, is amended to read as follows:

17 § 426. Annual reports. The commissioner shall prepare for inclusion in
18 the annual report required by subdivision (d) of section seventeen of
19 this chapter to be filed with the governor and the legislature prior to
20 December fifteenth of each year, a report on the operations of the state
21 central register of child abuse and maltreatment and the various local
22 child protective services. The report shall include a full statistical
23 analysis of the reports made to the central register together with a
24 report on the implementation of this title, his or her evaluation of
25 services offered under this chapter and his or her recommendations for
26 additional legislation to fulfill the purposes of this title. Such
27 report shall indicate the number of child abuse and maltreatment reports
28 and cases received by the statewide central register of child abuse and
29 maltreatment by each district in the preceding year, the number of such
30 cases determined to have been indicated and the number of such cases
31 determined to be unfounded by each district in the preceding year, the
32 number of such cases which have not been indicated or unfounded within
33 the time period required by subdivision seven of section four hundred
34 twenty-four of this ~~[chapter]~~ article by each district in the preceding
35 year and the number of workers assigned to the child protective service
36 in each district in the preceding year. Such report shall include, among
37 other information, available demographic information and available
38 information concerning the racial and ethnic characteristics of the
39 family members and persons served by the differential response program
40 pursuant to section four hundred twenty-seven-a of the social services
41 law, as well as available information concerning the racial and ethnic
42 characteristics of the family members and persons serviced under the
43 traditional child protective services program, in each local social
44 services district in the state. ~~[The report shall also contain data on~~
45 ~~the protection of children in residential care from abuse and maltreat-~~
46 ~~ment, including reports received, results of investigations by types of~~
47 ~~facilities and programs, types of corrective action taken, as well as~~
48 ~~efforts undertaken by the department, the division for youth and the~~
49 ~~state education department to provide training pursuant to standards~~
50 ~~established by section four hundred sixty-two of this chapter, section~~
51 ~~five hundred one of the executive law and sections forty-four hundred~~
52 ~~three, forty-three hundred fourteen, forty-three hundred fifty-eight and~~
53 ~~forty-two hundred twelve of the education law.]~~

54 § 12. Section 460 of the social services law, as added by chapter 669
55 of the laws of 1977, is amended to read as follows:

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1 § 460. Declaration of policy and statement of purpose. Residential
2 care programs for adults and children of the highest quality, efficient-
3 ly produced and properly utilized at a reasonable cost, are a matter of
4 vital concern to the people of this state. In order to more effectively
5 protect and assure the life, health, safety and comfort of adults and
6 children who must be cared for away from their own homes, the department
7 of social services acting directly or through social services districts,
8 and with the cooperation of other state agencies, shall have the compre-
9 hensive responsibility for the development and administration of
10 programs, standards and methods of operation, and all other matters of
11 state policy, with respect to residential care programs for children and
12 adults and all facilities and agencies, whether public or private, which
13 are subject to the provisions of this article. For the purposes of this
14 article, with respect to residential care programs for children, the
15 term "department" shall mean the office of children and family services
16 and with respect to residential care programs for adults, the term shall
17 mean the office of children and family services in relation to family
18 type homes for adults and residential programs for victims of domestic
19 violence, the office of temporary and disability assistance in relation
20 to shelters for adults and shelters for families; and the department of
21 health in relation to all other residential care programs for adults.

22 § 13. Subdivision 2-a of section 460-c of the social services law, as
23 amended by chapter 32 of the laws of 1992 and paragraphs (a) and (b) as
24 amended by chapter 323 of the laws of 2008, is amended to read as
25 follows:

26 2-a. Special procedures relating to abuse and neglect of ~~[children in~~
27 ~~residential care]~~ vulnerable persons. (a) If the report of an investi-
28 gation of ~~[child]~~ abuse or ~~[maltreatment]~~ neglect is ~~[indicated]~~
29 substantiated in accordance with article eleven of this chapter, the
30 director or operator of a residential facility or program ~~[, including a~~
31 ~~program described in paragraph (j) of subdivision four of section four~~
32 ~~hundred twelve a of this chapter,]~~ shall submit to the ~~[office of chil-~~
33 ~~dren and family services]~~ department, within ten business days of
34 receipt of notice of the ~~[indicated]~~ substantiated report, a written
35 plan of prevention and remediation to be taken with respect to the
36 subject of ~~[the indicated]~~ such report to ~~[assure]~~ protect the continued
37 health ~~[and]~~ safety and welfare of ~~[children]~~ the service recipients
38 and provide for the prevention of future acts of abuse or ~~[maltreatment]~~
39 neglect. The ~~[office of children and family services]~~ department shall
40 approve or disapprove such plan and specify necessary revisions within
41 ten days of its receipt and shall monitor its implementation pursuant to
42 the provisions of this chapter.

43 (b) In the event an investigation of a report of alleged ~~[child]~~ abuse
44 or ~~[maltreatment]~~ neglect determines that ~~[some credible]~~ a preponder-
45 ance of evidence of abuse or ~~[maltreatment]~~ neglect exists and such
46 abuse or ~~[maltreatment]~~ neglect may be attributed in whole or in part to
47 noncompliance by the facility or program ~~[, including a program described~~
48 ~~in paragraph (j) of subdivision four of section four hundred twelve a of~~
49 ~~this chapter,]~~ with provisions of this chapter or regulations of the
50 ~~[office of children and family services]~~ department applicable to the
51 operation of such residential facility or program, the director or oper-
52 ator of such facility or program shall, in consultation with officials
53 of the department responsible for the approval of operating certificates
54 and for monitoring the provision of protective services to ~~[children]~~
55 service recipients, develop a plan of prevention and remediation which
56 shall be submitted to and approved by the ~~[office of children and family~~

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1 ~~services~~] department in accordance with time limits established by regu-
2 lations of the ~~[office of children and family services]~~ department.
3 Implementation of such plan shall be jointly monitored by officials of
4 the ~~[office of children and family services]~~ department responsible for
5 the approval of operating certificates and for monitoring the provision
6 of protective services to ~~[children]~~ service recipients. In reviewing
7 the continuing qualification of a residential ~~[child care]~~ facility or
8 program for an operating certificate, the ~~[office of children and family~~
9 ~~services]~~ department shall evaluate such facility's or program's compli-
10 ance with plans of prevention and remediation developed and implemented
11 pursuant to this section.

12 (c) Development and implementation of plans pursuant to this section
13 shall, to the extent possible, be coordinated with remediation plans
14 required by local social services districts.

15 § 14. Section 461-m of the social services law, as amended by chapter
16 462 of the laws of 1996, is amended to read as follows:

17 § 461-m. Death and felony crime reporting. The operator of an adult
18 home or residence for adults shall have an affirmative duty to report
19 any death, or attempted suicide of a resident to the department within
20 twenty-four hours of its occurrence, and shall also have an affirmative
21 duty to report to an appropriate law enforcement authority if it is
22 believed that a felony crime may have been committed against a resident
23 of such facility as soon as possible, or in any event within forty-eight
24 hours. In addition, the operator shall send any reports involving a
25 resident who had at any time received services from a mental hygiene
26 service provider to the ~~[state commission on quality of care for the~~
27 ~~mentally disabled]~~ justice center for the protection of people with
28 special needs.

29 § 15. Section 461-o of the social services law, as added by chapter
30 462 of the laws of 1996, is amended to read as follows:

31 § 461-o. Complaint investigation procedures. The department shall
32 establish procedures governing the receipt and investigation of
33 complaints regarding the care afforded to residents of adult care facil-
34 ities consistent with article eleven of this chapter, as applicable.
35 Such procedures shall assure the confidentiality of the complainant.
36 Such procedures shall include but not be limited to the procedures for
37 reporting complaints, either in writing or orally to the department, and
38 the time frames governing the investigation of any such complaints
39 submitted to the department. Provided however, if any complaint alleges
40 the abuse or neglect of a resident or involves an incident that exposes
41 a resident to cruel or unsafe care or otherwise represents a serious
42 resident care issue, the department shall ensure that an investigation
43 of any such complaint is initiated immediately and in no event commenced
44 less than seventy-two hours from the time such complaint is received by
45 the department. Upon the conclusion of the investigation by the depart-
46 ment the operator and the complainant shall be notified in writing of
47 the results of such investigation or, as applicable, pursuant to article
48 eleven of this chapter.

49 § 16. Section 462 of the social services law, as added by chapter 669
50 of the laws of 1977, subdivision 1 as amended by chapter 677 of the laws
51 of 1985, paragraphs (b) and (c) of subdivision 1 as amended by chapter
52 32 of the laws of 1992, paragraph (f) of subdivision 1 as added by chap-
53 ter 472 of the laws of 2004, paragraph (a) of subdivision 2 as amended
54 by chapter 800 of the laws of 1985 and paragraph (b) of subdivision 2 as
55 amended by chapter 558 of the laws of 1999, is amended to read as
56 follows:

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1 § 462. Responsibility for standards. 1. (a) The ~~[department of social~~
2 ~~services]~~ office of children and family services shall promulgate regu-
3 lations concerning standards of care and treatment and fiscal, adminis-
4 trative, nutritional, architectural and safety standards, consistent
5 with the provisions of section three hundred ninety-eight-a of this
6 chapter, which shall apply to all facilities exercising care or custody
7 of children or providing care or shelter to unmarried mothers.

8 (b) With respect to facilities exercising care or custody of children,
9 no license or operating certificate shall be provided or renewed unless
10 it can be demonstrated that such facilities comply with regulations for
11 the prevention and remediation of ~~[abuse and maltreatment of]~~ reportable
12 incidents involving children in such facilities, including procedures
13 for:

14 (i) consistent with appropriate collective bargaining agreements and
15 applicable provisions of the civil service law, ~~[the review and evalu-~~
16 ~~ation of the backgrounds of and the information supplied by any person~~
17 ~~applying to be an employee, a volunteer or consultant, which shall~~
18 ~~include but not be limited to the following requirements: that the~~
19 ~~applicant set forth his or her employment history, provide personal and~~
20 ~~employment references, relevant experiential and educational information~~
21 ~~and sign a sworn statement indicating whether the applicant to the best~~
22 ~~of his or her knowledge, has ever been convicted of a crime in this~~
23 ~~state or any other jurisdiction]~~ assisting the justice center for the
24 protection of people with special needs with its review and evaluation
25 of criminal background checks of prospective employees, as set forth in
26 subdivision five of section five hundred fifty-three of the executive
27 law;

28 (ii) establishing, for employees, relevant minimal experiential and
29 educational qualifications consistent with appropriate collective
30 bargaining agreements and applicable provisions of the civil service
31 law;

32 (iii) assuring adequate and appropriate supervision of employees,
33 volunteers and consultants;

34 (iv) demonstrating by a residential facility or program that appropri-
35 ate action is taken to assure the safety of the child who is reported
36 pursuant to article eleven of this chapter to the ~~[state]~~ vulnerable
37 persons' central register [of child abuse and maltreatment] as well as
38 other children in care, immediately upon notification that a report of
39 ~~[child abuse or maltreatment]~~ a reportable incident has been made with
40 respect to a child in such facility or program;

41 (v) consistent with applicable collective bargaining agreements,
42 assuring that an individual who has committed a category one offense, as
43 defined in paragraph (a) of subdivision five of section four hundred
44 ninety-three of this chapter, that is included on the vulnerable
45 persons' central register is not hired or otherwise used in any position
46 in which such individual would have regular and substantial contact with
47 a service recipient in any program operated, licensed or certified by
48 the office;

49 (vi) removing a child, consistent as applicable with any court order
50 placing the child, when it is determined that there is risk to such
51 child if he or she continues to remain within a facility or program;

52 ~~[(vi)]~~ (vii) appropriate preventive and remedial action to be taken
53 including legal actions, consistent with appropriate collective bargain-
54 ing agreements and applicable provisions of the civil service law.

55 (c) With respect to facilities exercising care or custody of children
56 such standards shall establish as a priority that:

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1 (i) subject to the amounts appropriated therefor, administrators,
2 employees, volunteers and consultants receive training in at least the
3 following: child abuse prevention and identification, safety and securi-
4 ty procedures, the principles of child development, the characteristics
5 of children in care and techniques of group and child management includ-
6 ing crisis intervention, the laws, regulations and procedures governing
7 the protection of children from abuse and ~~[maltreatment]~~ neglect, and
8 other appropriate topics, provided however, that the ~~[department]~~ office
9 may exempt administrators and consultants of such facilities or programs
10 from such requirements upon demonstration of substantially equivalent
11 knowledge or experience; and

12 (ii) subject to the amounts appropriated therefor, children receive
13 instruction, consistent with their age, needs and circumstances as well
14 as the needs and circumstances within the facility or program, in tech-
15 niques and procedures which will enable such children to advocate for
16 and protect themselves from ~~[abuse and maltreatment]~~ reportable inci-
17 dents; and

18 (iii) the ~~[department]~~ office, in consultation with the executive
19 director of the justice center for persons with special needs, shall
20 take all reasonable and necessary actions to assure that employees,
21 volunteers and consultants in residential care facilities and programs
22 are kept apprised on a current basis of all ~~[department]~~ office policies
23 and procedures relating to the protection of children from ~~[abuse and~~
24 ~~maltreatment]~~ reportable incidents, and shall monitor and supervise the
25 provision of training to such administrators, employees, volunteers,
26 children and consultants.

27 (d) Such regulations shall be developed in consultation with other
28 state departments and agencies responsible for human services programs
29 including, but not limited to, the department of education, the depart-
30 ment of health, ~~[the department of mental hygiene, the division for~~
31 ~~youth and the board of social welfare,]~~ the office of mental health, the
32 office for people with developmental disabilities, the office of alco-
33 holism and substance abuse services and the justice center for the
34 protection of people with special needs and shall, to the extent possi-
35 ble, be consistent with those promulgated by other state agencies for
36 such purposes.

37 (e) This subdivision shall not apply to facilities operated by or
38 certified or licensed to operate by another state agency.

39 (f) No residential institution for children as defined in subdivision
40 forty-four of section sixteen hundred seventy-six of the public authori-
41 ties law shall enter into a lease, sub-lease or other agreement with the
42 dormitory authority pursuant to subdivision forty of section sixteen
43 hundred eighty of the public authorities law unless and until:

44 (i) the office of children and family services, the director of the
45 division of the budget and any other state agency which licenses such
46 residential institutions for children first determines that the project
47 is necessary to address health and safety needs of children at the
48 institution, approve the project cost upon determination that such costs
49 are reasonable, necessary and cost effective based upon the application
50 of cost per square foot guidelines and any other standards applicable to
51 the type of program or to the clinically-required needs of a specialized
52 group of children to be served by the project; and

53 (ii) the office of children and family services or such other state
54 agency which licenses such residential institution for children approves
55 the plans and specifications of the residential facilities to be

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1 replaced, reconstructed, rehabilitated, improved, renovated, or other-
2 wise provided for, furnished or equipped.

3 2. (a) The ~~[division-for-youth]~~ office shall establish regulations
4 governing secure and non-secure detention facilities subject to article
5 nineteen-G of the executive law and residential facilities operated as
6 approved runaway programs or transitional independent living support
7 programs pursuant to article nineteen-H of the executive law.

8 (b) The appropriate offices of the state department of mental hygiene
9 shall establish regulations governing all child care facilities subject
10 to articles ~~[twenty-three,]~~ thirty-one and thirty-two of the mental
11 hygiene law.

12 (c) The department of mental hygiene and the ~~[division-for-youth]~~
13 office shall propose any additional standards as are deemed necessary to
14 adequately ensure the care of children in facilities subject to the
15 inspection and supervision of the department, which care for a signif-
16 icant number of mentally disabled children, juvenile delinquents or
17 persons in need of supervision. The final form of any such additional
18 standards shall be subject to the approval of the department of mental
19 hygiene for such standards related to the care of mentally disabled
20 children, or the ~~[division-for-youth]~~ office for such standards related
21 to the care of juvenile delinquents and persons in need of supervision.

22 § 16-a. Section 462-a of the social services law, as added by chapter
23 669 of the laws of 1977, subdivision 1 as amended by chapter 465 of the
24 laws of 1992, subdivision 2 as amended by chapter 558 of the laws of
25 1999, subdivision 3 as amended by chapter 163 of the laws of 1992, is
26 amended to read as follows:

27 § 462-a. Responsibility for inspection and supervision. 1. The ~~[divi-~~
28 ~~sion-for-youth]~~ office of children and family services shall inspect and
29 supervise secure and non-secure detention facilities and those ~~[division~~
30 ~~for-youth]~~ office of children and family services residential facilities
31 authorized by article nineteen-G of the executive law and those residen-
32 tial facilities operated as approved runaway programs or transitional
33 independent living support programs pursuant to article nineteen-H of
34 the executive law.

35 2. The appropriate offices of the state department of mental hygiene
36 shall inspect and supervise those facilities subject to articles ~~[tween-~~
37 ~~ty-three,]~~ thirty-one and thirty-two of the mental hygiene law.

38 3. For those facilities which care for a significant number of mental-
39 ly disabled children, the department shall enter into written cooper-
40 ative agreements no later than October first, nineteen hundred seventy-
41 seven with the department of mental hygiene for joint inspection and
42 supervision of such facilities, as appropriate.

43 4. The ~~[department-of-social-services]~~ office of children and family
44 services shall inspect and supervise all other child care facilities
45 subject to its regulation.

46 § 16-b. Section 462-b of the social services law, as added by chapter
47 669 of the laws of 1977, subdivision 1 as amended by chapter 465 of the
48 laws of 1992, subdivision 2 as amended by chapter 558 of the laws of
49 1999, subdivision 3 as amended by chapter 163 of the laws of 1992, is
50 amended to read as follows:

51 § 462-b. Responsibility for enforcement. 1. The ~~[division-for-youth]~~
52 office of children and family services shall exercise the enforcement
53 powers enumerated in section four hundred sixty-d of this article which
54 may apply to secure and non-secure detention facilities and to those
55 ~~[division-for-youth]~~ office of children and family services residential
56 facilities authorized by article nineteen-G of the executive law and

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1 those residential facilities operated as approved runaway programs or
2 transitional independent living support programs pursuant to article
3 nineteen-H of the executive law.

4 2. The appropriate offices of the state department of mental hygiene
5 shall exercise the enforcement powers enumerated in section four hundred
6 sixty-d of this article which may apply to those facilities subject to
7 articles [~~twenty-three,~~] thirty-one and thirty-two of the mental hygiene
8 law.

9 3. With respect to facilities which care for a significant number of
10 mentally disabled children, the department shall enter into written
11 cooperative agreements no later than October first, nineteen hundred
12 seventy-seven with the department of mental hygiene establishing circum-
13 stances under which the department will at the request of the department
14 of mental hygiene act to limit or modify the operating certificate of
15 any facility so as to preclude such facility from accepting, caring for
16 or continuing to care for mentally disabled children.

17 4. The [~~department of social services~~] office of children and family
18 services shall exercise the enforcement powers enumerated in section
19 four hundred sixty-d of this article with respect to all other child
20 caring facilities subject to its regulation either independently or at
21 the request of the department of mental hygiene [~~or the division for~~
22 youth].

23 § 17. This act shall take effect June 30, 2013; provided, however,
24 that the amendments to section 426 of the social services law made by
25 section eleven-a of this act shall take effect on the same date as
26 section 6 of chapter 377 of the laws of 2011 takes effect; provided
27 further, that effective immediately, the addition, amendment or repeal
28 of any rule or regulation necessary for the implementation of this act
29 on its effective date are authorized to be made and completed on or
30 before such effective date.

31

PART E

32 Section 1. Subdivision 5 of section 1125 of the education law, as
33 added by chapter 180 of the laws of 2000, is amended to read as follows:

34 5. "Educational setting" shall mean the building and grounds of a
35 public school district, the vehicles provided by the school district for
36 the transportation of students to and from school buildings, field
37 trips, co-curricular and extra-curricular activities both on and off
38 school district grounds, all co-curricular and extra-curricular activity
39 sites, and any other location where direct contact between an employee
40 or volunteer and a child has allegedly occurred. Such term shall not
41 include a special act school district as defined in section four thou-
42 sand one of this chapter which shall be subject to article eleven of the
43 social services law.

44 § 1-a. Subdivisions (a), (b) and (c) of section 4212 of the education
45 law, as amended by chapter 32 of the laws of 1992, are amended to read
46 as follows:

47 (a) Promulgate regulations concerning standards for the protection of
48 children in residential care from [~~abuse and maltreatment~~] reportable
49 incidents in accordance with this section and article eleven of the
50 social services law, including procedures for:

51 (i) consistent with appropriate collective bargaining agreements and
52 applicable provisions of the civil service law, the review and evalu-
53 ation of the backgrounds of and the information supplied by any person
54 applying to be an employee, a volunteer or consultant, which shall

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1 include but not be limited to the following requirements: that the
2 applicant set forth his or her employment history, provide personal and
3 employment references, and relevant experiential and educational infor-
4 mation, and sign a sworn statement indicating whether the applicant, to
5 the best of his or her knowledge, has ever been convicted of a crime in
6 this state or any other jurisdiction;

7 (ii) establishing, for employees, relevant minimal experiential and
8 educational qualifications, consistent with appropriate collective
9 bargaining agreements and applicable provisions of the civil service
10 law;

11 (iii) assuring adequate and appropriate supervision of employees,
12 volunteers and consultants;

13 (iv) demonstrating by a residential facility or program that appropri-
14 ate action is taken to assure the safety of the child who is [~~reported~~]
15 alleged to have been subjected to a reportable incident in a report to
16 the [state] vulnerable persons' central register in accordance with
17 section four hundred ninety-two of the social services law as well as
18 other children in care, immediately upon notification that such a report
19 of [~~child abuse or maltreatment~~] an allegation of a reportable incident
20 has been made with respect to a child in such residential facility or
21 program;

22 (v) removing a child when it is determined that there is risk to such
23 child if he or she continues to remain within a residential facility or
24 program; and

25 (vi) appropriate preventive and remedial action to be taken including
26 legal actions, consistent with appropriate collective bargaining agree-
27 ments and applicable provisions of the civil service law.

28 (vii) consistent with applicable collective bargaining agreements,
29 assuring that an individual who has committed a category one offense, as
30 defined in paragraph (a) of subdivision four of section four hundred
31 ninety-three of the social services law, that is included on the vulner-
32 able persons' central register is not hired or otherwise used in any
33 position in which such individual would have regular and substantial
34 contact with a service recipient in any program described in paragraph
35 (e) of subdivision four of section four hundred eighty-eight of the
36 social services law.

37 Such standards shall also establish as a priority requirements that:

38 (A) subject to the amounts appropriated therefor, administrators,
39 employees, volunteers and consultants receive training in at least the
40 following: child abuse prevention and identification, safety and securi-
41 ty procedures, the principles of child development, the characteristics
42 of children in care and techniques of group and child management includ-
43 ing crisis intervention, the laws, regulations and procedures governing
44 the protection of children from [~~abuse and maltreatment~~] reportable
45 incidents, and other appropriate topics, provided, however, that the
46 department may exempt administrators and consultants from such require-
47 ments upon demonstration of substantially equivalent knowledge or expe-
48 rience; and

49 (B) subject to the amounts appropriated therefor, children receive
50 instruction, consistent with their age, needs and circumstances as well
51 as the needs and circumstances within the program, in techniques and
52 procedures which will enable such children to protect themselves from
53 [~~abuse and maltreatment~~] reportable incidents.

54 The department shall take all reasonable and necessary actions to
55 assure that employees, volunteers and consultants in residential facili-
56 ties and programs are kept apprised on a current basis of all department

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1 policies and procedures relating to the protection of children from
2 ~~[abuse and maltreatment]~~ reportable incidents, and shall monitor and
3 supervise the provision of training to such employees, volunteers and
4 consultants. Regulations and standards developed pursuant to this subdivi-
5 sion shall, to the extent possible, be consistent with those promul-
6 gated by other state agencies for such purposes.

7 (b) ~~[Cooperate with the state department of social services to protect
8 the health and safety of pupils at the school pursuant to title six of
9 article six of the social services law. Such cooperation shall include:
10 the making of reports of alleged child abuse or maltreatment, providing
11 necessary assistance to the state department of social services in the
12 department's investigation thereof and considering the recommendations
13 of the state department of social services for preventive and remedial
14 action including legal action and provide or direct the residential
15 facility to provide such written reports thereon to the department of
16 social services as to the implementation of plans of prevention and
17 remediation approved by the department of education; and~~

18 ~~(e)~~ Provide for the development and implementation of a plan of
19 prevention and remediation with respect to ~~[an indicated]~~ a substanti-
20 ated report of ~~[child abuse or maltreatment]~~ a reportable incident.
21 Such action shall include: (i) within ten days of receipt of ~~[an indi-~~
22 ~~cated]~~ such a report of [child abuse or maltreatment] a reportable inci-
23 dent, development and implementation of a plan of prevention and remedi-
24 ation to be taken with respect to a custodian or the residential
25 facility in order to assure the continued health and safety of children
26 and to provide for the prevention of future acts ~~[of abuse or maltreat-~~
27 ~~ment]~~ constituting reportable incidents; and (ii) development and imple-
28 mentation of a plan of prevention and remediation, in the event an
29 investigation of a report of an alleged [child abuse or maltreatment]
30 reportable incident determines that some credible evidence of ~~[abuse or~~
31 ~~maltreatment]~~ such reportable incident exists and such ~~[abuse or~~
32 ~~maltreatment]~~ reportable incident may be attributed in whole or in part
33 to noncompliance by the residential facility or program with provisions
34 of this chapter or regulations of the department applicable to the oper-
35 ation of a residential facility or program. Any plan of prevention and
36 remediation required to be developed ~~[pursuant to paragraph (ii) of this~~
37 ~~subdivision]~~ by a facility supervised by the department shall be submit-
38 ted to and approved by the department in accordance with time limits
39 established by regulations of the department. Implementation of the plan
40 shall be monitored by the department. In reviewing the continued quali-
41 fications of a residential facility or program for an operating certifi-
42 cate, the department shall evaluate such facility's compliance with
43 plans of prevention and remediation developed and implemented pursuant
44 to this subdivision.

45 § 2. Section 4314 of the education law, as added by chapter 677 of the
46 laws of 1985, subdivisions (a), (b) and (c) as amended by chapter 32 of
47 the laws of 1992, is amended to read as follows:

48 § 4314. Protection of pupils. The department shall:

49 (a) Promulgate regulations concerning standards for the protection of
50 children in residential care from ~~[abuse and maltreatment]~~ reportable
51 incidents in accordance with this section and article eleven of the
52 social services law, including procedures for:

53 (i) consistent with appropriate collective agreements and applicable
54 provisions of the civil service law, the review and evaluation of the
55 backgrounds of and the information supplied by any person applying to be
56 an employee, a volunteer or consultant, which shall include but not be

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1 limited to the following requirements: that the applicant set forth his
2 or her employment history, provide personal and employment references,
3 and relevant experiential and educational information, and sign a sworn
4 statement indicating whether the applicant, to the best of his or her
5 knowledge, has ever been convicted of a crime in this state or any other
6 jurisdiction;

7 (ii) establishing for employees, relevant minimal experiential and
8 educational qualifications consistent with appropriate collective
9 bargaining agreements and applicable provisions of the civil service
10 law;

11 (iii) assuring adequate and appropriate supervision of employees,
12 volunteers and consultants;

13 (iv) demonstrating by a residential facility or program that appropri-
14 ate action is taken to assure the safety of the child who is ~~[reported]~~
15 alleged to have been subjected to a reportable incident in a report to
16 the [state] vulnerable persons' central register in accordance with
17 section four hundred ninety-two of the social services law as well as
18 other children in care, immediately upon notification that such a report
19 of ~~[child abuse or maltreatment]~~ an allegation of a reportable incident
20 has been made ~~[with respect to a child in such residential facility or~~
21 ~~program]~~;

22 (v) removing a child when it is determined that there is risk to such
23 child if he or she continues to remain within a residential facility or
24 program; and

25 (vi) appropriate preventive and remedial action to be taken including
26 legal actions, consistent with appropriate collective bargaining agree-
27 ments and applicable provisions of the civil service law.

28 Such standards shall also establish as a priority requirements that:

29 (1) subject to the amounts appropriated therefor, administrators,
30 employees, volunteers and consultants receive training in at least the
31 following: child abuse prevention and identification, safety and secu-
32 rity procedures, the principles of child development, the character-
33 istics of children in care and techniques of group and child management
34 including crisis intervention, the laws, regulations and procedures
35 governing the protection of children from ~~[abuse and maltreatment]~~
36 reportable incidents, and other appropriate topics, provided however,
37 that the department may exempt administrators and consultants from such
38 requirements upon demonstration of substantially equivalent knowledge or
39 experience; and

40 (2) subject to the amounts appropriated therefor, children receive
41 instruction, consistent with their age, needs and circumstances as well
42 as the needs and circumstances within the facility or program, in tech-
43 niques and procedures which will enable such children to protect them-
44 selves from ~~[abuse and maltreatment]~~ reportable incidents.

45 The department, in consultation with the executive director of the
46 justice center for the protection of people with special needs, shall
47 take all reasonable and necessary actions to assure that employees,
48 volunteers and consultants in residential facilities are kept apprised
49 on a current basis of all department policies and procedures relating to
50 the protection of children from ~~[abuse and maltreatment]~~ reportable
51 incidents and shall monitor and supervise the provision of training to
52 such employees, volunteers and consultants. Regulations and standards
53 developed pursuant to this section shall, to the extent possible, be
54 consistent with those promulgated by other state agencies for such
55 purposes;

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1 (b) ~~{Cooperate with the state department of social services to protect~~
 2 ~~the health and safety of pupils at the school pursuant to title six of~~
 3 ~~article six of the social services law. Such cooperation shall include~~
 4 ~~the making of reports of alleged child abuse or maltreatment, providing~~
 5 ~~necessary assistance to the state department of social services in the~~
 6 ~~department's investigation thereof and considering the recommendations~~
 7 ~~of the state department of social services for preventive and remedial~~
 8 ~~action including legal action and provide or direct the residential~~
 9 ~~facility to provide such written reports thereon to the department of~~
 10 ~~social services as to the implementation of plans of prevention and~~
 11 ~~remediation approved by the department, and~~

12 ~~(e)}~~ Provide for the development and implementation of a plan of
 13 prevention and remediation with respect to ~~[an indicated]~~ a substanti-
 14 ated report of [child abuse or maltreatment] a reportable incident.
 15 Such action shall include: (i) within ten days of receipt of ~~[an indi-~~
 16 ated] such a report of [child abuse or maltreatment] a reportable inci-
 17 dent, development and implementation of a plan of prevention and remedi-
 18 ation to be taken with respect to a custodian or the residential
 19 facility in order to assure the continued health and safety of children
 20 and to provide for the prevention of future acts ~~[of abuse or maltreat-~~
 21 ment] constituting reportable incidents; and (ii) development and imple-
 22 mentation of a plan of prevention and remediation, in the event an
 23 investigation of a report of an alleged ~~[child abuse or maltreatment]~~
 24 reportable incident determines that some credible evidence of ~~[abuse or~~
 25 maltreatment] such reportable incident exists and such ~~[abuse or~~
 26 maltreatment] reportable incident may be attributed in whole or in part
 27 to noncompliance by the residential facility or program with provisions
 28 of this chapter or regulations of the department applicable to the oper-
 29 ation of such residential facility or program. Any plan of prevention
 30 and remediation required to be developed pursuant to ~~[paragraph (ii) of]~~
 31 this subdivision by a facility supervised by the department shall be
 32 submitted to and approved by the department in accordance with time
 33 limits established by regulations of the department. Implementation of
 34 the plan shall be monitored by the department. In reviewing the contin-
 35 ued qualifications of a residential facility or program for an operating
 36 certificate, the department shall evaluate such facility's compliance
 37 with plans of prevention and remediation developed and implemented
 38 pursuant to this subdivision.

39 § 3. Section 4358 of the education law, as added by chapter 677 of the
 40 laws of 1985, subdivisions (a), (b) and (c) as amended by chapter 32 of
 41 the laws of 1992, is amended to read as follows:

42 § 4358. Protection of pupils. The department shall:

43 (a) Promulgate regulations concerning standards for the protection of
 44 children in residential care from ~~[abuse and maltreatment]~~ reportable
 45 incidents in accordance with this section and article eleven of the
 46 social services law, including procedures for:

47 (i) consistent with appropriate collective bargaining agreements and
 48 applicable provisions of the civil service law, the review and evalu-
 49 ation of the backgrounds of and the information supplied by any person
 50 applying to be an employee, a volunteer or consultant, which shall
 51 include but not be limited to the following requirements: that the
 52 applicant set forth his or her employment history, provide personal and
 53 employment references and relevant experiential and educational informa-
 54 tion, and sign a sworn statement indicating whether the applicant, to
 55 the best of his or her knowledge, has ever been convicted of a crime in
 56 this state or any other jurisdiction;

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1 (ii) establishing, for employees, relevant minimal experiential and
2 educational qualifications, consistent with appropriate collective
3 bargaining agreements and applicable provisions of the civil service
4 law;

5 (iii) assuring adequate and appropriate supervision of employees,
6 volunteers and consultants;

7 (iv) demonstrating by a residential facility or program that appropri-
8 ate action is taken to assure the safety of the child who is ~~[reported]~~
9 alleged to have been subjected to a reportable incident in a report to
10 the [state] vulnerable persons' central register in accordance with
11 section four hundred ninety-two of the social services law as well as
12 other children in care, immediately upon notification that such a report
13 of [child abuse or maltreatment] an allegation of a reportable incident
14 has been made [with respect to a child in such facility or program];

15 (v) removing a child when it is determined that there is risk to such
16 child if he or she continues to remain within a facility or program; and

17 (vi) appropriate preventive and remedial action to be taken including
18 legal actions, consistent with appropriate collective bargaining agree-
19 ments and applicable provisions of the civil service law.

20 Such standards shall also establish as a priority requirements that:

21 (A) subject to the amounts appropriated therefor, administrators,
22 employees, volunteers and consultants receive training in at least the
23 following: child abuse prevention and identification, safety and securi-
24 ty procedures, the principles of child development, the characteristics
25 of children in care and techniques of group and child management includ-
26 ing crisis intervention, the laws, regulations and procedures governing
27 the protection of children from ~~[abuse and maltreatment]~~ reportable
28 incidents, and other appropriate topics, provided however, that the
29 department may exempt administrators and consultants from such require-
30 ments upon demonstration of substantially equivalent knowledge or expe-
31 rience; and

32 (B) subject to the amounts appropriated therefor, children receive
33 instruction, consistent with their age, needs and circumstances as well
34 as the needs and circumstances of the facility, in techniques and proce-
35 dures which will enable such children to protect themselves from ~~[abuse~~
36 ~~and maltreatment]~~ reportable incidents.

37 The department shall take all reasonable and necessary actions to
38 assure that employees, volunteers and consultants in residential facili-
39 ties and programs are kept apprised on a current basis of all department
40 policies and procedures relating to the protection of children from
41 ~~[abuse and maltreatment]~~ reportable incidents and shall monitor and
42 supervise the provision of training to such administrators, employees,
43 volunteers, children and consultants. Regulations and standards devel-
44 oped pursuant to this section shall, to the extent possible, be consist-
45 ent with those promulgated by other state agencies for such purposes;

46 (b) ~~[Cooperate with the state department of social services to protect~~
47 ~~the health and safety of pupils at the school pursuant to title six of~~
48 ~~article six of the social services law. Such cooperation shall include~~
49 ~~the making of reports of alleged child abuse or maltreatment, providing~~
50 ~~necessary assistance to the state department of social services in the~~
51 ~~department's investigation thereof and considering the recommendations~~
52 ~~of the state department of social services for preventive and remedial~~
53 ~~action including legal action and provide or direct the residential~~
54 ~~facility to provide such written reports to the department of social~~
55 ~~services as to the implementation of plans of prevention and remediation~~
56 ~~approved by the department; and~~

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1 ~~{e)}~~ Provide for the development and implementation of a plan of
2 prevention and remediation with respect to ~~[an-indicated]~~ a substanti-
3 ated report of [child-abuse-or-maltreatment] a reportable incident. Such
4 action shall include: (i) within ten days of receipt of ~~[an-indicated]~~
5 such a report [of-child-abuse-or-maltreatment] of a reportable incident,
6 development and implementation of a plan of prevention and remediation
7 to be taken with respect to a custodian or the residential facility in
8 order to assure the continued health and safety of children and to
9 provide for the prevention of future acts ~~[of-abuse-or-maltreatment]~~
10 constituting reportable incidents; and (ii) development and implementa-
11 tion of a plan of prevention and remediation, in the event an investi-
12 gation of a report of an alleged [child-abuse-or-maltreatment] report-
13 able incident determines that some credible evidence of ~~[abuse-or-~~
14 ~~maltreatment]~~ such reportable incident exists and such ~~[abuse-or-~~
15 ~~maltreatment]~~ reportable incident may be attributed in whole or in part
16 to noncompliance by the residential facility or program with provisions
17 of this chapter or regulations of the department applicable to the oper-
18 ation of such residential facility or program. Any plan of prevention
19 and remediation required to be developed pursuant to ~~[paragraph-(ii)-of]~~
20 this subdivision by a facility supervised by the department shall be
21 submitted to and approved by the department in accordance with time
22 limits established by regulations of the department. Implementation of
23 the plan shall be monitored by the department. In reviewing the contin-
24 ued qualifications of a residential facility or program for an operating
25 certificate, the department shall evaluate such facility's compliance
26 with plans of prevention and remediation developed and implemented
27 pursuant to this subdivision.

28 § 4. Subdivisions 11, 12, 13, 14, 15, 16, 17, 18, 19 and 19-a of
29 section 4403 of the education law, subdivisions 11, 12 and 13 as amended
30 by chapter 32 of the laws of 1992, subdivisions 14, 15 and 16 as added
31 by chapter 53 of the laws of 1986, subdivision 17 as amended by chapter
32 53 of the laws of 1987, subdivision 18 as added by chapter 428 of the
33 laws of 1992, subdivision 19 as added by chapter 600 of the laws of 1994
34 and subdivision 19-a as amended by chapter 378 of the laws of 2007, are
35 amended to read as follows:

36 11. To promulgate regulations concerning standards for the protection
37 of children in residential care from ~~[abuse-and-maltreatment]~~ reportable
38 incidents in accordance with this section and article eleven of the
39 social services law, including procedures for:

40 (a) consistent with appropriate collective bargaining agreements and
41 applicable provisions of the civil service law, the review and evalu-
42 ation of the backgrounds of and the information supplied by any person
43 applying to be an employee, a volunteer or consultant, which shall
44 include but not be limited to the following requirements: that the
45 applicant set forth his or her employment history, provide personal and
46 employment references, and relevant experiential and educational quali-
47 fications and, sign a sworn statement indicating whether the applicant,
48 to the best of his or her knowledge has ever been convicted of a crime
49 in this state or any other jurisdiction;

50 (b) establishing, for employees, relevant minimal experiential and
51 educational qualifications, consistent with appropriate collective
52 bargaining agreements and applicable provisions of the civil service
53 law;

54 (c) assuring adequate and appropriate supervision of employees, volun-
55 teers and consultants;

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1 (d) demonstrating by a residential facility or program that appropri-
2 ate action is taken to assure the safety of the child who is ~~[reported]~~
3 alleged to have been subjected to a reportable incident in a report to
4 the [state] vulnerable persons' central register in accordance with
5 section four hundred ninety-two of the social services law as well as
6 other children in care, immediately upon notification that such a report
7 of [child-abuse-or-maltreatment] an allegation of a reportable incident
8 has been made with respect to a child in such residential facility or
9 program;

10 (e) removing a child when it is determined that there is risk to such
11 child if he or she continues to remain within a residential facility or
12 program; and

13 (f) appropriate preventive and remedial action to be taken including
14 legal actions, consistent with appropriate collective bargaining agree-
15 ments and applicable provisions of the civil service law.

16 Such standards shall also establish as a priority requirements that:

17 (A) subject to amounts appropriated therefor, administrators, employ-
18 ees, volunteers and consultants receive training in at least the follow-
19 ing: child abuse prevention and identification, safety and security
20 procedures, the principles of child development, the characteristics of
21 children in care, and techniques of group and child management including
22 crisis intervention, the laws, regulations and procedures governing the
23 protection of children from ~~[abuse-and-maltreatment]~~ reportable inci-
24 dents, and other appropriate topics, provided however, that the depart-
25 ment may exempt administrators and consultants from such requirements
26 upon demonstration of substantially equivalent knowledge or experience;
27 and

28 (B) subject to the amounts appropriated therefor, children receive
29 instruction, consistent with their age, needs and circumstances as well
30 as the needs and circumstances within the program, in techniques and
31 procedures which will enable such children to advocate for and protect
32 themselves from [abuse-and-maltreatment] reportable incidents.

33 The department shall take all reasonable and necessary actions to
34 assure that employees, volunteers and consultants in residential facili-
35 ties and programs are kept apprised on a current basis of all department
36 policies and procedures relating to the protection of children from
37 ~~[abuse-and-maltreatment]~~ reportable incidents and shall monitor and
38 supervise the provision of training to such administrators, employees,
39 volunteers, children and consultants. Regulations and standards devel-
40 oped pursuant to this subdivision shall, to the extent possible, be
41 consistent with those promulgated by other state agencies for such
42 purposes.

43 ~~12. [To-cooperate-with-the-state-department-of-social-services-and~~
44 ~~other-departments, divisions-and-agencies-of-the-state-when-a-report-is~~
45 ~~received-pursuant-to-title-six-of-article-six-of-the-social-services-law~~
46 ~~to-protect-the-health-and-safety-of-children-in-residential-placement.~~
47 ~~Such-cooperation-shall-include-the-making-of-reports-of-alleged-child~~
48 ~~abuse-or-maltreatment, providing-necessary-assistance-to-the-state~~
49 ~~department-of-social-services-in-the-department's-investigation-thereof~~
50 ~~and-considering-the-recommendations-of-the-state-department-of-social~~
51 ~~services-for-preventive-and-remedial-action, including-legal-action-and~~
52 ~~providing-written-reports-thereon-to-the-department-of-social-services~~
53 ~~as-to-the-implementation-of-plans-of-prevention-and-remediation-approved~~
54 ~~by-the-department.~~

55 ~~13.] To provide for the development and implementation of a plan of~~
56 ~~prevention and remediation with respect to [an-indicated] a substanti-~~

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1 ated report of ~~[child abuse or maltreatment]~~ a reportable incident.
2 Such action shall include: (a) within ten days of receipt of ~~[an indi-~~
3 ~~ated]~~ a substantiated report of ~~[child abuse or maltreatment]~~ a report-
4 able incident, development and implementation of a plan of prevention
5 and remediation to be taken with respect to a custodian or the residen-
6 tial facility in order to assure the continued health and safety of
7 children and to provide for the prevention of future acts ~~[of abuse or~~
8 ~~maltreatment]~~ constituting reportable incidents; and (b) development and
9 implementation of a plan of prevention and remediation, in the event an
10 investigation of a report of an alleged ~~[child abuse or maltreatment]~~
11 reportable incident determines that some credible evidence of ~~[abuse or~~
12 ~~maltreatment]~~ such reportable incident exists and such ~~[abuse or~~
13 ~~maltreatment]~~ reportable incident may be attributed in whole or in part
14 to noncompliance by the residential facility or program with provisions
15 of this chapter or regulations of the department applicable to the oper-
16 ation of such residential facility or program. Any plan of prevention
17 and remediation required to be developed pursuant to ~~[paragraph (b) of]~~
18 this subdivision by a facility supervised by the department shall be
19 submitted to and approved by the department in accordance with time
20 limits established by regulations of the department. Implementation of
21 the plan shall be monitored by the department. In reviewing the contin-
22 ued qualifications of a residential facility or program for an operating
23 certificate, the department shall evaluate such facility's compliance
24 with plans of prevention and remediation developed and implemented
25 pursuant to this subdivision.

26 ~~[14]~~ 13. To provide technical assistance to school districts for
27 appropriate evaluation and assessment.

28 ~~[15]~~ 14. To provide technical assistance to school districts to
29 assist in the adaptation of curriculum for the instruction of children
30 with handicapping conditions.

31 ~~[16]~~ 15. To provide technical assistance to school districts to
32 assist in developing criteria for placement in special education and
33 criteria for reviewing the ability of a pupil to participate in regular
34 education.

35 ~~[17]~~ 16. Commencing with the nineteen hundred eighty-seven--eighty-
36 eight school year, to provide for instruction during the months of July
37 and August of students with handicapping conditions who have received
38 state appointments pursuant to article eighty-five, eighty-seven or
39 eighty-eight of this chapter and whose handicapping conditions, in the
40 judgment of the commissioner, are severe enough to exhibit the need for
41 a structured learning environment of twelve months duration to maintain
42 developmental levels, by making such appointments for twelve months;
43 provided that the initial term of appointment of a student with a handi-
44 capping condition who is the minimum age eligible for such a state
45 appointment shall not commence during the months of July or August.

46 ~~[18]~~ 17. To approve the provision of early intervention services, as
47 defined in section twenty-five hundred forty-one of the public health
48 law, by agencies which are approved providers of special services or
49 programs pursuant to section forty-four hundred ten of this article
50 based on such agency's compliance with the coordinated standards and
51 procedures for early intervention services established pursuant to title
52 II-A of article twenty-five of the public health law and, where applica-
53 ble, teacher certification requirements.

54 ~~[19]~~ 18. To establish guidelines for determining when a child is at
55 risk of a future placement in a residential school, and for the
56 provision by committees on special education of information to parents

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1 and other persons in parental relationship concerning the availability
2 of community support services to meet the needs of the family. The
3 guidelines shall be developed by the department after consultation with
4 the office of mental health, the office ~~[of mental retardation and]~~ for
5 people with developmental disabilities, the office of alcoholism and
6 substance abuse services, the department of health, the department of
7 social services and the division for youth.

8 ~~[19-a]~~ 19. To adopt regulations prescribing the state complaint
9 procedures pursuant to sections 300.151 through 300.153 of title thir-
10 ty-four of the code of federal regulations, where an individual or
11 organization files a written complaint alleging that a public agency has
12 violated part B of the individuals with disabilities education act. Such
13 regulations shall include, but not be limited to, remedies for denial of
14 appropriate services, including, as appropriate, the awarding of mone-
15 tary reimbursement, compensatory services or other corrective action
16 appropriate to the needs of the child.

17 § 5. Subdivision 2 of section 3650 of the education law, as added by
18 chapter 181 of the laws of 2007, is amended to read as follows:

19 2. The commissioner, in consultation with the ~~[state commission on~~
20 ~~quality care and advocacy for persons with disabilities]~~ justice center
21 for the protection of people with special needs, shall promulgate rules
22 and regulations requiring every school bus driver operating a school bus
23 which has or will have one or more students with a disability as passen-
24 gers to receive training and instruction relating to the understanding
25 of, and attention to, the special needs of such students. Such training
26 and instruction may be included with the training and instruction
27 required pursuant to paragraph a of subdivision one of this section and
28 shall be provided at least once per year or more frequently as deter-
29 mined by the commissioner in consultation with the state comprehensive
30 school bus driver safety training council. For the purposes of this
31 subdivision, the term "student with a disability" shall have the same
32 meaning as such term is defined in subdivision one of section forty-four
33 hundred one of this chapter. Any person employed as a school bus driver
34 on January first, two thousand nine who is subject to the provisions of
35 this subdivision shall comply with the requirements of this subdivision
36 by July first, two thousand nine. Any school bus driver hired after
37 January first, two thousand nine who is subject to the requirements of
38 this subdivision shall complete such training and instruction prior to
39 assuming his or her duties.

40 § 6. Subdivision 4 of section 1229-d of the vehicle and traffic law,
41 as added by chapter 181 of the laws of 2007, is amended to read as
42 follows:

43 (4) The commissioner of education, in consultation with the ~~[state~~
44 ~~commission on quality care and advocacy for persons with disabilities]~~
45 justice center for the protection of people with special needs, shall
46 promulgate rules and regulations requiring that every school bus attend-
47 ant serving a student or students with a disability receive training and
48 instruction relating to the understanding of and attention to the
49 special needs of such students. Such training and instruction may be
50 included with the training and instruction required pursuant to subdivi-
51 sion three of this section and shall be provided at least once per year
52 or more frequently as determined by the commissioner of education in
53 consultation with the state comprehensive school bus driver safety
54 training council. For the purposes of this subdivision, the term
55 "student with a disability" shall have the same meaning as such term is
56 defined in subdivision one of section forty-four hundred one of the

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1 education law. Any person employed as a school bus attendant serving a
2 student or students with a disability on January first, two thousand
3 nine shall comply with the requirements of this subdivision by July
4 first, two thousand nine. Any person hired after January first, two
5 thousand nine shall complete such training, instruction and testing
6 prior to assuming his or her duties as a school bus attendant serving a
7 student or students with a disability.
8 § 7. This act shall take effect June 30, 2013; provided, however, that
9 the amendments to subdivision 18 of section 4403 of the education law
10 made by section four of this act shall not affect the repeal of such
11 subdivision and shall be deemed repealed therewith; provided further
12 that the amendments to subdivision 19-a of section 4403 of the education
13 law made by section four of this act shall not affect the expiration of
14 such subdivision and shall be deemed to expire therewith.

15

PART F

16 Section 1. Subdivision (a) of section 16.33 of the mental hygiene law,
17 as amended by chapter 575 of the laws of 2004, is amended to read as
18 follows:

19 (a) Every provider of services who contracts with or is approved or
20 otherwise authorized by the office to provide services, except (1) a
21 department facility, (2) a hospital as defined in article twenty-eight
22 of the public health law, or (3) a licensed professional under title
23 eight of the education law who does not have employees or volunteers who
24 will have regular and substantial unsupervised or unrestricted physical
25 contact with the clients of such provider, and every applicant to be
26 such a provider of services except (i) a department facility, (ii) a
27 hospital as defined in article twenty-eight of the public health law, or
28 (iii) a licensed professional under title eight of the education law and
29 who does not have employees or volunteers who will have regular and
30 substantial unsupervised or unrestricted physical contact with the
31 clients of such provider, shall request that the ~~[office]~~ justice center
32 for the protection of people with special needs check, and upon such
33 request ~~[the office]~~ such justice center shall request and shall be
34 authorized to receive from the division of criminal justice services
35 criminal history information, as such phrase is defined in paragraph (c)
36 of subdivision one of section eight hundred forty-five-b of the execu-
37 tive law, concerning each (A) prospective operator, employee or volun-
38 teer of such provider who will have regular and substantial unsupervised
39 or unrestricted physical contact with the clients of such provider, or
40 (B) other person over the age of eighteen who is to reside in a family
41 care home, except any person receiving family care services, who will
42 have regular and substantial unsupervised or unrestricted physical
43 contact with the clients of such provider. For purposes of this section,
44 "operator" shall include any natural person with an ownership interest
45 in the provider of services.

46 § 2. The mental hygiene law is amended by adding a new section 19.20
47 to read as follows:

48 § 19.20 Review of criminal history information concerning certain
49 prospective employees and volunteers.

50 Every provider of services who contracts with or is approved or other-
51 wise authorized by the office to provide services, except (1) a depart-
52 ment facility, (2) a hospital as defined in article twenty-eight of the
53 public health law, or (3) a licensed professional under title eight of
54 the education law who does not have employees or volunteers who will

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1 have regular and substantial unsupervised or unrestricted physical
2 contact with the clients of such provider, shall request that the office
3 request and receive from the division of criminal justice services crim-
4 inal history information, as such phrase is defined in paragraph (c) of
5 subdivision one of section eight hundred forty-five-b of the executive
6 law, concerning each prospective employee or volunteer of such provider
7 who will have regular and substantial unsupervised or unrestricted phys-
8 ical contact with the clients of such provider.

9 (a) Prior to requesting the office to obtain a criminal history infor-
10 mation concerning any prospective employee or volunteer, a provider
11 shall:

12 (1) inform the prospective employee or volunteer in writing that the
13 provider is required to request his or her criminal history information
14 and review such information pursuant to this section; and

15 (2) obtain the signed informed consent of the prospective employee or
16 volunteer on a form supplied by the division of criminal justice
17 services which indicates that such person has:

18 (i) been informed of the right and procedures necessary to obtain,
19 review and seek correction of his or her criminal history information;

20 (ii) been informed of the reason for the request for his or her crimi-
21 nal history information;

22 (iii) consented to such request; and

23 (iv) supplied on the form a current mailing or home address.

24 Upon receiving such written consent, the provider shall obtain two sets
25 of fingerprints of such prospective employee or volunteer and provide
26 such fingerprints to the office pursuant to regulations established by
27 the division of criminal justice services.

28 (b) A provider requesting criminal history information pursuant to
29 this section shall also complete a form developed for such purpose by
30 the division of criminal justice services. Such form shall include a
31 sworn statement of the person designated by such provider to request,
32 receive and review criminal history information pursuant to paragraph
33 one of subdivision (g) of this section certifying that:

34 (1) such criminal history information will be used by the provider
35 solely for purposes authorized by this section;

36 (2) the provider and its staff are aware of and will abide by the
37 confidentiality requirements and all other provisions of this section;
38 and

39 (3) the persons designated by the provider to receive criminal history
40 information pursuant to paragraph one of subdivision (g) of this section
41 shall upon receipt immediately mark such criminal history information
42 "confidential," and shall at all times maintain such criminal history
43 information in a secure place.

44 (c) Upon receipt of the fingerprints and sworn statement required by
45 subdivisions (a) and (b) of this section, the office shall promptly
46 submit the fingerprints to the division of criminal justice services.
47 The division of criminal justice services shall promptly forward a set
48 of the applicant's fingerprints to the federal bureau of investigation
49 for the purpose of a nationwide criminal history record check to deter-
50 mine whether such applicant has been convicted of a criminal offense in
51 any state other than New York or in a federal jurisdiction.

52 (d) The division of criminal justice services shall promptly provide
53 the requested criminal history information, if any, to the office. Crim-
54 inal history information provided by the division of criminal justice
55 services pursuant to this section shall be furnished only by mail or
56 other method of secure and confidential delivery, addressed to the

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1 office. Such information and the envelope in which it is enclosed, if
2 any, shall be prominently marked "confidential," and shall at all times
3 be maintained by the office in a secure place.

4 (e) After receiving any criminal history information provided by the
5 division of criminal justice services concerning a prospective employee
6 or volunteer, the office shall review the information to determine
7 whether such prospective employee or volunteer has been convicted of a
8 criminal offense in any state other than New York or in a federal juris-
9 diction. If the record does not include such information, the office
10 shall forward a summary of the New York criminal history information to
11 the provider who shall proceed pursuant to subdivision (g) of this
12 section. For the purposes of this section, "summary of the criminal
13 history information" shall mean a comprehensive synopsis of criminal
14 history information which shall include an individualized statement for
15 each pending charge and each criminal conviction which has not been
16 vacated, reversed or sealed.

17 (f) Where the criminal history information received by the office
18 includes a criminal offense in any state other than New York or in a
19 federal jurisdiction, the office shall consider whether to approve or
20 disapprove the prospective employee based on the criminal history infor-
21 mation in accordance with the provisions of article twenty-three-A of
22 the correction law and subdivisions fifteen and sixteen of section two
23 hundred ninety-six of the executive law and notify the provider of its
24 determination, provided, however, that a reasonable time before making a
25 determination pursuant to this subdivision, the office shall provide the
26 prospective employee or volunteer with a copy of the criminal history
27 information and a copy of article twenty-three-A of the correction law,
28 and inform such prospective employee or volunteer of his or her right to
29 seek correction of any incorrect information contained in such criminal
30 history information pursuant to the regulations and procedures estab-
31 lished by the division of criminal justice services.

32 (g) Where the provider receives a summary of the criminal history
33 information from the office pursuant to subdivision (e) of this section,
34 the provider shall consider the information in accordance with the
35 provisions of article twenty-three-A of the correction law and subdivi-
36 sions fifteen and sixteen of section two hundred ninety-six of the exec-
37 utive law.

38 (1) A provider shall designate one or two persons in its employ who
39 shall be authorized to request, receive and review the summary of the
40 criminal history information, and only such persons and the prospective
41 employee or volunteer to which the criminal history information relates
42 shall have access to such information; provided, however, that the
43 summary of the criminal history information may be disclosed to other
44 personnel authorized by the provider who are empowered to make decisions
45 concerning prospective employees or volunteers and provided further that
46 such other personnel shall also be subject to the confidentiality
47 requirements and all other provisions of this section. A provider shall
48 notify the office of each person authorized to have access to criminal
49 history information pursuant to this section.

50 (2) Upon receipt of the summary of criminal history information pursu-
51 ant to this section, a provider shall provide the prospective employee
52 or volunteer with a copy of such summary of the criminal history infor-
53 mation and a copy of article twenty-three-A of the correction law, and
54 inform such prospective employee or volunteer of his or her right to
55 seek correction of any incorrect information contained in such criminal

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1 history information pursuant to the regulations and procedures estab-
2 lished by the division of criminal justice services.

3 (h) A prospective employee or volunteer may withdraw from the applica-
4 tion process, without prejudice, at any time regardless of whether he or
5 she, the office or the provider has reviewed his or her criminal history
6 information. Where a prospective employee or volunteer withdraws from
7 the application process, any fingerprints and criminal history informa-
8 tion concerning such prospective employee or volunteer received by the
9 office or the provider shall, within ninety days, be returned to such
10 prospective employee or volunteer.

11 (i) The commissioner of the division of criminal justice services
12 shall promulgate all rules and regulations necessary to implement the
13 provisions of this section, which shall include convenient procedures
14 for prospective employees and volunteers to promptly verify the accuracy
15 of their criminal history information and, to the extent authorized by
16 law, to have access to relevant documents related thereto.

17 (j) Any person who willfully permits the release of any confidential
18 criminal history information contained in the report to persons not
19 permitted by this section to receive such information shall be guilty of
20 a misdemeanor.

21 § 3. The mental hygiene law is amended by adding a new section 19.20-a
22 to read as follows:

23 § 19.20-a Review of criminal history information concerning prospective
24 providers, operators and individuals seeking to be creden-
25 tialed by the office.

26 The office shall be authorized to receive from the division of crimi-
27 nal justice services criminal history information, as such phrase is
28 defined in paragraph (c) of subdivision one of section eight hundred
29 forty-five-b of the executive law, concerning each applicant to be a
30 provider of services or operator of such provider except: (1) a depart-
31 ment facility; (2) a hospital as defined in article twenty-eight of the
32 public health law; or (3) a licensed professional under title eight of
33 the education law who does not have employees or volunteers who will
34 have regular and substantial unsupervised or unrestricted physical
35 contact with the clients of such provider, and for every individual
36 seeking to be credentialed by the office to provide substance use disorder
37 services pursuant to section 19.07 of this article. For purposes of
38 this section, "operator" shall include any natural person with an owner-
39 ship interest in the provider of services.

40 (a) Prior to requesting criminal history information concerning any
41 prospective provider, operator or individual seeking to be credentialed,
42 the office shall:

43 (1) inform the prospective provider, operator or individual seeking to
44 be credentialed in writing that the office is required to request his or
45 her criminal history information from the division of criminal justice
46 services and review such information pursuant to this section; and

47 (2) obtain the signed informed consent of the prospective provider,
48 operator or individual seeking to be credentialed on a form supplied by
49 the division of criminal justice services which indicates that such
50 person has:

51 (i) been informed of the right and procedures necessary to obtain,
52 review and seek correction of his or her criminal history information;

53 (ii) been informed of the reason for the request for his or her crimi-
54 nal history information;

55 (iii) consented to such request; and

56 (iv) supplied on the form a current mailing or home address.

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1 Upon receiving such written consent, the office may obtain two sets of
2 fingerprints of such prospective provider, operator or individual seek-
3 ing to be credentialed pursuant to regulations established by the divi-
4 sion of criminal justice services.

5 (b) The office shall designate one or two persons in its employ who
6 shall be authorized to request, receive and review criminal history
7 information, and only such persons and the prospective provider, opera-
8 tor or individual seeking to be credentialed to which the criminal
9 history information relates shall have access to such information;
10 provided, however, that criminal history information may be disclosed to
11 other personnel authorized by the office who are empowered to make deci-
12 sions concerning prospective providers, operators or individuals seeking
13 to be credentialed and provided further that such other personnel shall
14 also be subject to the confidentiality requirements and all other
15 provisions of this section. The office shall notify the division of
16 criminal justice services of each person authorized to have access to
17 criminal history information pursuant to this section.

18 (c) The office shall request criminal history information pursuant to
19 this section by completing a form developed for such purpose by the
20 division of criminal justice services. Such form shall include a sworn
21 statement of the persons designated by the office to request, receive
22 and review criminal history information pursuant to subdivision (b) of
23 this section certifying that:

24 (1) such criminal history information will be used by the office sole-
25 ly for purposes authorized by this section;

26 (2) the office and its staff are aware of and will abide by the confi-
27 dentiality requirements and all other provisions of this section; and

28 (3) the person designated by the office to receive criminal history
29 information pursuant to subdivision (b) of this section shall upon
30 receipt immediately mark such criminal history information "confiden-
31 tial," and shall at all times maintain such criminal history information
32 in a secure place.

33 (d) Upon receipt of the fingerprints and sworn statement required by
34 subdivisions (a) and (c) of this section, the division of criminal
35 justice services shall promptly forward a set of the individual's fing-
36 erprints to the federal bureau of investigation for the purpose of a
37 nationwide criminal history record check to determine whether such indi-
38 vidual has been convicted of a criminal offense in any state other than
39 New York or in a federal jurisdiction.

40 (e) The division of criminal justice services shall promptly provide
41 the requested criminal history information to the office. Criminal
42 history information provided by the division of criminal justice
43 services pursuant to this section shall be furnished only by mail or
44 other method of secure and confidential delivery, addressed to the
45 office. Such information and the envelope in which it is enclosed, if
46 any, shall be prominently marked "confidential," and shall at all times
47 be maintained by the office in a secure place.

48 (f) Upon receipt of criminal history information pursuant to this
49 section and before making a determination, the office shall provide the
50 prospective provider, operator or individual seeking to be credentialed
51 with a copy of such criminal history information and a copy of article
52 twenty-three-A of the correction law and inform such prospective provid-
53 er, operator or individual seeking to be credentialed of his or her
54 right to seek correction of any incorrect information contained in such
55 criminal history information pursuant to the regulations and procedures
56 established by the division of criminal justice services.

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1 (g) Criminal history information obtained pursuant to this section
2 shall be considered by the office in accordance with the provisions of
3 article twenty-three-A of the correction law and subdivisions fifteen
4 and sixteen of section two hundred ninety-six of the executive law.

5 (h) A prospective provider, operator or individual seeking to be
6 credentialed may withdraw from the application process, without preju-
7 dice, at any time regardless of whether or not he or she or the office
8 has reviewed his or her criminal history information. Where a prospec-
9 tive provider, operator or individual seeking to be credentialed with-
10 draws from the application process, any fingerprints and criminal histo-
11 ry information concerning such prospective provider, operator or
12 individual seeking to be credentialed received by the office shall,
13 within ninety days, be returned to such prospective provider, operator
14 or individual seeking to be credentialed by the person designated for
15 receipt of criminal history information pursuant to subdivision (b) of
16 this section.

17 (i) The commissioner of the division of criminal justice services
18 shall promulgate all rules and regulations necessary to implement the
19 provisions of this section, which shall include convenient procedures
20 for prospective providers, operators or individuals seeking to be
21 credentialed to promptly verify the accuracy of their criminal history
22 information and, to the extent authorized by law, to have access to
23 relevant documents related thereto.

24 (j) Any person who willfully permits the release of any confidential
25 criminal history information contained in the report to persons not
26 permitted by this section to receive such information shall be guilty of
27 a misdemeanor.

28 § 4. Subdivision 1 of section 378-a of the social services law, as
29 amended by chapter 7 of the laws of 1999, is amended to read as follows:

30 1. ~~[Subject to rules and regulations of the division of criminal~~
31 ~~justice services, an]~~ Every authorized agency which operates a residen-
32 tial program for children and the office of children and family services
33 shall ~~[have access to conviction records maintained by state law~~
34 ~~enforcement agencies pertaining to persons who have applied for and are~~
35 ~~under active consideration for employment by such authorized agency in~~
36 ~~positions where such persons will be engaged directly in the care and~~
37 ~~supervision of children]~~ request that the justice center for the
38 protection of people with special needs check, and upon such request,
39 such justice center shall request and shall be authorized to receive
40 from the division of criminal justice services criminal history informa-
41 tion, as such phrase is defined in paragraph (c) of subdivision one of
42 section eight hundred forty-five-b of the executive law concerning each
43 prospective operator, employee or volunteer of such residential program
44 who will have regular and substantial unsupervised or unrestricted phys-
45 ical contact with children in such program. For the purposes of this
46 section, "operator" shall include any natural person with an ownership
47 interest in the authorized agency. Access to and the use of such infor-
48 mation shall be governed by the provisions of section eight hundred
49 forty-five-b of the executive law.

50 § 5. Subdivision 2 and paragraph (a) of subdivision 5 of section 845-b
51 of the executive law, subdivision 2 as amended by chapter 769 of the
52 laws of 2005 and paragraph (a) of subdivision 5 as amended by chapter
53 331 of the laws of 2006, are amended to read as follows:

54 2. Where a provider is authorized or required to request a check of
55 criminal history information by an authorized agency pursuant to section
56 16.33 or 31.35 of the mental hygiene law ~~[e*]~~, article twenty-eight-E of

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1 the public health law or subdivision one of section three hundred seven-
2 ty-eight-a of the social services law, such provider shall proceed
3 pursuant to the provisions of this section and in a manner consistent
4 with the provisions of article twenty-three-A of the correction law,
5 subdivisions fifteen and sixteen of section two hundred ninety-six of
6 this chapter and all other applicable laws.

7 (a) Where the criminal history information concerning a subject indi-
8 vidual reveals a felony conviction at any time for a sex offense, a
9 felony conviction within the past ten years involving violence, or a
10 conviction [~~for endangering the welfare of an incompetent or physically~~
11 ~~disabled person~~] pursuant to section 260.00, 260.25, 260.32 or 260.34 of
12 the penal law, and in the case of criminal history information obtained
13 pursuant to section twenty-eight hundred ninety-nine-a of the public
14 health law, where the criminal history information concerning a subject
15 individual reveals a conviction at any time of any class A felony; a
16 conviction within the past ten years of any class B or C felony, any
17 class D or E felony defined in article one hundred twenty, one hundred
18 thirty, one hundred fifty-five, one hundred sixty, one hundred seventy-
19 eight or two hundred twenty of the penal law; or any crime defined in
20 [~~sections~~] section 260.32 or 260.34 of the penal law; or any comparable
21 offense in any other jurisdiction, the authorized agency shall deny or
22 disapprove the application for or renewal of the operating certificate,
23 contract, approval, employment of the subject individual or other
24 authorization to provide services, or direct the provider to deny
25 employment, as applicable, unless the authorized agency determines, in
26 its discretion, that approval of the application or renewal or employ-
27 ment will not in any way jeopardize the health, safety or welfare of the
28 beneficiaries of such services.

29 § 6. This act shall take effect on June 30, 2013; provided, however,
30 that effective immediately, the addition, amendment or repeal of any
31 rule or regulation necessary for the implementation of this act on its
32 effective date are authorized to be made and completed on or before such
33 date.

34

PART G

35 Section 1. The opening paragraph and subdivision 4 of section 240.50
36 of the penal law, the opening paragraph as amended by chapter 276 of the
37 laws of 1973 and subdivision 4 as amended by chapter 400 of the laws of
38 2008, are amended to read as follows:

39 A person is guilty of falsely reporting an incident in the third
40 degree when, knowing the information reported, conveyed or circulated to
41 be false or baseless, he or she:

42 4. Reports, by word or action, an alleged occurrence or condition of
43 child abuse or maltreatment or abuse or neglect of a vulnerable person
44 which did not in fact occur or exist to:

45 (a) the statewide central register of child abuse and maltreatment, as
46 defined in title six of article six of the social services law or the
47 vulnerable persons' central register as defined in article eleven of
48 such law, or

49 (b) any person required to report cases of suspected child abuse or
50 maltreatment pursuant to subdivision one of section four hundred thir-
51 teen of the social services law or to report cases of suspected abuse or
52 neglect of a vulnerable person pursuant to section four hundred ninety-
53 one of such law, knowing that the person is required to report such
54 cases, and with the intent that such an alleged occurrence be reported

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1 to the statewide central register or vulnerable persons' central regis-
2 ter.

3 § 2. Paragraph (h) of subdivision 3 of section 130.05 of the penal
4 law, as amended by chapter 264 of the laws of 2003, is amended and a new
5 paragraph (i) is added to read as follows:

6 (h) a client or patient and the actor is a health care provider or
7 mental health care provider charged with rape in the third degree as
8 defined in section 130.25, criminal sexual act in the third degree as
9 defined in section 130.40, aggravated sexual abuse in the fourth degree
10 as defined in section 130.65-a, or sexual abuse in the third degree as
11 defined in section 130.55, and the act of sexual conduct occurs during a
12 treatment session, consultation, interview, or examination[-]; or

13 (i) a resident or inpatient of a residential facility operated,
14 licensed or certified by (i) the office of mental health; (ii) the
15 office for people with developmental disabilities; or (iii) the office
16 of alcoholism and substance abuse services, and the actor is an employee
17 of the facility not married to such resident or inpatient. For purposes
18 of this paragraph, "employee" means either: an employee of the agency
19 operating the residential facility, who knows or reasonably should know
20 that such person is a resident or inpatient of such facility and who
21 provides direct care services, case management services, medical or
22 other clinical services, habilitative services or direct supervision of
23 the residents in the facility in which the resident resides; or an offi-
24 cer or other employee, consultant, contractor or volunteer of the resi-
25 dential facility, who knows or reasonably should know that the person is
26 a resident of such facility and who is in direct contact with residents
27 or inpatients; provided, however, that the provisions of this paragraph
28 shall only apply to a consultant, contractor or volunteer providing
29 services pursuant to a contractual arrangement with the agency operating
30 the residential facility or, in the case of a volunteer, a written
31 agreement with such facility, provided that the person received written
32 notice concerning the provisions of this paragraph; provided further,
33 however, "employee" shall not include a person with a developmental
34 disability who is or was receiving services and is also an employee of a
35 service provider and who has sexual contact with another service recipi-
36 ent who is a consenting adult who has consented to such contact.

37 § 3. The penal law is amended by adding a new section 260.24 to read
38 as follows:

39 § 260.24 Endangering the welfare of an incompetent or physically disa-
40 bled person in the second degree.

41 A person is guilty of endangering the welfare of an incompetent or
42 physically disabled person in the second degree when he or she reckless-
43 ly engages in conduct which is likely to be injurious to the physical,
44 mental or moral welfare of a person who is unable to care for himself or
45 herself because of physical disability, mental disease or defect.

46 Endangering the welfare of an incompetent or physically disabled
47 person in the second degree is a class A misdemeanor.

48 § 4. Section 260.25 of the penal law, as amended by chapter 381 of the
49 laws of 1998, is amended to read as follows:

50 § 260.25 Endangering the welfare of an incompetent or physically disa-
51 bled person in the first degree.

52 A person is guilty of endangering the welfare of an incompetent or
53 physically disabled person in the first degree when he knowingly acts in
54 a manner likely to be injurious to the physical, mental or moral welfare
55 of a person who is unable to care for himself or herself because of
56 physical disability, mental disease or defect.

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1 Endangering the welfare of an incompetent or physically disabled
 2 person in the first degree is a class ~~[A-misdemeanor]~~ E felony.
 3 § 5. This act shall take effect on the thirtieth day after it shall
 4 have become a law.

5

PART H

6 Section 1. Section 1, 2, 3 and 4 of chapter 606 of the laws of 2011,
 7 amending the mental hygiene law relating to creating an abuse prevention
 8 notification system, is amended to read as follows:

9 Section 1. The mental hygiene law is amended by adding a new section
 10 16.34 to read as follows:

11 § 16.34 Certain information regarding persons working with people with
 12 developmental disabilities.

13 (a) ~~[If the office receives a request]~~ Upon a request to the justice
 14 center for criminal history information for a prospective employee or
 15 volunteer pursuant to section eight hundred forty-five-b of the execu-
 16 tive law, the justice center shall notify the office, and if the office
 17 has [on-file] available, after a reasonably diligent search a substanti-
 18 ated report that the prospective employee or volunteer engaged in behav-
 19 ior that constituted abuse or serious neglect of a patient or consumer
 20 in a program licensed, operated, or certified by the office, the office
 21 shall [furnish] cause to be furnished a summary of such report or
 22 reports [together with any written response from the employee or volun-
 23 teer referred to in subdivision (c) of this section,] to the provider
 24 that requested the criminal history information from the justice center
 25 with respect to such prospective employee or volunteer[. The office
 26 shall provide such] ; provided, however, summary reports provided shall
 27 be limited to substantiated reports based on investigations that
 28 commenced prior to the effective date of this section. Such summary
 29 report [and response, if any,] shall be provided to the authorized
 30 person as defined in paragraph (b) of subdivision one of section eight
 31 hundred forty-five-b of the executive law and at that same time the
 32 office shall furnish such documents to the prospective employee or
 33 volunteer at the address for such person listed on the request.

34 (b) The summary report provided by the office to a provider of
 35 services pursuant to subdivision (a) of this section shall be received
 36 by the provider subject to the confidentiality provisions of subdivision
 37 seven of section eight hundred forty-five-b of the executive law.

38 (c) ~~[When the office receives a substantiated report indicating that~~
 39 ~~an employee or volunteer engaged in behavior that constitutes abuse or~~
 40 ~~serious neglect, the office shall provide such employee or volunteer~~
 41 ~~with written notification that he or she may obtain and review the~~
 42 ~~summary report and submit a written statement in response to the summary~~
 43 ~~report pursuant to regulations and procedures established by the office.~~
 44 ~~If the office receives such written statement, the office shall transmit~~
 45 ~~such written statement to any provider together with the summary report~~
 46 ~~provided pursuant to this section.~~

47 (d) ~~The office shall establish an appeals process by which an employee~~
 48 ~~or volunteer may challenge the determination that a report is substanti-~~
 49 ~~ated, with a de novo standard of review. The appeals process shall not~~
 50 ~~address or reverse any termination of employment that may have occurred~~
 51 ~~due to the report, but shall address whether future potential employers~~
 52 ~~receive a substantiated report when requesting criminal history informa-~~
 53 ~~tion.~~

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~~(e) The office shall establish a process for expunging a substantiated report from a person's record. A person may apply for expunging the substantiated report from his or her record after a period of five years from the filing of the report. The person shall affirmatively demonstrate to the commissioner clear and convincing evidence of rehabilitation.~~

~~(f)~~ For the purposes of this section the following terms shall have the following meanings:

1. "abuse" shall mean physical abuse, sexual abuse, or psychological abuse; and

2. "serious neglect" shall mean ~~the~~ intentional acts or omissions that endanger the life or health of a person receiving services.

3. "substantiated report" shall mean that, after investigation, the commission on quality care and advocacy for persons with disabilities or the office has determined, in writing, that a report filed by such commission, by the office, or by a provider certified by the office, meets the criteria of abuse or serious neglect, as defined in this section, of a patient or consumer in a program licensed, operated, or certified by the office and that the report and credible information submitted support the relevant allegations in the report or shall mean that the prospective employee or volunteer was either found guilty in a disciplinary proceeding, or there was a settlement agreement in which the prospective employee or volunteer admitted guilt.

~~(g)~~ (d) Nothing in this section shall be interpreted to limit the office's ability to investigate abuse, neglect or maltreatment, whether intentional or unintentional, under current law or regulations.

§ 2. Section 16.19 of the mental hygiene law is amended by adding a new subdivision (e) to read as follows:

(e) The commissioner shall promulgate rules and regulations requiring that when the office or a provider licensed, certified or operated by the office conducts an investigation regarding potential abuse, maltreatment or neglect of a person receiving services, any affected employee or volunteer shall be provided a copy of regulations and procedures governing such investigations and, in writing, notify the employee or volunteer subject of the investigation of the right and procedures for obtaining and responding to any report filed by the provider with the office in accordance with this section.

§ 3. Paragraph 1 of subdivision (c) of section 45.07 of the mental hygiene law, as amended by chapter 192 of the laws of 2010, is amended to read as follows:

1. Establish procedures to assure effective investigation of complaints of patients and their parents or legal guardians and employees of mental hygiene facilities affecting such patients including allegations of patient abuse or mistreatment, including all reports of abuse or neglect of children in residential care as defined in paragraphs (g),

(h) and (i) of subdivision four of section four hundred twelve-a of the social services law, except such facilities or programs enumerated in paragraph (j) of subdivision four of such section, and made pursuant to title six of article six of such law. Such procedures shall include but not be limited to receipt of written complaints, interviews of persons, patients and employees and on-site monitoring of conditions. In addition, the commission shall establish procedures for the speedy and impartial review of patient abuse and mistreatment allegations called to its attention. No complaint, report or allegation shall be declined by the commission solely because the complaint, report or allegation is made anonymously. ~~[When conducting an investigation pursuant to this~~

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1 ~~section, the commission shall provide any affected employee or volunteer~~
2 ~~with a copy of this section and the regulations and procedures governing~~
3 ~~such investigations and, in writing, notify the employee or volunteer of~~
4 ~~the investigation and of the right and procedures for obtaining and~~
5 ~~responding to any report filed by the commission with the applicable~~
6 ~~office in accordance with this section.]~~

7 § 4. This act shall take effect ~~(on the first of January next succeed-~~
8 ~~ing the date on which it shall have become a law)~~ June 30, 2013;
9 provided, however, that effective immediately the commissioner of devel-
10 opmental disabilities and the commissioner of mental health may adopt,
11 amend, suspend or repeal rules or regulations and take other actions
12 prior to and in preparation for the timely implementation of this act on
13 its effective date.

14 § 2. Chapter 6 of the laws of 2012, amending chapter 606 of the laws
15 of 2011, amending the mental hygiene law relating to creating an abuse
16 prevention notification system, is REPEALED.

17 § 3. This act shall take effect immediately.

18 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-
19 sion, section or part of this act shall be adjudged by any court of
20 competent jurisdiction to be invalid, such judgment shall not affect,
21 impair, or invalidate the remainder thereof, but shall be confined in
22 its operation to the clause, sentence, paragraph, subdivision, section
23 or part thereof directly involved in the controversy in which such judg-
24 ment shall have been rendered. It is hereby declared to be the intent of
25 the legislature that this act would have been enacted even if such
26 invalid provisions had not been included herein.

27 § 4. This act shall take effect immediately provided, however, that
28 the applicable effective date of Parts A through H of this act shall be
29 as specifically set forth in the last section of such Parts.

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

BILL NUMBER: S7749

SPONSOR: MCDONALD

TITLE OF BILL:

An act to amend the executive law, the criminal procedure law, the correction law and the public health law, in relation to establishing the justice center for the protection of people with special needs; to repeal article 45 of the mental hygiene law, relating to the state commission on quality of care and advocacy for persons with disabilities; and establishing the justice center medical review board (Part A); to amend the social services law, in relation to the protection of vulnerable persons (Part B); to amend the county law and the mental hygiene law, in relation to reports of abuse or neglect of individuals in certain facilities and programs and repealing certain provisions of the mental hygiene law relating thereto; and to amend the mental hygiene law, in relation to reports of abuse and mistreatment of vulnerable persons in residential care and repealing certain provisions of such law relating thereto (Part C); to amend the social services law, in relation to the definition of abused and maltreated child; in relation to mandatory reporting; in relation to the statewide central register of child abuse and maltreatment and access to such register; in relation to making technical corrections relating thereto; and repealing section 412-a, and other provisions of such law relating thereto (Part D); to amend the education law and the vehicle and traffic law, in relation to the protection of pupils in residential care from abuse, neglect and maltreatment (Part E); to amend the mental hygiene law, the executive law and the social services law, in relation to review of criminal history information concerning certain prospective providers, employees, and individuals credentialed by the office of alcoholism and substance abuse services (Part F); to amend the penal law, in relation to certain crimes of abuse, neglect or endangering the welfare of certain incompetent, physically disabled, or vulnerable persons (Part G); and to amend chapter 606 of the laws of 2011, amending the mental hygiene law relating to creating an abuse prevention notification system, in relation to creating an abuse prevention notification system; and to repeal chapter 6 of the laws of 2012, amending chapter 606 of the laws of 2011, amending the mental hygiene law relating to an abuse prevention notification system (Part H)

PURPOSE:

This legislation would create uniform safeguards for people with special needs served in residential facilities and day programs by provider agencies that are operated, licensed or certified by state agencies to protect them against abuse, neglect and other conduct that would jeopardize their health, safety and welfare. The safeguards would be implemented by a newly created Justice Center for the Protection of People with Special Needs, which would contain a Special Prosecutor and Inspector General, who would have concurrent authority with District Attorneys to prosecute abuse and neglect of people with special needs that rise to the level of a criminal offense.

SUMMARY OF PROVISIONS:

Section 1 of the bill identifies the title of the act as the "Protection

of People with Special Needs Act".

Section 2 of the bill sets forth Parts A through H:
Part A would add a new Article 20 of the Executive Law to establish the "Justice Center for the Protection of People with Special Needs" ("the Center"), which would be responsible for ensuring that individuals served in residential facilities and day programs by provider agencies that are operated, licensed or certified by the Office for People With Developmental Disabilities (OPWDD), the Office of Mental Health (OMH), the Office of Alcoholism and Substance Abuse Services (OASAS), the Office of Children and Family Services (OCFS), the Department of Health (DOH) and the State Education Department (SED) are protected from harm. The Center would operate a statewide, toll-free hotline to which mandated reporters would report abuse, neglect and significant incidents involving vulnerable persons (reportable incidents), and would be responsible for referring such reports to law enforcement, where appropriate, and investigating those reports. The Center also would: (a) contain a Special Prosecutor and Inspector General with the authority to prosecute, concurrently with the District Attorneys, offenses involving the abuse and neglect of people with special needs; (b) represent the State at public employee disciplinary proceedings, and at administrative proceedings relating to substantiated abuse and neglect cases; (c) establish a central register and database for reports of abuse and neglect of people with special needs, including the results of such investigations, to allow the Center to examine any patterns and trends in such reported incidents and in the reporting of such incidents, and in order to ensure that corrective action plans are implemented to prevent future incidents; (d) develop a code of conduct to guide the behavior of those employees who have regular contact with vulnerable persons; (e) develop appropriate training standards for investigators and train investigators to meet those standards; and (f) develop consistent policies and procedures for incident management by State agencies that oversee services for people with special needs. In addition, an Advisory Council of at least 15 members would be created to provide guidance to the Center in the development of policies, programs and regulations. Members would include persons with experience in the care and treatment of, or advocacy on behalf of, individuals with disabilities, as well as individuals or family members of individuals who have participated in programs or received services from programs under the jurisdiction of the Center.

This Part also would repeal Article 45 of the Mental Hygiene Law, eliminating the Commission on the Quality of Care and Advocacy for Persons with Disabilities (CQC), and assign its duties to the Justice Center. In addition, Part A would provide for re-designation of an independent agency to conduct protection, advocacy and client assistance functions, in conformance with federal provisions governing oversight of the State's system of care for individuals with disabilities, including: (a) providing information and referrals to address the needs of individuals with disabilities; (b) pursuing administrative and legal remedies as necessary to protect and advocate for the rights of individuals with disabilities; (c) investigating incidents of abuse and neglect reported to the independent agency; and (d) establishing a grievance procedure to ensure that individuals with disabilities have full access to services of the system.

Part B would add a new Article 11 of the Social Services Law to establish the Vulnerable Persons' Central Register within the Center, and the procedures that would have to be followed for the investigation of reportable incidents that are transmitted to the Register. It also would establish, where permitted by existing collective bargaining agreements, that employees found to have committed serious acts of abuse or neglect, as defined in the bill, would be subject to immediate termination and could not be hired in any future position in which they would have regular and substantial contact with people with special needs, and would require that remediation and corrective action plans be developed and implemented to prevent future incidents.

This Part also would create uniform definitions of reportable incidents, including physical, sexual and psychological abuse, neglect and related terms to ensure a consistent response to allegations of abuse and neglect and to better protect people with special needs who are reliant on services provided by the agencies and providers operating within the State's mental hygiene and human services systems. It also would require all of the state agencies overseeing these systems to implement consistent incident management procedures, to be developed by the Center, including a process to ensure timely reporting, investigation and review of allegations of reportable incidents that could subject a person to harm.

In addition, providers not otherwise subject to Article 6 of the Public Officers Law (the Freedom of Information Law) would be subject to the same requirements for disclosure of records as the State agencies that operate, license or certify facilities or providers that provide those services. The Center would assist these providers in fulfilling this new requirement.

Parts C, D and E would make conforming amendments to various sections of the law to reflect the new procedures and requirements created in Parts A and B.

Part F would centralize the criminal background check for OMH, OPWDD and OCFS in the Justice Center, and would create a new obligation for OASAS providers, their employees and individuals credentialed by that office to undergo a criminal history background check.

Part G would amend Penal Law § 240.50 relating to falsely reporting abuse or neglect of a vulnerable person to include making false reports to the vulnerable persons' central register. It also would: (a) amend Penal Law § 130.05 to add a definition of a resident or inpatient of a Department of Mental Hygiene or OASAS as a person incapable of consent; (b) create a new Penal Law § 260.24 to establish a class A misdemeanor for recklessly endangering the welfare of an incompetent or physically disabled person in the second degree; and (c) amend Penal Law § 260.25 to raise the penalty for endangering the welfare of an incompetent or physically disabled person to a class E felony.

Part H would incorporate into the Justice Center a requirement for OPWDD to provide information about substantiated reports of abuse or neglect when responding to a criminal background check. Under the bill, these requests will be made to the Justice Center, which will refer them to OPWDD for response; when the Justice Center becomes operational, it will provide similar information regarding its substantiated cases.

Section 3 of the bill is a severability clause.

Section 4 of the bill would establish the effective dates of the bill and its parts.

EXISTING LAW:

The law governing the agencies impacted in this legislation is in the Mental Hygiene, Social Services Law and Education Law. Various sections of the Penal Law relating to endangerment of incompetent and physically disabled persons are also impacted.

STATEMENT IN SUPPORT:

This bill would reform, overhaul and strengthen the system of protections from abuse and neglect for the over one million State residents with special needs who are served in facilities and programs operated, licensed and certified by OPWDD, OMH, OASAS, OCFS, DOH and SED. More than 270,000 children and adults with special needs and served in residential facilities, and many more are served by day programs

provided by State and private operators. Because of their special needs and other circumstances, these individuals may be especially vulnerable to abuse and neglect. This bill would strengthen and standardize the safety net for these vulnerable children and adults who receive care from New York's human services agencies and programs.

In 2011, Governor Cuomo appointed a Special Advisor on Vulnerable Persons to make recommendations concerning the protection and safety of people served in such programs. The resulting report, *The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities Against Abuse & Neglect*, has identified numerous gaps and inconsistencies in State systems that expose individuals with special needs to an increased risk of harm. These variations across state agencies and within the programs they operate or authorize include:

- o whether they require that provider agencies have an incident management program to identify and respond to unusual incidents;
- o whether they require that providers investigate reported allegations of abuse or neglect;
- o whether they establish timeframes for the completion of such investigations;
- o whether they require that persons conducting investigations be trained to do so;
- o the standard of proof used in such investigations;
- o what types of crimes must be reported to law enforcement agencies and under what circumstances; and
- o whether they require providers to analyze patterns and trends in reported incidents.

The report recommends significant reforms of the systems for reporting and investigating incidents of abuse and neglect in residential programs. The report also acknowledges that most of its recommendations would be equally applicable to non-residential programs.

This bill addresses and goes beyond that far-reaching report's recommendations. It creates a Justice Center for the Protection of People with Special Needs, a new entity that would cut across bureaucratic lines and have as its primary purpose and responsibility the protection of the health, safety and welfare of vulnerable persons. The Center would improve the State's response to allegations of abuse and neglect for individuals served in both residential and non-residential facilities, by:

- o operating a statewide 24-hour hotline staffed by trained personnel to which mandated reporters would be required to report reportable incidents committed against people with special needs who are being served by State and private residential and non-residential facilities and programs;
- o ensuring that allegations of abuse and neglect are promptly, fully and effectively investigated, including ensuring that, where appropriate, these incidents are reported to law enforcement and the wrongdoers prosecuted;
- o developing common standards and requirements for investigations and trainings of investigators;
- o ensuring that individuals who are responsible for abuse and neglect of people with special needs are held accountable;
- o prosecuting abuse and neglect crimes committed against people with special needs through concurrent authority with District Attorneys;
- o requiring providers to implement corrective action plans to prevent future incidents of abuse and neglect;
- o representing the State at all State employee disciplinary proceedings and at administrative proceedings related to substantiated allegations of abuse and neglect;
- o requiring, where permitted by existing collective bargaining agreements, that individuals found responsible for serious or repeated acts of abuse or neglect be subject to termination, and imposing progressive discipline, including retraining, on employees responsible for less serious acts;

- o developing a register that will contain the names of individuals found responsible for egregious or repeated acts of abuse or neglect, and barring such individuals from future employment in the care of people with special needs;
- o conducting the criminal history background check function for any person applying to be an employee, volunteer or consultant for whom a criminal background check is required as a condition of employment at any facility or provider agency operated, licensed or certified by OMH, OPWDD, or OCFS;
- o providing oversight of the human services system, conducting death and abuse investigations, and identifying risks and best practices to promote improved quality of care for people with special needs; and
- o developing codes of conduct to which all workers who have regular contact with people with special needs must subscribe.

This bill also creates other protections for people with special needs: it strengthens criminal statutes that make abuse of vulnerable or disabled persons a crime; and it promotes transparency by requiring non-state operated and provider agencies to disclose the same records relating to abuse and neglect as State agencies are required to do under the Freedom of Information Law.

These provisions, taken together, would address the gaps recognized in the Special Advisor's report, by creating a set of consistent and durable safeguards to protect people with special needs against abuse, neglect and other conduct that may jeopardize their health, safety and welfare.

BUDGET IMPLICATIONS:

The goals of this legislation, for this fiscal year, can be accomplished within existing appropriation authority.

EFFECTIVE DATE:

This bill would take effect June 30, 2013, except that: (1) the new Executive Law § 558(b) added by section 3 of Part A of the bill would take effect upon notice by the Governor to the Legislative Bill Drafting Commission that the protection and advocacy and client assistance programs have been redesignated; (2) the Penal Law changes set forth in Part G of the bill would take effect 30 days after enactment; and (3) Part H of the bill, amending Chapter 606 of the Laws of 2011, would take effect immediately.

