STATE OF NEW YORK

S. 7749

SENATE - ASSEMBLY

June 17, 2012

IN SENATE -- Introduced by Sens. MCDONALD, Alesi, 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 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

EXPLANATION—Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted. LBD12169-02-2
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:

Section 1. This act shall be known and may be cited as the "protection of people with special needs act".

§ 2. This act enacts into law major components of legislation which are necessary for the protection of persons who are vulnerable because of their reliance on professional caregivers to help them overcome physical, cognitive and other challenges. Each component is wholly contained within a Part identified as Parts A through H. The effective date for each particular provision contained within each Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section four of this act sets forth the general effective date of this act.

PART A

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

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

The justice center also will develop a register that will contain the names of individuals found responsible for egregious or repeated acts of abuse or neglect. Before being placed on the register, such individuals will have a right to challenge that finding, but once on the register they will be barred from future employment in the care of vulnerable persons. Employees found responsible for less serious acts shall be subjected to progressive discipline, including retraining and other actions necessary to facilitate their safe return to the workplace.
To ensure that individuals who work with vulnerable persons are aware of their obligations to assist such persons to lead safe, vital and productive lives, the legislation requires the justice center to develop a code of conduct for workers who have regular contact with vulnerable persons. This code of conduct will serve as a guide to such workers by containing the basic ethical standards to which all direct support workers should subscribe and be held accountable.

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

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

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

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

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

ARTICLE 20
PROTECTION OF PEOPLE WITH SPECIAL NEEDS

Section 550. Definitions.

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

552. Organization of the justice center.

553. Powers and duties of the justice center.

554. Codes of conduct.

555. Justice center medical review board: organization.

556. Functions, powers and duties of the board.

557. Reports to the justice center.

558. Access to records and facilities.

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

560. Annual report.

561. Advisory council.

562. Abuse and neglect notification.

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

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

2. "Mental hygiene facility" shall mean a facility as defined in subdivision six of section 1.03 of the mental hygiene law and facilities for the operation of which an operating certificate is required pursuant
to article sixteen or thirty-one of the mental hygiene law and including
family care homes. "Mental hygiene facility" also means a secure treat-
ment facility as defined by article ten of the mental hygiene law.
3. "Reportable incident" shall have the same meaning as defined in
subdivision one of section four hundred eighty-eight of the social
services law.
4. "State oversight agency" shall mean the state agency that operates,
licenses or certifies an applicable facility or provider agency as
defined in subdivision four of section four hundred eighty-eight of the
social services law; provided however that such term shall only include
the following entities: the office of mental health, the office for
people with developmental disabilities, the office of mental health and
substance abuse services, the office of children and family services,
the department of health and the state education department. "State
oversight agency" does not include agencies that are certification agen-
cies pursuant to federal law or regulation. For purposes of this arti-
cle, "state oversight agency" shall include the justice center for the
protection of people with special needs.
5. "Vulnerable person" shall mean a person who, due to physical or
cognitive disabilities, or the need for services or placement, is
receiving services from a facility or provider agency as defined in
subdivision four of section four hundred eighty-eight of the social
services law.
6. "Individual with a disability," except as used in subdivision (b)
of section five hundred fifty-eight of this article, shall mean a person
with a disability as defined in subdivision twenty-one of section two
hundred ninety-two of this chapter.
§ 551. The justice center for the protection of people with special
needs. 1. There is hereby created within the executive department a
justice center for the protection of people with special needs ("justice
center" or "center"). Such justice center shall be headed by an execu-
tive director, who shall be appointed by the governor, by and with the
advice and consent of the senate. The executive director may appoint
staff and perform such other functions for the efficient operation of
the justice center within the amounts made available therefor by appro-
novation.
2. The executive director shall recommend policies and procedures to
the state oversight agency for the protection of vulnerable persons,
including but not limited to policies and procedures: (a) for the
protection of vulnerable persons who reside in or receive services from
facilities or provider agencies as set forth in subdivision four of
section four hundred eighty-eight of the social services law; (b) relat-
ing to assuring, on behalf of the state, that vulnerable persons are
afforded care that is of a uniformly high standard; (c) relating to
assuring, on behalf of the state, that vulnerable persons are afforded
the opportunity to exercise all of the rights and responsibilities
accorded to residents of the state; and (d) to harmonize and improve the
procedures for and quality of investigations of reportable incidents
involving vulnerable persons within the different systems of care in the
state.
3. The executive director may, in consultation with the advisory coun-
cil, promulgate, adopt, amend or rescind rules and regulations necessary
to carry out the provisions of this article; provided, however, that
such rules and regulations shall be strictly limited in their applica-
tion to the means and methods of compliance with the provisions of this
article.
§ 552. Organization of the justice center. 1. The justice center shall
house the vulnerable persons' central register created in section four
hundred ninety-two of the social services law and shall perform all of
the necessary functions related to the receipt and acceptance of reports
of allegations of reportable incidents involving vulnerable persons, the
investigation of such accepted reports and the review of substantiated
findings of abuse or neglect, as defined in subdivision eleven of
section four hundred eighty-eight of the social services law, including
conducting any disciplinary proceedings for state employees resulting
from such substantiated findings (for state entities bound by collective
bargaining, the disciplinary process established through collective
bargaining shall govern). The justice center shall contain two separate
units, headed by two distinct deputies, one responsible for the prose-
cution of criminal matters and one for the resolution of non-criminal
matters. If, during an investigation, what appeared to be a non-criminal
matter warrants consideration for criminal charges, the matter shall be
promptly referred to the criminal unit. Information collected during
such investigations may only be shared between such units in accordance
with state and federal constitutional protections and laws and the
secrecy provisions contained in article one hundred ninety of the crimi-
nal procedure law, unless so ordered by a court in a pending proceeding.
2. (a) The justice center also shall employ a special prosecutor and
an inspector general for the protection of people with special needs
("special prosecutor"), who shall be appointed by the governor. Other
state agencies shall be required to make facilities available for office
space throughout the state and to assist when requested with respect to
the duties of the office. Pursuant to the provisions of this section,
such special prosecutor shall have the duty and power: (i) to investi-
gate and prosecute offenses involving abuse or neglect, as defined in
subdivision eleven of section four hundred eighty-eight of the social
services law, committed against vulnerable persons by custodians as
defined in subdivision two of section four hundred eighty-eight of the
social services law; and (ii) to cooperate with and assist district
attorneys and other local law enforcement officials in their efforts
against such abuse or neglect of vulnerable persons. Provided that noth-
ing herein shall interfere with the ability of district attorneys at any
time to receive complaints, investigate and prosecute any suspected
abuse or neglect or for any persons, whether a mandated reporter or not,
to report a complaint to a district attorney or other appropriate law
enforcement official. The special prosecutor may request and shall
receive, from any agency, department, division, board, bureau or com-
mission of the state, or any political subdivision thereof, cooperation and
assistance in the performance of his or her duties, and may provide
technical and other assistance to any district attorney or law enforce-
ment official requesting assistance in the investigation or prosecution
of abuse or neglect of vulnerable persons.
(b) The special prosecutor is empowered to apply for search warrants
pursuant to article six hundred ninety of the criminal procedure law,
and, except in exigent circumstances, shall give prior notice of the
application to the district attorney of the county in which such a
warrant is to be executed, and in such exigent circumstances shall give
such notice as soon thereafter as is practicable; provided, however that
the failure to give notice of a search warrant application to a district
attorney shall not be a ground to suppress the evidence seized in
executing the warrant. He or she may designate an assistant to exercise
any of such powers.
(g) The special prosecutor or one of his or her assistants may, after consultation with the district attorney as to the time and place of such attendance or appearance, attend in person any term of the county court or supreme court having appropriate jurisdiction, including an extraordinary special or trial term of the supreme court when one is appointed pursuant to section one hundred forty-nine of the judiciary law, or appear before the grand jury thereof, for the purpose of managing and conducting in such court or before such jury a criminal action or proceeding concerned with an offense where any conduct constituting or requisite to the completion of or in any other manner related to such offense involved the abuse or neglect of a vulnerable person, as defined in subdivision eleven of section four hundred eighty-eight of the social services law. In such case, such special prosecutor or his or her assistant so attending may exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform.

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

1. To create and establish the statewide vulnerable persons' central register, as set forth in section four hundred ninety-two of the social services law, which shall include, but not be limited to:
   (a) establishing procedures for the timely response to, and effective investigation of, allegations of reportable incidents that are accepted by the statewide vulnerable persons' central register;
   (b) establishing procedures for the notification of appropriate persons and entities with respect to reports and findings of reportable incidents;
   (c) representing the state in all administrative hearings and other administrative proceedings relating to discipline of state employees and adjudication of individuals charged with having committed or found to have committed abuse or neglect, as defined in subdivision eleven of section four hundred eighty-eight of the social services law (for state entities bound by collective bargaining, the disciplinary process established through collective bargaining shall govern);
   (d) identifying a process for a coordinated approach to avoid duplication and provide for timely responses to allegations of reportable incidents in dually licensed or co-located facilities and provider agencies, which shall include designation of a lead agency primarily responsible for carrying out the responsibilities of a facility or provider agency, pursuant to article eleven of the social services law, including but not limited to incident management and reporting, provided that in making any such designation or re-designation of such lead agency, consideration shall be given to the following factors: the proportion of services provided or recipients served in the dually licensed or co-located facilities and provider agencies pursuant to each license or certification granted by a state oversight agency, the recommendations of the respective state oversight agencies that granted such licensure or certification, and the designation or re-designation that would best protect the health, safety and welfare of vulnerable persons served by such facilities and provider agencies; provided, further that once designated, a lead agency shall only be re-designated as necessary to protect the health, safety and welfare of vulnerable persons served by such facilities and provider agencies;
   (e) where applicable, establishing uniform procedures for character and competence reviews of provider agencies initially, and upon renewal

http://nyslrs.state.ny.us/nyslbdcl/navigate.cgi?NVDTO: 7/9/2019
of licenses and operating certificates requiring a review of performance
records regarding incident management, the role of the board of direc-
tors in maintaining oversight over agency performance in this area, and
the management of reportable incidents affecting the safety of vulner-
able persons, including cases of systemic problems; and
(f) establishing training curricula for employers and employees who
provide care and treatment to vulnerable persons, and those who are in
supervisory positions with respect to such employees, regarding their
obligations to report, investigate and prevent reportable incidents.
Training and curricula shall address topics, including but not limited
to: (i) how to identify and report reportable incidents; (ii) the
prevention of abuse and neglect; (iii) the duty to report reportable
incidents; (iv) how to adhere to applicable codes of conduct; (v) the
disciplinary process and employees' rights pursuant to this article; and
(vi) how supervisory staff and management can promote compliance with
this article by new and existing employees. Such training, which shall
be given on a periodic basis, shall include, but not be limited to, live
training and supplemental courses accessible via the internet. Prior to
implementation of this article, the justice center shall provide
adequate interactive training, which shall include live training to the
extent practicable. Employees may call the hotline established pursuant
to subdivision two of section four hundred ninety-two of the social
services law, and upon inquiry, be given advice and assistance in
complying with their obligations and duties pursuant to this article.
2. To maintain a central repository for data relating to the investi-
gation of all reportable incidents;
3. To establish procedures for review of reportable incidents, to
identify preventive and corrective actions and to develop and implement
such actions and plans of improvement subject to the requirements of any
federal oversight entity;
4. To develop standards and training curricula for investigators who
will be assigned to investigate reportable incidents involving vulner-
able persons, and to provide periodic training to such investigators.
Such standards, curricula and training shall address topics including,
but not limited to: (a) how to identify and investigate reportable inci-
dents; (b) the duty to report reportable incidents; (c) the requirements
of all codes of conduct; (d) all applicable disciplinary processes; and
(e) employees' rights pursuant to this article;
5. To review and evaluate the criminal history information for any
person applying to be an employee, volunteer or consultant for whom a
criminal background check is required by law as a condition of employ-
ment at any facility or provider agencies as defined in subdivision
four of section four hundred eighty-eight of the social services law
that are operated, licensed or certified by the office of mental health,
the office for people with developmental disabilities and the office of
children and family services. Such review and evaluation shall include
but not be limited to a requirement that the applicant sign a sworn
statement whether, to the best of his or her knowledge, he or she has
ever been convicted of a crime in this state or any other jurisdiction;
6. To conduct periodic orientation, training and informational
programs upon appointment or reappointment, and as otherwise needed, to
assist the members of the boards of visitors of mental hygiene facili-
ties to fulfill their responsibilities pursuant to law;
7. (a) To visit, inspect and appraise the management of facilities or
provider agencies as defined in subdivision four of section four hundred
eighty-eight of the social services law providing services to vulnerable
persons with specific attention to the safety, security and quality of
care provided to patients and residents;
(b) To provide staff and other necessary assistance upon request to
boards of visitors of department of mental hygiene facilities in
performing their duties pursuant to law;
(c) To receive and review periodic and annual reports of the boards of
visitors of each department of mental hygiene facility;
(d) To place such members of its staff as it deems appropriate as
monitors in any facility or provider agency as defined in subdivision
four of section four hundred eighty-eight of the social services law
which, in the judgment of the executive director, presents an imminent
danger to the health or safety of the patients, residents or employees
of such facility;
8. To accept, as agent of the state, any grant, including federal
grants, or any gift for any of the purposes of this article. Any moneys
so received may be expended by the justice center to effectuate any
purpose of this article, subject to the same limitations as to approval
of expenditures and audit as are prescribed for state moneys appropri-
ated for the purposes of this article;
9. To enter into contracts with any person, firm, corporation, munici-
pality or governmental agency for the performance of functions author-
ized by law;
10. To administer an adult home and residence for adults resident
advocacy program to assist residents, who have at any time received or
are receiving services from a mental hygiene provider, adult homes
and residences for adults, as defined in section two of the social
services law, where at least twenty-five percent or twenty-five resi-
dents, whichever is less, have at any time received or are receiving
services from a mental hygiene provider which is licensed, operated or
funded by the office of mental health or office for people with develop-
mental disabilities, in understanding their legal rights, and to promote
and protect the rights of such residents.
11. To advise and assist vulnerable persons and individuals with disa-
bilities, family members, advocates, service providers and community
organizations in the formation of strategies to identify and meet the
needs of vulnerable persons and individuals with disabilities for
services, supports and advocacy;
12. To advise and assist the governor and public and private entities
in the development and implementation of state policies which meet the
needs of vulnerable persons and individuals with disabilities in a
manner that is respectful of the rights and choices of vulnerable
persons and individuals with disabilities;
13. To serve as a clearinghouse for information relating to services,
supports and advocacy for vulnerable persons and individuals with disa-
bilities and provide a statewide system of information and referral to
link persons seeking information and assistance with public and private
sector services, supports and advocacy which may be appropriate to meet
their needs;
14. To advise and assist the governor, state agencies, vulnerable
persons, individuals with disabilities and public and private sector
entities in the design and implementation of initiatives to increase
access to technology related assistance for vulnerable persons and indi-
viduals with disabilities;
15. To administer the surrogate decision-making committee program, as
authorized pursuant to article eighty of the mental hygiene law;
16. To stimulate community interest in the problems experienced by
vulnerable persons and individuals with disabilities and promote public
awareness of resources available to such persons and individuals;
17. To advise and assist political subdivisions of the state in the
development of local programs for vulnerable persons and individuals
with disabilities;
18. To advise and assist educational institutions in the state in the
development of courses of study for persons engaged in public and
private programs for vulnerable persons and individuals with disabili-
ties;
19. To conduct or cause to be conducted such studies of the needs of
vulnerable persons and individuals with disabilities as may be appropri-
ate;
20. To do all other things necessary to carry out its functions,
powers and duties set forth in this article;
21. To receive and review reports required pursuant to section 16.19
of the mental hygiene law and take any action as required by law. The
justice center shall assist the commissioner of the office for
people with developmental disabilities in developing and preparing
recommendations required by paragraph three of subdivision (d) of
section 16.19 of the mental hygiene law for submission to the governor,
temporary president of the senate and speaker of the assembly;
22. To prepare and disseminate an educational pamphlet, and serve as
an information clearinghouse, on the rights of parents and legal repre-
sentatives and advocates to access records and reports relating to
patient care and treatment and all other relevant documents from
programs and facilities that are licensed, certified or operated by the
offices of mental health, people with developmental disabilities, alco-
holism and substance abuse services, and children and family services,
and the department of health and the state education department. Such
pamphlet shall include a discussion of how to appeal a decision denying
a requested record or report;
23. To consult with the commissioner of education regarding the
promulgation of rules and regulations requiring that every school bus
driver and school bus attendant serving students with disabilities
receive training and instruction relating to the understanding of and
attention to the special needs of such students pursuant to subdivision
one of section thirty-six hundred fifty of the education law and subdi-
vision four of section twelve hundred twenty-nine-d of the vehicle and
traffic law;
24. To monitor and make recommendations regarding the quality of care
provided to inmates with serious mental illness, including those who are
in a residential mental health treatment unit or segregated confinement
facilities operated by the department of corrections and community
supervision, and oversee compliance with paragraphs (d) and (e) of
subdivision six of section one hundred thirty-seven, and section four
hundred one of the correction law. Such responsibilities shall be
conducted in accordance with section four hundred one-a of the
correction law;
25. (a) To make a preliminary determination whether matters referred
to its attention, warrant investigation and, if so, conduct an investi-
gation of such scope and duration as it deems necessary and proper;
(b) Make findings concerning such matters referred to its attention
and, where it deems appropriate, make a report and recommendations,
which shall be provided to the commissioner and to the director of the
facility involved. Such commissioner and director shall each make a
written response, within ninety days of receipt of such report, of
action taken regarding each of the recommendations in the report;
26. To review the cost effectiveness of mental hygiene programs and
procedures provided for by law with particular attention to efficiency,
effectiveness and economy in the management, supervision and delivery of
such programs. Such review may include but is not limited to: (a)
determining reasons for rising costs and possible means of controlling
them; (b) analyzing and comparing expenditures in mental hygiene to
determine the factors associated with variations in costs; and (c)
analyzing and comparing achievements in selected samples to determine
the factors associated with variations in program success and their
relationship to mental hygiene costs; and
27. In its discretion, to review the policies and practices relating
to the prevention of abuse or neglect in facilities or provider agen-
cies, including staffing patterns of various service models and the
supervision required to help ensure the safety of service recipients.
§ 554. Codes of conduct. 1. The justice center shall adopt and amend,
as appropriate, codes of conduct for all custodians as defined in subdi-
vision two of section four hundred eighty-eight of the social services
law who have or will have regular and direct contact with vulnerable
persons who reside in or receive services from such facilities or
provider agencies. Such codes shall govern the conduct of such custo-
dians with respect to the safety, dignity and welfare of vulnerable
persons to whom they provide care. The justice center shall establish a
process by which each custodian is provided with a copy of the applica-
table code of conduct and is required, at the time of his or her initial
employment, and at least annually thereafter, to acknowledge that he or
she has read and understands such code of conduct. Such process shall
also provide for the enforcement of such codes consistent with appro-
piate collective bargaining agreements.
2. Minimum requirements for codes of conduct. Such codes of conduct
shall include, at a minimum: a. Provisions regarding the responsibility
of such custodians to support the emotional, physical and personal wel-
being of the vulnerable persons they serve, including their protection
from abuse and neglect, and to seek guidance and advice to resolve
issues as needed when making decisions relating to the persons they
serve.
   b. Provisions regarding the responsibility of such custodians to
assist the vulnerable persons they support to direct the course of their
own lives, honoring, where appropriate, their right to assume risk in a
safe manner and recognizing their potential for lifelong learning and
growth.
   c. Provisions regarding the responsibility of custodians to partic-
ipate in available appropriate training to maintain their competency
and skill-level, and to model and shape the behavior of their co-work-
ers.
   d. Provisions regarding the responsibility of such custodians to
promote and practice justice, fairness and equity for the vulnerable
persons they support, uphold and respect their human and civil rights
and respect their human dignity and uniqueness.
   e. Provisions regarding the responsibility of such custodians to
assist, where appropriate, the vulnerable persons they support in devel-
oping and maintaining relationships with families, friends and the
community-at-large.
   f. Provisions regarding the responsibility of such custodians to
advocate with and/or on behalf of the vulnerable persons they support
for their needs, interest, justice, inclusion and full community participation.

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

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

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

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

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

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

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

(a) make a preliminary determination whether the death of a patient or resident in a residential facility within the meaning of subdivision four of section four hundred eighty-eight of the social services law that is operated, licensed or certified by an office of the department of mental hygiene or the office of children and family services, which has been brought to its attention is unusual or whether such death reasonably appears to have resulted from other than natural causes and warrants investigation:
(b) investigate the causes of and circumstances surrounding such
unusual death or deaths from other than natural causes of patients or
residents in such facilities;
(c) visit and inspect any facility in which such a death has occurred;
(d) cause the body of the deceased to undergo such examinations
including an autopsy as in the opinion of the board are necessary to
determine the cause of death, irrespective of whether such examination
or autopsy shall have been previously performed;
(e) upon review of the cause of and circumstances surrounding the
death of any patient or resident, submit its report thereon to the execu-
tive director and, where appropriate, make recommendations to prevent
the recurrence of same to the appropriate commissioner of the department
of mental hygiene or the commissioner of children and family services
and to the director of the facility; and
(f) advise the executive director on medical issues relevant to the
functions, powers, and duties of the justice center, including allega-
tions of abuse or neglect of a patient or resident referred to it.

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

§ 558. Access to records and facilities. (a) The justice center must
be granted access at any and all times to any facility or provider agen-
cy as defined in subdivision four of section four hundred eighty-eight
of the social services law, and, consistent with federal law, to all
books, records, and data pertaining to any such facility or provider
agency deemed necessary for carrying out the justice center's functions,
powers and duties. The justice center or any employee of the justice
center designated by the executive director may require from the offi-
cers or employees of such facility or provider agency or from the
commissioners of the state oversight agencies as defined in subdivision
four-a of such section four hundred eighty-eight of the social services
law, any information deemed necessary for the purpose of carrying out
the justice center's functions, powers and duties, including otherwise
confidential information and such entities shall be required to provide
such requested information. The executive director or any employee of
the justice center designated by the executive director may require from
any hospital, as defined under article twenty-eight of the public health
law, any information, report or record necessary for the purpose of
carrying out the functions, powers and duties of the justice center
related to the investigation of deaths and complaints of abuse or
neglect concerning vulnerable persons who have been treated at such
hospitals, and from any adult care facility as defined in subdivision
twenty-one of section two of the social services law, such information,
report or record, including access to such facility necessary for the
purpose of carrying out the functions, powers and duties of the justice
center related to the investigation of deaths concerning patients of
mental hygiene facilities who resided at such residential care facili-
ties at the time of their death or were former residents of such resi-
dential care facilities and the justice center determines that such
information, report or record is necessary for the completion of its
investigation. Such hospitals and adult care facilities shall be
required to provide such requested information, reports, records and
access. The results of investigations involving such residents of adult
care facilities shall be provided promptly to the commissioner of the
department of health and shall be treated as a record or personal infor-
ination within the meaning of section ninety-six of the public officers
law and shall not be disclosed except in accordance with such section
ninety-six. Information, books, records or data which are confidential
as provided by law shall be kept confidential by the justice center and
any limitations on the release thereof imposed by law upon the party
furnishing the information, books, records or data shall apply to the
justice center except as may otherwise be provided by article eleven of
the social services law.

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

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

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

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

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

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

(iii) Pursuant to the requirements of federal law, upon receipt of a
complaint of an incident of abuse or neglect of an individual with a
disability, if there is probable cause to believe that such an incident
occurred, the independent agency shall have prompt access, at
reasonable times, to any facility or part thereof serving such individ-
ual that is operated, certified or licensed by any office or agency of
the state; to all books, records and data pertaining to such a facility;
to such individual with a disability in a location in which services,
supports and other assistance are provided to such individual; to
records of a facility or provider agency concerning such individual; and
to any other records that are relevant to conducting an investigation.
The independent agency also shall have access to records of the justice
center as set forth in paragraph (f) of subdivision one and paragraph
(y) of subdivision two of section four hundred ninety-six of the social
services law.
(iv) All records and documents received by the independent agency
shall be received subject to any confidentiality requirements applicable
pursuant to state and federal law.
(v) The governor shall be authorized to re-designate the agency imple-
menting the protection and advocacy program and client assistance
programs only if there is good cause for the re-designation and in
accordance with federal requirements.
(vi) The independent agency may assist in the development of residen-
tial councils at facilities and programs.
(vii) To the extent consistent with federal law, the independent agen-
cy shall make copies of any of its reports available to the governor,
the temporary president of the senate and the speaker of the assembly.
(viii) The independent agency shall take affirmative steps to assure
that its programs and services are geographically representative of the
state and, to the extent practicable, ensure regional access, and
reflect the diversity of the state with respect to race and ethnicity.
(c) In the exercise of its functions, powers and duties, the executive
director and any employee designated by him or her is authorized to
issue and enforce a subpoena and a subpoena duces tecum, conduct hear-
ings, administer oaths and examine persons under oath, in accordance
with and pursuant to civil practice law and rules.
(d) In any case where a person in charge or control of such facility
or an officer or employee thereof shall fail to comply with the
provisions of subdivision (a) of this section, the justice center may
apply to the supreme court for an order directed to such person requir-
ing compliance therewith. Upon such application the court may issue such
order as may be just and a failure to comply with the order of the court
shall be a contempt of court and punishable as such.
§ 559. New York State interagency coordinating council for services to
persons who are deaf, deaf-blind, or hard of hearing. 1. Subject to an
appropriation, the justice center shall have the central responsibility
for administering the provisions of this section and otherwise coordi-
nating the activities of the state interagency coordinating council for
services to persons who are deaf, deaf-blind, or hard of hearing with
respect to serving residents of the state who are deaf, deaf-blind, or
hard of hearing, in consultation with the office of the aging, the public service commission, the
department of health, the department of labor, the department of educa-
tion, and other state agencies as appropriate. The council shall meet a
minimum of three times a year.
2. The following definitions describe the functional characteristics
of persons who are deaf, deaf-blind, or hard of hearing, as used in this
section.
(a) Deaf. Describes persons who have a profound hearing loss and who
primarily rely on visual communication, such as sign language, writing,
lip reading, and gestures, which may be used exclusively or in combina-
tion. Such persons generally use a form of American sign language as
their primary mode of communication. In addition, there is a group of
profoundly deaf individuals who communicate orally and may use sign
language to support their understanding of the spoken language. Hearing
aids and other assistive technology may also be used to aid in communication.
(b) Deaf-blind. An individual with a concomitant hearing and visual impairment, the combination of which causes such severe communication and other developmental and educational problems that the individual cannot be accommodated in programs for individuals who are solely deaf or blind.
(c) Hard of hearing. A hard of hearing person is someone with a measurable hearing loss and who self-identifies as being hard of hearing, although audiologically he or she may have a profound hearing loss. Additionally, this person typically uses his or her residual hearing, speech and speech reading skills, and hearing aids to communicate; he or she may rely on assistive listening devices to augment his or her ability to hear and speak.
3. Subject to an appropriation, the justice center shall have the following powers and duties:
(a) To coordinate the activities of the state interagency coordinating council and to promote, in cooperation with the appropriate state agencies, the implementation of a comprehensive statewide program of coordinated services for persons who are deaf, deaf-blind, or hard of hearing that includes educational, medical, housing, transportation, technology supports, personal care, family supports, day program services, and other essential services that maximize existing resources and administrative mechanisms to address issues and legal obligations.
(b) To maintain data on the incidence of deafness, deaf-blindness, and other hearing loss.
(c) To serve as a clearinghouse for information on services available to persons who are deaf, deaf-blind, or hard of hearing, including, but not limited to, resources that support the development and implementation of community-based services and rehabilitation.
(d) To disseminate general information on deafness and the unique communication needs of persons who are deaf, deaf-blind, and hard of hearing, and to inform the deaf, deaf-blind, and hard of hearing communities about available services and how such services can be accessed.
(e) To receive complaints in matters affecting the deaf, deaf-blind, or hard of hearing communities and to refer such complaints to the appropriate regulatory agencies where it deems necessary or appropriate.
(f) To conduct an ongoing evaluation of the needs of the deaf, deaf-blind, and hard of hearing communities, including technology needs.
(g) To report to the governor and the legislature, on or before November first of each year, on matters which shall include, but not be limited to:
(i) the status of current efforts to achieve the purposes of this section, which will be updated in subsequent reports; and
(ii) recommendations for standards, policies, procedures, and strategies necessary to assure communication accessibility and community-based services, including needed statutory revisions.
4. (a) Subject to an appropriation, the state interagency coordinating council for services to persons who are deaf, deaf-blind, or hard of hearing is hereby established and shall consist of the following persons to be appointed by the governor:
(i) seven agency heads or their designees, acting in an ex officio capacity: the executive director of the justice center, who shall serve as the chair of the state interagency coordinating council, the commissioner of the office of children and family services, the director of the office for aging, the chair of the public service commission, the
commissioner of health, the commissioner of labor, and the commissioner of education:

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

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

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

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

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

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

§ 561. Advisory council. 1. There shall be within the justice center an advisory council consisting of no less than fifteen members to be appointed by the governor, with the advice and consent of the senate. Members shall be appointed on the basis of their professional and personal knowledge in the care and treatment of and in the provision of services, supports, and advocacy to and on behalf of service recipients, as defined in subdivision nine of section four hundred eighty-eight of the social services law, and individuals with disabilities, or their active interest in the system of services for such service recipients or
individuals with disabilities. In making such appointments, the governor
shall endeavor to ensure the overall membership of the council adequate-
ly reflects the programs and services within the justice center's juris-
diction and that at least one-half of the members are individuals or
parents or relatives of individuals who are or have participated in or
are or have been recipients of programs and services within the justice
center's jurisdiction. The council shall include but shall not be limit-
ed to:
(a) members of boards of visitors appointed pursuant to articles seven
and thirteen of the mental hygiene law;
(b) consumer representatives, including current or former service
recipients of an applicable facility or provider agency;
(c) parents, relatives or guardians of such service recipients;
(d) providers of services to vulnerable persons;
(e) directors of facilities, community services or members of commu-
   nity services boards;
(f) current and former consumers of services for individuals with
   physical disabilities;
(g) members of organizations that advocate on behalf of vulnerable
   persons and individuals with disabilities; and
(h) an employee of a facility or provider agency as defined in subdivi-
   sion four of section four hundred eighty-eight of the social ser-
   vices law.
2. Members shall be appointed for terms of three years provided,
however, that of the members first appointed, one-third shall be
appointed for one-year terms and one-third shall be appointed for two-
year terms. A member may be removed by the governor for good cause after
notice and an opportunity to be heard on the charges. Vacancies shall be
filled in the same manner as original appointments for the remainder of
any unexpired term.
3. The governor shall designate one member of the council as its chair
to serve as such at the pleasure of the governor.
4. Council members shall not receive compensation, but each member
shall be entitled to receive his or her reasonable and necessary
expenses incurred in connection with his or her services as a member
within the amounts appropriated therefor.
5. The council shall have an executive secretary designated by the
executive director of the justice center. The executive director may
also assign such other employees of the justice center as the council
may from time to time require to assist it in the performance of its
duties.
6. The council shall advise and assist the justice center in develop-
ing policies, proposed regulations, plans and programs to carry out its
functions, powers and duties pursuant to this section. The council may
consider any matter related to improving the quality of life of citizens
of the state who have disabilities and shall advise the justice center
on any such matter.
7. The council shall meet at least four times a year. The council
shall meet at the request of its chair or the executive director of the
justice center.
§ 562. Abuse and neglect notification. 1. Upon receiving a request for
criminal history information, pursuant to section eight hundred forty-
five-b of this chapter, for a prospecive employee or volunteer of a
facility or provider licensed, operated, or certified by the office for
people with developmental disabilities, the justice center shall furnish
a summary of any substantiated reports in its possession regarding a
finding of category two conduct pursuant to section four hundred ninety-three of the social services law, by a prospective employee or volunteer, if all relevant hearings and appeals have been exhausted. The justice center shall provide such summary report to the authorized person as defined in paragraph (b) of subdivision one of section eight hundred forty-five-b of this chapter and at that same time furnish such documents to the prospective employee or volunteer at the address for such person listed on the request.

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

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

32. "District attorney" means a district attorney, an assistant district attorney or a special district attorney, and, where appropriate, the attorney general, an assistant attorney general, a deputy attorney general [or] a special deputy attorney general, or the special prosecutor and inspector general for the protection of people with special needs or his or her assistants when acting pursuant to their duties in matters arising under article twenty of the executive law.

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

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

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

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

2. The [commission] justice center shall monitor the quality of care in residential mental health treatment programs and shall ensure compliance with paragraphs (d) and (e) of subdivision six of section one
hundred thirty-seven of this chapter and section four hundred one of
this article. The [commission] justice center may recommend to the
department and the office of mental health that inmates in segregated
confinement pursuant to subdivision six of section one hundred thirty-
seven of this chapter be evaluated for placement in a residential mental
health treatment unit. It may also recommend ways to further the goal
of diverting and removing inmates with serious mental illness from
segregated confinement to residential mental health treatment units. The
[commission] justice center shall include in its annual report to the
governor and the legislature pursuant to [subdivision (g) of] section
[46.09] five hundred sixty of the [mental hygiene] executive law, a
description of the state's progress in complying with this article,
which shall be publicly available.
3. The [commission] justice center shall appoint an advisory committee
on psychiatric correctional care ("committee"), which shall be composed
of independent mental health experts and mental health advocates, and
may include family members of former inmates with serious mental
illness. Such committee shall advise the [commission] justice center on
its oversight responsibilities pursuant to this section [and—article
forty-five of the mental hygiene law]. The committee may also make
recommendations to the [commission] justice center regarding improve-
ments to prison-based mental health care. Nothing in this subdivision
shall be deemed to authorize members of the committee to have access to
a correctional or mental hygiene facility or any part of such a facility.
Provided, however, newly appointed members of the advisory committee
shall be provided with a tour of a segregated confinement unit and a
residential mental health treatment unit, as selected by the commissi-
er. Any such tour shall be arranged on a date and at a time selected by
the commissioner and upon such terms and conditions as are within the
sole discretion of the commissioner.
§ 7. Paragraph (c) of subdivision 6 of section 2994-m of the public
health law, as added by chapter 8 of the laws of 2010, is amended to
read as follows:
(c) Nothing in this subdivision shall prohibit the [state commission
on quality of care and advocacy for persons with disabilities] justice
center for the protection of people with special needs or any agency or
person within or under contract with the [commission] justice center
which provides protection and advocacy services from requiring any
information, report or record from a hospital in accordance with the
provisions of section [46.09] five hundred fifty-eight of the [mental
hygiene] executive law.
§ 8. Transfer of employees. Notwithstanding any other provision of
law, rule, or regulation to the contrary, upon the transfer of any func-
tions from the state commission on quality of care and advocacy for
persons with disabilities, the office of mental health, the office for
people with developmental disabilities, the office of alcoholism and
substance abuse services, the office of children and family services and
the department of health to the justice center for the protection of
people with special needs pursuant to this act, employees performing
those functions shall be transferred to such justice center pursuant to
subdivision two of section 70 of the civil service law. Employees
transferred pursuant to this section shall be transferred without
further examination or qualification and shall retain their respective
civil service classifications, status and collective bargaining unit
designations and collective bargaining agreements.
§ 9. Transfer of records. All books, papers, and property of the state
commission on quality of care and advocacy for persons with disabilities
shall be deemed to be in the possession of the executive director of the
justice center for the protection of people with special needs, and
shall continue to be maintained by such justice center.
§ 10. Continuity of authority. For the purpose of succession of all
functions, powers, duties and obligations transferred and assigned to,
devolved upon and assumed by it pursuant to this act, the justice center
for the protection of people with special needs shall be deemed and held
to constitute the continuation of the state commission on quality of
care and advocacy for persons with disabilities.
§ 11. Completion of unfinished business. Any business or other matter
undertaken or commenced by the state commission on quality of care and
advocacy for persons with disabilities, the office of mental health, the
office for people with developmental disabilities, the office of alco-
holism and substance abuse services, the office of children and family
services, the department of health and the state education department
pertaining to or connected with the functions, powers, obligations and
duties hereby transferred and assigned to the justice center for the
protection of people with special needs and pending on the effective
date of this act, may be conducted and completed by such justice center
in the same manner and under the same terms and conditions and with the
same effect as if conducted and completed by the state commission on
quality of care and advocacy for persons with disabilities.
§ 12. Continuation of rules and regulations. All rules, regulations,
acts, orders, determinations, and decisions of the state commission on
quality of care and advocacy for persons with disabilities pertaining to
the functions and powers transferred and assigned pursuant to this act,
in force at the time of such transfer and assumption, shall continue in
full force and effect as rules, regulations, acts, orders, determina-
ations and decisions of the justice center for the protection of people
with special needs until duly modified or abrogated by the executive
director of such justice center.
§ 13. Terms occurring in laws, contracts and other documents. Whenever
the state commission on quality of care and advocacy for persons with
disabilities, or the chairman thereof, is referred to or designated in
any law, contract or document pertaining to the functions, powers, obli-
gations and duties hereby transferred to and assigned to the justice
center for the protection of people with special needs, such reference
or designation shall be deemed to refer to such justice center, or the
executive director thereof, as applicable.
§ 14. Existing rights and remedies preserved. No existing right or
remedy of any character shall be lost, impaired or affected by any
provisions of this act.
§ 15. Pending actions and proceedings. No action or proceeding pending
at the time this act shall take effect, brought by or against the
state commission on quality of care and advocacy for persons with disa-
bilities, or the chairman thereof, shall be affected by any provision of
this act, but the same may be prosecuted or defended in the name of the
executive director of the justice center for the protection of people
with special needs. In all such actions and proceedings, the executive
director of such justice center, upon application to the court, shall be
substituted as a party.
§ 16. Transfer of appropriations heretofore made. All appropriatio-
ns or reappropriations heretofore made to the state commission on quality
of care and advocacy for persons with disabilities to the extent of
removing unexpended or unencumbered balance thereof, whether allocated
or unallocated and whether obligated or unobligated, are hereby trans-
ferred to and made available for use and expenditure by the justice
center for the protection of people with special needs subject to the
approval of the director of the budget for the same purposes for which
originally appropriated or reappropriated and shall be payable on vouchers
certified or approved by the executive director of such justice
center on audit and warrant of the comptroller. In addition to such
authority otherwise granted pursuant to law to interchange, transfer and
suballocate amounts appropriated for the office for people with develop-
mental disabilities, the office of mental health, the office of alcohol-
ism and substance abuse services, the department of health and the
office of children and family services, such amounts appropriated for
state operations for such agencies may also be interchanged, transferred
and suballocated for the purpose of planning, developing and/or imple-
menting the alignment of the operations within and between such agencies
sufficient to fulfill the purposes of this act for the state fiscal year
beginning April 1, 2012.
§ 17. Transfer of assets and liabilities. All assets and liabilities
of the state commission on quality of care and advocacy for persons with
disabilities are hereby transferred to and assumed by the justice center
for the protection of people with special needs.
§ 18. This act shall take effect June 30, 2013; provided, however,
that, effective immediately, any actions necessary for the implementa-
tion of this act on its effective date, and the addition, amendment or
repeal of any rule or regulation necessary for the implementation of
this act on its effective date, are authorized to be taken or made on or
before such date, and provided further that subdivision (b) of section
five hundred fifty-eight of the executive law, providing for re-designa-
tion of the protection and advocacy and client assistance programs, as
added by section three of this act, shall become effective upon filing
the governor’s final notice of re-designation with the legislative bill
drafting commission.

PART B

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

ARTICLE 11

PROTECTION OF PEOPLE WITH SPECIAL NEEDS

Section 488. Definitions.

489. Applicability.

490. Incident management programs.

491. Duty to report incidents.

492. Vulnerable persons’ central register.

493. Abuse and neglect findings: consequences.

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

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

496. Confidentiality.

497. Immunity from liability.

§ 488. Definitions. As used in this article, the following terms shall
have the following meanings:
1. "Reportable incident" shall mean the following conduct that a mandated reporter is required to report to the vulnerable persons' central register:

(a) "Physical abuse," which shall mean conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental or emotional condition of a service recipient or causing the likelihood of such injury or impairment. Such conduct may include but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shaking, dragging, throwing, punching, shaking, burning, cutting or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any person.

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

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

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

(e) "Use of aversive conditioning," which shall mean the application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services in the absence of a person-specific authorization by the operating, licensing or certifying state agency pursuant to governing state agency regulations. Aversive conditioning may include but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, the withholding of meals and the provision of substitute foods in
an unpalatable form and movement limitations used as punishment, including but not limited to helmets and mechanical restraint devices.

(f) "Obstruction of reports of reportable incidents," which shall mean conduct by a custodian that impedes the discovery, reporting or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment or supervision of a service recipient, actively persuading a mandated reporter from making a report of a reportable incident to the statewide vulnerable persons' central registry with the intent to suppress the reporting of the investigation of such incident, intentionally making a false statement or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with governing state agency regulations, policies or procedures; or, for a mandated reporter who is a custodian as defined in subdivision two of this section, failing to report a reportable incident upon discovery.

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

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

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

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

2. conduct on the part of a custodian, which is inconsistent with a service recipient's individual treatment plan or individualized educational program, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies and which impairs or
creates a reasonably foreseeable potential to impair the health, safety
or welfare of a person receiving services, including but not limited to:
(A) unauthorized seclusion, which shall mean the placement of a person
receiving services in a room or area from which he or she cannot, or
perceives that he or she cannot, leave at will;
(B) unauthorized use of time-out, which shall mean the use of a proce-
dure in which a person receiving services is removed from regular
programming and isolated in a room or area for the convenience of a
custodian, or as a substitute for programming but shall not include the
use of a time-out as an emergency intervention to protect the health or
safety of the individual or other persons;
(C) except as provided for in paragraph (g) of subdivision one of this
section, the administration of a prescribed or over-the-counter medica-
tion, which is inconsistent with a prescription or order issued for a
service recipient by a licensed, qualified health care practitioner, and
which has an adverse effect on a service recipient. For purposes of
this paragraph, "adverse effect" shall mean the unanticipated and unde-
sirable side effect from the administration of a particular medication
which unfavorably affects the well-being of a service recipient;
(D) inappropriate use of restraints, which shall mean the use of a
restraint when the technique that is used, the amount of force that is
used or the situation in which the restraint is used is inconsistent
with a service recipient's individual plan, generally accepted treatment
practices and/or applicable federal or state laws, regulations or poli-
cies. For the purposes of this subdivision, a "restraint" shall include
the use of any manual, pharmacological or mechanical measure or device
to immobilize or limit the ability of a person receiving services to
freely move his or her arms, legs or body; or
(E) any other conduct identified in regulations of the state oversight
agency, pursuant to guidelines or standards established by the executive
director.
2. "Custodian" means a director, operator, employee or volunteer of a
facility or provider agency; or a consultant or an employee or volunteer
of a corporation, partnership, organization or governmental entity which
provides goods or services to a facility or provider agency pursuant to
contract or other arrangement that permits such person to have regular
and substantial contact with individuals who are cared for by the facil-
ity or provider agency.
3. "Executive director" shall mean the executive director of the
justice center for the protection of people with special needs as estab-
lished by article twenty of the executive law.
4. "Facility" or "provider agency" shall mean:
(a) a facility or program in which services are provided and which is
operated, licensed or certified by the office of mental health, the
office for people with developmental disabilities or the office of alco-
holism and substance abuse services, including but not limited to
psychiatric centers, inpatient psychiatric units of a general hospital,
developmental centers, intermediate care facilities, community resi-
dences, group homes and family care homes, provided, however, that such
term shall not include a secure treatment facility as defined in section
10.03 of the mental hygiene law, or services provided in programs or
facilities that are operated by the office of mental health and located
in state correctional facilities under the jurisdiction of the depart-
ment of corrections and community supervision;
(b) any program or facility that is operated by the office of children
and family services for juvenile delinquents or juvenile offenders
placed in the custody of the commissioner of such office and any residential programs or facilities licensed or certified by the office of children and family services, excluding foster family homes and residential programs for victims of domestic violence;

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

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

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

4-a. "State oversight agency" shall mean the state agency that operates, licenses or certifies an applicable facility or provider agency: provided however that such term shall only include the following entities: the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services, the office of children and family services, the department of health and the state education department. "State oversight agency" does not include agencies that are certification agencies pursuant to federal law or regulation.

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

5-a. "Human services professional" shall mean any: physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; licensed practical nurse; nurse practitioner; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; licensed speech/language pathologist or audiologist; licensed physical therapist; licensed occupational therapist; hospital personnel engaged in the admission, examination, care or treatment of persons; Christian Science practitioner; school official, which includes but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate; social services worker; any other child care or foster care
worker; mental health professional; person credentialed by the office of
alcoholism and substance abuse services; peace officer; police officer;
district attorney or assistant district attorney; investigator employed
in the office of a district attorney; or other law enforcement official.
6. "Physical injury" and "impairment of physical condition" shall mean
any confirmed harm, hurt or damage resulting in a significant worsening
or diminution of an individual's physical condition.
7. "Delegate investigatory entity" shall mean a facility or provider
agency, or any other entity authorized by the regulations of a state
oversight agency or the justice center for the protection of people with
special needs to conduct an investigation of a reportable incident.
8. "Justice center" shall mean the justice center for the protection
of people with special needs.
9. "Person receiving services," or "service recipient" shall mean an
individual who resides or is an inpatient in a residential facility or
who receives services from a facility or provider agency.
10. "Personal representative" shall mean a person authorized under
state, tribal, military or other applicable law to act on behalf of a
vulnerable person in making health care decisions or, for programs that
serve children under the jurisdiction of the state education department
or the office of children and family services, the service recipient's
parent, guardian or other person legally responsible for such person.
11. "Abuse or neglect" shall mean the conduct described in paragraphs
(a) through (h) of subdivision one of this section.
12. "Subject of the report" shall mean a custodian, as defined in
subdivision two of this section, who is reported to the vulnerable
persons' central register for the alleged abuse or neglect of a vulner-
able person as defined in subdivision eleven of this section.
13. "Other persons named in the report" shall mean be limited to
the following persons who are named in a report to the vulnerable
persons' central register other than the subject of the report: the
service recipient whose care and treatment is the concern of a report to
the vulnerable persons' central register, and the personal representa-
tive, if any, as defined in subdivision ten of this section.
14. "Vulnerable persons' central register" shall mean the statewide
central register of reportable incidents involving vulnerable persons,
which shall operate in accordance with section four hundred ninety-two
of this article.
15. "Vulnerable person" shall mean a person who, due to physical or
home care, or the need for services or placement, is
receiving services from a facility or provider agency.
16. "Intentionally" and "recklessly" shall have the same meanings as
provided in subdivisions one and three of section 15.05 of the penal
law.
§ 489. Applicability. The provisions of this article shall apply to
facilities and provider agencies, provided, however, nothing in this
article shall be deemed to relieve any facility or provider agency or
custodian thereof covered by this article of its or their obligations to
comply with the requirements of federal laws or regulations to which
that facility, provider agency or custodian thereof is subject, includ-
ing any requirements that are a condition of federal financial partic-
ipation in medical assistance payments. To the extent that federal
requirements conflict with any of the provisions in this article, the
federal requirements shall supersede the conflicting provisions in this
article with respect to any such facility or provider agency.
§ 490. Incident management programs. 1. Each state oversight agency, as defined in this article, shall promulgate regulations approved by the justice center, that contain procedures and requirements consistent with guidelines and standards developed by the justice center, addressing the following issues relating to an incident management program: provided, however, that regulations of the state education department need not be approved by the justice center, but shall be developed in consultation with the justice center:

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

(b) all reportable incidents are promptly investigated;

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

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

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

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

2. Notwithstanding any other provision of law, except as may be provided by section 33.25 of the mental hygiene law, records, reports or other information maintained by the justice center, state oversight agencies, delegate investigatory entities, and facilities and provider agencies regarding the deliberations of an incident review committee shall be confidential, provided that nothing in this article shall be deemed to diminish or otherwise derogate the legal privilege afforded to proceedings, records, reports or other information relating to a quality assurance function, including the investigation of an incident reported pursuant to section 29.29 of the mental hygiene law, as provided in section sixty-five hundred twenty-seven of the education law. For
purposes of this section, a quality assurance function is a process for
systematically monitoring and evaluating various aspects of a program,
service or facility to ensure that standards of care are being met.

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

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

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

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

§ 491. Duty to report incidents. 1. (a) Mandated reporters shall
report allegations of reportable incidents to the vulnerable persons'
(b) Allegations of reportable incidents shall be reported immediately to the vulnerable persons' central register upon discovery. For purposes of this article, "discovery" occurs when the mandated reporter witnesses a suspected reportable incident or when another person, including the vulnerable person, comes before the mandated reporter in the mandated reporter's professional or official capacity and provides the mandated reporter with reasonable cause to suspect that the vulnerable person has been subjected to a reportable incident. A report to the register shall include the name, title and contact information of every person known to the mandated reporter to have the same information as the mandated reporter concerning the reportable incident. Nothing in this subdivision shall be construed to prohibit a mandated reporter from contacting or reporting to law enforcement or emergency services before or after reporting to the vulnerable persons' central register.

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

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

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

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

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

http://nyslrs.state.ny.us/nyslbdc1/navigate.cgi?NVDTO: 7/9/2019
makes a report in accordance with this section. A court of competent
jurisdiction may grant injunctive relief to any person determined to
have been subjected to such retaliation.
§ 492. Vulnerable persons' central register. 1. There shall be estab-
lished in the justice center a statewide vulnerable persons' central
register. The register shall: (a) receive reports of allegations of
reportable incidents involving persons receiving services in facilities
or provider agencies subject to the requirements of this article; (b) as
warranted, refer reports alleging crimes to appropriate law enforcement
authorities; (c) notify appropriate persons and officials of received
and accepted reports, and (d) maintain an electronic database of each
report and the finding associated with each report. In accordance with
this section, the executive director shall establish standards and
procedures for the operation of the vulnerable persons' central regis-
ter.
2. (a) The vulnerable persons' central register shall be staffed by
persons with at least a baccalaureate or equivalent college degree in a
relevant field of study or at least two years of experience in the
direct provision of services, adult or child protective services, and
any other qualifications identified by the executive director. Direct
service provision shall include the care, investigation, assessment,
treatment, or care planning for persons in facilities or programs
covered by this article or equivalent facilities or programs. Vulner-
able persons' central register staff also shall have access to appropri-
ate law enforcement officers or others with law enforcement experience
who shall assist in screening reports that appear to allege criminal
offenses and help refer reports, as warranted, to appropriate law
enforcement authorities.
(b) The vulnerable persons' central register shall receive reports of
allegations of reportable incidents twenty-four hours per day, seven
days a week. Mandated reporters shall make such reports in accordance
with section four hundred ninety-one of this article; provided, however,
any person who has reasonable cause to suspect that a person receiving
services has been subjected to a reportable incident may make such a
report. In no event shall a report by a mandated reporter to the vulner-
able persons' central register eliminate the obligation of a mandated
reporter to report incidents in accordance with the applicable laws,
regulations and policy of the applicable state oversight agency.
(c) Reports of allegations of reportable incidents shall be submitted,
by a statewide, toll-free telephone number (a "hotline") or by electron-
ic transmission, in a manner and on forms prescribed by the executive
director. The information required on the reporting form shall include
but is not limited to: the name and contact information of the person or
persons making the report, if available, and, if the report is made by a
custodian, any other staff who have the same information: the name and
address of the facility or provider agency; the date, time, specific
location and description of the incident; the name and contact informa-
tion of the subject of the reportable incident, if known; the name of
the vulnerable person alleged to have been subjected to a reportable
incident; the names of personal representatives for the vulnerable
person who is alleged to have been subjected to a reportable incident,
if known; and any other information or documentation that the executive
director believes may be helpful. The inability of a person making a
report to identify a subject shall, in no circumstance, constitute cause
to reject such allegation for investigation or to fail to refer such
allegation for corrective action. The hotline shall accept anonymous
calls.
3. (a) When any allegation that could reasonably constitute a report-
able incident is received by the register, the register shall accept and
immediately transmit notice of the report orally or electronically to
the appropriate state oversight agency and, as appropriate, to the
director or operator of that facility or provider agency.
(b) Whenever a telephone call or electronic transmission to the
vulnerable persons' central register alleges an act or circumstances
that may constitute a criminal offense or an immediate threat to a
vulnerable person's health, safety or welfare, the register shall
convey, by the most expeditious means available, the information contained
in such call or transmission to the appropriate law enforcement agency
or district attorney and, to the extent necessary, the appropriate emer-
gency responder, and the state oversight agency.
(c) The justice center is responsible for commencing an investigation
of all allegations of reportable incidents that are accepted by the
vulnerable persons' central register. With respect to such an investi-
gation, the justice center shall:
(i) upon acceptance of a report of a reportable incident by the
vulnerable persons' central register, promptly commences an appropriate
investigation;
(ii) take all appropriate measures to protect the life and health of
the person who is the alleged victim of a reportable incident, which may
include working with the state oversight agency to take immediate steps
to remove the vulnerable person from his or her current facility or
program or to remove or suspend a subject from a facility or program,
subject to any applicable collective bargaining agreement, if the
justice center has reasonable cause to believe that the circumstances or
condition of the vulnerable person are such that continuing the vulner-
able person in his or her place of residence or program, or that contin-
uing such subject in his or her current facility or program, presents an
imminent danger to the vulnerable person's life or health;
(iii) determine whether the subject of the report is currently the
subject of an open or substantiated report in the vulnerable persons'
central register;
(iv) contact the statewide central register of child abuse and
maltreatment to determine whether the subject of the report has been or
is currently the subject of an indicated child abuse and maltreatment
report on file with the statewide central register of child abuse and
maltreatment;
(v) if it is discovered that the subject of a report has one or more
substantiated reports of abuse or neglect or indicated reports of child
abuse or maltreatment in the statewide central register of child abuse
and maltreatment, an investigation was or investigations were
conducted by a different state agency or a local child protective
service, contact all known agencies or services who investigated such
previous report or reports to obtain information on such reports in
accordance with section four hundred ninety-six of this article;
(vi) notify the personal representative of the person alleged to have
been abused or neglected and, except in the case of a criminal investi-
gation, or if the executive director or his or her designee determines
that doing so would interfere with any ongoing investigation, notify the
subject or subjects of the report and any other persons named in the
report in writing of the existence of the report; provided, however,
that such notification may be limited in accordance with subdivision (c) of section 33.15 of the mental hygiene law;

(ii) if a report of a reportable incident to the vulnerable persons' central register involves the death of a person, the justice center shall give telephone notice and immediately send a copy of the report to the appropriate district attorney and to the medical examiner or coroner. The medical examiner or coroner shall conduct a prompt investigation and shall forward a preliminary written report of his or her findings within sixty days of the date of death, absent extraordinary circumstances, and his or her final written report promptly, absent extraordinary circumstances, to the appropriate district attorney, the appropriate law enforcement official, the state agency responsible for overseeing the investigation, the justice center medical review board and, if the death occurred in a hospital, the hospital;

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

(ix) notify the applicable state oversight agency and the director or operator, where appropriate, to develop a plan of prevention or remediation that the facility or program must implement in response to the report's findings which must be approved and its implementation monitored by the justice center or the state oversight agency, as appropriate; and

(x) refer suspected cases of falsely reporting abuse or neglect in violation of subdivision four of section 240.50 of the penal law to the appropriate law enforcement agency or district attorney for investigation and prosecution.

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

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

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

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

(b) The register shall include the following information for each report: a record of the final disposition of the report; the names and identifying data; dates and circumstances of any person requesting or receiving information from the register; whether the person making the report authorized the disclosure of his or her name and personally identifiable information; and any other information that the executive director, in consultation with the commissioners of the state oversight agencies covered by this article, identifies as furthering the purposes of this article and complying with state and federal regulations regarding the security and confidentiality of individually identifying health information.
5. The justice center shall review such electronic database to identify incident patterns and trends, and implement preventive and corrective actions, and to identify patterns and trends in the reporting and response to allegations of reportable incidents and develop plans of improvement based on such reviews.

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

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

(c) The justice center, in collaboration with the state agencies operating, licensing or certifying facilities or the provider agencies covered by this article, shall provide mandated reporters with written information explaining the reporting requirements in accordance with this article.

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

8. In a case where a subject of a report of alleged abuse or neglect resigns from his or her position or is terminated while under investigation, the state operating agency or the applicable facility or provider agency shall promptly report such resignation or termination to the justice center. The investigation of the report shall continue despite the resignation or termination of such subject.

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

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

3. (a) A finding shall be based on a preponderance of the evidence and shall indicate whether: (i) the alleged abuse or neglect is substantiated because it is determined that the incident occurred and the subject of the report was responsible or, if no subject can be identified and an incident occurred, that, the facility or provider agency was responsible; or (ii) the alleged abuse or neglect is unsubstantiated because it is determined not to have occurred or the subject of the report was not
responsible, or because it cannot be determined that the incident occurred or that the subject of the report was responsible. A report shall not be determined to be substantiated or unsubstantiated solely because the subject of a report resigns during an investigation.

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

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

(d) A report that is found to be unsubstantiated shall be sealed immediately.

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

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

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

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

(iii) threats, taunts or ridicule that is likely to result in a substantial and protracted diminution of a service recipient’s psychological or intellectual functioning, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor;

(iv) engaging in or encouraging others to engage in cruel or degrading treatment, which may include a pattern of cruel and degrading physical contact, of a service recipient, that results in a substantial and protracted diminution of a service recipient’s psychological or intellectual functioning, supported by a clinical assessment performed by a
physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor;

(v) engaging in or encouraging others to engage in any conduct in violation of article one hundred thirty of the penal law with a service recipient;

(vi) any conduct that is inconsistent with a service recipient's individual treatment plan or applicable federal or state laws, regulations or policies, that encourages, facilitates or permits another to engage in any conduct in violation of article one hundred thirty of the penal law, with a service recipient;

(vii) any conduct encouraging or permitting another to promote a sexual performance, as defined in subdivision one of section 263.00 of the penal law, by a service recipient, or permitting or using a service recipient in any prostitution-related offense;

(viii) using or distributing a schedule I controlled substance, as defined by article thirty-three of the public health law, at the work place or while on duty;

(ix) unlawfully administering a controlled substance, as defined by article thirty-three of the public health law to a service recipient;

(x) intentionally falsifying records related to the safety, treatment or supervision of a service recipient, including but not limited to medical records, fire safety inspections and drills and supervision checks when the false statement contained therein is made with the intent to mislead a person investigating a reportable incident and it is reasonably foreseeable that such false statement may endanger the health, safety or welfare of a service recipient;

(xi) knowingly and willfully failing to report, as required by paragraph (a) of subdivision one of section four hundred ninety-one of this article, any of the conduct in subparagraphs (i) through (ix) of this paragraph upon discovery;

(xii) for supervisors, failing to act upon a report of conduct in subparagraphs (i) through (x) of this paragraph as directed by regulation, procedure or policy;

(xiii) intentionally making a materially false statement during an investigation into a report of conduct described in subparagraphs (i) through (x) of this paragraph with the intent to obstruct such investigation; and

(xiv) intimidating a mandated reporter with the intention of preventing him or her from reporting conduct described in subparagraphs (i) through (x) of this paragraph or retaliating against any custodian making such a report in good faith.

(b) Category two is substantiated conduct by custodians that is not otherwise described in category one, but conduct in which the custodian seriously endangers the health, safety or welfare of a service recipient by committing an act of abuse or neglect. Category two conduct under this paragraph shall be elevated to category one conduct when such conduct occurs within three years of a previous finding that such custodian engaged in category two conduct. Reports that result in a category two finding not elevated to a category one finding shall be sealed after five years.

(c) Category three is abuse or neglect by custodians that is not otherwise described in categories one and two. Reports that result in a category three finding shall be sealed after five years.

(d) Category four shall be conditions at a facility or provider agency that expose service recipients to harm or risk of harm where staff culpability is mitigated by systemic problems such as inadequate manage-
ment, staffing, training or supervision. Category four also shall
include instances in which it has been substantiated that a service
recipient has been abused or neglected, but the perpetrator of such
abuse or neglect cannot be identified.

5. (a) Category one findings shall result in permanent placement of
the subject of the report on the vulnerable persons' central register in
accordance with section four hundred ninety-five of this article.
(b) Except when a custodian has a category two finding elevated to a
category one finding pursuant to this section, a custodian with a cate-
gory two finding shall be subject to progressive discipline. (For state
entities bound by collective bargaining, such discipline established by
collective bargaining shall govern.) In conjunction with such discipli-
nary action, the facility or provider agency shall develop a plan for
training and any other actions to reduce the risk of recurrence of such
conduct. Such plan must be approved by and its implementation monitored
by the justice center or the state oversight agency, as appropriate.

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

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

(b) If the administrative law judge determines that the justice center
failed to prove by a preponderance of the evidence the finding that the
subject committed the act or acts of abuse or neglect, the justice
center shall amend the record to reflect that such a finding was made,
and shall promptly notify the subject of the report and any other
persons or entities previously notified of the existence of the report
of the amended finding. Such report shall be sealed in accordance with
the standards set forth in section four hundred ninety-six of this arti-
cle.
2. The justice center is authorized to make any appropriate order respecting the amendment of such findings of a report to make it accurate or consistent with the requirements of this article.

§ 495. Register of substantiated category one cases of abuse or neglect. 1. The justice center shall develop and maintain a register of subjects of reports who have been found to have a substantiated category one case of abuse or neglect, in accordance with paragraph (a) of subdivision four of section four hundred ninety-three of this article, and who have: (a) not requested an amendment of the findings of the report in the time specified in subdivision one of section four hundred ninety-four of this article; or (b) been heard pursuant to such subdivision and all the findings of the report were not amended to be unsubstantiated.

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

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

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

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

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

§ 496. Confidentiality. 1. Unless an investigation of a report conducted pursuant to this article has been substantiated, all information, including information identifying the subject of the report and other persons named in the report, shall be sealed forthwith by the vulnerable persons' central register, the state oversight agency and the facility or provider agency. Such reports may only be unsealed and made
available, consistent with any other applicable state or federal law.

to:

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

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

(c) the subject of the report;

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

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

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

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

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

2. Reports made pursuant to this article and found to be substantiated
as well as any other information obtained, reports written or photo-
graphs taken concerning such reports in the possession of the justice
center, a state oversight agency, a delegate investigatory entity,
facility or provider agency covered by this article shall be confiden-
tial and shall not be disclosed to any other party unless authorized
pursuant to this section or any other applicable state or federal law.

In the event that other applicable state or federal law provisions are
more restrictive than the provisions of this section, the provisions of
such other state or federal law shall apply. In accordance with this
section, such information shall be made available only to:

(a) a person who is the subject of the report;
(b) other persons named in the report, which includes, but is not limited to, the service recipient's parent, guardian or other person legally responsible for such person. Notwithstanding the prohibitions on non-redisclosure set forth in subdivision four of this section, the service recipient, and such service recipient's parent, guardian or other person legally responsible for such service recipient may disclose information and reports made available pursuant to this paragraph to an attorney, who shall not further disclose except as is necessary for use by such attorney in rendering advice, assistance and representation;

c. the justice center;

d. the applicable state oversight agency, the director or operator of the applicable facility or provider agency and, as appropriate, the local social services commissioner, the commissioner of the office of children and family services, or the school district placing the service recipient, or an agency providing adult protective services to the service recipient;

e. a physician who has before him or her a service recipient whom he or she reasonably suspects may be or may have been abused or neglected;

(f) a court, upon a finding that the information in the record is relevant to the determination of an issue before the court;

g. a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury;

(h) any appropriate state legislative committee responsible for legislation affecting vulnerable persons, provided, however, that no information identifying or tending to identify the subjects of the report or other persons named in the report shall be made available;

(i) any person engaged in a bona fide research purpose; provided, however, that no information identifying or tending to identify the subjects of the report or other persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and the justice center, after consultation with the commissioner of the applicable state oversight agency, gives prior approval;

(j) a facility or provider agency, other providers of services to vulnerable persons in programs licensed or certified by any state oversight agency, or any other provider agency as defined in subdivision three of section four hundred twenty-four-a of this chapter or a licensing agency as defined in subdivision four of section four hundred twenty-four-a of this chapter, in accordance with the provisions of subdivision two of section four hundred ninety-five of this article;

(k) a probation service regarding a person about whom it is conducting an investigation pursuant to article three hundred ninety of the criminal procedure law, or a probation service or the department of corrections and community supervision regarding a person to whom the service or department is providing supervision pursuant to article sixty of the penal law or article eight of the correction law, where the service or department requests the information upon a certification that such information is necessary to conduct its investigation, that there is reasonable cause to believe that the subject of an investigation is the subject of a substantiated report and that there is reasonable cause to believe that such records are necessary to the investigation by the probation service or the department, provided, however, that only substantiated reports shall be furnished pursuant to this subdivision;

(l) a district attorney, an assistant district attorney or investigator employed by the office of a district attorney, a sworn officer of the division of state police, of the regional state park police, of a
city police department, or of a county, town or village police department, or county sheriff's office or department upon written verification that such information is necessary to conduct a criminal investigation or criminal prosecution of a person, and that there is reasonable cause to believe that such person is the subject of a report; provided, however, that only substantiated reports shall be furnished pursuant to this subdivision:

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

(n) a provider or coordinator of services to which a facility or provider agency or social services district has referred a service recipient or a service recipient's family or to whom the service recipient or the recipient's family have referred themselves at the request of such agency or social services district, when said service recipient is reported to the vulnerable persons' central register as the vulnerable person and when the records, reports or other information are necessary to enable the provider or coordinator to establish and implement a plan of service for the service recipient or the service recipient's family, or to monitor the provision and coordination of services and the circumstances of the service recipient and the service recipient's family, or to directly provide services in accordance with requirements established by the applicable state oversight agency to the extent that the sharing of such information is not otherwise prohibited by federal law; provided, however, a provider or coordinator of services given access to information concerning a service recipient pursuant to this paragraph shall be authorized to redisclose such information to other persons or agencies which also provide services to the service recipient or the service recipient's family only if an agreement has been or will be reached between the provider or coordinator of service and such facility or provider agency, operating state agency or local district. An agreement entered into pursuant to this paragraph shall include the specific agencies and categories of individuals to whom redisclosure by the provider or coordinator of services is authorized. Persons or agencies given access to information pursuant to this paragraph may exchange such information in order to facilitate the provision or coordination of services to the service recipient or the service recipient's family;

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

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

(q) the director or operator of the facility or provider agency and, as appropriate, the local social services commissioner, commissioner of the office of children and family services, or school district placing a child in that program, the applicable executive agency, and, for any report involving abuse or neglect of a child, any attorney appointed to represent the child whose appointment has been continued by a family
court judge during the term of the placement and subject to the limitations contained in section four hundred ninety-five of this article:

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

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

(t) officers and employees of the state comptroller, for purposes of a duly authorized performance audit, provided that such comptroller shall have certified to the keeper of such records that he or she has instituted procedures developed in consultation with the justice center to limit access to service recipient-identifiable information to persons requiring such information for purposes of the audit and that appropriate controls and prohibitions are imposed on the dissemination of service recipient-identifiable information contained in the conduct of the audit;

(i) Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such vulnerable person or such person's family shall not be made available to such officers and employees unless disclosure of such information is absolutely essential to the specific audit activity and the justice center gives prior written approval.

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

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

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

http://nyslrs.state.ny.us/nyslbdci/navigate.cgi?NVDTO: 7/9/2019
article six of this chapter, when such official has reasonable cause to
believe that such reports and information are needed to further the
present investigation;
(w) for reports alleging abuse or neglect of children, members of a
citizen review panel as established pursuant to section three hundred
seventy-one-b of this chapter; provided, however, such members shall not
disclose to any person or governmental official any identifying informa-
tion which the panel has been provided and shall not make public other
information unless otherwise authorized by statute;
(x) officers and employees of the education department and, where
applicable, the department of health, for the purpose of investigating
charges and maintaining professional discipline proceedings against the
professional license of the subject of the report pursuant to Title VIII
of the education law, and to employees of the education department for
the purpose of investigating charges and maintaining good moral charac-
ter proceedings against the teaching, school administrator or school
leader certificate or license of the subject of the report; and
(y) the independent agency designated pursuant to subdivision (b) of
section five hundred fifty-eight of the executive law, provided that
such information is relevant to a matter within the legal authority of
such agency.
3. (a) The executive director, in consultation with the applicable
state oversight agency may disclose information regarding the abuse or
neglect of a vulnerable person as set forth in this subdivision, and the
investigation thereof and any services related thereto, to persons other
than those authorized to receive records under subdivision two of this
section if otherwise permitted by applicable federal law and if he or
she determines that such disclosure shall not be contrary to the best
interests of the vulnerable person and any one of the following factors
are present:
(i) the subject of the report has been charged in an accusatory
instrument with committing a crime related to a report maintained in the
vulnerable persons' central register; or
(ii) the investigation of the abuse or neglect of the vulnerable
person or the provision of services by the facility or provider agency
has been publicly disclosed in a report required to be disclosed in the
course of their official duties, by a law enforcement agency or offici-
al, a district attorney, any other state or local investigative agency
or official, or by judge of the unified court system; or
(iii) there has been a prior knowing, voluntary, public disclosure by
an individual concerning a report of abuse or neglect in which such
individual is named as the subject of the report; or
(iv) the vulnerable person named in the report has died or the report
involves the near fatality of a vulnerable person. For the purposes of
this section, "near fatality" means an act that results in the vulner-
able person being placed, as certified by a physician, in serious or
critical condition.
(b) For the purposes of this subdivision, only the following informa-
tion may be disclosed:
(i) the name of the abused or neglected vulnerable person;
(ii) the determination by the justice center and the findings upon
which such determination was based;
(iii) identification of services provided or actions, if any, taken
regarding the vulnerable person named in the report and his or her fami-
ly as a result of any such report or reports;
(iv) whether any report of abuse or neglect regarding such vulnerable
person has been "substantiated" as maintained by the vulnerable persons'
central register;
(v) any actions taken by the state oversight agency or the facility or
provider agency in response to reports of abuse or neglect of the
vulnerable person to the vulnerable persons' central register, including
but not limited to actions taken after each and every report of abuse or
neglect of such person and the dates of such reports; and
(vi) any extraordinary or pertinent information concerning the circum-
stances of the abuse or neglect of the vulnerable person and the inves-
tigation thereof, where the executive director, in consultation with the
commissioner of the applicable state oversight agency determines such
disclosure is consistent with the public interest.
(c) Information may be disclosed pursuant to this subdivision as
follows:
(i) information released prior to the completion of the investigation
of a report shall be limited to a statement that a report is "under
investigation";
(ii) when there has been a prior disclosure pursuant to paragraph (a)
of this subdivision, information released in a case in which the inves-
tigation of the report has been completed but not substantiated, infor-
mation shall be limited to the statement that "the investigation has
been completed and the report has been unsubstantiated";
(iii) if the report has been "substantiated" then information may be
released pursuant to paragraph (a) of this subdivision.
(d) Any disclosure of information pursuant to this subdivision shall
be consistent with the provisions of paragraph (b) of this subdivision.
Such disclosure shall not identify or provide an identifying description
of the source of the report, and shall not identify the name of the
abused or neglected vulnerable person's siblings or children, the parent
or other person legally responsible for such person or any other members
of such person's household.
(e) In determining, pursuant to paragraph (a) of this subdivision,
whether disclosure will be contrary to the best interests of the vulner-
able person, the executive director shall consider the interest in
privacy of the vulnerable person and such person's siblings or children,
the parent or other person legally responsible for such person or any
other members of such person's household.
(f) Except as it applies directly to the cause of the abuse or neglect
of the vulnerable person, nothing in this subdivision shall be deemed to
authorize the release or disclosure of the substance or content of any
psychological, psychiatric, therapeutic, clinical or medical reports,
evaluations or like materials or information pertaining to such person
or such person's family. Any such information that applies directly to
the cause of the abuse or neglect of the vulnerable person may be
disclosed only if disclosure is not otherwise restricted by applicable
federal or state laws.

4. A person given access to the names or other information identifying
the subject of the report or other persons named in the report shall not
divulg[e or] make public such identifying information unless he or she is
a district attorney or other law enforcement official and the purpose is
to initiate court action or the disclosure is necessary in connection
with the investigation or prosecution of the subject of the report for a
crime alleged to have been committed by the subject against another
person named in the report. Nothing in this section shall be construed
to permit any release, disclosure or identification of the names or
identifying descriptions of persons who have reported suspected abuse or
neglect to the vulnerable persons’ central register or the state over-
sight agency, facility or provider agency or other entity where such
persons are employed or with which they are associated without such
persons’ written permission except to persons, officials, and agencies
enumerated in paragraphs (f), (g), (l), (m) and (v) of subdivision two
of this section. To the extent that persons or agencies are given
access to information pursuant to paragraphs (c), (d), (e), (k), (l),
(m), (n) and (p) of subdivision two of this section, such persons or
agencies may give and receive such information to each other in order to
facilitate an investigation conducted, or the provision of services, by
such persons or agencies.
5. Notwithstanding any contrary provision of this section, mental
hygiene legal service shall have access to all information, books,
records and data as provided for in subdivision (d) of section 47.03 of
the mental hygiene law.
§ 497. Immunity from liability. Any person participating reasonably
and in good faith in making a report, taking photographs, conducting or
overseeing an investigation, operating the vulnerable persons’ central
register or disclosing information in compliance with this article shall
have immunity from any liability, civil or criminal, that might other-
wise result by reason of such actions. For the purpose of any proceed-
ing, civil or criminal, the good faith of any such person required to
perform any of such functions in accordance with this article shall be
presumed, provided such person, was acting in discharge of his or her
duties and within the scope of his or her employment or responsibil-
ities and that such liability did not result from the willful miscon-
duct or gross negligence of such person.
§ 2. This act shall take effect June 30, 2013; provided, however,
that, effective immediately, any actions necessary for the implementa-
tion of this act on its effective date, and the addition, amendment or
repeal of any rule or regulation necessary for the implementation of
this act on its effective date, are authorized to be taken or made on or
before such date.

PART C

§ 1. Subdivisions 6 and 7 of section 677 of the county law,
subdivision 6 as amended by chapter 491 of the laws of 1987, subdivision
7 as added by chapter 477 of the laws of 1979 and paragraph (a) of
subdivision 7 as amended by chapter 330 of the laws of 1993, are amended
to read as follows:
6. The coroner, coroner’s physician or medical examiner shall promptly
provide the chairman of the correction medical review board and the
commissioner of correctional services with copies of any autopsy report,
toxicological report or any report of any examination or inquiry
prepared with respect to any death occurring to an inmate of a correc-
tional facility as defined by subdivision three of section forty of the
correction law within his county; and shall promptly provide the execu-
tive director of the justice center for the protection of people with
special needs with copies of any autopsy report, toxicology report or
any report of any examination or inquiry prepared with respect to the
death of any service recipient occurring while he or she was a resident
in any facility operated, licensed or certified by any agency within the
department of mental hygiene, the office of children and family
services, the department of health or the state education department.
If the toxicological report is prepared pursuant to any agreement or contract with any person, partnership, corporation or governmental agency with the coroner or medical examiner, each such report shall be promptly provided to the chairman of the correction medical review board [and to], the commissioner of correctional services or the executive director of the justice center for people with special needs, as appropriate, by such person, partnership, corporation or governmental agency.

7. (a) Upon the written request of the commissioner of mental health, the commissioner of [mental retardation and] the office for persons with developmental disabilities, the director of the mental hygiene legal service, [the chairman of the commission on quality of care for the mentally disabled], the executive director of the justice center for the protection of people with special needs or the director of a mental hygiene facility, as defined in subdivision two of section [45:02] five hundred fifty-six of the [mental hygiene] executive law, at which the deceased was a patient or resident, the coroner, coroner's physician or medical examiner shall provide such person with a copy of all reports and records, including, but not limited to, autopsy reports and toxicological reports related to the deceased prepared by a person, partnership, corporation or governmental agency pursuant to any agreement or contract with the coroner or medical examiner with respect to the death of a patient or resident receiving services for a mental disability at such a mental hygiene facility.

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

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

(a) The commissioner shall exercise all powers vested in the office.

He may delegate any function, power, or duty assigned to him or to the office of mental health to a director of a facility operated by such office or to any other officer or employee of such office, unless otherwise provided by law. He may enter into agreements with the executive director of the justice center for the protection of people with special needs or the other commissioners of the department in order to ensure that programs and services are provided for all of the mentally disabled.
(d) The commissioner and directors of office facilities may request and upon such request the coroner, coroner’s physician or medical examiner shall provide to such persons access to original autopsy slides, tissue materials and specimens derived from any autopsy or inquiry with respect to the death of a patient or resident in a mental hygiene facility, as defined in section 45.01 of this chapter subdivision two of section five hundred fifty of the executive law. Such original materials shall be preserved intact, except for unavoidable changes due to necessary scientific testing, and shall be returned to the coroner, coroner’s physician or medical examiner.

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

(b) Such director shall have the responsibility of seeing that there is humane treatment of the patients at his or her facility and shall investigate, or cause to be investigated, every [case of alleged patient abuse or mistreatment] reportable incident in accordance with article eleven of the social services law. Also in accordance with article eleven of the social services law, the director shall require allegations of reportable incidents to be reported to the vulnerable persons’ central register, which shall screen and immediately forward reports that appear to allege crimes to the appropriate law enforcement agency. The [director] vulnerable persons’ central register shall notify immediately, and in any event within three working days, the board of visitors of the facility and the mental hygiene legal service located in the same judicial department as the hospital, school, or institution of every complaint of patient abuse or [mistreatment] neglect and shall inform the board and the mental hygiene legal service of the results of his investigation. [If it appears that a crime may have been committed, the director shall give notice thereof to the district attorney or other appropriate law enforcement official as soon as possible, and in any event within three working days unless it appears that the crime includes an employee, intern, volunteer, consultant, contractor, or visitor and the alleged conduct caused physical injury or the patient was subject to unauthorized sexual contact, or if it appears the crime is endangering the welfare of an incompetent or physically disabled person pursuant to section 260.25 of the penal law, or if the crime was any felony under state or federal law, then the district attorney or other appropriate law enforcement official must be contacted immediately, and in any event no later than twenty-four hours.]

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

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

(c) The commissioner and directors of office facilities may request and upon such request the coroner, coroner’s physician or medical examiner shall provide to such persons access to original autopsy slides, tissue materials and specimens derived from any autopsy or inquiry with respect to the death of a patient or resident in a mental hygiene facility, as defined in section 45.01 of this chapter subdivision two of
section five hundred fifty of the executive law. Such original materials
shall be preserved intact, except for unavoidable changes due to neces-
sary scientific testing and shall be returned to the coroner, coroner's
physician or medical examiner.
§ 5. Subdivision (b) of section 13.21 of the mental hygiene law, as
amended by section 3 of part J of chapter 56 of the laws of 2012, is
amended to read as follows:
(b) Such directors shall have the responsibility of seeing that there
is humane treatment of individuals with developmental disabilities
receiving services in settings operated, licensed, certified, funded or
approved by this office and shall investigate, or cause to be investi-
gated, every reportable incident in accordance with article eleven of
the social services law. Also in accordance with article eleven of the
social services law, the director shall require allegations of report-
able incidents to be reported to the vulnerable persons' central regis-
ter, which shall screen and immediately forward reports that appear to
allege crimes to the appropriate law enforcement agency. [A—director—of
a state operations office] The vulnerable persons' central register
shall notify immediately, and in any event within three working days,
the board of visitors of the facility and the mental hygiene legal
service located in the same judicial department as the state operations
office of every complaint of patient abuse or mistreatment and shall
inform the board and the mental hygiene legal service of the results of
his or her investigation. [If it appears that a crime may have been
committed, such state operations director shall give notice thereof to
the district attorney or other appropriate law enforcement official as
soon as possible, and in any event within three working days unless it
appears that the crime includes an employee, intern, volunteer, consult-
ant, contractor, or visitor and the alleged conduct caused physical
injury or the patient was subject to unauthorized sexual contact, or if
it appears the crime is endangering the welfare of an incompetent or
physically disabled person pursuant to section 260.25 of the penal law,
or if the crime was any felony under state or federal law, then the
district attorney or other appropriate law enforcement official must be
notified immediately, and in any event as soon as possible within twenty-
hours—]
§ 6. Subdivision 2 of section 13.34 of the mental hygiene law is
REPEALED and subdivisions 3, 4, 5 and 6 are renumbered subdivisions 2,
3, 4 and 5.
§ 7. Subdivisions 1 and 2 of section 13.34 of the mental hygiene law,
subdivision 1 as amended by section 16 of part J of chapter 56 of the
laws of 2012, subdivision 2 as amended by chapter 542 of the laws of
2011 and such subdivision as renumbered by section six of this act, are
amended to read as follows:
1. There shall be at each developmental center facility listed in
section 13.17 of this article, an ombudsman who shall be an employee of
the [commission on quality of care and advocacy for persons with disa-
bilities] justice center for the protection of people with special needs
under article [forty-five] twenty of [this chapter] the executive law
and who shall be responsible for receiving and responding to any
complaints regarding [individuals receiving services] individuals receiving services
residing in such facility. The ombudsman shall have the following powers
and duties:
1. to advise and consult with individuals receiving services, parents,
guardians, correspondents and other interested persons with respect to
any complaints, or issues related to [the conditions of clients’ resid-
dents] individuals receiving services;
ii. to review and attempt to remedy specific complaints with responsi-
ble and appropriate staff;
iii. where it appears that care has not been rendered as required by
applicable standards to refer the complaint to the appropriate agency or
body for its attention;
iv. to receive and keep confidential any complaint, information or
inquiry from any source. The records of the ombudsman shall be confiden-
tial, and shall not be available to the public;
v. to advise and consult with the board of visitors served by the
ombudsman with respect to any complaints or issues relating to [condi-
tions of clients’ residences] individuals receiving services, treatment
and care and to regularly attend the meetings of such board; and
vi. to meet with the commissioner, or a representative of the commis-
sioner, on a quarterly basis regarding systemic issues in the ombuds-
man’s jurisdiction.
2. The ombudsman shall be afforded initial training and orientation by
the [commission on quality of care and advocacy for persons with disab-
hilities] justice center for the protection of people with special
needs.
§ 8. Subdivision (b) of section 16.13 of the mental hygiene law is
REPEALED and a new subdivision (b) is added to read as follows:
(b) Making reports of allegations of reportable incidents in accord-
ance with article eleven of the social services law to the vulnerable
persons’ central register, which shall screen and immediately forward
reports that appear to allege crimes to the appropriate law enforce-
ment agency.
§ 9. Section 16.29 of the mental hygiene law, as amended by chapter 24
of the laws of 2007, subdivision (b) as amended by chapter 37 of the
laws of 2011, is amended to read as follows:
§ 16.29 [Child abuse and maltreatment in residential care] Abuse,
neglect, and significant incidents involving vulnerable
persons.
(a) The commissioner, in consultation with the executive director of
the justice center for the protection of people with special needs,
shall promulgate regulations establishing standards for the protection
of [children in residential] service recipients in the care of facili-
ties and provider agencies operated, licensed or certified by the office
from [abuse and maltreatment] reportable incidents pursuant to article
eleven of the social services law, including procedures for:
(I) [Reviewing and evaluating the backgrounds of and information
supplied by any person applying to be an employee, a volunteer or
consultant;] consistent with appropriate collective bargaining agree-
ments and applicable provisions of the civil service law;[Such review
and evaluation shall include but not be limited to the following
requirements: that the applicant has not falsified or engaged in any fraud.
He or she had ever been convicted of a crime in this state or other jurisdiction.
Assisting the justice center for the protection of people with special needs with its review
and evaluation of criminal background checks of prospective employees,
as set forth in subdivision five of section five hundred fifty-three of
the executive law;]
(2) establishing minimal experiential and educational qualifications for employees that are consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law;

(3) assuring adequate and appropriate supervision of employees, volunteers and consultants;

(4) demonstrating that appropriate action is taken to assure the safety of a service recipient as well as other persons in care, immediately upon notification that a report of child abuse or maltreatment has been made with respect to a child in a residential facility in accordance with article 11 of the social services law;

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

(5) removing a service recipient when it is determined that there is a risk to such person if he or she continues to remain in a facility;

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

(i) administrators, employees, volunteers and consultants receive training in at least the following: abuse prevention and identification, safety and security procedures, the principles of child development, the characteristics of persons in care and techniques of group management including crisis intervention, the laws, regulations and procedures governing the protection of vulnerable persons from reportable incidents, and other appropriate topics provided, however, that the office may exempt administrators and consultants from such requirements upon demonstration of substantially equivalent knowledge or experience; and

(ii) service recipients receive instruction consistent with their age, needs and circumstances as well as the needs and circumstances within the facility or program, in techniques and procedures which will enable them to advocate and protect themselves from reportable incidents.

The commissioner, in consultation with the executive director of the justice center for the protection of people with special needs, shall take all reasonable and necessary actions to assure that employees, volunteers and consultants in facilities operated or overseen by the office are kept apprised on a current basis of all policies and procedures of the office relating to the protection of vulnerable persons, and shall monitor and supervise the provision of training to such administrators, employees, volunteers, children and consultants. Standards developed pursuant to this subdivision shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes.
(b) The commissioner shall provide necessary assistance to the [state commission — on equality of care and advocacy for persons with disabilities] justice center for the protection of people with special needs in the conduct of investigations pursuant to [section 45.07 of this chapter] article eleven of the executive law, shall consider its recommendations for appropriate preventive and remedial action including legal actions, and shall provide or direct a residential facility licensed or operated by the office for people with developmental disabilities to provide written reports thereon to the [commission] justice center as to the implementation of plans of prevention and remediation approved by such office.

(c) The commissioner shall provide for the development and implementation of a plan of prevention and remediation with respect to [an indicated] a substantiated report of [child abuse or maltreatment] a reportable incident. Such action shall include:

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

(ii) development and implementation of a plan of prevention and remediation in the event an investigation of a report of [an alleged] child abuse or maltreatment determines that some credible evidence of abuse or maltreatment reportable incident exists and such [abuse or maltreatment] reportable incident may be attributed in whole or in part to noncompliance by the facility with the provisions of this chapter or regulations of the office applicable to the operation of such [residential] facility. Any plan of prevention and remediation required to be developed pursuant to this subdivision by a facility supervised by the office shall be submitted to and approved by such office in accordance with time limits established by regulations of such office. Implementation of the plan shall be monitored by such office. In reviewing the continued qualifications of a residential facility or program for an operating certificate, the office shall evaluate such facility's compliance with plans of prevention and remediation developed and implemented pursuant to this subdivision.

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

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

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

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

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

3. assuring adequate and appropriate supervision of employees, volunteers and consultants;

4. demonstrating that appropriate action is taken to assure the safety of the [child who is reported to the state central register] service recipient as well as other [children] persons in care, immediately upon notification that a report of child abuse or maltreatment reportable incident has been made [with respect to a child's custodian in a residential facility] in accordance with article eleven of the social services law;

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

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

6. taking appropriate preventive and remedial actions, including legal action, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law. [Such] The commissioner shall adopt standards [shall also establish] as established by the justice center for the protection of people with special needs, that:

(i) administrators, employees, volunteers and consultants receive training in at least the following: [child] abuse prevention and identification, safety and security procedures, the principles of child development, the characteristics of [children] persons in care and techniques of group [and child] management including crisis intervention, the laws, rules and regulations and procedures governing the protection of [children] vulnerable persons from [abuse and maltreatment] reportable incidents and other appropriate topics; provided, however, that [either] the office may exempt administrators and consultants from such requirements upon demonstration of substantially equivalent knowledge or experience; and

(ii) [children] service recipients receive instruction consistent with their age, needs and circumstances as well as the needs and circumstances within the facility or program, in techniques and procedures that will enable [such children] them to advocate and protect themselves from [abuse and maltreatment] reportable incidents.

The commissioner, in consultation with the executive director of the justice center for the protection of people with special needs, shall take all reasonable and necessary actions to assure that employees, volunteers or consultants in [residential care] facilities operated or
overseen by the office are kept apprised on a current basis of all policies and procedures [of the office] relating to the protection of [child abuse and maltreatment,] vulnerable persons and shall monitor and supervise the provision of training to such administrators, employees, volunteers, children and consultants. Standards developed pursuant to this subdivision shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes.

(b) The commissioner shall provide necessary assistance to the [state commission on quality of care and advocacy for persons with disabilities] justice center for the protection of people with special needs in the conduct of investigations pursuant to [section 45.07 of this chapter] article eleven of the executive law, shall consider its recommendations for appropriate preventive and remedial action including legal actions, and shall provide or direct a residential facility licensed or operated by the office of mental health to provide written reports thereto in such [commission] justice center as to the implementation of plans of prevention and remediation.

(c) The commissioner shall provide for the development and implementation of a plan of prevention and remediation with respect to [an indicated] a substantiated report of [child abuse or maltreatment] a reportable incident. Such action shall include:

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

2. development and implementation of a plan of prevention and remediation, in the event an investigation of a report of an alleged [child abuse or maltreatment] reportable incident determines that [a] such report [of child abuse or maltreatment is indicated] is substantiated and such [abuse or maltreatment] reportable incident may be attributed in whole or in part to noncompliance by the facility with provisions of this chapter or regulations of the respective [offices] office applicable to the operation of such [residential] facility. Any plan of prevention and remediation required to be developed pursuant to this subdivision by a facility supervised by [either] the office shall be submitted to and approved by such office in accordance with time limits established by rules and regulations of such office. Implementation of the plan shall be monitored by such office or the justice center. In reviewing the continued qualification of a residential facility or program for such a permit certificate, the office having supervisory responsibilities shall evaluate such facility's compliance with plans of prevention and remediation developed pursuant to this subdivision.

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

(c) The commissioners and the facility director shall ensure that a notice of the rights included in regulations promulgated pursuant to this section is posted in each ward or living area of every hospital operated or licensed by the office of mental health and every developmental center operated by the office for people with developmental disabilities, and that such notice is provided to every individual resident of any other residential facility or program operated or licensed by the respective offices upon admission to such facility or program, upon
limitation on any right, or at the individual's request. The notice
shall include the address and telephone numbers of the office of the
facility director or such person's designee responsible for receiving
questions or complaints, the board of visitors if applicable, the mental
hygiene legal service, the vulnerable persons' central register and the
[commission on quality of care and advocacy for persons with disabili-
ties] justice center for the protection of people with special needs.
§ 12. Section 33.06 of the mental hygiene law, as amended by chapter
37 of the laws of 2011, is amended to read as follows:
§ 33.06 Reports of abuse [or mistreatment], neglect, and significant
incidents.
The executive director of the justice center for the protection of
people with special needs, in consultation with the commissioner of the
office of mental health, the commissioner of the office of alcoholism
and substance abuse services and the commissioner of the office for
people with developmental disabilities shall establish procedures or
mechanisms pursuant to article eleven of the social services law to
receive allegations or complaints of [abuse or mistreatment of] report-
able incidents involving individuals served by agencies and providers
licensed or operated by the offices, including receipt of anonymous
allegations or complaints. [Such mechanisms shall include the operation
of a toll-free number. Allegations or complaints received shall be evalu-
ated and, if necessary, referred for appropriate corrective action,
consistent with laws, regulations and procedures established for the
investigation, resolution and response to incident reports to ensure the
care and safety of all patients. The inability of the person reporting
the abuse to identify the alleged perpetrator shall, in no circumstance,
constitute the sole cause to reject such allegation for investigation or
fail to refer such allegation for corrective action. When an allegation
of abuse or maltreatment of a child is made, the allegation shall be
referred to the statewide central register of child abuse and maltreat-
ment, established pursuant to section four hundred twenty-two of the
social services law.]
§ 13. Subdivision (a) of section 33.25 of the mental hygiene law, as
added by chapter 24 of the laws of 2007, is amended to read as follows:
(a) Records and documents pertaining to allegations and investigations
into [patient-abuse or mistreatment] reportable incidents at a facility,
as defined in subdivision six of section 1.03 of this chapter, including
but not limited to all complaints and reports made pursuant to [subdivi-
sion (a) of section 45.07 and section 45.17 of this title] article elev-
en of the social services law, shall be released to a qualified person,
as defined in paragraph six of subdivision (a) of section 33.16 of this
article, upon a written request by such qualified person. Such records
and documents shall be made available by the appropriate office within
twenty-one days of the conclusion of its investigation, provided that
the names and other personally identifying information of other patients
and employees shall not be included unless such patients and employees
authorize disclosure.
§ 14. This act shall take effect June 30, 2013.

PART D

Section 1. Paragraph (a) of subdivision 5 of section 20 of the social
services law, as amended by chapter 485 of the laws of 2006, is amended
to read as follows:
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(a) In the case of the death of a child whose care and custody or
custody and guardianship has been transferred to an authorized agency,
other than a vulnerable person as defined in article eleven of this
chapter, or the death of a child for whom any local department of social
services has an open child protective services or preventive services
case, or in the case of a report made to the statewide central register
of child abuse and maltreatment involving the death of a child, the
office of children and family services shall (i) investigate or provide
for an investigation of the cause of and circumstances surrounding such
death, (ii) review such investigation, and (iii) prepare and issue a
report on such death, except where a report is issued by an approved
local or regional fatality review team in accordance with section four
hundred twenty-two-b of this chapter.

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

5. "Other persons named in the report" shall mean and be limited to
the following persons who are named in a report of child abuse or
maltreatment other than the subject of the report: (a) the child who
is reported to the statewide central register of child abuse and
maltreatment; and such child's parent, guardian, or other person legally
responsible for the child who has not been named in the report as
allegedly responsible for causing injury, abuse or maltreatment to the
child or as allegedly allowing such injury, abuse or maltreatment to be
inflicted on such child; or

(b) other persons named in a report of an abused or neglected child in
residential care as defined in subdivision nine of section four hundred
twelve-a of this title;

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

1. An "abused child" means[+]
   (a) a child under eighteen years of age [not in "residential care,
   as defined in subdivision four of section four hundred twelve-a of
   this title,] and who is defined as an abused child by the family court act[+]
   or
   (b) a child under the age of eighteen years who is defined as an
   abused child in residential care pursuant to subdivision one of section
   four hundred twelve-a of this title];

2. A "maltreated child" includes[+]
   (a) a child under eighteen years of age [not in "residential care,
   as defined in subdivision four of section four hundred twelve-a of
   this title,] (a) defined as a neglected child by the family court act, or
   [++] (b) who has had serious physical injury inflicted upon him or
   her by other than accidental means; [or]
   (b) a child who is a neglected child in residential care as defined in
   subdivision two of section four hundred twelve-a of this title;]

4. "Subject of the report" means[+-] any parent of, guardian of, or
other person eighteen years of age or older legally responsible for, as
defined in subdivision (g) of section one thousand twelve of the family
court act, a child reported to the statewide central register of child
abuse and maltreatment who is allegedly responsible for causing injury,
abuse or maltreatment to such child or who allegedly allows such injury,
abuse or maltreatment to be inflicted on such child; or a director or an
operator of, or employee or volunteer in, a home operated or supervised
by an authorized agency, the office of children and family services, [or an office of the department of mental hygiene] or in a family day-care
home, a day-care center, a group family day care home, a school-age
child care program or a day-services program who is allegedly respon-
sible for causing injury, abuse or maltreatment to a child who is reported
to the statewide central register of child abuse or maltreatment or who
allegedly allows such injury, abuse or maltreatment to be inflicted on
such child: (see
(b) a subject of a report of an abused or neglected child in residen-
tial care as defined in subdivision eight of section four hundred
twelve-a of this title)
§ 2-b. Section 412-a of the social services law is REPEALED.
§ 3. Paragraphs (a) and (c) of subdivision 1 of section 413 of the
social services law, paragraph (a) as amended by chapter 91 of the laws
of 2011 and paragraph (c) as amended by chapter 366 of the laws of 2008,
are amended to read as follows:
(a) The following persons and officials are required to report or
cause a report to be made in accordance with this title when they have
reasonable cause to suspect that a child coming before them in their
professional or official capacity is an abused or maltreated child, or
when they have reasonable cause to suspect that a child is an abused or
maltreated child where the parent, guardian, custodian or other person
legally responsible for such child comes before them in their profes-
sional or official capacity and states from personal knowledge facts,
conditions or circumstances which, if correct, would render the child an
abused or maltreated child: any physician; registered physician assist-
ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
osteopath; optometrist; chiropractor; podiatrist; resident; intern;
psychologist; registered nurse; social worker; emergency medical techni-
cian; licensed creative arts therapist; licensed marriage and family
therapist; licensed mental health counselor; licensed psychoanalyst;
hospital personnel engaged in the admission, examination, care or treat-
ment of persons; a Christian Science practitioner; school official,
which includes but is not limited to school teacher, school guidance
counselor, school psychologist, school social worker, school nurse,
school administrator or other school personnel required to hold a teach-
ing or administrative license or certificate; social services worker;
director of a children's overnight camp, summer day camp or traveling
summer day camp, as such camps are defined in section thirteen hundred
ninety-two of the public health law; day care center worker; school-age
child care worker; provider of family or group family day care; [employ-
ees or volunteer in a residential care facility defined in subdivision
four of section four hundred twelve-a of this title] or any other child
care or foster care worker; mental health professional; substance abuse
counselor; alcoholism counselor; all persons credentialed by the office
of alcoholism and substance abuse services; peace officer; police offi-
cer; district attorney or assistant district attorney; investigator
employed in the office of a district attorney; or other law enforcement
official.
(c) A medical or other public or private institution, school, facility
or agency shall not take any retaliatory personnel action, as such term
is defined in paragraph (e) of subdivision one of section seven hundred
forty of the labor law, against an employee because such employee
believes that he or she has reasonable cause to suspect that a child is
an abused or maltreated child and that employee therefore makes a report
in accordance with this title. No school, school official, child care
provider, foster care provider, residential care facility provider,
hospital, medical institution provider or mental health facility provid-
er shall impose any conditions, including prior approval or prior
notification, upon a member of their staff specifically required to
report under this title. At the time of the making of a report, or at
any time thereafter, such person or official may exercise the right to
request, pursuant to paragraph (A) of subdivision four of section four
hundred twenty-two of this title, the findings of an investigation made
pursuant to this title [or section 45.07 of the mental hygiene law].
§ 3-a. Section 415 of the social services law, as amended by chapter
323 of the laws of 2008, is amended to read as follows:
§ 415. Reporting procedure. Reports of suspected child abuse or
malreatment made pursuant to this title shall be made immediately by
telephone or by telephone facsimile machine on a form supplied by the
commissioner of the office of children and family services. Oral reports
shall be followed by a report in writing within forty-eight hours after
such oral report. Oral reports shall be made to the statewide central
register of child abuse and maltreatment unless the appropriate local
plan for the provision of child protective services provides that oral
reports should be made to the local child protective service. In those
localities in which oral reports are made initially to the local child
protective service, the child protective service shall immediately make
an oral or electronic report to the statewide central register. Written
reports shall be made to the appropriate local child protective service
except that written reports involving children [in residential care, as
defined in subdivision four of section four hundred twelve-a of this
title, or] being cared for in a home operated or supervised by an
authorized agency [or the office of children and family services [or
an office of the department of mental hygiene,] shall be made to the
statewide central register of child abuse and maltreatment which shall
transmit the reports to the agency responsible for investigating the
report, in accordance with paragraph (a) or (e) of subdivision eleven
of section four hundred twenty-two of this title [as applicable]. Written reports shall be
made in a manner prescribed and on forms supplied by the commissioner of
the office of children and family services and shall include the follow-
ning information: the names and addresses of the child and his or her
parents or other person responsible for his or her care, if known, and,
as the case may be, the name and address of the [residential care facil-
ity or] program in which the child [resides or] is receiving care; the
child's age, sex and race; the nature and extent of the child's inju-
ries, abuse or maltreatment, including any evidence of prior injuries,
abuse or maltreatment to the child or, as the case may be, his or her
siblings; the name of the person or persons alleged to be responsible
for causing the injury, abuse or maltreatment, if known; family composi-
tion, where appropriate; the source of the report; the person making the
report and where he or she can be reached; the actions taken by the
reporting source, including the taking of photographs and x-rays,
removal or keeping of the child or notifying the medical examiner or
coroner; and any other information which the commissioner of the office
of children and family services may, by regulation, require, or the
person making the report believes might be helpful, in the furtherance
of the purposes of this title. Notwithstanding the privileges set forth
in article forty-five of the civil practice law and rules, and any other
 provision of law to the contrary, mandated reporters who make a report
which initiates an investigation of an allegation of child abuse or
maltreatment are required to comply with all requests for records made
by a child protective service relating to such report, including records
relating to diagnosis, prognosis or treatment, and clinical records, of
any patient or client that are essential for a full investigation of
allegations of child abuse or maltreatment pursuant to this title;
provided, however, that disclosure of substance abuse treatment records
shall be made pursuant to the standards and procedures for disclosure of
such records delineated in federal law. Written reports from persons or
officials required by this title to report shall be admissible in
evidence in any proceedings relating to child abuse or maltreatment.

§ 4. Section 418 of the social services law, as amended by chapter 485
of the laws of 2006, is amended to read as follows:
§ 418. Mandatory reporting to and post-mortem investigation of deaths
by medical examiner or coroner. Any person or official required to
report cases of suspected child abuse or maltreatment, including workers
of the local child protective service[,...as well as an employee of an
official of a state agency responsible for the investigation of a report
of abuse or maltreatment of a child in residential care] who has
reasonable cause to suspect that a child died as a result of child abuse
or maltreatment shall report that fact to the appropriate medical exam-
iner or coroner. The medical examiner or coroner shall accept the
report for investigation and shall issue a preliminary written report of
his or her finding within sixty days of the date of death, absent
extraordinary circumstances, and his or her final written report prompt-
ly, absent extraordinary circumstances, to the police, the appropriate
district attorney, the local child protective service, the office of
children and family services, and, if the institution making the report
is a hospital, the hospital. The office of children and family services
shall promptly provide a copy of the preliminary and final reports to
the statewide central register of child abuse and maltreatment.

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

Responsibility of the [department] office. The [department] office
shall: 1. In conjunction with local departments, both jointly and indi-
vidually, within the appropriation available, conduct a continuing
publicity and education program for local department staff, persons and
officials required to report including district attorneys, assistant
district attorneys, police officers, peace officers, investigators
employed in the office of a district attorney, and any other appropriate
persons to encourage the fullest degree of reporting of suspected child
abuse or maltreatment. Such program shall be developed and implemented
in coordination with those established pursuant to section 31.06 of the
mental hygiene law, section twenty-eight hundred five-n of the public
health law, section thirty-two hundred nine-a of the education law
[end] sections two hundred fourteen-a and eight hundred forty of the
executive law and article eleven of this chapter. The program shall
include but not be limited to responsibilities, obligations and powers
under this title and chapter as well as the diagnosis of child abuse and
maltreatment, the procedures of the child protective service, the family
court and other duly authorized agencies and the prevention, treatment
and remediation of abuse and maltreatment of children in residential
care.
§ 6. Subparagraph (r) of paragraph (A) of subdivision 4 of section 422 of the social services law is REPEALED, and the opening paragraph, subparagraph (j) and the first undesignated paragraph of paragraph (A) of subdivision 4 of section 422 of the social services law, as amended by chapter 12 of the laws of 1996, are amended to read as follows:

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

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

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

§ 7. The opening paragraph, subparagraph (iii) of paragraph (a) and paragraph (b) of subdivision 5 and subdivision 5 of section 422 of the social services law, the opening paragraph, subparagraph (iii) of paragraph (a) and paragraph (b) of subdivision 5 as amended by chapter 555.
of the laws of 2000 and subdivision 6 as amended by chapter 323 of the
laws of 2008, are amended to read as follows:

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

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

(b) Persons given access to unfounded reports pursuant to subparagraph
(v) of paragraph (a) of this subdivision shall not redisclose such
reports except as necessary to conduct such appropriate investigation or
prosecution and shall request of the court that any copies of such
reports produced in any court proceeding be redacted to remove the names
of the subjects and other persons named in the reports or that the court
issue an order protecting the names of the subjects and other persons
named in the reports from public disclosure. The local child protective
service or state agency shall not indicate the subsequent report solely
based upon the existence of the prior unfounded report or reports.

Notwithstanding section four hundred fifteen of this title, section one
thousand forty-six of the family court act, or, except as set forth
herein, any other provision of law to the contrary, an unfounded report
shall not be admissible in any judicial or administrative proceeding or
action; provided, however, an unfounded report may be introduced into
evidence: (i) by the subject of the report where such subject is a
respondent in a proceeding under article ten of the family court act or
is a plaintiff or petition in a civil action or proceeding alleging
the false reporting of child abuse or maltreatment; or (ii) in a crim-
nal court for the purpose of prosecuting a violation of subdivision
three [four] of section [240.55] 240.50 of the penal law. Legally sealed
unfounded reports shall be expunged ten years after the receipt of the
report. [Whenever the office of children and family services determines
that there is some credible evidence of abuse or maltreatment as a
result of an investigation of a report conducted pursuant to subdivision
(c) of section 45.07 of the mental hygiene law, the office of children
and family services shall notify the commission on quality of care for
the mentally disabled.]

6. In all other cases, the record of the report to the statewide
central register shall be expunged ten years after the eighteenth birth-
day of the youngest child named in the report. In the case of a child in
residential care [as defined in subdivision four of section four hundred
twelve of this title], the record of the report to the statewide
central register shall be expunged ten years after the reported child’s
eighteenth birthday. In any case and at any time, the commissioner of
the office of children and family services may amend any record upon
good cause shown and notice to the subjects of the report and other
persons named in the report.
§ 7-a. Subdivisions 10 and 11 of section 422 of the social services
law are REPEALED, and subdivision 9 and 14, subdivision 9 as amended by
chapter 634 of the laws of 1988, subdivision 14 as added by chapter 477
of the laws of 1989, are amended to read as follows:
9. Written notice of any expungement or amendment of any record, made
pursuant to the provisions of this title, shall be served forthwith upon
each subject of such record, other persons named in the report, the
commissioner, and, as appropriate, the applicable local child protective
service, the [commission on quality of care for the mentally disabled,
the division for youth] justice center for the protection of people
with special needs, department of education, office of mental health,
office [of mental retardation and] for people with developmental disa-
bilities, the local social services commissioner or school district
placing the child, any [law guardian] attorney for the child appointed
to represent the child whose appointment has been continued by a family
court judge during the term of a child's placement, and the director or
operator of a residential care facility or program. The local child
protective service or the state agency which investigated the report,
upon receipt of such notice, shall take the appropriate similar action
in regard to its child abuse and maltreatment register and records and
inform, for the same purpose, any other agency which received such
record.
14. The [department] office shall refer suspected cases of falsely
reporting child abuse and maltreatment in violation of subdivision
[three] four of section [240.55] 240.50 of the penal law to the appro-
priate law enforcement agency or district attorney.
§ 7-b. Subdivision 1 of section 422-b of the social services law, as
amended by chapter 485 of the laws of 2006, is amended to read as
follows:
1. A fatality review team may be established at a local or regional
level, with the approval of the office of children and family services,
for the purpose of investigating the death of any child whose care and
custody or custody and guardianship has been transferred to an author-
ized agency, other than a vulnerable child as defined in article eleven
of this chapter, any child for whom child protective services has an
open case, any child for whom the local department of social services
has an open preventive services case, and in the case of a report made
to the statewide central register of child abuse and maltreatment
involving the death of a child. A fatality review team may also investi-
gate any unexplained or unexpected death of any child under the age of
eighteen.
§ 7-c. Subdivision 8 of section 424 of the social services law, as
amended by chapter 477 of the laws of 1989, is amended to read as
follows:
§ 8. Refer suspected cases of falsely reporting child abuse and
maltreatment in violation of subdivision [three] four of section
[240.55] 240.50 of the penal law to the appropriate law enforcement
agency or district attorney;
§ 8. Subdivisions 3, 4, 5 and 6 of section 424-a of the social
services law, subdivision 3 as amended by chapter 578 of the laws of
1997, subdivision 4 as amended by chapter 465 of the laws of 1992,
subdivision 5 as added by chapter 677 of the laws of 1985, paragraph (a)
of subdivision 5 as amended by chapter 634 of the laws of 1988 and
subdivision 6 as amended by chapter 587 of the laws of 1997, are amended
and a new subdivision 7 is added to read as follows:

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

4. For purposes of this [chapter] section, the term "licensing agency"
shall mean an authorized agency which has received an application to
become an adoptive parent or an authorized agency which has received an
application for a certificate or license to receive, board or keep any
child pursuant to the provisions of section three hundred seventy-six or
three hundred seventy-seven of this article or an authorized agency
which has received an application from a relative within the second
degree or third degree of consanguinity of the parent of a child or a
relative within the second degree or third degree of consanguinity of
the step-parent of a child or children, or the child's legal guardian
for approval to receive, board or keep such child or a state or local
governmental agency which receives an application to provide child day
care services in a child day care center, school-age child care program,
family day care home or group family day care home pursuant to the
provisions of section three hundred ninety of this article, or the
department of health and mental hygiene of the city of New York, when
such department receives an application for a certificate of approval to
provide [family] child day care services in a child day care center
pursuant to the provisions of the health code of the city of New York,
or the office of mental health or the office [of mental retardation and]
for people with developmental disabilities when such office receives an
application for an operating certificate pursuant to the provisions of
the mental hygiene law to operate a family care home which will serve
children, or a state or local governmental official who receives an
application for a permit to operate a camp which is subject to the
provisions of article thirteen-A[7] or thirteen-B [or thirteen-G] of the
public health law or the [division—for youth] office of children and
family services which has received an application for a certificate to
receive, board or keep any child at a foster family home pursuant to
articles nineteen-G and nineteen-H of the executive law or any other
facility or provider agency, as defined in subdivision four of section

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

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

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

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

7. Any facility, provider agency, or program that is required to
conduct an inquiry pursuant to section four hundred ninety-five of this
chapter shall first conduct the inquiry required under such section. If
the result of the inquiry under section four hundred ninety-five of this
chapter is that the person about whom the inquiry is made is on the
register of substantiated category one cases of abuse or neglect and the
facility or provider agency is required to deny the application in
accordance with article eleven of this chapter, the facility or provider
agency shall not be required to make an inquiry of the office under this
section.
§ 8-a. Paragraph (b) and subparagraph (iv) of paragraph (e) of subdivision 1 and paragraph (a) of subdivision 2 of section 424-a of the social services law, paragraph (b) of subdivision 1 as amended by chapter 677 of the laws of 1985, subparagraph (i) of paragraph (b) of subdivision 1 as amended by chapter 260 of the laws of 1991, subparagraph (iv) of paragraph (e) of subdivision 1 as amended by chapter 323 of the laws of 2008, and paragraph (a) of subdivision 2 as amended by chapter 441 of the laws of 1993, are amended to read as follows:

(b) (i) [A] Subject to the provisions of subdivision seven of this section, a provider agency shall inquire of the [department] office and the [department] office shall, subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether any person who is actively being considered for employment and who will have the potential for regular and substantial contact with [children] individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment prior to permitting such person to have unsupervised contact with [children] such individuals. Such agency may inquire of the [department] office and the [department] office shall inform such agency and the subject of the inquiry whether any person who is currently employed and who has the potential for regular and substantial contact with [children] individuals who are cared for by such agency is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment. A provider agency shall also inquire of the [department] office and the [department] office shall inform such agency and the subject of the inquiry whether any person who is employed by an individual, corporation, partnership or association which provides goods or services to such agency who has the potential for regular and substantial contact with [children] individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment prior to permitting such person to have unsupervised contact with [children] such individuals. Inquiries made to the [department] office pursuant to this subparagraph by a provider agency on current employees shall be made no more often than once in any six month period.

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

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

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

(a) Upon notification by the [department] office or by a child care resource and referral program in accordance with subdivision six of this section that any person who has applied to a licensing agency for a license, certificate or permit or who seeks to become an employee of a provider agency, or to accept a child for adoptive placement or who will be hired as a consultant or used as a volunteer by a provider agency, or that any other person about whom an inquiry is made to the [department] office pursuant to the provisions of this section is the subject of an indicated report, the licensing or provider agency shall determine on the basis of information it has available whether to approve such application or retain the employee or hire the consultant or use the volunteer or permit an employee of another person, corporation, partnership or association to have access to the [children] individuals cared for by the provider agency, provided, however, that if such application is approved, or such employee is retained or consultant hired or volunteer used or person permitted to have access to the children cared for by such agency the licensing or provider agency shall maintain a written record, as part of the application file or employment record, of the specific reasons why such person was determined to be appropriate to receive a foster care or adoption placement or to provide day care services, to be the director of a camp subject to the provisions of article thirteen-A or [or] article thirteen-B of the public health law, to be employed, to be retained as an employee, to be hired as a consultant, used as a volunteer or to have access to the [children] individuals cared for by the agency.

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

§ 424-b. Children in the care of certain public and private agencies. Notwithstanding any inconsistent provisions of law, when a report of child abuse or maltreatment involves a child being cared for in a home operated or supervised by an authorized agency[.] or the office of children and family services, [or] an office of the department of mental hygiene[,] such report shall be accepted and maintained by the office of children and family services and shall be referred for the purposes of conducting an investigation to the appropriate staff within the office.
of children and family services [or the appropriate office of the
department of mental hygiene] where the child is in the care of such
agency; and where the child is in a home operated or supervised by an
authorized agency, to the social services district wherein such home is
located. The [agency] office or social services district receiving such
referral shall undertake an appropriate investigation of the report, in
accordance with the terms and conditions set forth in [subdivisions one
through eight of section four hundred twenty-four c of] this title. Any
person who is alleged to have abused or maltreated a child in a report
accepted and referred pursuant to this section shall be accorded the
procedural rights set forth in section four hundred twenty-two and in
subdivision six of section four hundred twenty-four of this title. Noth-
ing in this section shall impose any duty or responsibility on any child
protective service pursuant to section four hundred twenty-two, four
hundred twenty-four or any other provision of this article.
§ 9-a. Sections 424-c and 424-d of the social services law are
REPEALED.
§ 10. Subdivision 1 of section 425 of the social services law, as
amended by chapter 634 of the laws of 1988, is amended to read as
follows:
1. To effectuate the purposes of this title, the commissioner may
request and shall receive from departments, boards, bureaus, or other
agencies of the state, or any of its political subdivisions, or any duly
authorized agency, or any other agency providing services under the
local child protective services plan such assistance and data as will
enable the department and local child protective services to fulfill
their responsibilities properly. (In relation to an investigation of a
report of abuse or maltreatment involving a child in residential care,
such data may include, but need not be limited to, the case records of
the child who allegedly was abused or maltreated and any other child who
allegedly witnessed the abuse or maltreatment and, consistent with
appropiate collective bargaining agreements and applicable provisions
of the civil service law, those portions of the employment record of the
subject of the report considered by the subject's employer to be rele-
vant and reasonably related to the allegations being investigated by the
department.) Nothing contained in this subdivision shall limit the
department's authority under sections three hundred seventy-two, four
hundred sixty-c and four hundred sixty-e of this chapter to access the
records of authorized agencies.
§ 11. Section 426 of the social services law, as amended by chapter
676 of the laws of 1985, is amended to read as follows:
§ 426. Annual reports. The commissioner shall prepare for inclusion in
the annual report required by subdivision (d) of section seventeen of
this chapter to be filed with the governor and the legislature prior to
December fifteenth of each year, a report on the operations of the state
central register of child abuse and maltreatment and the various local
child protective services. The report shall include a full statistical
analysis of the reports made to the central register together with a
report on the implementation of this title, his or her evaluation of
services offered under this chapter and his or her recommendations for
additional legislation to fulfill the purposes of this title. Such
report shall indicate the number of child abuse and maltreatment reports
and cases received by the statewide central register of child abuse and
maltreatment by each district in the preceding year, the number of such
cases determined to have been indicated and the number of such cases
determined to be unfounded by each district in the preceding year, the
number of such cases which have not been indicated or unfounded within
the time period required by subdivision seven of section four hundred
twenty-four of this [chapter] article by each district in the preceding
year, and the number of workers assigned to the child protective service
in each district in the preceding year. [The report shall also contain
data on the protection of children in residential care from abuse and
maltreatment, including reports received, results of investigations by
types of facilities and programs, types of corrective action taken, as
well as efforts undertaken by the department, the division for youth
and the state education department to provide training pursuant to stan-
dards established by section four hundred sixty-two of this chapter,
section five hundred one of the executive law and sections forty-four
hundred three, forty-three hundred fourteen, forty-three hundred fifty-
eight and forty-two hundred twelve of the education law.]§ 11-a. Section 426 of the social services law, as amended by chapter
377 of the laws of 2011, is amended to read as follows:
§ 426. Annual reports. The commissioner shall prepare for inclusion in
the annual report required by subdivision (d) of section seventeen of
this chapter to be filed with the governor and the legislature prior to
December fifteen of each year, a report on the operations of the state
central register of child abuse and maltreatment and the various local
child protective services. The report shall include a full statistical
analysis of the reports made to the central register together with a
report on the implementation of this title, his or her evaluation of
services offered under this chapter and his or her recommendations for
additional legislation to fulfill the purposes of this title. Such
report shall indicate the number of child abuse and maltreatment reports
and cases received by the statewide central register of child abuse and
maltreatment by each district in the preceding year, the number of such
cases determined to have been indicated and the number of such cases
determined to be unfounded by each district in the preceding year, the
number of such cases which have not been indicated or unfounded within
the time period required by subdivision seven of section four hundred
twenty-four of this [chapter] article by each district in the preceding
year and the number of workers assigned to the child protective service
in each district in the preceding year. Such report shall include, among
other information, available demographic information and available
information concerning the racial and ethnic characteristics of the
family members and persons served by the differential response program
pursuant to section four hundred twenty-seven-a of the social services
law, as well as available information concerning the racial and ethnic
characteristics of the family members and persons served under the
traditional child protective services program, in each local social
services district in the state. [The report shall also contain data on
the protection of children in residential care from abuse and maltreat-
ment, including reports received, results of investigations by types of
facilities and programs, types of corrective action taken, as well as
efforts undertaken by the department, the division for youth and the
state education department to provide training pursuant to standards
established by section four hundred sixty-two of this chapter, section
five hundred one of the executive law and sections forty-four hundred
three, forty-three hundred fourteen, forty-three hundred fifty-eight and
forty-two hundred twelve of the education law.]§ 12. Section 460 of the social services law, as added by chapter 669
of the laws of 1977, is amended to read as follows:
§ 460. Declaration of policy and statement of purpose. Residential care programs for adults and children of the highest quality, efficiently produced and properly utilized at a reasonable cost, are a matter of vital concern to the people of this state. In order to more effectively protect and assure the life, health, safety and comfort of adults and children who must be cared for away from their own homes, the department of social services acting directly or through social services districts, and with the cooperation of other state agencies, shall have the comprehensive responsibility for the development and administration of programs, standards and methods of operation, and all other matters of state policy, with respect to residential care programs for children and adults and all facilities and agencies, whether public or private, which are subject to the provisions of this article. For the purposes of this article, with respect to residential care programs for children, the term "department" shall mean the office of children and family services and with respect to residential care programs for adults, the term shall mean the office of children and family services in relation to family type homes for adults and residential programs for victims of domestic violence, the office of temporary and disability assistance in relation to shelters for adults and shelters for families; and the department of health in relation to all other residential care programs for adults.

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

2-a. Special procedures relating to abuse and neglect of [children-in Residential Care] vulnerable persons. (a) If the report of an investigation of [child] abuse or [maltreatment] neglect is [indicated] substantiated in accordance with article eleven of this chapter, the director or operator of a residential facility or program[,] including a program described in paragraph (j) of subdivision four of section four hundred twelve-a of this chapter[,] shall submit to the [office of children and family services] department, within ten business days of receipt of notice of the [indicated] substantiated report, a written plan of prevention and remediation to be taken with respect to the subject of [the indicated] such report to [assure] protect the continued health and safety of welfare of [children] the service recipients and provide for the prevention of future acts of abuse or [maltreatment] neglect. The [office of children and family services] department shall approve or disapprove such plan and specify necessary revisions within ten days of its receipt and shall monitor its implementation pursuant to the provisions of this chapter.

(b) In the event an investigation of a report of alleged [child] abuse or [maltreatment] neglect determines that [credible] a preponderance of evidence of abuse or [maltreatment] neglect exists and such abuse or [maltreatment] neglect may be attributed in whole or in part to noncompliance of the facility or program[,] including a program described in paragraph (j) of subdivision four of section four hundred twelve-a of this chapter[,] with provisions of this chapter or regulations of the [office of children and family services] department applicable to the operation of such residential facility or program, the director or operator of such facility or program shall, in consultation with officials of the department responsible for the approval of operating certificates and for monitoring the provision of protective services to [children] service recipients, develop a plan of prevention and remediation which shall be submitted to and approved by the [office of children and family services] department.
services] department in accordance with time limits established by regu-
lations of the [office of children and family services] department.
Implementation of such plan shall be jointly monitored by officials of
the [office of children and family services] department responsible for
the approval of operating certificates and for monitoring the provision
of protective services to [children] service recipients. In reviewing
the continuing qualification of a residential [child care] facility or
program for an operating certificate, the [office of children and family
services] department shall evaluate such facility's or program's compli-
ance with plans of prevention and remediation developed and implemented
pursuant to this section.
(c) Development and implementation of plans pursuant to this section
shall, to the extent possible, be coordinated with remediation plans
required by local social services districts.
§ 14. Section 461-m of the social services law, as amended by chapter
462 of the laws of 1996, is amended to read as follows:
§ 461-m. Death and felony crime reporting. The operator of an adult
home or residence for adults shall have an affirmative duty to report
any death, or attempted suicide of a resident to the department within
twenty-four hours of its occurrence, and shall also have an affirmative
duty to report to an appropriate law enforcement authority if it is
believed that a felony crime may have been committed against a resident
of such facility as soon as possible, or in any event within forty-eight
hours. In addition, the operator shall send any reports involving a
resident who had at any time received services from a mental hygiene
service provider to the [state commission on quality of care for the
mentally disabled] justice center for the protection of people with
special needs.
§ 15. Section 461-o of the social services law, as added by chapter
462 of the laws of 1996, is amended to read as follows:
§ 461-o. Complaint investigation procedures. The department shall
establish procedures governing the receipt and investigation of
complaints regarding the care afforded to residents of adult care facil-
ities consistent with article eleven of this chapter, as applicable.
Such procedures shall assure the confidentiality of the complainant.
Such procedures shall include but not be limited to the procedures for
reporting complaints, either in writing or orally to the department, and
the time frames governing the investigation of any such complaints
submitted to the department. Provided however, if any complaint alleges
the abuse or neglect of a resident or involves an incident that exposes
a resident to cruel or unsafe care or otherwise represents a serious
resident care issue, the department shall ensure that an investigation
of any such complaint is initiated immediately and in no event commences
less than seventy-two hours from the time such complaint is received by
the department. Upon the conclusion of the investigation by the depart-
ment the operator and the complainant shall be notified in writing of
the results of such investigation or, as applicable, pursuant to article
eleven of this chapter.
§ 16. Section 462 of the social services law, as added by chapter 669
of the laws of 1977, subdivision 1 as amended by chapter 677 of the laws
of 1985, paragraphs (b) and (c) of subdivision 1 as amended by chapter
32 of the laws of 1992, paragraph (f) of subdivision 1 as added by chap-
ter 472 of the laws of 2004, paragraph (a) of subdivision 2 as amended
by chapter 800 of the laws of 1985 and paragraph (b) of subdivision 2 as
amended by chapter 558 of the laws of 1999, is amended to read as
follows:
§ 462. Responsibility for standards. 1. (a) The [de]partment of [so]cial
services, office of children and family services shall promulgate regu-
lations concerning standards of care and treatment and fiscal, adminis-
trative, nutritional, architectural and safety standards, consistent
with the provisions of section three hundred ninety-eight-a of this
chapter, which shall apply to all facilities exercising care or custody
of children or providing care or shelter to unmarried mothers.
(b) With respect to facilities exercising care or custody of children,
no license or operating certificate shall be provided or renewed unless
it can be demonstrated that such facilities comply with regulations for
the prevention and remediation of [abuse and n]oegetreatment of [reportable
incidents involving children in such facilities, including procedures
for:
(i) consistent with appropriate collective bargaining agreements and
applicable provisions of the civil service law, [the] review and evalu-
ation of the backgrounds of and the information supplied by any person
applying to be an employee, a volunteer or consultant, which shall
include but not be limited to the following requirements: that the
applicant—set forth his or her employment history, provide personal and
employment references, relevant experiential and educational information
and sign a sworn statement indicating whether the applicant to the best
of his or her knowledge, has ever been convicted of a crime in this
state or any other jurisdiction; assisting the justice center for the
protection of people with special needs with its review and evaluation
of criminal background checks of prospective employees, as set forth in
subdivision five of section five hundred fifty-three of the executive
law;
(ii) establishing, for employees, relevant minimal experiential and
educational qualifications consistent with appropriate collective
bargaining agreements and applicable provisions of the civil service
law;
(iii) assuring adequate and appropriate supervision of employees,
volunteers and consultants;
(iv) demonstrating by a residential facility or program that appropri-
ate action is taken to assure the safety of the child who is reported
pursuant to article eleven of this chapter to the [state] vulnerable
persons' central register [of child abuse and maltreatment] as well as
other children in care, immediately upon notification that a report of
[child abuse or maltreatment] a reportable incident has been made with
respect to a child in such facility or program;
(v) consistent with applicable collective bargaining agreements,
assuring that an individual who has committed a category one offense, as
defined in paragraph (a) of subdivision five of section four hundred
ninety-three of this chapter, that is included on the vulnerable
persons' central register is not hired or otherwise used in any position
in which such individual would have regular and substantial contact with
a service recipient in any program operated, licensed or certified by
the office;
(vi) removing a child, consistent as applicable with any court order
placing the child, when it is determined that there is risk to such
child if he or she continues to remain within a facility or program;
(vii) [appropriate preventive and remedial action to be taken
including legal actions, consistent with appropriate collective bargain-
ing agreements and applicable provisions of the civil service law.
(c) With respect to facilities exercising care or custody of children
such standards shall establish as a priority that:
(i) subject to the amounts appropriated therefor, administrators, employees, volunteers and consultants receive training in at least the following: child abuse prevention and identification, safety and security procedures, the principles of child development, the characteristics of children in care and techniques of group and child management including crisis intervention, the laws, regulations and procedures governing the protection of children from abuse and [maltreatment] neglect, and other appropriate topics, provided however, that the [department] office may exempt administrators and consultants of such facilities or programs from such requirements upon demonstration of substantially equivalent knowledge or experience; and

(ii) subject to the amounts appropriated therefor, children receive instruction, consistent with their age, needs and circumstances as well as the needs and circumstances within the facility or program, in techniques and procedures which will enable such children to advocate for and protect themselves from [abuse-and-maltreatment] reportable incidents; and

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

(d) Such regulations shall be developed in consultation with other state departments and agencies responsible for human services programs including, but not limited to, the department of education, the department of health, [the department of mental hygiene, the division for youth and the board of social welfare,] the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services and the justice center for the protection of people with special needs and shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes.

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

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

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

(ii) the office of children and family services or such other state agency which licenses such residential institution for children approves the plans and specifications of the residential facilities to be
replaced, reconstructed, rehabilitated, improved, renovated, or otherwise provided for, furnished or equipped.

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

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

(c) The department of mental hygiene and the [division—for—youth] office shall propose any additional standards as are deemed necessary to adequately ensure the care of children in facilities subject to the inspection and supervision of the department, which care for a significant number of mentally disabled children, juvenile delinquents or persons in need of supervision. The final form of any such additional standards shall be subject to the approval of the department of mental hygiene for such standards related to the care of mentally disabled children, or the [division—for—youth] office for such standards related to the care of juvenile delinquents and persons in need of supervision.

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

§ 462-a. Responsibility for inspection and supervision. 1. The [division—for—youth] office of children and family services shall inspect and supervise secure and non-secure detention facilities and those [division—for—youth] office of children and family services residential facilities authorized by article nineteen-G of the executive law and those residential facilities operated as approved runaway programs or transitional independent living support programs pursuant to article nineteen-H of the executive law.

2. The appropriate offices of the state department of mental hygiene shall inspect and supervise those facilities subject to articles [twenty-three] thirty-one and thirty-two of the mental hygiene law.

3. For those facilities which care for a significant number of mentally disabled children, the department shall enter into written cooperative agreements no later than October first, nineteen hundred seventy-one, with the department of mental hygiene for joint inspection and supervision of such facilities, as appropriate.

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

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

§ 462-b. Responsibility for enforcement. 1. The [division—for—youth] office of children and family services shall exercise the enforcement powers enumerated in section four hundred sixty-d of this article which may apply to secure and non-secure detention facilities and to those residential facilities authorized by article nineteen-G of the executive law and...
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
5. The appropriate offices of the state department of mental hygiene
6 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
10. With respect to facilities which care for a significant number of
11 mentally disabled children, the department shall enter into written
12 cooperative agreements no later than October first, nineteen hundred
13 seventy-seven with the department of mental hygiene establishing circum-
14 stances under which the department will at the request of the department
15 of mental hygiene act to limit or modify the operating certificate of
16 any facility so as to preclude such facility from accepting, caring for
17 or continuing to care for mentally disabled children.
18
19. The department of social services office of children and family
20 services shall exercise the enforcement powers enumerated in section
21 four hundred sixty-d of this article with respect to all other child
22 caring facilities subject to its regulation either independently or at
23 the request of the department of mental hygiene (see the division for
24 youth).
25
26. This act shall take effect June 30, 2013; provided, however,
27 that the amendments to section 426 of the social services law made by
28 section eleven-a of this act shall take effect on the same date as
29 section 6 of chapter 377 of the laws of 2011 takes effect; provided
30 further, that effective immediately, the addition, amendment or repeal
31 of any rule or regulation necessary for the implementation of this act
32 on its effective date are authorized to be made and completed on or
33 before such effective date.
34
PART E
35
36. Section 1. Subdivision 5 of section 1125 of the education law, as
37 added by chapter 180 of the laws of 2000, is amended to read as follows:
38 5. "Educational setting" shall mean the building and grounds of a
39 public school district, the vehicles provided by the school district for
40 the transportation of students to and from school buildings, field
41 trips, co-curricular and extra-curricular activities both on and off
42 school district grounds, all co-curricular and extra-curricular activity
43 sites, and any other location where direct contact between an employee
44 or volunteer and a child has allegedly occurred. Such term shall not
45 include a special act school district as defined in section four thou-
46 sand one of this chapter which shall be subject to article eleven of the
47 social services law.
48
49. § 1-a. Subdivisions (a), (b) and (c) of section 4212 of the education
50 law, as amended by chapter 32 of the laws of 1992, are amended to read
51 as follows:
52 (a) Promulgate regulations concerning standards for the protection of
53 children in residential care from [abuse and maltreatment] reportable
54 incidents in accordance with this section and article eleven of the
55 social services law, including procedures for:
56 (i) consistent with appropriate collective bargaining agreements and
57 applicable provisions of the civil service law, the review and evalu-
58 ation of the backgrounds of and the information supplied by any person
59 applying to be an employee, a volunteer or consultant, which shall
include but not be limited to the following requirements: that the applicant set forth his or her employment history, provide personal and employment references, and relevant experiential and educational information, and sign a sworn statement indicating whether the applicant, to the best of his or her knowledge, has ever been convicted of a crime in this state or any other jurisdiction;

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

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

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

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

(vi) appropriate preventive and remedial action to be taken including legal actions, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law.

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

Such standards shall also establish as a priority requirements that:

(A) to the amounts appropriated therefor, administrators, employees, volunteers and consultants receive training in at least the following: child abuse prevention and identification, safety and security procedures, the principles of child development, the characteristics of children in care and techniques of group and child management including crisis intervention, the laws, regulations and procedures governing the protection of children from [abuse and maltreatment] reportable incidents, and other appropriate topics, provided, however, that the department may exempt administrators and consultants from such requirements upon demonstration of substantially equivalent knowledge or experience; and

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

The department shall take all reasonable and necessary actions to assure that employees, volunteers and consultants in residential facilities and programs are kept apprised on a current basis of all department
policies and procedures relating to the protection of children from
[abuse—and—maltreatment] reportable incidents, and shall monitor and
supervise the provision of training to such employees, volunteers and
consultants. Regulations and standards developed pursuant to this subdi-
vision shall, to the extent possible, be consistent with those promul-
gated by other state agencies for such purposes.
(b) Cooperate with the state department of social services to protect
the health and safety of pupils at the school pursuant to title six of
article six of the social services law. Such cooperation shall include:
the making of reports of alleged child abuse or maltreatment; providing
necessity assistance to the state department of social services in the
department's investigation thereof and considering the recommendations
of the state department of social services for preventive and remedial
action including legal action and—provide or direct the residential
facility to provide—such written reports thereof to the department of
social services as to the implementation of plans of prevention and
remediation approved by the department of education; and
(c) Provide for the development and implementation of a plan of
prevention and remediation with respect to [an indicated] a substanti-
ated report of [child abuse or maltreatment] a reportable incident.
Such action shall include: (i) within ten days of receipt of [an—indi-
cated] such a report of [child abuse or maltreatment] a reportable inci-
dent, development and implementation of a plan of prevention and remedi-
ation to be taken with respect to a custodian or the residential
facility in order to assure the continued health and safety of children
and to provide for the prevention of future acts [of abuse or mal-
treatment] constituting reportable incidents; and (ii) development and imple-
mentation of a plan of prevention and remediation, in the event an
investigation of a report of an alleged [child abuse or maltreatment]
reportable incident determines that some credible evidence of [abuse or
maltreatment] such reportable incident exists and such [abuse or
maltreatment] reportable incident may be attributed in whole or in part
to noncompliance by the residential facility or program with provisions
of this chapter or regulations of the department applicable to the oper-
ation of a residential facility or program. Any plan of prevention and
remediation required to be developed [pursuant to paragraph (ii) of this
subdivision] by a facility supervised by the department shall be submit-
ted to and approved by the department in accordance with time limits
established by regulations of the department. Implementation of the plan
shall be monitored by the department. In reviewing the continued qual-
ifications of a residential facility or program for an operating certif-
icate, the department shall evaluate such facility's compliance with
plans of prevention and remediation developed and implemented pursuant
to this subdivision.
§ 2. Section 4314 of the education law, as added by chapter 677 of the
laws of 1985, subdivisions (a), (b) and (c) as amended by chapter 32 of
the laws of 1992, is amended to read as follows:
§ 4314. Protection of pupils. The department shall:
(a) Promulgate regulations concerning standards for the protection of
children in residential care from [abuse—and—maltreatment] reportable
incidents in accordance with this section and article eleven of the
social services law, including procedures for:
(i) consistent with appropriate collective agreements and applicable
provisions of the civil service law, the review and evaluation of the
backgrounds of and the information supplied by any person applying to be
an employee, a volunteer or consultant, which shall include but not be
limited to the following requirements: that the applicant set forth his
or her employment history, provide personal and employment references,
and relevant experiential and educational information, and sign a sworn
statement indicating whether the applicant, to the best of his or her
knowledge, has ever been convicted of a crime in this state or any other
jurisdiction;
(ii) establishing for employees, relevant minimal experiential and
educational qualifications consistent with appropriate collective
bargaining agreements and applicable provisions of the civil service
law;
(iii) assuring adequate and appropriate supervision of employees,
volunteers and consultants;
(iv) demonstrating by a residential facility or program that appropri-
ate action is taken to assure the safety of the child who is [reported]
alleged to have been subjected to a reportable incident in a report to
the [state] vulnerable persons' central register in accordance with
section four hundred ninety-two of the social services law as well as
other children in care, immediately upon notification that such a report
of [child abuse or maltreatment] an allegation of a reportable incident
has been made [with respect to a child in such residential facility or
program];
(v) removing a child when it is determined that there is risk to such
child if he or she continues to remain within a residential facility or
program; and
(vi) appropriate preventive and remedial action to be taken including
legal actions, consistent with appropriate collective bargaining agree-
ments and applicable provisions of the civil service law.
Such standards shall also establish as a priority requirements that:
(1) subject to the amounts appropriated therefor, administrators,
employees, volunteers and consultants receive training in at least the
following: child abuse prevention and identification, safety and secu-
ritv procedures, the principles of child development, the character-
istics of children in care and techniques of group and child management
including crisis intervention, the laws, regulations and procedures
governing the protection of children from [abuse and maltreatment]
reportable incidents, and other appropriate topics, provided however,
that the department may exempt administrators and consultants from such
requirements upon demonstration of substantially equivalent knowledge or
experience; and
(2) subject to the amounts appropriated therefor, children receive
instruction, consistent with their age, needs and circumstances as well
as the needs and circumstances within the facility or program, in tech-
niques and procedures which will enable such children to protect them-
selves from [abuse and maltreatment] reportable incidents.
The department, in consultation with the executive director of the
justice center for the protection of people with special needs, shall
take all reasonable and necessary actions to assure that employees,
volunteers and consultants in residential facilities are kept apprized
on a current basis of all department policies and procedures relating to
the protection of children from [abuse and maltreatment] reportable
incidents and shall monitor and supervise the provision of training to
such employees, volunteers and consultants. Regulations and standards
developed pursuant to this section shall, to the extent possible, be
consistent with those promulgated by other state agencies for such
purposes;
(b) [Cooperate with the state department of social services to protect
the health and safety of pupils at the school pursuant to title six of
article six of the social services law. Such cooperation shall include:
the making of reports of alleged child abuse or maltreatment; providing
necessary assistance to the state department of social services in the
department's investigation thereof and considering the recommendations
of the state department of social services for preventive and remedial
action including legal action and provide or direct the residential
facility to provide such written reports thereto to the department of
social services as to the implementation of a plan of prevention and
remediation approved by the department; and

(e) Provide for the development and implementation of a plan of
prevention and remediation with respect to an alleged report of [child abuse or maltreatment] a reportable incident.
Such action shall include: (i) within ten days of receipt of an alleged report of [child abuse or maltreatment] a reportable incident, development and implementation of a plan of prevention and remediation to be taken with respect to a custodian or the residential facility in order to assure the continued health and safety of children
and to provide for the prevention of future acts of abuse or maltreatment constituting reportable incidents; and (ii) development and implementation of a plan of prevention and remediation, in the event an investigation of a report of an alleged child abuse or maltreatment reportable incident determines that some credible evidence of abuse or maltreatment exists and such abuse or maltreatment reportable incident may be attributed in whole or in part
to noncompliance by the residential facility or program with provisions
of this chapter or regulations of the department applicable to the operation of such residential facility or program. Any plan of prevention and remediation required to be developed pursuant to [paragraph (ii) of this subdivision by a facility supervised by the department shall be submitted to and approved by the department in accordance with time limits established by regulations of the department. Implementation of the plan shall be monitored by the department. In reviewing the continued qualifications of a residential facility or program for an operating certificate, the department shall evaluate such facility's compliance with plans of prevention and remediation developed and implemented pursuant to this subdivision.

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

§ 4358. Protection of pupils. The department shall:

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

(i) consistent with appropriate collective bargaining agreements and
applicable provisions of the civil service law, the review and evalu-
ation of the backgrounds of and the information supplied by any person
applying to be an employee, a volunteer or consultant, which shall
include but not be limited to the following requirements: that the
applicant set forth his or her employment history, provide personal and
employment references and relevant experiential and educational informa-
tion, and sign a sworn statement indicating whether the applicant, to
the best of his or her knowledge, has ever been convicted of a crime in
this state or any other jurisdiction;
(i) establishing, for employees, relevant minimal experiential and educational qualifications, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law;
(ii) assuring adequate and appropriate supervision of employees, volunteers and consultants;
(iv) demonstrating by a residential facility or program that appropriate action is taken to assure the safety of the child who is alleged to have been subjected to a reportable incident in a report to the [state] vulnerable persons' central register in accordance with section four hundred ninety-two of the social services law as well as other children in care, immediately upon notification that such a report of [child abuse or maltreatment] an allegation of a reportable incident has been made [with respect to a child in such facility or program];
(v) removing a child when it is determined that there is risk to such child if he or she continues to remain within a facility or program; and
(vi) appropriate preventive and remedial action to be taken including legal actions, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law.

Such standards shall also establish as a priority requirements that:
(A) subject to the amounts appropriated therefor, administrators, employees, volunteers and consultants receive training in at least the following: child abuse prevention and identification, safety and security procedures, the principles of child development, the characteristics of children in care and techniques of group and child management including crisis intervention, the laws, regulations and procedures governing the protection of children from [abuse and maltreatment] reportable incidents, and other appropriate topics, provided however, that the department may exempt administrators and consultants from such requirements upon demonstration of substantially equivalent knowledge or experience; and
(B) subject to the amounts appropriated therefor, children receive instruction, consistent with their age, needs and circumstances as well as the needs and circumstances of the facility, in techniques and procedures which will enable such children to protect themselves from [abuse and maltreatment] reportable incidents.

The department shall take all reasonable and necessary actions to assure that employees, volunteers and consultants in residential facilities and programs are kept apprised on a current basis of all department policies and procedures relating to the protection of children from [abuse and maltreatment] reportable incidents and shall monitor and supervise the provision of training to such administrators, employees, volunteers, children and consultants. Regulations and standards developed pursuant to this section shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes;
(b) [Cooperate with the state department of social services to protect the health and safety of pupils at the school pursuant to title six of article six of the social services law. Such cooperation shall include the making of reports of alleged child abuse or maltreatment, providing necessary assistance to the state department of social services in the department's investigation thereof and considering the recommendations of the state department of social services for preventive and remedial action including legal action and provide or direct the residential facility to provide such written reports to the department of social services as to the implementation of plans of prevention and remediation approved by the department; and

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

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

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

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

(c) assuring adequate and appropriate supervision of employees, volun-
(d) demonstrating by a residential facility or program that appropriate action is taken to assure the safety of the child who is [reported] alleged to have been subjected to a reportable incident in a report to the [state] vulnerable persons' central register in accordance with section four hundred ninety-two of the social services law as well as other children in care, immediately upon notification that such a report of [child abuse or maltreatment] an allegation of a reportable incident has been made with respect to a child in such residential facility or program;
(e) removing a child when it is determined that there is risk to such child if he or she continues to remain within a residential facility or program; and
(f) appropriate preventive and remedial action to be taken including legal actions, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law.
Such standards shall also establish as a priority requirements that:
(A) subject to amounts appropriated therefor, administrators, employees, volunteers and consultants receive training in at least the following: child abuse prevention and identification, safety and security procedures, the principles of child development, the characteristics of children in care, and techniques of group and child management including crisis intervention, the laws, regulations and procedures governing the protection of children from [abuse and maltreatment] reportable incidents, and other appropriate topics, provided however, that the department may exempt administrators and consultants from such requirements upon demonstration of substantially equivalent knowledge or experience; and
(B) subject to the amounts appropriated therefor, children receive instruction, consistent with their age, needs and circumstances as well as the needs and circumstances within the program, in techniques and procedures which will enable such children to advocate for and protect themselves from [abuse and maltreatment] reportable incidents.
The department shall take all reasonable and necessary actions to assure that employees, volunteers and consultants in residential facilities and programs are kept apprised on a current basis of all department policies and procedures relating to the protection of children from [abuse and maltreatment] reportable incidents and shall monitor and supervise the provision of training to such administrators, employees, volunteers, children and consultants. Regulations and standards developed pursuant to this subdivision shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes.
12. To cooperate with the state department of social services and other departments, divisions and agencies of the state when a report is received pursuant to title six of article six of the social services law to protect the health and safety of children in residential placement. Such cooperation shall include: the making of reports of alleged child abuse or maltreatment, providing necessary assistance to the state department of social services in the department's investigation thereof and considering the recommendations of the state department of social services for preventive and remedial action, including legal action and providing written reports thereof to the department of social services as to the implementation of plans of prevention and remediation approved by the department.
13. To provide for the development and implementation of a plan of prevention and remediation with respect to [an indicated] a substance-
Such action shall include: (a) within ten days of receipt of [an indicated] a substantiated report of [child abuse or maltreatment] a reportable incident, development and implementation of a plan of prevention and remediation to be taken with respect to a custodian or the residential facility in order to assure the continued health and safety of children and to provide for the prevention of future acts of abuse or maltreatment constituting reportable incidents; and (b) development and implementation of a plan of prevention and remediation, in the event an investigation of a report of an alleged [child abuse or maltreatment] reportable incident determines that some credible evidence of [abuse or maltreatment] such reportable incident exists and such [abuse or maltreatment] reportable incident may be attributed in whole or in part to noncompliance by the residential facility or program with provisions of this chapter or regulations of the department applicable to the operation of such residential facility or program. Any plan of prevention and remediation required to be developed pursuant to [paragraph (b) of] this subdivision by a facility supervised by the department shall be submitted to and approved by the department in accordance with time limits established by regulations of the department. Implementation of the plan shall be monitored by the department. In reviewing the continued qualifications of a residential facility or program for an operating certificate, the department shall evaluate such facility’s compliance with plans of prevention and remediation developed and implemented pursuant to this subdivision.

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

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

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

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

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

[19] 18. To establish guidelines for determining when a child is at risk of a future placement in a residential school, and for the provision by committees on special education of information to parents.
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 subdivision
51 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
education law. Any person employed as a school bus attendant serving a
student or students with a disability on January first, two thousand
nine shall comply with the requirements of this subdivision by July
first, two thousand nine. Any person hired after January first, two
thousand nine shall complete such training, instruction and testing
prior to assuming his or her duties as a school bus attendant serving a
student or students with a disability.
§ 7. This act shall take effect June 30, 2013; provided, however, that
the amendments to subdivision 18 of section 4403 of the education law
made by section four of this act shall not affect the repeal of such
subdivision and shall be deemed repealed therewith; provided further
that the amendments to subdivision 19-a of section 4403 of the education
law made by section four of this act shall not affect the expiration of
such subdivision and shall be deemed to expire therewith.

PART F

Section 1. Subdivision (a) of section 16.33 of the mental hygiene law,
as amended by chapter 575 of the laws of 2004, is amended to read as
follows:
(a) Every provider of services who contracts with or is approved or
otherwise authorized by the office to provide services, except (i) a
department facility, (ii) a hospital as defined in article twenty-eight
of the public health law, or (iii) a licensed professional under title
eight of the education law who does not have employees or volunteers
who will have regular and substantial unsupervised or unrestricted physical
contact with the clients of such provider, and every applicant to be
such a provider of services except (i) a department facility, (ii) a
hospital as defined in article twenty-eight of the public health law, or
(iii) a licensed professional under title eight of the education law and
who does not have employees or volunteers who will have regular and
substantial unsupervised or unrestricted physical contact with the
clients of such provider, shall request that the [office] justice center
for the protection of people with special needs check, and upon such
request the [office] such justice center shall request and shall be
authorized to receive from the division of criminal justice services
criminal history information, as such phrase is defined in paragraph (c)
of subdivision one of section eight hundred forty-five-b of the execu-
tive law, concerning each (A) prospective operator, employee or volun-
teer of such provider who will have regular and substantial unsupervised
or unrestricted physical contact with the clients of such provider, or
(B) other person over the age of eighteen who is to reside in a family
care home, except any person receiving family care services, who will
have regular and substantial unsupervised or unrestricted physical
contact with the clients of such provider. For purposes of this section,
"operator" shall include any natural person with an ownership interest
in the provider of services.
§ 2. The mental hygiene law is amended by adding a new section 19.20
to read as follows:
§ 19.20 Review of criminal history information concerning certain
prospective employees and volunteers.
Every provider of services who contracts with or is approved or other-
wise authorized by the office to provide services, except (1) a depart-
ment facility, (2) a hospital as defined in article twenty-eight of the
public health law, or (3) a licensed professional under title eight of
the education law who does not have employees or volunteers who will

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have regular and substantial unsupervised or unrestricted physical
contact with the clients of such provider, shall request that the office
request and receive from the division of criminal justice services crim-
inal history information, as such phrase is defined in paragraph (c) of
subdivision one of section eight hundred forty-five-b of the executive
law, concerning each prospective employee or volunteer of such provider
who will have regular and substantial unsupervised or unrestricted phys-
ical contact with the clients of such provider.
(a) Prior to requesting the office to obtain a criminal history infor-
mation concerning any prospective employee or volunteer, a provider
shall:
(1) inform the prospective employee or volunteer in writing that the
provider is required to request his or her criminal history information
and review such information pursuant to this section; and
(2) obtain the signed informed consent of the prospective employee or
volunteer on a form supplied by the division of criminal justice
services which indicates that such person has:
(i) been informed of the right and procedures necessary to obtain,
review and seek correction of his or her criminal history information;
(ii) been informed of the reason for the request for his or her crim-
inal history information;
(iii) consented to such request; and
(iv) supplied on the form a current mailing or home address.
Upon receiving such written consent, the provider shall obtain two sets
of fingerprints of such prospective employee or volunteer and provide
such fingerprints to the office pursuant to regulations established by
the division of criminal justice services.
(b) A provider requesting criminal history information pursuant to
this section shall also complete a form developed for such purpose by
the division of criminal justice services. Such form shall include a
sworn statement of the person designated by such provider to request,
receive and review criminal history information pursuant to paragraph
one of subdivision (g) of this section certifying that:
(1) such criminal history information will be used by the provider
solely for purposes authorized by this section;
(2) the provider and its staff are aware of and will abide by the
confidentiality requirements and all other provisions of this section;
and
(3) the persons designated by the provider to receive criminal history
information pursuant to paragraph one of subdivision (g) of this section
shall upon receipt immediately mark such criminal history information
"confidential," and shall at all times maintain such criminal history
information in a secure place.
(c) Upon receipt of the fingerprints and sworn statement required by
subdivisions (a) and (b) of this section, the office shall promptly
submit the fingerprints to the division of criminal justice services.
The division of criminal justice services shall promptly forward a set
of the applicant's fingerprints to the federal bureau of investigation
for the purpose of a nationwide criminal history record check to deter-
mine whether such applicant has been convicted of a criminal offense in
any state other than New York or in a federal jurisdiction.
(d) The division of criminal justice services shall promptly provide
the requested criminal history information, if any, to the office. Crim-
inal history information provided by the division of criminal justice
services pursuant to this section shall be furnished only by mail or
other method of secure and confidential delivery, addressed to the
office. Such information and the envelope in which it is enclosed, if any, shall be prominently marked "confidential," and shall at all times be maintained by the office in a secure place.

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

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

(g) Where the provider receives a summary of the criminal history information from the office pursuant to subdivision (e) of this section, the provider shall consider the information in accordance with the provisions of article twenty-three-A of the correction law and subdivisions fifteen and sixteen of section two hundred ninety-six of the executive law.

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

(2) Upon receipt of the summary of criminal history information pursuant to this section, a provider shall provide the prospective employee or volunteer with a copy of such summary of the criminal history information and a copy of article twenty-three-A of the correction law, and inform such prospective employee or volunteer of his or her right to seek correction of any incorrect information contained in such criminal
history information pursuant to the regulations and procedures established by the division of criminal justice services.

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

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

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

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

§ 19.20-a Review of criminal history information concerning prospective providers, operators and individuals seeking to be credentialed by the office.

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

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

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

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

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

(ii) been informed of the reason for the request for his or her criminal history information;

(iii) consented to such request; and

(iv) supplied on the form a current mailing or home address.
Upon receiving such written consent, the office may obtain two sets of fingerprints of such prospective provider, operator or individual seeking to be credentialed pursuant to regulations established by the division of criminal justice services.

(b) The office shall designate one or two persons in its employ who shall be authorized to request, receive and review criminal history information, and only such persons and the prospective provider, operator or individual seeking to be credentialed to which the criminal history information relates shall have access to such information; provided, however, that criminal history information may be disclosed to other personnel authorized by the office who are empowered to make decisions concerning prospective providers, operators or individuals seeking to be credentialed and provided further that such other personnel shall also be subject to the confidentiality requirements and all other provisions of this section. The office shall notify the division of criminal justice services of each person authorized to have access to criminal history information pursuant to this section.

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

(1) such criminal history information will be used by the office solely for purposes authorized by this section;
(2) the office and its staff are aware of and will abide by the confidentiality requirements and all other provisions of this section; and
(3) the person designated by the office to receive criminal history information pursuant to subdivision (b) of this section shall upon receipt immediately mark such criminal history information "confidential," and shall at all times maintain such criminal history information in a secure place.

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

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

(f) Upon receipt of criminal history information pursuant to this section and before making a determination, the office shall provide the prospective provider, operator or individual seeking to be credentialed with a copy of such criminal history information and a copy of article twenty-three-A of the correction law and inform such prospective provider, operator or individual seeking to be credentialed of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to the regulations and procedures established by the division of criminal justice services.
(g) Criminal history information obtained pursuant to this section shall be considered by the office in accordance with the provisions of article twenty-three-A of the correction law and subdivisions fifteen and sixteen of section two hundred ninety-six of the executive law.

(h) A prospective provider, operator or individual seeking to be credentialed may withdraw from the application process, without prejudice, at any time regardless of whether or not he or she or the office has reviewed his or her criminal history information. Where a prospective provider, operator or individual seeking to be credentialed withdraws from the application process, any fingerprints and criminal history information concerning such prospective provider, operator or individual seeking to be credentialed received by the office shall, within ninety days, be returned to such prospective provider, operator or individual seeking to be credentialed by the person designated for receipt of criminal history information pursuant to subdivision (b) of this section.

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

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

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

1. [Subject-to-rules-and-regulations-of-the-division-of-criminal-justice-services-on] Every authorized agency which operates a residential program for children and the office of children and family services shall have access to conviction records maintained by state law enforcement agencies pertaining to persons who have applied for and are under active consideration for employment by such authorized agency in positions where such persons will be engaged directly in the care and supervision of children] request that the justice center for the protection of people with special needs check, and upon such request, such justice center shall request and shall be authorized to receive from the division of criminal justice services criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law concerning each prospective operator, employee or volunteer of such residential program who will have regular and substantial unsupervised or unrestricted physical contact with children in such program. For the purposes of this section, "operator" shall include any natural person with an ownership interest in the authorized agency. Access to and the use of such information shall be governed by the provisions of section eight hundred forty-five-b of the executive law.

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

2. Where a provider is authorized or required to request a check of criminal history information by an authorized agency pursuant to section 16.33 or 31.35 of the mental hygiene law [85] article twenty-eight-E of
the public health law or subdivision one of section three hundred seventy-eight-a of the social services law, such provider shall proceed pursuant to the provisions of this section and in a manner consistent with the provisions of article twenty-three-A of the correction law, subdivisions fifteen and sixteen of section two hundred ninety-six of this chapter and all other applicable laws.

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

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

PART G

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

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

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

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

(b) any person required to report cases of suspected child abuse or maltreatment pursuant to subdivision one of section four hundred thirteen of the social services law or to report cases of suspected abuse or neglect of a vulnerable person pursuant to section four hundred ninety-one of such law, knowing that the person is required to report such cases, and with the intent that such an alleged occurrence be reported
§ 2. Paragraph (h) of subdivision 3 of section 130.05 of the penal law, as amended by chapter 266 of the laws of 2003, is amended and a new paragraph (i) is added to read as follows:

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

(i) a resident or inpatient of a residential facility operated, licensed or certified by (i) the office of mental health: (ii) the office for people with developmental disabilities; or (iii) the office of alcoholism and substance abuse services, and the actor is an employee of the facility not married to such resident or inpatient. For purposes of this paragraph, "employee" means either: an employee of the agency operating the residential facility, who knows or reasonably should know that such person is a resident or inpatient of such facility and who provides direct care services, case management services, medical or other clinical services, habilitative services or direct supervision of the residents in the facility in which the resident resides: or an officer or other employee, consultant, contractor or volunteer of the residential facility, who knows or reasonably should know that the person is a resident of such facility and who is in direct contact with residents or inpatients: provided, however, that the provisions of this paragraph shall only apply to a consultant, contractor or volunteer providing services pursuant to a contractual arrangement with the agency operating the residential facility or, in the case of a volunteer, a written agreement with such facility, provided that the person received written notice concerning the provisions of this paragraph; provided further, however, "employee" shall not include a person with a developmental disability who is or was receiving services and is also an employee of a service provider and who has sexual contact with another service recipient who is a consenting adult who has consented to such contact.

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

§ 260.24 Endangering the welfare of an incompetent or physically disabled person in the second degree.

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

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

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

§ 260.25 Endangering the welfare of an incompetent or physically disabled person in the first degree.

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

§ 5. This act shall take effect on the thirtieth day after it shall have become a law.

PART H

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

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

(a) [If the office receives a request] Upon a request to the justice center for criminal history information for a prospective employee or volunteer pursuant to section eight hundred forty-five-b of the executive law, the justice center shall notify the office, and if the office has [on file] available, after a reasonably diligent search a substantiated report that the prospective employee or volunteer engaged in behavior that constituted abuse or serious neglect of a patient or consumer in a program licensed, operated, or certified by the office, the office shall [furnish cause to be furnished] a summary of such report or reports [together with any written response from the employee or volunteer referred to in subdivision (c) of this section] to the provider that requested the criminal history information from the justice center with respect to such prospective employee or volunteer. [The office shall provide such reports; provided, however, summary reports provided shall be limited to substantiated reports based on investigations that commenced prior to the effective date of this section. Such summary report [and response, if any] shall be provided to the authorized person as defined in paragraph (b) of subdivision one of section eight hundred forty-five-b of the executive law and at that same time the office shall furnish such documents to the prospective employee or volunteer at the address for such person listed on the request.]

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

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

(d) The office shall establish an appeals process by which an employee or volunteer may challenge the determination that a report is substantiated, with a de novo standard of review. The appeals process shall not address or reverse any termination of employment that may have occurred due to the report, but shall address whether future potential employers receive a substantiated report when requesting criminal history information.
(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's clear and convincing evidence of rehabilitation.

(§) 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.

(gh) (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.
section, the commission shall provide any affected employee or volunteer
with a copy of this section and the regulations and procedures governing
such investigations and, in writing, notify the employee or volunteer of
the investigation and of the right and procedures for obtaining and
responding to any report filed by the commission with the applicable
office in accordance with this section.]
§ 4. This act shall take effect [on the first of January next succeeding
the date on which it shall have become a law] June 30, 2013;
provided, however, that effective immediately the commissioner of devel-
opmental disabilities and the commissioner of mental health may adopt,
amend, suspend or repeal rules or regulations and take other actions
prior to and in preparation for the timely implementation of this act on
its effective date.
§ 2. Chapter 6 of the laws of 2012, amending chapter 606 of the laws
of 2011, amending the mental hygiene law relating to creating an abuse
prevention notification system, is REPEALED.
§ 3. Severability clause. If any clause, sentence, paragraph, subdivi-
sion, section or part of this act shall be adjudged by any court of
competent jurisdiction to be invalid, such judgment shall not affect,
impair, or invalidate the remainder thereof, but shall be confined in
its operation to the clause, sentence, paragraph, subdivision, section
or part thereof directly involved in the controversy in which such judg-
ment shall have been rendered. It is hereby declared to be the intent of
the legislature that this act would have been enacted even if such
invalid provisions had not been included herein.
§ 4. This act shall take effect immediately provided, however, that
the applicable effective date of Parts A through H of this act shall be
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: MC DONALD

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:

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

- 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;
- 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;
- developing common standards and requirements for investigations and trainings of investigators;
- ensuring that individuals who are responsible for abuse and neglect of people with special needs are held accountable;
- prosecuting abuse and neglect crimes committed against people with special needs through concurrent authority with District Attorneys;
- requiring providers to implement corrective action plans to prevent future incidents of abuse and neglect;
- representing the State at all State employee disciplinary proceedings and at administrative proceedings related to substantiated allegations of abuse and neglect;
- 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.