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I N S E N A T E

May 8, 2012

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 Mental Health and Developmental Disabilities

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 repeal chapter 606 of the laws of 2011, amending the mental hygiene law relating 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)

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

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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".

S 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.

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

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

14 S 2. Article 45 of the mental hygiene law is REPEALED.

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

17 ARTICLE 20

18 PROTECTION OF PEOPLE WITH SPECIAL NEEDS

19 SECTION 550. DEFINITIONS.

20 551. THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH
21 SPECIAL NEEDS.

22 552. ORGANIZATION OF THE JUSTICE CENTER.

23 553. POWERS AND DUTIES OF THE JUSTICE CENTER.

24 554. CODES OF CONDUCT.

25 555. JUSTICE CENTER MEDICAL REVIEW BOARD; ORGANIZATION.

26 556. FUNCTIONS, POWERS AND DUTIES OF THE BOARD.

27 557. REPORTS TO THE JUSTICE CENTER.

28 558. ACCESS TO RECORDS AND FACILITIES.

29 559. NEW YORK STATE INTERAGENCY COORDINATING COUNCIL FOR
30 SERVICES TO PERSONS WHO ARE DEAF, DEAF-BLIND, OR HARD OF
31 HEARING.

32 560. ANNUAL REPORT.

33 S 550. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL
34 HAVE THE FOLLOWING MEANINGS:

35 1. "EXECUTIVE DIRECTOR" SHALL MEAN THE EXECUTIVE DIRECTOR OF THE
36 JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS.

37 2. "MENTAL HYGIENE FACILITY" SHALL MEAN A FACILITY AS DEFINED IN
38 SUBDIVISION SIX OF SECTION 1.03 OF THE MENTAL HYGIENE LAW AND FACILITIES
39 FOR THE OPERATION OF WHICH AN OPERATING CERTIFICATE IS REQUIRED PURSUANT
40 TO ARTICLE SIXTEEN OR THIRTY-ONE OF THE MENTAL HYGIENE LAW AND INCLUDING
41 FAMILY CARE HOMES. "MENTAL HYGIENE FACILITY" ALSO MEANS A SECURE TREAT-
42 MENT FACILITY AS DEFINED BY ARTICLE TEN OF THE MENTAL HYGIENE LAW.

43 3. "ABUSE OR NEGLECT" SHALL HAVE THE SAME MEANING AS DEFINED IN
44 SUBDIVISION ONE OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL
45 SERVICES LAW.

46 4. "STATE OVERSIGHT AGENCY" SHALL MEAN THE STATE AGENCY THAT OPERATES,
47 LICENSES OR CERTIFIES AN APPLICABLE FACILITY OR PROVIDER AGENCY;
48 PROVIDED HOWEVER THAT SUCH TERM SHALL ONLY INCLUDE THE FOLLOWING ENTI-
49 TIES: THE OFFICE OF MENTAL HEALTH, THE OFFICE FOR PEOPLE WITH DEVELOP-
50 MENTAL DISABILITIES, THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE
51 SERVICES, THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE DEPARTMENT OF
52 HEALTH AND THE STATE EDUCATION DEPARTMENT. "STATE OVERSIGHT AGENCY" DOES
53 NOT INCLUDE AGENCIES THAT ARE CERTIFICATION AGENCIES PURSUANT TO FEDERAL
54 LAW OR REGULATION.

55 5. "VULNERABLE PERSON" SHALL MEAN A PERSON WHO, DUE TO PHYSICAL OR
56 COGNITIVE DISABILITIES, OR THE NEED FOR SPECIALIZED SERVICES OR PLACE-

MENT, 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.

S 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 EXECUTIVE 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 APPROPRIATION.

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) RELATING 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 ABUSE OR NEGLECT AND SIGNIFICANT INCIDENTS RELATED TO VULNERABLE PERSONS WITHIN THE DIFFERENT SYSTEMS OF CARE IN THE STATE.

3. THE EXECUTIVE DIRECTOR MAY 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 APPLICATION TO THE MEANS AND METHODS OF COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE.

S 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 ABUSE OR NEGLECT OF VULNERABLE PERSONS, THE INVESTIGATION OF SUCH ACCEPTED REPORTS AND THE REVIEW OF SUBSTANTIATED FINDINGS OF ABUSE OR NEGLECT, INCLUDING CONDUCTING ANY DISCIPLINARY PROCEEDINGS RESULTING FROM SUCH SUBSTANTIATED FINDINGS (FOR STATE ENTITIES BOUND BY COLLECTIVE BARGAINING, THE DISCIPLINARY PROCESS ESTABLISHED THROUGH COLLECTIVE BARGAINING SHALL GOVERN).

2. (A) THE JUSTICE CENTER ALSO SHALL EMPLOY A SPECIAL PROSECUTOR AND INSPECTOR GENERAL FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS ("SPECIAL PROSECUTOR"), WHO SHALL BE APPOINTED BY THE GOVERNOR. PURSUANT TO THE PROVISIONS OF THIS SECTION, SUCH SPECIAL PROSECUTOR SHALL HAVE THE DUTY AND POWER: (I) TO INVESTIGATE AND PROSECUTE OFFENSES INVOLVING ABUSE OR NEGLECT COMMITTED AGAINST VULNERABLE PERSONS; AND (II) TO COOPERATE WITH AND ASSIST DISTRICT ATTORNEYS AND OTHER LOCAL LAW ENFORCEMENT OFFICIALS IN THEIR EFFORTS AGAINST THE ABUSE OR NEGLECT OF VULNERABLE PERSONS. THE SPECIAL PROSECUTOR MAY REQUEST AND SHALL RECEIVE, FROM ANY AGENCY, DEPARTMENT, DIVISION, BOARD, BUREAU OR COMMISSION 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 ENFORCEMENT 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.

(C) THE SPECIAL PROSECUTOR OR ONE OF HIS OR HER ASSISTANTS, MAY 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 THOSE TERMS ARE DEFINED IN THIS ARTICLE. 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.

S 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 ABUSE OR NEGLECT 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 ABUSE OR NEGLECT OF VULNERABLE PERSONS AND SIGNIFICANT INCIDENTS, AS APPLICABLE;

(C) REPRESENTING THE STATE IN ALL HEARINGS AND OTHER PROCEEDINGS RELATING TO DISCIPLINE OF EMPLOYEES CHARGED WITH HAVING COMMITTED ABUSE OR NEGLECT;

(D) CONSISTENT WITH APPROPRIATE COLLECTIVE BARGAINING AGREEMENTS, CONDUCTING ALL HEARINGS AND OTHER PROCEEDINGS RELATING TO DISCIPLINE OF EMPLOYEES FOUND TO HAVE COMMITTED ABUSE OR NEGLECT (FOR STATE ENTITIES BOUND BY COLLECTIVE BARGAINING, THE DISCIPLINARY PROCESS ESTABLISHED THROUGH COLLECTIVE BARGAINING SHALL GOVERN);

(E) IDENTIFYING A PROCESS FOR TIMELY RESPONSES TO ALLEGATIONS OF REPORTABLE INCIDENTS IN DUALY LICENSED OR CO-LOCATED FACILITIES AND PROVIDER AGENCIES; AND

(F) WHERE APPLICABLE, ESTABLISHING UNIFORM PROCEDURES FOR CHARACTER AND COMPETENCE REVIEWS OF PROVIDER AGENCIES INITIALLY, AND UPON RENEWAL OF LICENSES AND OPERATING CERTIFICATES REQUIRING A REVIEW OF PERFORMANCE RECORDS REGARDING INCIDENT MANAGEMENT, THE ROLE OF THE BOARD OF DIRECTORS IN MAINTAINING OVERSIGHT OVER AGENCY PERFORMANCE IN THIS AREA, AND THE MANAGEMENT OF INCIDENTS AFFECTING RESIDENT SAFETY, INCLUDING CASES OF SYSTEMIC PROBLEMS.

2. TO MAINTAIN A CENTRAL REPOSITORY FOR DATA RELATING TO THE INVESTIGATION OF ALL REPORTS OF ALLEGED ABUSE OR NEGLECT AND SIGNIFICANT INCI-

DENTS, AS DEFINED IN SUBDIVISIONS ONE AND TWELVE OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW;

3. TO ESTABLISH PROCEDURES FOR REVIEW OF INSTANCES OF ABUSE, NEGLECT AND SIGNIFICANT INCIDENTS, AS DEFINED IN SUBDIVISIONS ONE AND TWELVE OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW, 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 REPORTED ALLEGATIONS OF ABUSE OR NEGLECT AND SIGNIFICANT INCIDENTS INVOLVING VULNERABLE PERSONS, AND TO PROVIDE TRAINING TO SUCH INVESTIGATORS;

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 AS A CONDITION OF EMPLOYMENT AT ANY FACILITIES OR PROVIDER AGENCIES AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW, WHICH ARE OPERATED, LICENSED OR CERTIFIED BY THE OFFICE OF MENTAL HEALTH, THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES 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 FACILITIES 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 MENTAL HYGIENE FACILITY 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 APPROPRIATED FOR THE PURPOSES OF THIS ARTICLE;

9. TO ENTER INTO CONTRACTS WITH ANY PERSON, FIRM, CORPORATION, MUNICIPALITY OR GOVERNMENTAL AGENCY FOR THE PERFORMANCE OF FUNCTIONS AUTHORIZED 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, OF 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 DEVELOPMENTAL DISABILITIES, IN UNDERSTANDING THEIR LEGAL RIGHTS, AND TO PROMOTE AND PROTECT THE RIGHTS OF SUCH RESIDENTS.

11. TO ADVISE AND ASSIST VULNERABLE PERSONS, FAMILY MEMBERS, ADVOCATES, SERVICE PROVIDERS AND COMMUNITY ORGANIZATIONS IN THE FORMATION OF STRATEGIES TO IDENTIFY AND MEET THE NEEDS OF VULNERABLE PERSONS 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 IN A MANNER THAT IS RESPECTFUL OF THE RIGHTS AND CHOICES OF VULNERABLE PERSONS;

13. TO SERVE AS A CLEARINGHOUSE FOR INFORMATION RELATING TO SERVICES, SUPPORTS AND ADVOCACY FOR VULNERABLE PERSONS 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 AND PUBLIC AND PRIVATE SECTOR ENTITIES IN THE DESIGN AND IMPLEMENTATION OF INITIATIVES TO INCREASE ACCESS TO TECHNOLOGY RELATED ASSISTANCE FOR VULNERABLE PERSONS;

15. TO ADMINISTER SUCH PROTECTION AND ADVOCACY AND CLIENT ASSISTANCE PROGRAMS AS MAY BE ESTABLISHED BY FEDERAL LAW, PURSUANT TO SUCH AUTHORIZATION OR DESIGNATION AS MAY BE REQUIRED;

16. TO ADMINISTER THE SURROGATE DECISION-MAKING COMMITTEE PROGRAM, AS AUTHORIZED PURSUANT TO ARTICLE EIGHT OF THE MENTAL HYGIENE LAW;

17. TO STIMULATE COMMUNITY INTEREST IN THE PROBLEMS EXPERIENCED BY VULNERABLE PERSONS AND PROMOTE PUBLIC AWARENESS OF RESOURCES AVAILABLE TO SUCH PERSONS;

18. TO ADVISE AND ASSIST POLITICAL SUBDIVISIONS OF THE STATE IN THE DEVELOPMENT OF LOCAL PROGRAMS FOR VULNERABLE PERSONS;

19. 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;

20. TO CONDUCT OR CAUSE TO BE CONDUCTED SUCH STUDIES OF THE NEEDS OF VULNERABLE PERSONS AS MAY BE APPROPRIATE;

21. TO DO ALL OTHER THINGS NECESSARY OR CONVENIENT TO CARRY OUT ITS FUNCTIONS, POWERS AND DUTIES SET FORTH IN THIS ARTICLE;

22. 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 ALSO 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;

23. TO PREPARE AND DISSEMINATE AN EDUCATIONAL PAMPHLET, AND SERVE AS AN INFORMATION CLEARINGHOUSE, ON THE RIGHTS OF PARENTS AND LEGAL REPRESENTATIVES 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 OR ALCOHOLISM AND SUBSTANCE ABUSE SERVICES. SUCH PAMPHLET SHALL INCLUDE A DISCUSSION OF HOW TO APPEAL A DECISION DENYING A REQUESTED RECORD OR REPORT;

24. 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 SUBDIVISION FOUR OF SECTION TWELVE HUNDRED TWENTY-NINE-D OF THE VEHICLE AND TRAFFIC LAW; AND

25. 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 IN 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 CARRIED OUT IN ACCORDANCE WITH SECTION FOUR HUNDRED ONE-A OF THE CORRECTION LAW.

S 554. CODES OF CONDUCT. 1. THE JUSTICE CENTER SHALL ADOPT AND AMEND, AS APPROPRIATE, CODES OF CONDUCT FOR ALL EMPLOYEES WHO HAVE OR WILL HAVE REGULAR AND DIRECT CONTACT WITH 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. SUCH CODES SHALL GOVERN THE CONDUCT OF SUCH EMPLOYEES 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 ALL SUCH EMPLOYEES ARE PROVIDED WITH A COPY OF SUCH CODES OF CONDUCT AND ARE REQUIRED, AT THE TIME OF THEIR INITIAL EMPLOYMENT, AND AT LEAST ANNUALLY THEREAFTER, TO ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND SUCH CODES OF CONDUCT. SUCH PROCESS SHALL ALSO PROVIDE FOR THE ENFORCEMENT OF SUCH CODES CONSISTENT WITH APPROPRIATE 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 EMPLOYEES TO SUPPORT THE EMOTIONAL, PHYSICAL AND PERSONAL WELL-BEING OF THE VULNERABLE PERSONS THEY SERVE, INCLUDING THEIR PROTECTION FROM ABUSE AND NEGLECT.

B. PROVISIONS REGARDING THE RESPONSIBILITY OF SUCH EMPLOYEES 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 SUCH EMPLOYEES TO PARTICIPATE IN AVAILABLE, APPROPRIATE TRAINING TO MAINTAIN THEIR COMPETENCY AND SKILL-LEVEL, AND TO MODEL AND SHAPE THE BEHAVIOR OF THEIR CO-WORKERS, AND TO SEEK GUIDANCE AND ADVICE TO RESOLVE ISSUES AS NEEDED WHEN MAKING DECISIONS RELATING TO THE PERSONS THEY SERVE.

D. PROVISIONS REGARDING THE RESPONSIBILITY OF SUCH EMPLOYEES 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 EMPLOYEES TO ASSIST, WHERE APPROPRIATE, THE VULNERABLE PERSONS THEY SUPPORT IN DEVELOPING AND MAINTAINING RELATIONSHIPS WITH FAMILIES, FRIENDS AND THE COMMUNITY-AT-LARGE.

F. PROVISIONS REGARDING THE RESPONSIBILITY OF SUCH EMPLOYEES TO ADVOCATE WITH AND/OR ON BEHALF OF THE VULNERABLE PERSONS THEY SUPPORT FOR

1 THEIR NEEDS, INTEREST, JUSTICE, INCLUSION AND FULL COMMUNITY PARTIC-
2 IPATION.

3 S 555. JUSTICE CENTER MEDICAL REVIEW BOARD; ORGANIZATION. (A) THERE
4 SHALL BE WITHIN THE JUSTICE CENTER A JUSTICE CENTER MEDICAL REVIEW
5 BOARD. THE BOARD SHALL BE COMPOSED OF UP TO FIFTEEN MEMBERS, INCLUDING
6 SPECIALISTS IN FORENSIC PATHOLOGY, PSYCHIATRY, INTERNAL MEDICINE AND
7 ADDICTION MEDICINE TO BE APPOINTED BY THE GOVERNOR. THE GOVERNOR SHALL
8 DESIGNATE ONE OF THE MEMBERS TO SERVE AS CHAIR OF THE BOARD. MEMBERS
9 SHALL BE APPOINTED FOR TERMS OF THREE YEARS, PROVIDED, HOWEVER, THAT
10 ONE-THIRD OF THE MEMBERS FIRST APPOINTED SHALL BE APPOINTED FOR A ONE
11 YEAR TERM AND ONE-THIRD FOR TWO YEAR TERMS. VACANCIES SHALL BE FILLED IN
12 THE SAME MANNER AS ORIGINAL APPOINTMENTS FOR THE REMAINDER OF ANY UNEX-
13 PIRE TERM. MEMBERS SHALL CONTINUE IN OFFICE AFTER THE EXPIRATION OF
14 THEIR TERMS UNTIL THEIR SUCCESSORS HAVE BEEN APPOINTED AND QUALIFIED.
15 THE GOVERNOR MAY REMOVE ANY MEMBER OF THE BOARD WHENEVER IN HIS OR HER
16 JUDGMENT THE PUBLIC INTEREST MAY REQUIRE SUCH REMOVAL. IN CASE OF SUCH
17 REMOVAL, THE GOVERNOR SHALL FILE WITH THE DEPARTMENT OF STATE A STATE-
18 MENT INDICATING THE CAUSE FOR SUCH REMOVAL. NOTWITHSTANDING ANY
19 PROVISION OF LAW TO THE CONTRARY, THE CHAIR OF THE BOARD MAY APPOINT
20 COMMITTEES OF FIVE OR MORE MEMBERS OF THE BOARD AND DELEGATE IN WRITING
21 TO ANY SUCH COMMITTEE THE AUTHORITY TO PERFORM THE FUNCTIONS, POWERS AND
22 DUTIES OF THE BOARD PURSUANT TO SECTION FIVE HUNDRED FIFTY-SIX OF THIS
23 ARTICLE.

24 (B) THE MEMBERS OF THE BOARD SHALL RECEIVE NO COMPENSATION FOR THEIR
25 SERVICES BUT SHALL BE REIMBURSED FOR THEIR ACTUAL AND NECESSARY EXPENSES
26 INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

27 (C) THE BOARD SHALL HAVE AN EXECUTIVE SECRETARY AND SUCH OFFICERS AND
28 EMPLOYEES AS THE EXECUTIVE DIRECTOR SHALL ASSIGN UPON REQUEST OF THE
29 CHAIR OF THE BOARD, TO ASSIST IT IN THE PERFORMANCE OF ITS DUTIES.

30 (D) ALL RECORDS OF THE PROCEEDINGS, THE DELIBERATIONS OF THE JUSTICE
31 CENTER MEDICAL REVIEW BOARD AND ANY TESTIMONY GIVEN BEFORE THE BOARD
32 SHALL NOT BE SUBJECT TO DISCLOSURE UNDER ARTICLE THIRTY-ONE OF THE CIVIL
33 PRACTICE LAW AND RULES.

34 (E) THE BOARD OR ANY COMMITTEE APPOINTED BY THE CHAIR OF THE BOARD
35 SHALL MEET AT THE REQUEST OF ITS CHAIR OR THE EXECUTIVE DIRECTOR OF THE
36 JUSTICE CENTER. ANY MEMBER OF THE BOARD WHO FAILS TO ATTEND THREE
37 CONSECUTIVE MEETINGS OF THE BOARD OR THE COMMITTEE TO WHICH SUCH MEMBER
38 IS ASSIGNED BY THE CHAIR OF THE BOARD, UNLESS EXCUSED BY THE CHAIR OF
39 THE BOARD, SHALL BE CONSIDERED TO HAVE VACATED HIS OR HER OFFICE UNLESS
40 OTHERWISE ORDERED BY THE GOVERNOR. THE TERM OF ANY SUCH PERSON APPOINTED
41 BY THE GOVERNOR TO FILL SUCH VACANCY SHALL BE GOVERNED BY THE PROVISIONS
42 OF THIS SECTION.

43 S 556. FUNCTIONS, POWERS AND DUTIES OF THE BOARD. THE JUSTICE CENTER
44 MEDICAL REVIEW BOARD SHALL HAVE THE FOLLOWING FUNCTIONS, POWERS AND
45 DUTIES:

46 (A) MAKE A PRELIMINARY DETERMINATION WHETHER THE DEATH OF A PATIENT OR
47 RESIDENT IN A RESIDENTIAL FACILITY WITHIN THE MEANING OF SUBDIVISION
48 FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW,
49 WHICH HAS BEEN BROUGHT TO ITS ATTENTION IS UNUSUAL OR WHETHER SUCH DEATH
50 REASONABLY APPEARS TO HAVE RESULTED FROM OTHER THAN NATURAL CAUSES AND
51 WARRANTS INVESTIGATION;

52 (B) INVESTIGATE THE CAUSES OF AND CIRCUMSTANCES SURROUNDING SUCH
53 UNUSUAL DEATH OR DEATHS FROM OTHER THAN NATURAL CAUSES OF PATIENTS OR
54 RESIDENTS IN SUCH FACILITIES;

55 (C) VISIT AND INSPECT ANY FACILITY IN WHICH SUCH A DEATH HAS OCCURRED;

1 (D) CAUSE THE BODY OF THE DECEASED TO UNDERGO SUCH EXAMINATIONS
2 INCLUDING AN AUTOPSY AS IN THE OPINION OF THE BOARD ARE NECESSARY TO
3 DETERMINE THE CAUSE OF DEATH, IRRESPECTIVE OF WHETHER SUCH EXAMINATION
4 OR AUTOPSY SHALL HAVE BEEN PREVIOUSLY PERFORMED;

5 (E) UPON REVIEW OF THE CAUSE OF AND CIRCUMSTANCES SURROUNDING THE
6 DEATH OF ANY PATIENT OR RESIDENT, SUBMIT ITS REPORT THEREON TO THE EXEC-
7 UTIVE DIRECTOR AND, WHERE APPROPRIATE, MAKE RECOMMENDATIONS TO PREVENT
8 THE RECURRENCE OF SAME TO THE APPROPRIATE COMMISSIONER OF THE DEPARTMENT
9 OF MENTAL HYGIENE OR THE COMMISSIONER OF CHILDREN AND FAMILY SERVICES
10 AND TO THE DIRECTOR OF THE FACILITY; AND

11 (F) ADVISE THE EXECUTIVE DIRECTOR ON MEDICAL ISSUES RELEVANT TO THE
12 FUNCTIONS, POWERS, AND DUTIES OF THE JUSTICE CENTER INCLUDING ALLEGA-
13 TIONS OF ABUSE OR NEGLECT OF A PATIENT OR RESIDENT REFERRED TO IT.

14 S 557. REPORTS TO THE JUSTICE CENTER. EVERY DIRECTOR OR OTHER PERSON
15 IN CHARGE OF A RESIDENTIAL FACILITY WITHIN THE MEANING OF SUBDIVISION
16 FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW,
17 SHALL REPORT IMMEDIATELY TO THE EXECUTIVE DIRECTOR AND THE JUSTICE
18 CENTER MEDICAL REVIEW BOARD THE DEATH OF A PATIENT OR RESIDENT OF ANY
19 SUCH FACILITY IN SUCH MANNER AND SUCH FORM AS THE JUSTICE CENTER SHALL
20 PRESCRIBE, TOGETHER WITH AN AUTOPSY REPORT, IF ANY.

21 S 558. ACCESS TO RECORDS AND FACILITIES. (A) THE JUSTICE CENTER MUST
22 BE GRANTED ACCESS AT ANY AND ALL TIMES TO ANY FACILITY OR PROVIDER AGEN-
23 CY AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT
24 OF THE SOCIAL SERVICES LAW, AND, CONSISTENT WITH FEDERAL LAW, TO ALL
25 BOOKS, RECORDS, AND DATA PERTAINING TO ANY SUCH FACILITY OR PROVIDER
26 AGENCY DEEMED NECESSARY FOR CARRYING OUT THE JUSTICE CENTER'S FUNCTIONS,
27 POWERS AND DUTIES. THE JUSTICE CENTER OR ANY EMPLOYEE OF THE JUSTICE
28 CENTER MAY REQUIRE FROM THE OFFICERS OR EMPLOYEES OF SUCH FACILITY OR
29 PROVIDER AGENCY OR FROM THE COMMISSIONERS OF THE STATE OVERSIGHT AGEN-
30 CIES AS DEFINED IN SUBDIVISION FOUR-A OF SUCH SECTION FOUR HUNDRED
31 EIGHTY-EIGHT, ANY INFORMATION DEEMED NECESSARY FOR THE PURPOSE OF CARRY-
32 ING OUT THE JUSTICE CENTER'S FUNCTIONS, POWERS AND DUTIES, INCLUDING
33 OTHERWISE CONFIDENTIAL INFORMATION. THE EXECUTIVE DIRECTOR OR ANY
34 EMPLOYEE OF THE JUSTICE CENTER MAY REQUIRE FROM ANY HOSPITAL, AS DEFINED
35 UNDER ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, ANY INFORMATION,
36 REPORT OR RECORD NECESSARY FOR THE PURPOSE OF CARRYING OUT THE FUNC-
37 TIONS, POWERS AND DUTIES OF THE JUSTICE CENTER RELATED TO THE INVESTI-
38 GATION OF DEATHS AND COMPLAINTS OF ABUSE OR NEGLECT CONCERNING VULNER-
39 ABLE PERSONS WHO HAVE BEEN TREATED AT SUCH HOSPITALS, AND FROM ANY ADULT
40 CARE FACILITY AS DEFINED IN PARAGRAPH TWENTY-ONE OF SECTION TWO OF THE
41 SOCIAL SERVICES LAW, SUCH INFORMATION, REPORT OR RECORD, INCLUDING
42 ACCESS TO SUCH FACILITY NECESSARY FOR THE PURPOSE OF CARRYING OUT THE
43 FUNCTIONS, POWERS AND DUTIES OF THE JUSTICE CENTER RELATED TO THE INVES-
44 TIGATION OF DEATHS CONCERNING PATIENTS OF MENTAL HYGIENE FACILITIES WHO
45 RESIDED AT SUCH RESIDENTIAL CARE FACILITIES AT THE TIME OF THEIR DEATH
46 OR WERE FORMER RESIDENTS OF SUCH RESIDENTIAL CARE FACILITIES AND THE
47 JUSTICE CENTER DETERMINES THAT SUCH INFORMATION, REPORT OR RECORD IS
48 NECESSARY FOR THE COMPLETION OF ITS INVESTIGATION. THE RESULTS OF INVES-
49 TIGATIONS INVOLVING SUCH RESIDENTS OF ADULT CARE FACILITIES SHALL BE
50 PROVIDED PROMPTLY TO THE COMMISSIONER OF THE DEPARTMENT OF HEALTH AND
51 SHALL BE TREATED AS A RECORD OR PERSONAL INFORMATION WITHIN THE MEANING
52 OF SECTION NINETY-SIX OF THE PUBLIC OFFICERS LAW AND SHALL NOT BE
53 DISCLOSED EXCEPT IN ACCORDANCE WITH SUCH SECTION NINETY-SIX. INFORMA-
54 TION, BOOKS, RECORDS OR DATA WHICH ARE CONFIDENTIAL AS PROVIDED BY LAW
55 SHALL BE KEPT CONFIDENTIAL BY THE JUSTICE CENTER AND BY NON-PROFIT
56 ORGANIZATIONS RECEIVING CONTRACTS PURSUANT TO SECTION FIVE HUNDRED

FIFTY-THREE OF THIS ARTICLE 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 AND SUCH NON-PROFIT ORGANIZATIONS RECEIVING CONTRACTS PURSUANT TO SUCH SUBDIVISION EXCEPT AS MAY OTHERWISE BE PROVIDED BY ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW.

(B) PURSUANT TO THE AUTHORIZATION OF THE JUSTICE CENTER TO ADMINISTER THE PROTECTION AND ADVOCACY SYSTEM AS PROVIDED FOR BY FEDERAL LAW, ANY AGENCY OR PERSON WITHIN OR UNDER CONTRACT WHICH PROVIDES PROTECTION AND ADVOCACY SERVICES MUST BE GRANTED ACCESS AT ANY AND ALL TIMES TO ANY FACILITY, OR PART THEREOF, SERVING A VULNERABLE PERSON OPERATED, CERTIFIED OR LICENSED BY ANY OFFICE OR AGENCY OF THE STATE, AND TO ALL BOOKS, RECORDS, AND DATA PERTAINING TO ANY SUCH FACILITY UPON RECEIPT OF A COMPLAINT BY OR ON BEHALF OF A PERSON WITH A DISABILITY. INFORMATION, BOOKS, RECORDS OR DATA WHICH ARE CONFIDENTIAL AS PROVIDED BY LAW SHALL BE KEPT CONFIDENTIAL BY THE PERSON OR AGENCY WITHIN THE PROTECTION AND ADVOCACY SYSTEM AND ANY LIMITATIONS ON THE RELEASE THEREOF IMPOSED BY LAW UPON THE PARTY FURNISHING THE INFORMATION, BOOKS, RECORDS OR DATA SHALL APPLY TO THE PERSON OR AGENCY WITHIN THE PROTECTION AND ADVOCACY SYSTEM.

(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 HEARINGS, 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 REQUIRING 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.

S 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 COORDINATING 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 CHILDREN AND FAMILY SERVICES, THE OFFICE FOR THE AGING, THE PUBLIC SERVICE COMMISSION, THE DEPARTMENT OF HEALTH, THE DEPARTMENT OF LABOR, THE DEPARTMENT OF EDUCATION, 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 COMBINATION. 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.

S 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 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 INCIDENTS OF ABUSE AND NEGLECT, AND OTHER SERIOUS 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.

S 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.

S 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:

1 6. The department shall ensure that the curriculum for new correction
2 officers, and other new department staff who will regularly work in
3 programs providing mental health treatment for inmates, shall include at
4 least eight hours of training about the types and symptoms of mental
5 illnesses, the goals of mental health treatment, the prevention of
6 suicide and training in how to effectively and safely manage inmates
7 with mental illness. Such training may be provided by the office of
8 mental health or the [New York state commission on quality of care and
9 advocacy for persons with disabilities] JUSTICE CENTER FOR THE
10 PROTECTION OF PEOPLE WITH SPECIAL NEEDS. All department staff who are
11 transferring into a residential mental health treatment unit shall
12 receive a minimum of eight additional hours of such training, and eight
13 hours of annual training as long as they work in such a unit. The
14 department shall provide additional training on these topics on an ongoing
15 basis as it deems appropriate.

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

18 S 401-a. Oversight responsibilities of the [New York state commission
19 on quality of care and advocacy for persons with disabilities] JUSTICE
20 CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS. 1. The [New York
21 state commission on quality of care and advocacy for persons with disabilities
22 ("commission")] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE
23 WITH SPECIAL NEEDS shall be responsible for monitoring the quality of
24 mental health care provided to inmates pursuant to article forty-five of
25 the mental hygiene law. The [commission] JUSTICE CENTER shall have
26 direct and immediate access to all areas where state prisoners are
27 housed, and to clinical and department records relating to inmates'
28 clinical conditions. The [commission] JUSTICE CENTER shall maintain the
29 confidentiality of all patient-specific information.

30 2. The [commission] JUSTICE CENTER shall monitor the quality of care
31 in residential mental health treatment programs and shall ensure compliance
32 with paragraphs (d) and (e) of subdivision six of section one
33 hundred thirty-seven of this chapter and section four hundred one of
34 this article. The [commission] JUSTICE CENTER may recommend to the
35 department and the office of mental health that inmates in segregated
36 confinement pursuant to subdivision six of section one hundred thirty-
37 seven of this chapter be evaluated for placement in a residential mental
38 health treatment unit. It may also recommend ways to further the goal
39 of diverting and removing inmates with serious mental illness from
40 segregated confinement to residential mental health treatment units. The
41 [commission] JUSTICE CENTER shall include in its annual report to the
42 governor and the legislature pursuant to [subdivision (g) of] section
43 [45.07] FIVE HUNDRED SIXTY of the [mental hygiene] EXECUTIVE law, a
44 description of the state's progress in complying with this article,
45 which shall be publicly available.

46 3. The [commission] JUSTICE CENTER shall appoint an advisory committee
47 on psychiatric correctional care ("committee"), which shall be composed
48 of independent mental health experts and mental health advocates, and
49 may include family members of former inmates with serious mental
50 illness. Such committee shall advise the [commission] JUSTICE CENTER on
51 its oversight responsibilities pursuant to this section [and article
52 forty-five of the mental hygiene law]. The committee may also make
53 recommendations to the [commission] JUSTICE CENTER regarding improvements
54 to prison-based mental health care. Nothing in this subdivision
55 shall be deemed to authorize members of the committee to have access to
56 a correctional or mental hygiene facility or any part of such a facility.

ty. 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 commissioner. 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.

S 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 [45.09] FIVE HUNDRED FIFTY-EIGHT of the [mental hygiene] EXECUTIVE law.

S 8. Transfer of employees. Notwithstanding any other provision of law, rule, or regulation to the contrary, upon the transfer of any functions 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 and 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. 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.

S 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.

S 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.

S 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 alcoholism 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.

S 12. Continuation of rules and regulations. All rules, regulations, acts, orders, determinations, and decisions of the state commission on

1 quality of care and advocacy for persons with disabilities pertaining to
2 the functions and powers transferred and assigned pursuant to this act,
3 in force at the time of such transfer and assumption, shall continue in
4 full force and effect as rules, regulations, acts, orders, determi-
5 nations and decisions of the justice center for the protection of people
6 with special needs until duly modified or abrogated by the executive
7 director of such justice center.

8 S 13. Terms occurring in laws, contracts and other documents. Whenever
9 the state commission on quality of care and advocacy for persons with
10 disabilities, or the chairman thereof, is referred to or designated in
11 any law, contract or document pertaining to the functions, powers, obli-
12 gations and duties hereby transferred to and assigned to the justice
13 center for the protection of people with special needs, such reference
14 or designation shall be deemed to refer to such justice center, or the
15 executive director thereof, as applicable.

16 S 14. Existing rights and remedies preserved. No existing right or
17 remedy of any character shall be lost, impaired or affected by any
18 provisions of this act.

19 S 15. Pending actions and proceedings. No action or proceeding pending
20 at the time when this act shall take effect, brought by or against the
21 state commission on quality of care and advocacy for persons with disa-
22 bilities, or the chairman thereof, shall be affected by any provision of
23 this act, but the same may be prosecuted or defended in the name of the
24 executive director of the justice center for the protection of people
25 with special needs. In all such actions and proceedings, the executive
26 director of such justice center, upon application to the court, shall be
27 substituted as a party.

28 S 16. Transfer of appropriations heretofore made. All appropriations
29 or reappropriations heretofore made to the state commission on quality
30 of care and advocacy for persons with disabilities to the extent of
31 remaining unexpended or unencumbered balance thereof, whether allocated
32 or unallocated and whether obligated or unobligated, are hereby trans-
33 ferred to and made available for use and expenditure by the justice
34 center for the protection of people with special needs subject to the
35 approval of the director of the budget for the same purposes for which
36 originally appropriated or reappropriated and shall be payable on vouch-
37 ers certified or approved by the executive director of such justice
38 center on audit and warrant of the comptroller. In addition to such
39 authority otherwise granted pursuant to law to interchange, transfer and
40 suballocate amounts appropriated for the office for people with develop-
41 mental disabilities, the office of alcoholism and substance abuse
42 services, the department of health and the office of children and family
43 services, such amounts appropriated for state operations for such agen-
44 cies may also be interchanged, transferred and suballocated for the
45 purpose of planning, developing and/or implementing the alignment of the
46 operations within and between such agencies sufficient to fulfill the
47 purposes of this act for the state fiscal year beginning April 1, 2012.

48 S 17. Transfer of assets and liabilities. All assets and liabilities
49 of the state commission on quality of care and advocacy for persons with
50 disabilities are hereby transferred to and assumed by the justice center
51 for the protection of people with special needs.

52 S 18. This act shall take effect upon the confirmation by the senate
53 of the appointment by the governor of the executive director of the
54 justice center for the protection of people with special needs, proof of
55 such confirmation to be promptly transmitted by the governor to the
56 legislative bill drafting commission, provided that should confirmation

1 not take place on or before April 1, 2013, then this part shall take
2 effect on April 1, 2013.

3 PART B

4 Section 1. Article 11 of the social services law is renumbered article
5 12 and sections 484, 485 and 486 are renumbered sections 550, 551 and
6 552 and a new article 11 is added to read as follows:

7 ARTICLE 11

8 PROTECTION OF PEOPLE WITH SPECIAL NEEDS

9 SECTION 488. DEFINITIONS.

10 489. APPLICABILITY.

11 490. INCIDENT MANAGEMENT PROGRAMS.

12 491. DUTY TO REPORT INCIDENTS.

13 492. VULNERABLE PERSONS' CENTRAL REGISTER.

14 493. ABUSE AND NEGLECT FINDINGS; CONSEQUENCES.

15 494. AMENDMENTS TO AND APPEALS OF SUBSTANTIATED REPORTS OF
16 ABUSE OR NEGLECT.

17 495. REGISTER OF SUBSTANTIATED CATEGORY ONE CASES OF ABUSE OR
18 NEGLECT.

19 496. CONFIDENTIALITY.

20 497. IMMUNITY FROM LIABILITY.

21 S 488. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL
22 HAVE THE FOLLOWING MEANINGS:

23 1. "ABUSE OR NEGLECT" SHALL INCLUDE THE CONDUCT DESCRIBED IN PARAGRAPH
24 (A) OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED NINETY-THREE OF THIS
25 ARTICLE, AS WELL AS:

26 (A) "PHYSICAL ABUSE," WHICH SHALL MEAN PHYSICAL CONTACT THAT IS NOT
27 ACCIDENTAL, IS COMMITTED BY AN AGENT OF A FACILITY OR PROVIDER AGENCY
28 AND THAT RESULTS IN OR HAS THE REASONABLY FORESEEABLE POTENTIAL TO
29 RESULT IN PHYSICAL INJURY OR SERIOUS OR PROTRACTED IMPAIRMENT OF THE
30 PHYSICAL, MENTAL OR EMOTIONAL CONDITION OF A SERVICE RECIPIENT. PHYSICAL
31 ABUSE SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, SLAPPING, HITTING,
32 KICKING, BITING, CHOKING, SMOTHERING, SHOVING, DRAGGING, THROWING,
33 PUNCHING, SHAKING, BURNING, CUTTING OR THE USE OF CORPORAL PUNISHMENT.
34 PHYSICAL ABUSE SHALL NOT INCLUDE REASONABLE EMERGENCY INTERVENTIONS
35 NECESSARY TO PROTECT THE SAFETY OF ANY PERSON.

36 (B) "SEXUAL ABUSE," WHICH SHALL MEAN ANY CONDUCT BY AN AGENT OF A
37 FACILITY OR PROVIDER AGENCY THAT SUBJECTS A PERSON RECEIVING SERVICES TO
38 ANY OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OR SECTION 255.25,
39 255.26 OR 255.27 OF THE PENAL LAW; OR ANY CONDUCT OR COMMUNICATION BY
40 SUCH AN AGENT THAT ALLOWS, PERMITS, USES OR ENCOURAGES A SERVICE RECIPI-
41 ENT TO ENGAGE IN ANY ACT DESCRIBED IN ARTICLES TWO HUNDRED THIRTY OR TWO
42 HUNDRED SIXTY-THREE OF THE PENAL LAW. FOR PURPOSES OF THIS PARAGRAPH
43 ONLY, A PERSON WITH A DEVELOPMENTAL DISABILITY WHO IS OR WAS RECEIVING
44 SERVICES AND IS ALSO AN EMPLOYEE OR VOLUNTEER OF A SERVICE PROVIDER
45 SHALL NOT BE CONSIDERED AN AGENT OF A FACILITY OR PROVIDER AGENCY IF HE
46 OR SHE HAS SEXUAL CONTACT WITH ANOTHER SERVICE RECIPIENT WHO IS A
47 CONSENTING ADULT WHO HAS CONSENTED TO SUCH CONTACT.

48 (C) "PSYCHOLOGICAL ABUSE," WHICH SHALL MEAN VERBAL OR NON-VERBAL
49 CONDUCT BY AN AGENT OF A FACILITY OR PROVIDER AGENCY THAT RESULTS IN OR
50 HAS THE REASONABLY FORESEEABLE POTENTIAL TO RESULT IN A SUBSTANTIAL
51 DIMINUTION OF A SERVICE RECIPIENT'S EMOTIONAL, SOCIAL OR BEHAVIORAL
52 DEVELOPMENT OR CONDITION, WHICH IS DETERMINED BY A PHYSICIAN, PSYCHOL-
53 OGIST, PSYCHIATRIC NURSE PRACTITIONER, LICENSED CLINICAL OR MASTER
54 SOCIAL WORKER OR LICENSED MENTAL HEALTH COUNSELOR. SUCH CONDUCT MAY

1 INCLUDE BUT SHALL NOT BE LIMITED TO INTIMIDATION, THREATS, THE DISPLAY
2 OF A WEAPON OR OTHER OBJECT THAT COULD REASONABLY BE PERCEIVED BY A
3 SERVICE RECIPIENT AS A MEANS FOR INFLECTION OF PAIN OR INJURY, IN A
4 MANNER THAT CONSTITUTES A THREAT OF PHYSICAL PAIN OR INJURY, TAUNTS,
5 DEROGATORY COMMENTS OR RIDICULE.

6 (D) "INAPPROPRIATE USE OF RESTRAINTS," WHICH SHALL MEAN THE USE OF A
7 RESTRAINT WHEN THE TECHNIQUE THAT IS USED, THE AMOUNT OF FORCE THAT IS
8 USED OR THE SITUATION IN WHICH THE RESTRAINT IS USED IS INCONSISTENT
9 WITH A SERVICE RECIPIENT'S INDIVIDUAL TREATMENT PLAN, GENERALLY ACCEPTED
10 TREATMENT PRACTICES AND/OR APPLICABLE FEDERAL OR STATE LAWS, REGULATIONS
11 OR POLICIES, EXCEPT WHEN THE RESTRAINT IS USED AS A REASONABLE EMERGENCY
12 INTERVENTION TO PREVENT IMMINENT RISK OF HARM TO A PERSON RECEIVING
13 SERVICES OR TO ANY OTHER PERSON. FOR PURPOSES OF THIS SUBDIVISION, A
14 "RESTRAINT" SHALL INCLUDE THE USE OF ANY MANUAL, PHARMACOLOGICAL OR
15 MECHANICAL MEASURE OR DEVICE TO IMMOBILIZE OR LIMIT THE ABILITY OF A
16 PERSON RECEIVING SERVICES TO FREELY MOVE HIS OR HER ARMS, LEGS OR BODY.

17 (E) "USE OF AVERSIVE CONDITIONING," WHICH SHALL MEAN THE APPLICATION
18 OF A PHYSICAL STIMULUS THAT IS INTENDED TO INDUCE PAIN OR DISCOMFORT IN
19 ORDER TO MODIFY OR CHANGE THE BEHAVIOR OF A PERSON RECEIVING SERVICES IN
20 THE ABSENCE OF A PERSON-SPECIFIC AUTHORIZATION BY THE OPERATING, LICENS-
21 ING OR CERTIFYING STATE AGENCY PURSUANT TO GOVERNING STATE AGENCY REGU-
22 LATIONS. AVERSIVE CONDITIONING MAY INCLUDE BUT IS NOT LIMITED TO, THE
23 USE OF PHYSICAL STIMULI SUCH AS NOXIOUS ODORS, NOXIOUS TASTES, BLIND-
24 FOLDS, THE WITHHOLDING OF MEALS AND THE PROVISION OF SUBSTITUTE FOODS IN
25 AN UNPALATABLE FORM.

26 (F) "OBSTRUCTION OF REPORTS OF ABUSE OR NEGLECT," WHICH SHALL MEAN
27 CONDUCT BY AN AGENT OF A FACILITY OR PROVIDER AGENCY THAT IMPEDES THE
28 DISCOVERY, REPORTING OR INVESTIGATION OF THE TREATMENT OF A SERVICE
29 RECIPIENT BY FALSIFYING RECORDS RELATED TO THE SAFETY, TREATMENT OR
30 SUPERVISION OF A SERVICE RECIPIENT WHO MAY HAVE BEEN ABUSED OR
31 NEGLECTED, ACTIVELY PERSUADING A MANDATED REPORTER FROM MAKING A REPORT
32 OF ABUSE OR NEGLECT TO THE STATEWIDE VULNERABLE PERSONS' CENTRAL REGIS-
33 TER WITH THE INTENT TO SUPPRESS THE REPORTING OF THE INVESTIGATION OF AN
34 INCIDENT OF ABUSE OR NEGLECT, INTENTIONALLY MAKING A FALSE STATEMENT OR
35 INTENTIONALLY WITHHOLDING MATERIAL INFORMATION DURING AN INVESTIGATION
36 INTO A REPORT OF ABUSE OR NEGLECT; INTENTIONAL FAILURE OF A SUPERVISOR
37 OR MANAGER TO ACT UPON A REPORT OF ABUSE OR NEGLECT IN ACCORDANCE WITH
38 GOVERNING STATE AGENCY REGULATIONS, POLICIES OR PROCEDURES; OR, FOR A
39 MANDATED REPORTER WHO IS AN AGENT OF A FACILITY OR PROVIDER AGENCY,
40 FAILING TO REPORT ABUSE OR NEGLECT UPON DISCOVERY.

41 (G) "UNLAWFUL USE OR ADMINISTRATION OF A CONTROLLED SUBSTANCE," WHICH
42 SHALL MEAN ANY ADMINISTRATION TO A SERVICE RECIPIENT OF: A CONTROLLED
43 SUBSTANCE AS DEFINED BY ARTICLE THIRTY-THREE OF THE PUBLIC HEALTH LAW,
44 WITHOUT A PRESCRIPTION; OR OTHER MEDICATION NOT APPROVED FOR ANY USE BY
45 THE FEDERAL FOOD AND DRUG ADMINISTRATION. IT ALSO SHALL INCLUDE AN AGENT
46 USING OR DISTRIBUTING AN UNLAWFUL CONTROLLED SUBSTANCE AS DEFINED BY
47 ARTICLE THIRTY-THREE OF THE PUBLIC HEALTH LAW, AT THE WORKPLACE OR WHILE
48 ON DUTY.

49 (H) "NEGLECT," WHICH SHALL MEAN ANY INACTION OR LACK OF ATTENTION BY
50 AN AGENT OF A FACILITY OR PROVIDER AGENCY THAT RESULTS IN OR HAS THE
51 REASONABLY FORESEEABLE POTENTIAL TO RESULT IN PHYSICAL INJURY OR SERIOUS
52 OR PROTRACTED IMPAIRMENT OF THE PHYSICAL, MENTAL OR EMOTIONAL CONDITION
53 OF A SERVICE RECIPIENT. NEGLECT SHALL INCLUDE, BUT IS NOT LIMITED TO:

54 (I) FAILURE TO PROVIDE PROPER SUPERVISION, INCLUDING A LACK OF PROPER
55 SUPERVISION THAT RESULTS IN CONDUCT BETWEEN PERSONS RECEIVING SERVICES
56 THAT WOULD CONSTITUTE ABUSE IF COMMITTED BY AN AGENT OR AGENTS OF A

1 FACILITY OR PROVIDER AGENCY; (II) FAILURE TO PROVIDE ADEQUATE FOOD,
2 CLOTHING, SHELTER, MEDICAL, DENTAL, OPTOMETRIC OR SURGICAL CARE,
3 CONSISTENT WITH THE RULES OR REGULATIONS PROMULGATED BY THE STATE AGENCY
4 OPERATING, CERTIFYING OR SUPERVISING THE FACILITY OR PROVIDER AGENCY,
5 PROVIDED THAT THE FACILITY OR PROVIDER AGENCY HAS REASONABLE ACCESS TO
6 THE PROVISION OF SUCH SERVICES AND THAT NECESSARY CONSENTS TO ANY SUCH
7 MEDICAL, DENTAL, OPTOMETRIC OR SURGICAL TREATMENT HAVE BEEN SOUGHT AND
8 OBTAINED FROM THE APPROPRIATE INDIVIDUALS; OR (III) FAILURE TO PROVIDE
9 ACCESS TO EDUCATIONAL INSTRUCTION, BY AN AGENT WITH A DUTY TO ENSURE
10 THAT AN INDIVIDUAL RECEIVES ACCESS TO SUCH INSTRUCTION IN ACCORDANCE
11 WITH THE PROVISIONS OF PART ONE OF ARTICLE SIXTY-FIVE OF THE EDUCATION
12 LAW.

13 2. "AGENT OF A FACILITY OR PROVIDER AGENCY" SHALL MEAN A PERSON
14 AUTHORIZED TO ACT FOR A PROVIDER OF SERVICES IN A FACILITY OR PROVIDER
15 AGENCY, INCLUDING BUT NOT LIMITED TO AN EMPLOYEE, MANAGER, ADMINISTRA-
16 TOR, CONSULTANT, INTERN OR VOLUNTEER, OR A CONTRACTOR WHO HAS REGULAR
17 AND SUBSTANTIAL CONTACT WITH SERVICE RECIPIENTS.

18 3. "EXECUTIVE DIRECTOR" SHALL MEAN THE EXECUTIVE DIRECTOR OF THE
19 JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS.

20 4. "FACILITY" OR "PROVIDER AGENCY" SHALL MEAN:

21 (A) A FACILITY OR PROGRAM IN WHICH SERVICES ARE PROVIDED AND WHICH IS
22 OPERATED, LICENSED OR CERTIFIED BY THE OFFICE OF MENTAL HEALTH, THE
23 OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES OR THE OFFICE OF ALCO-
24 HOLISM AND SUBSTANCE ABUSE SERVICES, INCLUDING BUT NOT LIMITED TO
25 PSYCHIATRIC CENTERS, INPATIENT PSYCHIATRIC UNITS OF A GENERAL HOSPITAL,
26 DEVELOPMENTAL CENTERS, INTERMEDIATE CARE FACILITIES, COMMUNITY RESI-
27 DENCES, GROUP HOMES AND FAMILY CARE HOMES, PROVIDED, HOWEVER, THAT SUCH
28 TERM SHALL NOT INCLUDE A SECURE TREATMENT FACILITY AS DEFINED IN SECTION
29 10.03 OF THE MENTAL HYGIENE LAW, OR SERVICES PROVIDED IN PROGRAMS OR
30 FACILITIES THAT ARE OPERATED BY THE OFFICE OF MENTAL HEALTH AND LOCATED
31 IN STATE CORRECTIONAL FACILITIES UNDER THE JURISDICTION OF THE DEPART-
32 MENT OF CORRECTIONS AND COMMUNITY SUPERVISION.

33 (B) ANY PROGRAM OR FACILITY THAT IS OPERATED BY THE OFFICE OF CHILDREN
34 AND FAMILY SERVICES FOR JUVENILE DELINQUENTS OR JUVENILE OFFENDERS
35 PLACED IN THE CUSTODY OF THE COMMISSIONER OF SUCH OFFICE AND ANY RESI-
36 DENTIAL PROGRAMS OR FACILITIES LICENSED OR CERTIFIED BY THE OFFICE OF
37 CHILDREN AND FAMILY SERVICES, EXCLUDING FOSTER FAMILY HOMES AND RESIDEN-
38 TIAL PROGRAMS FOR VICTIMS OF DOMESTIC VIOLENCE;

39 (C) ADULT CARE FACILITIES, WHICH SHALL MEAN: (I) AN ADULT HOME OR
40 ENRICHED HOUSING PROGRAM LICENSED PURSUANT TO ARTICLE SEVEN OF THIS
41 CHAPTER; (II) AN ADULT HOME OR ENRICHED HOUSING PROGRAM AUTHORIZED TO
42 OPERATE AN ASSISTED LIVING PROGRAM PURSUANT TO SECTION FOUR HUNDRED
43 SIXTY-ONE-L OF THIS CHAPTER; (III) SUCH AN ADULT HOME OR ENRICHED HOUS-
44 ING PROGRAM WITH ASSISTED LIVING RESIDENCE LICENSURE PURSUANT TO ARTICLE
45 FORTY-SIX-B OF THE PUBLIC HEALTH LAW; OR (IV) OVERNIGHT SUMMER DAY AND
46 TRAVELING SUMMER DAY CAMPS FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES
47 AS DEFINED IN REGULATIONS PROMULGATED BY THE COMMISSIONER OF HEALTH; OR

48 (D) THE NEW YORK STATE SCHOOL FOR THE BLIND AND THE NEW YORK STATE
49 SCHOOL FOR THE DEAF, WHICH OPERATE PURSUANT TO ARTICLES EIGHTY-SEVEN AND
50 EIGHTY-EIGHT OF THE EDUCATION LAW; AN INSTITUTION FOR THE INSTRUCTION OF
51 THE DEAF AND THE BLIND WHICH HAS A RESIDENTIAL COMPONENT AND IS SUBJECT
52 TO THE VISITATION OF THE COMMISSIONER OF EDUCATION PURSUANT TO ARTICLE
53 EIGHTY-FIVE OF THE EDUCATION LAW WITH RESPECT TO ITS DAY AND RESIDENTIAL
54 COMPONENTS; SPECIAL ACT SCHOOL DISTRICTS SERVING STUDENTS WITH DISABILI-
55 TIES; OR IN-STATE PRIVATE SCHOOLS WHICH HAVE BEEN APPROVED BY THE
56 COMMISSIONER OF EDUCATION FOR SPECIAL EDUCATION SERVICES OR PROGRAMS,

1 AND WHICH HAVE A RESIDENTIAL PROGRAM, INCLUDING A SCHOOL APPROVED ON A
2 CHILD-SPECIFIC BASIS FOR EMERGENCY INTERIM PLACEMENTS PURSUANT TO
3 GOVERNING STATE REGULATIONS, WITH RESPECT TO ITS DAY AND RESIDENTIAL
4 COMPONENTS.

5 4-A. "STATE OVERSIGHT AGENCY" SHALL MEAN THE STATE AGENCY THAT OPER-
6 ATES, LICENSES OR CERTIFIES AN APPLICABLE FACILITY OR PROVIDER AGENCY;
7 PROVIDED HOWEVER THAT SUCH TERM SHALL ONLY INCLUDE THE FOLLOWING ENTI-
8 TIES: THE OFFICE OF MENTAL HEALTH, THE OFFICE FOR PEOPLE WITH DEVELOP-
9 MENTAL DISABILITIES, THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE
10 SERVICES, THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE DEPARTMENT OF
11 HEALTH AND THE STATE EDUCATION DEPARTMENT. "STATE OVERSIGHT AGENCY" DOES
12 NOT INCLUDE AGENCIES THAT ARE CERTIFICATION AGENCIES PURSUANT TO FEDERAL
13 LAW OR REGULATION.

14 5. "MANDATED REPORTER" SHALL MEAN AN AGENT OF A FACILITY OR PROVIDER
15 AGENCY AND ANY: PHYSICIAN; REGISTERED PHYSICIAN ASSISTANT; SURGEON;
16 MEDICAL EXAMINER; CORONER; DENTIST; DENTAL HYGIENIST; OSTEOPATH; OPTOME-
17 TRIST; CHIROPRACTOR; PODIATRIST; RESIDENT; INTERN; PSYCHOLOGIST; REGIS-
18 TERED NURSE; LICENSED PRACTICAL NURSE; NURSE PRACTITIONER; SOCIAL WORK-
19 ER; EMERGENCY MEDICAL TECHNICIAN; LICENSED CREATIVE ARTS THERAPIST;
20 LICENSED MARRIAGE AND FAMILY THERAPIST; LICENSED MENTAL HEALTH COUNSE-
21 LOR; LICENSED PSYCHOANALYST; HOSPITAL PERSONNEL ENGAGED IN THE ADMIS-
22 SION, EXAMINATION, CARE OR TREATMENT OF PERSONS; CHRISTIAN SCIENCE PRAC-
23 TITIONER; SCHOOL OFFICIAL, WHICH INCLUDES BUT IS NOT LIMITED TO SCHOOL
24 TEACHER, SCHOOL GUIDANCE COUNSELOR, SCHOOL PSYCHOLOGIST, SCHOOL SOCIAL
25 WORKER, SCHOOL NURSE, SCHOOL ADMINISTRATOR OR OTHER SCHOOL PERSONNEL
26 REQUIRED TO HOLD A TEACHING OR ADMINISTRATIVE LICENSE OR CERTIFICATE;
27 SOCIAL SERVICES WORKER; ANY OTHER CHILD CARE OR FOSTER CARE WORKER;
28 MENTAL HEALTH PROFESSIONAL; PERSON CREDENTIALLED BY THE OFFICE OF ALCO-
29 HOLISM AND SUBSTANCE ABUSE SERVICES; PEACE OFFICER; POLICE OFFICER;
30 DISTRICT ATTORNEY OR ASSISTANT DISTRICT ATTORNEY; INVESTIGATOR EMPLOYED
31 IN THE OFFICE OF A DISTRICT ATTORNEY; OR OTHER LAW ENFORCEMENT OFFICIAL.

32 6. "PHYSICAL INJURY" AND "IMPAIRMENT OF PHYSICAL CONDITION" SHALL MEAN
33 ANY CONFIRMED HARM, HURT OR DAMAGE RESULTING IN A SIGNIFICANT WORSENING
34 OR DIMINUTION OF AN INDIVIDUAL'S PHYSICAL CONDITION.

35 7. "DELEGATE INVESTIGATORY ENTITY" SHALL MEAN A FACILITY OR PROVIDER
36 AGENCY, OR ANY OTHER ENTITY AUTHORIZED BY THE REGULATIONS OF A STATE
37 OVERSIGHT AGENCY OR THE JUSTICE CENTER FOR PERSONS WITH DISABILITIES OR
38 SPECIAL NEEDS TO CONDUCT AN INVESTIGATION OF AN ALLEGATION OF ABUSE OR
39 NEGLECT OR A SIGNIFICANT INCIDENT.

40 8. "JUSTICE CENTER" SHALL MEAN THE JUSTICE CENTER FOR THE PROTECTION
41 OF PEOPLE WITH SPECIAL NEEDS.

42 9. "PERSON RECEIVING SERVICES," OR "SERVICE RECIPIENT" SHALL MEAN AN
43 INDIVIDUAL WHO RESIDES OR IS AN INPATIENT IN A RESIDENTIAL FACILITY OR
44 WHO RECEIVES SERVICES FROM A FACILITY OR PROVIDER AGENCY AS DEFINED IN
45 SUBDIVISION FOUR OF THIS SECTION.

46 10. "PERSONAL REPRESENTATIVE" SHALL MEAN A PERSON AUTHORIZED UNDER
47 STATE, TRIBAL, MILITARY OR OTHER APPLICABLE LAW TO ACT ON BEHALF OF A
48 VULNERABLE PERSON IN MAKING HEALTH CARE DECISIONS OR, FOR PROGRAMS THAT
49 SERVE CHILDREN UNDER THE JURISDICTION OF THE STATE EDUCATION DEPARTMENT
50 OR THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE SERVICE RECIPIENT'S
51 PARENT, GUARDIAN OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH PERSON.

52 11. "REPORTABLE INCIDENT" SHALL MEAN AN ALLEGATION OF ABUSE, NEGLECT,
53 OR A SIGNIFICANT INCIDENT, AS THESE TERMS ARE DEFINED IN THIS SECTION OR
54 ANY OTHER CONDUCT OR OCCURRENCE THAT THE STATE OVERSIGHT AGENCY IDENTI-
55 FIES AS WARRANTING MONITORING.

12. "SIGNIFICANT INCIDENT" SHALL MEAN AN INCIDENT, OTHER THAN AN INCIDENT OF ABUSE OR NEGLECT, THAT BECAUSE OF ITS SEVERITY OR THE SENSITIVITY 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:

(A) CONDUCT BETWEEN PERSONS RECEIVING SERVICES THAT WOULD CONSTITUTE ABUSE IF COMMITTED BY AN AGENT OR AGENTS OF A FACILITY OR PROVIDER AGENCY; OR

(B) CONDUCT ON THE PART OF AN AGENT OF A FACILITY OR PROVIDER AGENCY, WHICH IS INCONSISTENT WITH A SERVICE RECIPIENT'S INDIVIDUAL TREATMENT PLAN, 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:

(I) 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;

(II) UNAUTHORIZED USE OF TIME-OUT, WHICH SHALL MEAN THE USE OF A PROCEDURE IN WHICH A PERSON RECEIVING SERVICES IS REMOVED FROM REGULAR PROGRAMMING AND ISOLATED IN A ROOM OR AREA FOR THE CONVENIENCE OF AGENTS OF A FACILITY, OR AS A SUBSTITUTE FOR PROGRAMMING;

(III) EXCEPT AS PROVIDED FOR IN PARAGRAPH (G) OF SUBDIVISION ONE OF THIS SECTION, THE ADMINISTRATION OF A PRESCRIBED OR OVER-THE-COUNTER MEDICATION, 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 UNDESIRABLE SIDE EFFECT FROM THE ADMINISTRATION OF A PARTICULAR MEDICATION WHICH UNFAVORABLY AFFECTS THE WELL-BEING OF A SERVICE RECIPIENT; OR

(C) ANY OTHER CONDUCT IDENTIFIED IN REGULATIONS OF THE STATE OVERSIGHT AGENCY, PURSUANT TO GUIDELINES OR STANDARDS ESTABLISHED BY THE EXECUTIVE DIRECTOR.

13. "SUBJECT OF THE REPORT" SHALL MEAN AN AGENT OF A FACILITY OR PROVIDER AGENCY, AS DEFINED IN SUBDIVISION FOUR OF THIS SECTION, WHO IS REPORTED TO THE VULNERABLE PERSONS' CENTRAL REGISTER FOR THE ALLEGED ABUSE OR NEGLECT OF A VULNERABLE PERSON.

14. "OTHER PERSONS NAMED IN THE REPORT" SHALL MEAN AND BE LIMITED TO THE FOLLOWING PERSONS WHO ARE NAMED IN A REPORT OF ABUSE OR NEGLECT 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 REPRESENTATIVE, IF ANY, AS DEFINED IN SUBDIVISION TEN OF THIS SECTION.

15. "VULNERABLE PERSONS' CENTRAL REGISTER" SHALL MEAN THE STATEWIDE CENTRAL REGISTER OF ABUSE AND NEGLECT OF VULNERABLE PERSONS, WHICH SHALL OPERATE IN ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-TWO OF THIS ARTICLE.

16. "VULNERABLE PERSON" SHALL MEAN A PERSON WHO, DUE TO PHYSICAL OR COGNITIVE DISABILITIES, OR THE NEED FOR SPECIALIZED SERVICES OR PLACEMENT, IS RECEIVING SERVICES FROM A FACILITY OR PROVIDER AGENCY.

S 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 AGENT 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 AGENT THEREOF IS SUBJECT, INCLUDING

1 ANY REQUIREMENTS THAT ARE A CONDITION OF FEDERAL FINANCIAL PARTICIPATION
2 IN MEDICAL ASSISTANCE PAYMENTS. TO THE EXTENT THAT FEDERAL REQUIREMENTS
3 CONFLICT WITH ANY OF THE PROVISIONS IN THIS ARTICLE, THE FEDERAL
4 REQUIREMENTS SHALL SUPERSEDE THE CONFLICTING PROVISIONS IN THIS ARTICLE
5 WITH RESPECT TO ANY SUCH FACILITY OR PROVIDER AGENCY.

6 S 490. INCIDENT MANAGEMENT PROGRAMS. 1. EACH STATE OVERSIGHT AGENCY,
7 AS DEFINED IN THIS ARTICLE, SHALL PROMULGATE REGULATIONS APPROVED BY THE
8 JUSTICE CENTER, THAT CONTAIN PROCEDURES AND REQUIREMENTS CONSISTENT WITH
9 GUIDELINES AND STANDARDS DEVELOPED BY THE JUSTICE CENTER, ADDRESSING THE
10 FOLLOWING ISSUES RELATING TO AN INCIDENT MANAGEMENT PROGRAM:

11 (A) ALL REPORTABLE INCIDENTS ARE IDENTIFIED AND REPORTED IN A TIMELY
12 MANNER IN ACCORDANCE WITH THIS ARTICLE;

13 (B) ALL REPORTABLE INCIDENTS ARE INVESTIGATED IN A TIMELY MANNER;

14 (C) INDIVIDUAL INCIDENTS OF ABUSE OR NEGLECT AND SIGNIFICANT INCI-
15 DENTS, AND INCIDENT PATTERNS AND TRENDS, ARE REVIEWED TO IDENTIFY AND
16 IMPLEMENT PREVENTIVE AND CORRECTIVE ACTIONS, WHICH MAY INCLUDE, BUT
17 SHALL NOT BE LIMITED TO, STAFF RETRAINING OR ANY APPROPRIATE DISCIPLI-
18 NARY ACTION ALLOWED BY LAW OR CONTRACT, AS WELL AS OPPORTUNITIES FOR
19 IMPROVEMENT;

20 (D) PATTERNS AND TRENDS IN THE REPORTING AND RESPONSE TO ALLEGATIONS
21 OF ABUSE AND NEGLECT AND OTHER REPORTABLE INCIDENTS ARE REVIEWED AND
22 PLANS OF IMPROVEMENT ARE TIMELY DEVELOPED BASED ON SUCH REVIEWS;

23 (E) INFORMATION REGARDING INDIVIDUAL REPORTABLE INCIDENTS, INCIDENT
24 PATTERNS AND TRENDS, AND PATTERNS AND TRENDS IN THE REPORTING AND
25 RESPONSE TO ALLEGATIONS OF ABUSE AND NEGLECT AND OTHER REPORTABLE INCI-
26 DENTS IS SHARED, CONSISTENT WITH APPLICABLE LAW, WITH THE JUSTICE
27 CENTER, IN THE FORM AND MANNER REQUIRED BY THE JUSTICE CENTER AND, FOR
28 FACILITIES OR PROVIDER AGENCIES THAT ARE NOT STATE OPERATED, WITH THE
29 APPLICABLE STATE OVERSIGHT AGENCY WHICH SHALL PROVIDE SUCH INFORMATION
30 TO THE JUSTICE CENTER; AND

31 (F) INCIDENT REVIEW COMMITTEES ARE ESTABLISHED; PROVIDED, HOWEVER,
32 THAT THE REGULATIONS MAY AUTHORIZE AN EXEMPTION FROM THIS REQUIREMENT,
33 WHEN APPROPRIATE, BASED ON THE SIZE OF THE FACILITY OR PROVIDER AGENCY
34 OR OTHER RELEVANT FACTORS. SUCH COMMITTEES SHALL BE COMPOSED OF MEMBERS
35 OF THE GOVERNING BODY OF THE FACILITY OR PROVIDER AGENCY AND OTHER
36 PERSONS IDENTIFIED BY THE DIRECTOR OF THE FACILITY OR PROVIDER AGENCY,
37 INCLUDING SOME MEMBERS OF THE FOLLOWING: DIRECT SUPPORT STAFF, LICENSED
38 HEALTH CARE PRACTITIONERS, SERVICE RECIPIENTS AND REPRESENTATIVES OF
39 FAMILY, CONSUMER AND OTHER ADVOCACY ORGANIZATIONS, BUT NOT THE DIRECTOR
40 OF THE FACILITY OR PROVIDER AGENCY. SUCH COMMITTEE SHALL MEET REGULARLY
41 TO: (I) REVIEW THE TIMELINESS, THOROUGHNESS AND APPROPRIATENESS OF THE
42 FACILITY OR PROVIDER AGENCY'S RESPONSES TO REPORTABLE INCIDENTS; (II)
43 RECOMMEND ADDITIONAL OPPORTUNITIES FOR IMPROVEMENT TO THE DIRECTOR OF
44 THE FACILITY OR PROVIDER AGENCY, IF APPROPRIATE; (III) REVIEW INCIDENT
45 TRENDS AND PATTERNS CONCERNING REPORTABLE INCIDENTS; AND (IV) MAKE
46 RECOMMENDATIONS TO THE DIRECTOR OF THE FACILITY OR PROVIDER AGENCY TO
47 ASSIST IN REDUCING REPORTABLE INCIDENTS. MEMBERS OF THE COMMITTEE SHALL
48 BE TRAINED IN CONFIDENTIALITY LAWS AND REGULATIONS, AND SHALL COMPLY
49 WITH SECTION SEVENTY-FOUR OF THE PUBLIC OFFICERS LAW.

50 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EXCEPT AS MAY BE
51 PROVIDED BY SECTION 33.25 OF THE MENTAL HYGIENE LAW, RECORDS, REPORTS OR
52 OTHER INFORMATION MAINTAINED BY THE JUSTICE CENTER, STATE OVERSIGHT
53 AGENCIES, DELEGATE INVESTIGATORY ENTITIES AND FACILITIES AND PROVIDER
54 AGENCIES REGARDING THE DELIBERATIONS OF AN INCIDENT REVIEW COMMITTEE
55 SHALL BE CONFIDENTIAL AND SHALL NOT BE DISCLOSED TO ANY PARTY UNLESS
56 OTHERWISE REQUIRED BY LAW AND, PROVIDED, FURTHER, 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 JUDICIAL OR ADMINISTRATIVE PROCEEDING WITH RESPECT TO QUALITY ASSURANCE RECORDS OR ANY FINDING, RECOMMENDATION, EVALUATION, OPINION OR ACTION TAKEN, EXCEPT THAT THIS PROVISION IS NOT INTENDED TO RELIEVE ANY STATE OVERSIGHT AGENCY, DELEGATE INVESTIGATORY ENTITY, FACILITY OR PROVIDER AGENCY, 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 COMMUNICATION OF INFORMATION IN THE POSSESSION OF SUCH PERSON TO AN INCIDENT MANAGEMENT COMMITTEE, OR ON ACCOUNT OF ANY RECOMMENDATION OR EVALUATION REGARDING THE CONDUCT OR PRACTICES OF ANY AGENT OF A FACILITY OR PROVIDER AGENCY.

5. WITH RESPECT TO THE IMPLEMENTATION OF INCIDENT MANAGEMENT PLANS IN RESIDENTIAL SCHOOLS OR FACILITIES LOCATED OUTSIDE OF NEW YORK STATE, THE LOCAL SOCIAL SERVICES DISTRICT OR LOCAL EDUCATION AGENCY CONTRACTING OR PLACING AN INDIVIDUAL WITH SUCH FACILITY OR SCHOOL OR THE STATE AGENCY FUNDING SUCH INDIVIDUAL'S PLACEMENT SHALL REQUIRE THAT: (A) THE PLACING ENTITY OR FUNDING AGENCY BE NOTIFIED IMMEDIATELY OF ANY ALLEGATION OF ABUSE OR NEGLECT, OR OTHER SIGNIFICANT INCIDENT INVOLVING AN INDIVIDUAL FROM NEW YORK STATE; (B) AN INVESTIGATION BE CONDUCTED BY THE OUT-OF-STATE FACILITY OR SCHOOL OR OTHER ENTITY AUTHORIZED TO CONDUCT SUCH INVESTIGATION, OR BY THE PLACING ENTITY OR FUNDING AGENCY, WHERE PRACTICABLE; AND (C) THE FINDINGS OF SUCH INVESTIGATION BY THE OUT-OF-STATE FACILITY OR ENTITY BE FORWARDED TO THE PLACING ENTITY OR FUNDING AGENCY IN NEW YORK STATE WITHIN NINETY DAYS. SUCH ENTITIES OR AGENCIES SHALL FORWARD SUCH REPORTS TO THE JUSTICE CENTER, AND ITS EXECUTIVE DIRECTOR, IN HIS OR HER DISCRETION MAY TERMINATE FUNDING FOR SUCH FOR ANY FAILURE TO COMPLY WITH THIS SECTION.

6. ALL FACILITIES OR PROVIDER AGENCIES NOT OTHERWISE SUBJECT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW SHALL MAKE AVAILABLE FOR PUBLIC INSPECTION AND COPYING RECORDS RELATING TO ABUSE AND NEGLECT OF VULNERABLE PERSONS AS WOULD BE AVAILABLE FROM A STATE AGENCY, AS DEFINED IN ARTICLE SIX OF THE PUBLIC OFFICERS LAW UPON WRITTEN REQUEST FOR SUCH RECORDS, PROVIDED THAT SUCH ENTITIES MAY DENY ACCESS TO RECORDS OR PORTIONS THEREOF THAT SUCH ENTITY 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 RECORDS 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.

1 S 491. DUTY TO REPORT INCIDENTS. 1. (A) MANDATED REPORTERS SHALL
2 REPORT ALLEGATIONS OF ABUSE OR NEGLECT TO THE VULNERABLE PERSONS'
3 CENTRAL REGISTER AS ESTABLISHED BY SECTION FOUR HUNDRED NINETY-TWO OF
4 THIS ARTICLE AND IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH THEREIN.

5 (B) ALLEGATIONS OF ABUSE OR NEGLECT SHALL BE REPORTED IMMEDIATELY TO
6 THE VULNERABLE PERSONS' CENTRAL REGISTER UPON DISCOVERY. FOR PURPOSES
7 OF THIS ARTICLE, "DISCOVERY" OCCURS WHEN THE MANDATED REPORTER WITNESSES
8 AN INCIDENT OF SUSPECTED ABUSE OR NEGLECT OR WHEN ANOTHER PERSON,
9 INCLUDING THE VULNERABLE PERSON, COMES BEFORE THE MANDATED REPORTER IN
10 THE MANDATED REPORTER'S PROFESSIONAL OR OFFICIAL CAPACITY AND PROVIDES
11 THE MANDATED REPORTER WITH REASONABLE CAUSE TO SUSPECT THAT THE VULNER-
12 ABLE PERSON HAS BEEN ABUSED OR NEGLECTED; PROVIDED, HOWEVER, SUCH
13 MANDATED REPORTERS SHALL NOT BE REQUIRED TO REPORT TO THE VULNERABLE
14 PERSONS' CENTRAL REGISTER ANY INCIDENT THAT THE MANDATED REPORTER ACTU-
15 ALLY KNOWS HAS ALREADY BEEN REPORTED TO SUCH REGISTER. WHENEVER A
16 MANDATED REPORTER WHO IS AN AGENT OF A FACILITY OR PROVIDER AGENCY IS
17 REQUIRED TO REPORT TO THE VULNERABLE PERSONS' CENTRAL REGISTER, SUCH
18 MANDATED REPORTER SHALL MAKE THE REPORT AS REQUIRED AND SHALL THEN ALSO
19 REPORT SUCH INCIDENT TO THE ADMINISTRATOR OR A DESIGNATED PERSON IN HIS
20 OR HER FACILITY OR PROVIDER AGENCY IN ACCORDANCE WITH AGENCY REGU-
21 LATIONS, POLICIES AND PROCEDURES. THE ADMINISTRATOR OR DESIGNATED PERSON
22 SHALL BE RESPONSIBLE FOR ALL SUBSEQUENT ADMINISTRATION NECESSITATED BY
23 THE REPORT. A REPORT TO THE REGISTER SHALL INCLUDE THE NAME, TITLE AND
24 CONTACT INFORMATION OF EVERY PERSON KNOWN TO THE MANDATED REPORTER TO
25 HAVE THE SAME INFORMATION AS THE MANDATED REPORTER CONCERNING THE
26 ALLEGED ABUSE OR NEGLECT. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO
27 REQUIRE MORE THAN ONE REPORT TO THE VULNERABLE PERSONS' CENTRAL REGISTER
28 CONCERNING A PARTICULAR INCIDENT OR ALLEGATION OF ABUSE OR NEGLECT.

29 (C) NOTWITHSTANDING THE PRIVILEGES SET FORTH IN ARTICLE FORTY-FIVE OF
30 THE CIVIL PRACTICE LAW AND RULES, AND ANY OTHER PROVISION OF LAW TO THE
31 CONTRARY, MANDATED REPORTERS WHO MAKE A REPORT WHICH INITIATES AN INVE-
32 STIGATION OF AN ALLEGATION OF ABUSE OR NEGLECT OF A VULNERABLE PERSON ARE
33 REQUIRED TO COMPLY WITH ALL REQUESTS FOR RECORDS MADE BY THE JUSTICE
34 CENTER FOR PERSONS WITH DISABILITIES OR SPECIAL NEEDS OR A DELEGATE
35 INVESTIGATORY ENTITY RELATING TO SUCH REPORT, INCLUDING RECORDS RELATING
36 TO DIAGNOSIS, PROGNOSIS OR TREATMENT, AND CLINICAL RECORDS, OF ANY
37 PATIENT OR CLIENT THAT ARE ESSENTIAL FOR A FULL INVESTIGATION OF ALLEGA-
38 TIONS OF ABUSE OR NEGLECT PURSUANT TO THIS ARTICLE; PROVIDED, HOWEVER,
39 THAT DISCLOSURE OF SUBSTANCE ABUSE TREATMENT AND EDUCATIONAL RECORDS
40 SHALL BE MADE PURSUANT TO THE STANDARDS AND PROCEDURES FOR DISCLOSURE OF
41 SUCH RECORDS DELINEATED IN FEDERAL LAW. WRITTEN REPORTS FROM PERSONS OR
42 OFFICIALS REQUIRED BY THIS TITLE TO REPORT SHALL BE ADMISSIBLE IN
43 EVIDENCE IN ANY PROCEEDINGS RELATING TO ABUSE OR NEGLECT.

44 2. (A) AGENTS OF A FACILITY OR PROVIDER AGENCY SHALL PROMPTLY REPORT
45 ANY SIGNIFICANT INCIDENT TO THE DIRECTOR OF THE FACILITY OR PROVIDER
46 AGENCY AND THE APPLICABLE STATE OVERSIGHT AGENCY IN ACCORDANCE WITH THE
47 REGULATIONS OF SUCH STATE OVERSIGHT AGENCY; PROVIDED, HOWEVER, ANY
48 PERSON WHO HAS REASONABLE CAUSE TO SUSPECT THAT A PERSON RECEIVING
49 SERVICES HAS BEEN SUBJECT TO A SIGNIFICANT INCIDENT ALSO MAY MAKE SUCH A
50 REPORT. THE APPLICABLE STATE OVERSIGHT AGENCY SHALL NOTIFY THE JUSTICE
51 CENTER OF ANY SUCH INCIDENT, IN THE FORM AND MANNER PROVIDED BY THE
52 RULES, REGULATIONS, GUIDELINES OR STANDARDS ESTABLISHED BY THE JUSTICE
53 CENTER.

54 (B) IN ACCORDANCE WITH REGULATIONS OF THE APPLICABLE STATE OVERSIGHT
55 AGENCY, REPORTS OF SIGNIFICANT INCIDENTS SHALL BE INVESTIGATED, EITHER
56 BY THE STATE OVERSIGHT AGENCY, THE JUSTICE CENTER OR BY A DELEGATE

1 INVESTIGATORY ENTITY, AND THE RESULTS OF THE INVESTIGATION SHALL BE
2 REVIEWED AND THE INCIDENT RESOLVED PURSUANT TO THE PROCEDURES ESTAB-
3 LISHED AS PART OF THE INCIDENT MANAGEMENT PROGRAM DESCRIBED IN SECTION
4 FOUR HUNDRED NINETY OF THIS ARTICLE.

5 3. ANY PERSON OR OFFICIAL REQUIRED TO REPORT CASES OF SUSPECTED ABUSE
6 OR NEGLECT OR A SIGNIFICANT INCIDENT PURSUANT TO THIS SECTION MAY TAKE
7 OR CAUSE TO BE TAKEN COLOR PHOTOGRAPHS OF VISIBLE TRAUMA AND THE FACE OF
8 THE VULNERABLE PERSON NAMED IN THE REPORT AND UPON THE CONSENT OF A
9 PERSON AUTHORIZED TO CONSENT TO MEDICAL CARE FOR THE VULNERABLE PERSON,
10 SHALL, IF MEDICALLY INDICATED, CAUSE TO BE PERFORMED A RADIOLOGICAL
11 EXAMINATION OF THE VULNERABLE PERSON. ANY PHOTOGRAPHS OR RADIOLOGICAL
12 EXAMINATIONS TAKEN SHALL BE PROVIDED TO THE JUSTICE CENTER FOR USE ONLY
13 FOR THE PURPOSES OF AN INVESTIGATION OF ABUSE, NEGLECT OR A SIGNIFICANT
14 INCIDENT.

15 4. (A) ANY PERSON OR OFFICIAL REQUIRED BY THIS ARTICLE TO REPORT A
16 CASE OF SUSPECTED ABUSE OR NEGLECT TO THE VULNERABLE PERSONS' CENTRAL
17 REGISTER WHO WILLFULLY FAILS TO DO SO SHALL BE GUILTY OF A CLASS A
18 MISDEMEANOR.

19 (B) ANY PERSON OR OFFICIAL REQUIRED BY THIS ARTICLE TO REPORT A CASE
20 OF SUSPECTED ABUSE OR NEGLECT TO THE VULNERABLE PERSONS' CENTRAL REGIS-
21 TER WHO KNOWINGLY AND WILLFULLY FAILS TO DO SO SHALL BE CIVILLY LIABLE
22 FOR THE DAMAGES PROXIMATELY CAUSED BY SUCH FAILURE.

23 5. A MEDICAL OR OTHER PUBLIC OR PRIVATE INSTITUTION, STATE AGENCY,
24 SCHOOL, FACILITY OR PROVIDER AGENCY SHALL NOT TAKE ANY RETALIATORY
25 PERSONNEL ACTION, AS SUCH TERM IS DEFINED IN PARAGRAPH (E) OF SUBDIVI-
26 SION ONE OF SECTION SEVEN HUNDRED FORTY OF THE LABOR LAW, AGAINST AN
27 EMPLOYEE OR AGENT BECAUSE SUCH EMPLOYEE OR AGENT BELIEVES THAT HE OR SHE
28 HAS REASONABLE CAUSE TO SUSPECT THAT A VULNERABLE PERSON HAS BEEN
29 NEGLECTED OR HAS BEEN SUBJECTED TO A SIGNIFICANT INCIDENT AND THAT
30 EMPLOYEE OR AGENT THEREFORE MAKES A REPORT IN ACCORDANCE WITH THIS
31 SECTION. A COURT OF COMPETENT JURISDICTION MAY GRANT INJUNCTIVE RELIEF
32 TO ANY PERSON DETERMINED TO HAVE BEEN SUBJECTED TO SUCH RETALIATION.

33 S 492. VULNERABLE PERSONS' CENTRAL REGISTER. 1. THERE SHALL BE ESTAB-
34 LISHED IN THE JUSTICE CENTER A STATEWIDE VULNERABLE PERSONS' CENTRAL
35 REGISTER. THE REGISTER SHALL: (A) RECEIVE REPORTS OF ALLEGATIONS OF
36 ABUSE OR NEGLECT OF PERSONS RECEIVING SERVICES IN FACILITIES OR PROVIDER
37 AGENCIES SUBJECT TO THE REQUIREMENTS OF THIS ARTICLE; (B) AS WARRANTED,
38 REFER REPORTS ALLEGING CRIMES TO APPROPRIATE LAW ENFORCEMENT AUTHORI-
39 TIES; (C) NOTIFY APPROPRIATE PERSONS AND OFFICIALS OF RECEIVED AND
40 ACCEPTED REPORTS; AND (D) MAINTAIN AN ELECTRONIC DATABASE OF EACH REPORT
41 AND THE FINDING ASSOCIATED WITH EACH REPORT. IN ACCORDANCE WITH THIS
42 SECTION, THE EXECUTIVE DIRECTOR SHALL ESTABLISH STANDARDS AND PROCEDURES
43 FOR THE OPERATION OF THE VULNERABLE PERSONS' CENTRAL REGISTER.

44 2. (A) THE VULNERABLE PERSONS' CENTRAL REGISTER SHALL BE STAFFED BY
45 PERSONS WITH AT LEAST A BACCALAUREATE OR EQUIVALENT COLLEGE DEGREE IN A
46 RELEVANT FIELD OF STUDY OR AT LEAST TWO YEARS OF EXPERIENCE IN THE
47 DIRECT PROVISION OF SERVICES, ADULT OR CHILD PROTECTIVE SERVICES, OR ANY
48 OTHER QUALIFICATIONS IDENTIFIED BY THE EXECUTIVE DIRECTOR. DIRECT
49 SERVICE PROVISION SHALL INCLUDE THE CARE, INVESTIGATION, ASSESSMENT,
50 TREATMENT, OR CASE PLANNING FOR PERSONS IN FACILITIES OR PROGRAMS
51 COVERED BY THIS ARTICLE OR EQUIVALENT FACILITIES OR PROGRAMS. VULNER-
52 ABLE PERSONS' CENTRAL REGISTER STAFF ALSO SHALL HAVE ACCESS TO APPROPRI-
53 ATE LAW ENFORCEMENT OFFICERS OR OTHERS WITH LAW ENFORCEMENT EXPERIENCE
54 WHO SHALL ASSIST IN SCREENING REPORTS THAT APPEAR TO ALLEGE CRIMINAL
55 OFFENSES AND HELP REFER REPORTS, AS WARRANTED, TO APPROPRIATE LAW
56 ENFORCEMENT AUTHORITIES.

1 (B) THE VULNERABLE PERSONS' CENTRAL REGISTER SHALL RECEIVE REPORTS OF
2 ALLEGATIONS OF ABUSE OR NEGLECT TWENTY-FOUR HOURS PER DAY, SEVEN DAYS A
3 WEEK. MANDATED REPORTERS SHALL MAKE SUCH REPORTS IN ACCORDANCE WITH
4 SECTION FOUR HUNDRED NINETY-ONE OF THIS ARTICLE; PROVIDED, HOWEVER, ANY
5 PERSON WHO HAS REASONABLE CAUSE TO SUSPECT THAT A PERSON RECEIVING
6 SERVICES IS ABUSED OR NEGLECTED MAY MAKE SUCH A REPORT. IN NO EVENT
7 SHALL A REPORT BY A MANDATED REPORTER TO THE VULNERABLE PERSONS' CENTRAL
8 REGISTER ELIMINATE THE OBLIGATION OF A MANDATED REPORTER TO REPORT INCI-
9 DENTS IN ACCORDANCE WITH THE APPLICABLE LAWS, REGULATIONS AND POLICY OF
10 THE APPLICABLE STATE OVERSIGHT AGENCY.

11 (C) REPORTS OF ALLEGATIONS OF ABUSE OR NEGLECT SHALL BE SUBMITTED, BY
12 A STATEWIDE, TOLL-FREE TELEPHONE NUMBER (A "HOTLINE") OR BY ELECTRONIC
13 TRANSMISSION, IN A MANNER AND ON FORMS PRESCRIBED BY THE EXECUTIVE
14 DIRECTOR. THE INFORMATION REQUIRED ON THE REPORTING FORM SHALL INCLUDE
15 BUT IS NOT LIMITED TO: THE NAME AND CONTACT INFORMATION OF THE PERSON OR
16 PERSONS MAKING THE REPORT, IF AVAILABLE, AND, IF THE REPORT IS MADE BY
17 AN AGENT OF A FACILITY OR PROVIDER AGENCY, ANY OTHER STAFF WHO HAVE THE
18 SAME INFORMATION; THE NAME AND ADDRESS OF THE FACILITY OR PROVIDER AGEN-
19 CY; THE DATE, TIME, SPECIFIC LOCATION AND DESCRIPTION OF THE INCIDENT;
20 THE NAME AND CONTACT INFORMATION OF THE SUBJECT OF THE REPORT OF ABUSE
21 OR NEGLECT, IF KNOWN; THE NAME OF THE VULNERABLE PERSON ALLEGED TO HAVE
22 BEEN ABUSED OR NEGLECTED; THE NAMES OF PERSONAL REPRESENTATIVES FOR THE
23 VULNERABLE PERSON WHO IS ALLEGED TO HAVE BEEN ABUSED OR NEGLECTED, IF
24 KNOWN; AND ANY OTHER INFORMATION OR DOCUMENTATION THAT THE EXECUTIVE
25 DIRECTOR BELIEVES MAY BE HELPFUL. THE INABILITY OF A PERSON MAKING A
26 REPORT TO IDENTIFY A SUBJECT SHALL, IN NO CIRCUMSTANCE, CONSTITUTE CAUSE
27 TO REJECT SUCH ALLEGATION FOR INVESTIGATION OR TO FAIL TO REFER SUCH
28 ALLEGATION FOR CORRECTIVE ACTION.

29 3. (A) WHEN ANY ALLEGATION THAT COULD REASONABLY CONSTITUTE ABUSE OR
30 NEGLECT IS RECEIVED BY THE REGISTER, THE REGISTER SHALL ACCEPT AND IMME-
31 DIATELY TRANSMIT NOTICE OF THE REPORT ORALLY OR ELECTRONICALLY TO THE
32 APPROPRIATE STATE OVERSIGHT AGENCY AND, AS APPROPRIATE, TO THE DIRECTOR
33 OR OPERATOR OF THAT FACILITY OR PROVIDER AGENCY.

34 (B) WHENEVER A TELEPHONE CALL OR ELECTRONIC TRANSMISSION TO THE
35 VULNERABLE PERSONS' CENTRAL REGISTER ALLEGES AN ACT OR CIRCUMSTANCES
36 THAT MAY CONSTITUTE A CRIMINAL OFFENSE OR AN IMMEDIATE THREAT TO A
37 VULNERABLE PERSON'S HEALTH, SAFETY OR WELFARE, THE REGISTER SHALL
38 CONVEY, BY THE MOST EXPEDIENT MEANS AVAILABLE, THE INFORMATION CONTAINED
39 IN SUCH CALL OR TRANSMISSION TO THE APPROPRIATE LAW ENFORCEMENT AGENCY,
40 DISTRICT ATTORNEY OR OTHER PUBLIC OFFICIAL EMPOWERED TO PROVIDE NECES-
41 SARY AID OR ASSISTANCE, AND STATE OVERSIGHT AGENCY.

42 (C) THE JUSTICE CENTER IS RESPONSIBLE FOR COMMENCING AN INVESTIGATION
43 OF ALL ALLEGATIONS OF ABUSE OR NEGLECT THAT ARE ACCEPTED BY THE VULNER-
44 ABLE PERSONS' CENTRAL REGISTER. WITH RESPECT TO SUCH AN INVESTIGATION,
45 THE JUSTICE CENTER SHALL:

46 (I) UPON ACCEPTANCE OF A REPORT OF ABUSE OR NEGLECT BY THE VULNERABLE
47 PERSONS' CENTRAL REGISTER, PROMPTLY COMMENCE AN APPROPRIATE INVESTI-
48 GATION;

49 (II) TAKE ALL APPROPRIATE MEASURES TO PROTECT THE LIFE AND HEALTH OF
50 THE PERSON WHO IS THE ALLEGED VICTIM OF ABUSE OR NEGLECT, WHICH MAY
51 INCLUDE WORKING WITH THE STATE OVERSIGHT AGENCY TO TAKE IMMEDIATE STEPS
52 TO REMOVE THE VULNERABLE PERSON FROM HIS OR HER CURRENT FACILITY OR
53 PROGRAM, IF THE JUSTICE CENTER HAS REASONABLE CAUSE TO BELIEVE THAT THE
54 CIRCUMSTANCES OR CONDITION OF THE VULNERABLE PERSON ARE SUCH THAT
55 CONTINUING IN HIS OR HER PLACE OF RESIDENCE PRESENTS AN IMMINENT DANGER
56 TO HIS OR HER LIFE OR HEALTH;

1 (III) DETERMINE WHETHER THE SUBJECT OF THE REPORT IS CURRENTLY THE
2 SUBJECT OF AN OPEN OR SUBSTANTIATED REPORT IN THE VULNERABLE PERSONS'
3 CENTRAL REGISTER;

4 (IV) CONTACT THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND
5 MALTREATMENT TO DETERMINE WHETHER THE SUBJECT OF THE REPORT HAS BEEN OR
6 IS CURRENTLY THE SUBJECT OF AN INDICATED CHILD ABUSE AND MALTREATMENT
7 REPORT ON FILE WITH THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND
8 MALTREATMENT;

9 (V) IF IT IS DISCOVERED THAT THE SUBJECT OF A REPORT HAS ONE OR MORE
10 SUBSTANTIATED REPORTS OF ABUSE OR NEGLECT OR INDICATED REPORTS OF CHILD
11 ABUSE OR MALTREATMENT IN THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE
12 AND MALTREATMENT AND AN INVESTIGATION WAS OR INVESTIGATIONS WERE
13 CONDUCTED BY A DIFFERENT STATE AGENCY, OR A LOCAL CHILD PROTECTIVE
14 SERVICE, CONTACT ALL KNOWN AGENCIES OR SERVICES WHO INVESTIGATED SUCH
15 PREVIOUS REPORT OR REPORTS TO OBTAIN INFORMATION ON SUCH REPORTS IN
16 ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-SIX OF THIS ARTICLE;

17 (VI) NOTIFY THE PERSONAL REPRESENTATIVE OF THE PERSON ALLEGED TO HAVE
18 BEEN ABUSED OR NEGLECTED, AND, IF WARRANTED, NOTIFY THE SUBJECT OR
19 SUBJECTS OF THE REPORT AND ANY OTHER PERSONS NAMED IN THE REPORT IN
20 WRITING OF THE EXISTENCE OF THE REPORT; PROVIDED, HOWEVER, THAT SUCH
21 NOTIFICATION MAY BE LIMITED IN ACCORDANCE WITH SUBDIVISION (C) OF
22 SECTION 33.16 OF THE MENTAL HYGIENE LAW;

23 (VII) IF A REPORT OF ABUSE OR NEGLECT TO THE VULNERABLE PERSONS'
24 CENTRAL REGISTER INVOLVES THE DEATH OF A PERSON, THE JUSTICE CENTER
25 SHALL GIVE TELEPHONE NOTICE AND IMMEDIATELY SEND A COPY OF THE REPORT TO
26 THE APPROPRIATE DISTRICT ATTORNEY AND TO THE MEDICAL EXAMINER OR CORON-
27 ER. THE MEDICAL EXAMINER OR CORONER SHALL CONDUCT A PROMPT INVESTIGATION
28 AND SHALL FORWARD A PRELIMINARY WRITTEN REPORT OF HIS OR HER FINDINGS
29 WITHIN SIXTY DAYS OF THE DATE OF DEATH, ABSENT EXTRAORDINARY CIRCUM-
30 STANCES, AND HIS OR HER FINAL WRITTEN REPORT PROMPTLY, ABSENT EXTRAOR-
31 DINARY CIRCUMSTANCES, TO THE APPROPRIATE DISTRICT ATTORNEY, THE APPRO-
32 PRIATE LAW ENFORCEMENT OFFICIAL, THE STATE AGENCY RESPONSIBLE FOR
33 OVERSEEING THE INVESTIGATION, THE JUSTICE CENTER MEDICAL REVIEW BOARD
34 AND, IF THE DEATH OCCURRED IN A HOSPITAL, THE HOSPITAL;

35 (VIII) SUBMIT ABUSE AND NEGLECT FINDINGS TO THE VULNERABLE PERSONS'
36 CENTRAL REGISTER IN ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-THREE OF
37 THIS ARTICLE;

38 (IX) NOTIFY THE APPLICABLE STATE OVERSIGHT AGENCY AND THE DIRECTOR OR
39 OPERATOR, WHERE APPROPRIATE, TO DEVELOP A PLAN OF PREVENTION OR REMEDI-
40 ATION THAT THE FACILITY OR PROGRAM MUST IMPLEMENT IN RESPONSE TO THE
41 REPORT'S FINDINGS WHICH MUST BE APPROVED AND MONITORED OF ITS IMPLEMEN-
42 TATION BY THE JUSTICE CENTER OR THE STATE OVERSIGHT AGENCY, AS APPROPRI-
43 ATE; AND

44 (X) REFER SUSPECTED CASES OF FALSELY REPORTING ABUSE OR NEGLECT IN
45 VIOLATION OF SUBDIVISION FOUR OF SECTION 240.50 OF THE PENAL LAW TO THE
46 APPROPRIATE LAW ENFORCEMENT AGENCY OR DISTRICT ATTORNEY FOR INVESTI-
47 GATION AND PROSECUTION.

48 (D) WHENEVER A TELEPHONE CALL OR ELECTRONIC TRANSMISSION TO THE
49 VULNERABLE PERSONS' CENTRAL REGISTER CANNOT BE ACCEPTED AS A REPORT, BUT
50 THE INFORMATION PROVIDED ALLEGES A SIGNIFICANT INCIDENT OR OTHER POTEN-
51 TIAL WRONGDOING AT A FACILITY OR PROVIDER AGENCY, THE REGISTER SHALL
52 FORWARD THE REPORT TO THE APPLICABLE STATE OVERSIGHT AGENCY FOR INVESTI-
53 GATION AND PROTECTIVE ACTIONS, AS NEEDED, PURSUANT TO SECTION FOUR
54 HUNDRED NINETY-ONE OF THIS ARTICLE.

55 4. THE JUSTICE CENTER SHALL MAINTAIN AND KEEP UP-TO-DATE ABUSE AND
56 NEGLECT RECORDS OF ALL CASES REPORTED, TOGETHER WITH ANY ADDITIONAL

1 INFORMATION OBTAINED DURING AN INVESTIGATION OF SUCH A REPORT AND A
2 RECORD OF THE FINAL DISPOSITION OF THE REPORT.

3 5. THE VULNERABLE PERSONS' CENTRAL REGISTER SHALL MAINTAIN AN ELEC-
4 TRONIC DATABASE OF ALL ACCEPTED REPORTS OF ABUSE AND NEGLECT AND SIGNIF-
5 ICANT INCIDENTS. STATE OVERSIGHT AGENCIES SHALL HAVE ACCESS TO INFORMA-
6 TION IN THE DATABASE, LIMITED TO CASES INVOLVING FACILITIES OR PROVIDER
7 AGENCIES UNDER THEIR JURISDICTION.

8 (A) A UNIQUE IDENTIFIER SHALL BE ASSIGNED TO EACH REPORT BY THE
9 VULNERABLE PERSONS' CENTRAL REGISTER.

10 (B) THE REGISTER SHALL INCLUDE THE FOLLOWING INFORMATION FOR EACH
11 REPORT: A RECORD OF THE FINAL DISPOSITION OF THE REPORT; THE NAMES AND
12 IDENTIFYING DATA; DATES AND CIRCUMSTANCES OF ANY PERSON REQUESTING OR
13 RECEIVING INFORMATION FROM THE REGISTER; WHETHER THE PERSON MAKING THE
14 REPORT AUTHORIZED THE DISCLOSURE OF HIS OR HER NAME AND PERSONALLY IDEN-
15 TIFIABLE INFORMATION; AND ANY OTHER INFORMATION THAT THE EXECUTIVE
16 DIRECTOR, IN CONSULTATION WITH THE COMMISSIONERS OF THE STATE OVERSIGHT
17 AGENCIES COVERED BY THIS ARTICLE, IDENTIFIES AS FURTHERING THE PURPOSES
18 OF THIS ARTICLE AND COMPLYING WITH STATE AND FEDERAL REGULATIONS REGARD-
19 ING THE SECURITY AND CONFIDENTIALITY OF INDIVIDUALLY IDENTIFYING HEALTH
20 INFORMATION.

21 6. THE JUSTICE CENTER SHALL REVIEW SUCH ELECTRONIC DATABASE TO IDENTI-
22 FY INCIDENT PATTERNS AND TRENDS, AND IMPLEMENT PREVENTIVE AND CORRECTIVE
23 ACTIONS, AND TO IDENTIFY PATTERNS AND TRENDS IN THE REPORTING AND
24 RESPONSE TO ALLEGATIONS OF ABUSE AND NEGLECT AND OTHER REPORTABLE INCI-
25 DENTS AND DEVELOP PLANS OF IMPROVEMENT BASED ON SUCH REVIEWS.

26 7. (A) GENERAL INFORMATION ABOUT THE EXISTENCE AND PURPOSES OF THE
27 VULNERABLE PERSONS' CENTRAL REGISTER AND HOW TO MAKE A REPORT TO THE
28 REGISTER SHALL BE MADE AVAILABLE ON THE WEBSITE OF THE JUSTICE CENTER,
29 WITH LINKS TO SUCH INFORMATION PROVIDED ON THE WEBSITES OF EACH OF THE
30 STATE OVERSIGHT AGENCIES COVERED BY THIS ARTICLE.

31 (B) THE JUSTICE CENTER, IN COLLABORATION WITH THE STATE OVERSIGHT
32 AGENCIES COVERED BY THIS ARTICLE, SHALL DEVELOP AND WIDELY DISTRIBUTE
33 WRITTEN INFORMATION EXPLAINING THE REPORTING REQUIREMENTS AND PROCESSES
34 CONSISTENT WITH THIS ARTICLE. IN ADDITION, UPON A VULNERABLE PERSON'S
35 COMMENCEMENT OF THE RECEIPT OF SERVICES BY A FACILITY OR A PROVIDER
36 AGENCY, PERSONAL REPRESENTATIVES SHALL BE PROVIDED WITH SUCH INFORMA-
37 TION, AND SUCH INFORMATION SHALL BE MADE AVAILABLE UPON REQUEST TO ANY
38 PERSON.

39 (C) THE JUSTICE CENTER, IN COLLABORATION WITH THE STATE AGENCIES OPER-
40 ATING, LICENSING OR CERTIFYING FACILITIES OR THE PROVIDER AGENCIES
41 COVERED BY THIS ARTICLE, SHALL PROVIDE MANDATED REPORTERS WITH WRITTEN
42 INFORMATION EXPLAINING THE REPORTING REQUIREMENTS IN ACCORDANCE WITH
43 THIS ARTICLE.

44 (D) THE JUSTICE CENTER SHALL DEVELOP AND IMPLEMENT PROGRAMS TO PUBLIC-
45 LY RECOGNIZE AND VALUE THE CONTRIBUTIONS OF REPORTERS OF ABUSE OR
46 NEGLECT, OR SIGNIFICANT INCIDENTS, WHOSE ACTIONS PROMPT CORRECTIONS AND
47 IMPROVEMENTS IN THE SERVICE SYSTEM; PROVIDED, HOWEVER, THAT THE NAME AND
48 OTHER PERSONALLY IDENTIFIABLE INFORMATION OF SUCH REPORTER SHALL NOT BE
49 SHARED UNLESS SUCH PERSON AUTHORIZES DISCLOSURE.

50 8. IN A CASE WHERE A SUBJECT OF A REPORT OF ALLEGED ABUSE OR NEGLECT
51 RESIGNS FROM HIS OR HER POSITION OR IS TERMINATED WHILE UNDER INVESTI-
52 GATION, THE STATE OPERATING AGENCY OR THE APPLICABLE FACILITY OR PROVID-
53 ER AGENCY SHALL PROMPTLY REPORT SUCH RESIGNATION OR TERMINATION TO THE
54 JUSTICE CENTER. THE INVESTIGATION OF THE REPORT SHALL CONTINUE DESPITE
55 THE RESIGNATION OR TERMINATION OF SUCH SUBJECT.

1 S 493. ABUSE AND NEGLECT FINDINGS; CONSEQUENCES. 1. WITHIN SIXTY DAYS
2 OF THE VULNERABLE PERSONS' CENTRAL REGISTER ACCEPTING A REPORT OF AN
3 ALLEGATION OF ABUSE OR NEGLECT, THE JUSTICE CENTER SHALL CAUSE THE FIND-
4 INGS OF THE INVESTIGATION TO BE ENTERED INTO THE VULNERABLE PERSONS'
5 CENTRAL REGISTER. THE JUSTICE CENTER MAY TAKE ADDITIONAL TIME TO ENTER
6 SUCH FINDINGS INTO THE VULNERABLE PERSONS' CENTRAL REGISTER; PROVIDED,
7 HOWEVER, THAT THE REASONS FOR ANY DELAY MUST BE DOCUMENTED AND SUCH
8 FINDINGS SUBMITTED AS SOON THEREAFTER AS PRACTICABLY POSSIBLE.

9 2. FOR SUBSTANTIATED REPORTS OF ABUSE OR NEGLECT IN FACILITIES OR
10 PROVIDER AGENCIES IN RECEIPT OF MEDICAL ASSISTANCE, SUCH INFORMATION
11 SHALL ALSO BE FORWARDED BY THE JUSTICE CENTER TO THE OFFICE OF THE MEDI-
12 CAID INSPECTOR GENERAL.

13 3. (A) A FINDING SHALL BE BASED ON A PREPONDERANCE OF THE EVIDENCE AND
14 SHALL INDICATE WHETHER: (I) THE ALLEGED ABUSE OR NEGLECT IS SUBSTANTI-
15 ATED BECAUSE IT IS DETERMINED THAT THE INCIDENT OCCURRED AND THE SUBJECT
16 OF THE REPORT WAS RESPONSIBLE OR, IF NO SUBJECT CAN BE IDENTIFIED AND AN
17 INCIDENT OCCURRED, THAT, THE FACILITY OR PROVIDER AGENCY WAS RESPONSI-
18 BLE; (II) THE ALLEGED ABUSE OR NEGLECT IS DISCONFIRMED BECAUSE IT IS
19 DETERMINED NOT TO HAVE OCCURRED OR THE SUBJECT OF THE REPORT WAS NOT
20 RESPONSIBLE; OR (III) THE REPORT IS INCONCLUSIVE BECAUSE IT CANNOT BE
21 DETERMINED THAT THE INCIDENT OCCURRED OR THAT THE SUBJECT OF THE REPORT
22 WAS RESPONSIBLE. A REPORT SHALL NOT BE DETERMINED TO BE INCONCLUSIVE
23 SOLELY BECAUSE THE SUBJECT OF A REPORT RESIGNS DURING AN INVESTIGATION.
24 THE JUSTICE CENTER SHALL CONSIDER A RESIGNATION OF A SUBJECT OF A REPORT
25 DURING AN INVESTIGATION AS A NEGATIVE INFERENCE REGARDING THE ACTIONS OR
26 LACK OF ACTION BY SUCH SUBJECT.

27 (B) IN CONJUNCTION WITH THE POSSIBLE FINDINGS IDENTIFIED IN PARAGRAPH
28 (A) OF THIS SUBDIVISION, A CONCURRENT FINDING MAY BE MADE THAT A SYSTEM-
29 IC PROBLEM CAUSED OR CONTRIBUTED TO THE OCCURRENCE OF THE INCIDENT.

30 (C) THE JUSTICE CENTER SHALL NOTIFY THE SUBJECT OF THE REPORT, THE
31 FACILITY OR PROVIDER AGENCY WHERE THE ABUSE OR NEGLECT WAS ALLEGED TO
32 HAVE OCCURRED, THE APPLICABLE STATE OVERSIGHT AGENCY AND OTHER PERSONS
33 NAMED IN THE REPORT OF THE FINDINGS OF THE INVESTIGATION AND, AS APPLI-
34 CABLE, THE LOCAL SOCIAL SERVICES COMMISSIONER OR SCHOOL DISTRICT THAT
35 PLACED THE INDIVIDUAL IN THE FACILITY OR PROVIDER AGENCY, THE OFFICE OF
36 CHILDREN AND FAMILY SERVICES AND ANY ATTORNEY FOR THE INDIVIDUAL WHOSE
37 APPOINTMENT HAS BEEN CONTINUED BY A FAMILY COURT JUDGE DURING THE TERM
38 OF AN INDIVIDUAL'S PLACEMENT, IN ACCORDANCE WITH APPLICABLE STATE AND
39 FEDERAL LAWS AND REGULATIONS GOVERNING THE USE AND DISCLOSURE OF
40 RECORDS. IF THE REPORT IS SUBSTANTIATED, THE JUSTICE CENTER SHALL ALSO
41 NOTIFY THE SUBJECT OF THE REPORT OF HIS OR HER RIGHTS TO REQUEST THAT
42 THE REPORT BE AMENDED IN ACCORDANCE WITH SECTION FOUR HUNDRED
43 NINETY-FOUR OF THIS ARTICLE.

44 (D) A REPORT THAT IS FOUND TO BE DISCONFIRMED OR INCONCLUSIVE SHALL BE
45 SEALED IMMEDIATELY.

46 4. SUBSTANTIATED REPORTS OF ABUSE OR NEGLECT SHALL BE CATEGORIZED INTO
47 ONE OR MORE OF THE FOLLOWING THREE CATEGORIES, AS APPLICABLE:

48 (A) CATEGORY ONE CONDUCT IS SERIOUS PHYSICAL ABUSE, SEXUAL ABUSE OR
49 OTHER SERIOUS CONDUCT BY AGENTS OF A FACILITY OR PROVIDER AGENCY, WHICH
50 INCLUDES:

51 (I) INTENTIONAL CONDUCT THAT CAUSES PHYSICAL INJURY AS DEFINED IN
52 SUBDIVISION NINE OF SECTION 10.00 OF THE PENAL LAW, OR THAT CAUSES DEATH
53 OR SERIOUS DISFIGUREMENT, IMPAIRMENT OF HEALTH OR LOSS OR IMPAIRMENT OF
54 THE FUNCTION OF ANY BODILY ORGAN OR PART OR CREATES A REASONABLY FORE-
55 SEEABLE RISK OF SUCH PHYSICAL INJURY;

(II) FAILURE TO PERFORM A DUTY THAT RESULTS IN PHYSICAL INJURY THAT CREATES A RISK OF DEATH OR THAT CAUSES DEATH OR SERIOUS DISFIGUREMENT, IMPAIRMENT OF HEALTH OR LOSS OR IMPAIRMENT OF THE FUNCTION OF ANY BODILY ORGAN OR PART, A SUBSTANTIAL DIMINUTION OF A SERVICE RECIPIENT'S PSYCHOLOGICAL OR INTELLECTUAL FUNCTIONING, AS DETERMINED BY A PHYSICIAN, PSYCHOLOGIST, PSYCHIATRIC NURSE PRACTITIONER, LICENSED CLINICAL OR MASTER SOCIAL WORKER OR LICENSED MENTAL HEALTH COUNSELOR, OR CREATES A REASONABLY FORESEEABLE RISK OF EITHER;

(III) THREATS, TAUNTS, DEROGATORY COMMENTS OR RIDICULE THAT RESULTS IN OR HAS THE POTENTIAL TO RESULT IN A SUBSTANTIAL DIMINUTION OF A SERVICE RECIPIENT'S PSYCHOLOGICAL OR INTELLECTUAL FUNCTIONING, AS DETERMINED BY A PHYSICIAN, PSYCHOLOGIST, PSYCHIATRIC NURSE PRACTITIONER, LICENSED CLINICAL OR MASTER SOCIAL WORKER OR LICENSED MENTAL HEALTH COUNSELOR;

(IV) ENCOURAGING OTHERS TO ENGAGE IN CRUEL OR DEGRADING TREATMENT OF A SERVICE RECIPIENT THAT RESULTS IN OR HAS THE POTENTIAL TO RESULT IN A SUBSTANTIAL DIMINUTION OF A SERVICE RECIPIENT'S PSYCHOLOGICAL OR INTELLECTUAL FUNCTIONING, AS DETERMINED BY A PHYSICIAN, PSYCHOLOGIST, PSYCHIATRIC NURSE PRACTITIONER, LICENSED CLINICAL OR MASTER SOCIAL WORKER OR LICENSED MENTAL HEALTH COUNSELOR;

(V) ENGAGING IN ANY CONDUCT INTENDED TO PROMOTE OR PRODUCE SEXUAL CONTACT BETWEEN PERSONS RECEIVING SERVICES AND AGENTS OF A FACILITY OR PROVIDER AGENCY OR BETWEEN PERSONS RECEIVING SERVICES WHEN ONE PERSON IS NOT CAPABLE OF CONSENT. SEXUAL CONTACT SHALL INCLUDE BUT NOT BE LIMITED TO SEXUAL INTERCOURSE, DEVIATE SEXUAL INTERCOURSE, AGGRAVATED SEXUAL CONTACT OR SEXUAL TOUCHING;

(VI) ANY CONDUCT ENCOURAGING, FACILITATING OR PERMITTING ANOTHER TO ENGAGE IN SEXUAL CONDUCT WITH A SERVICE RECIPIENT;

(VII) ANY CONDUCT ENCOURAGING OR PERMITTING ANOTHER TO PROMOTE A SEXUAL PERFORMANCE BY A SERVICE RECIPIENT OR PERMITTING OR USING A SERVICE RECIPIENT IN ANY PROSTITUTION-RELATED OFFENSE;

(VIII) USING OR DISTRIBUTING AN UNLAWFUL CONTROLLED SUBSTANCE, AS DEFINED BY ARTICLE THIRTY-THREE OF THE PUBLIC HEALTH LAW, AT THE WORK PLACE OR WHILE ON DUTY;

(IX) ADMINISTERING AN UNLAWFUL 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;

(XI) FAILING TO REPORT 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 OR INTENTIONALLY WITHHOLDING MATERIAL INFORMATION DURING AN INVESTIGATION INTO A REPORT OF CONDUCT DESCRIBED IN SUBPARAGRAPHS (I) THROUGH (X) OF THIS PARAGRAPH OR OTHERWISE OBSTRUCTING AN 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 AGENT MAKING SUCH A REPORT IN GOOD FAITH.

(B) CATEGORY TWO CONDUCT IS ABUSE OR NEGLECT BY AGENTS OF A FACILITY OR PROVIDER AGENCY THAT DOES NOT MEET THE CONDUCT DESCRIBED IN CATEGORY ONE. CONDUCT IN THIS CATEGORY THAT OCCURS MORE THAN ONCE WITHIN A THREE-YEAR PERIOD SHALL ELEVATE A FINDING FROM CATEGORY TWO TO CATEGORY

ONE. REPORTS THAT RESULT IN A CATEGORY TWO FINDING NOT ELEVATED TO A CATEGORY ONE FINDING SHALL BE SEALED AFTER FIVE YEARS.

(C) CATEGORY THREE 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 MANAGEMENT, STAFFING, TRAINING OR SUPERVISION. CATEGORY THREE 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) WHEN AN EMPLOYEE HAS A SECOND SUBSTANTIATED CATEGORY TWO FINDING OCCURRING WITHIN A THREE-YEAR PERIOD, AN EMPLOYEE WITH A CATEGORY 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 DISCIPLINARY ACTION, THE EMPLOYER 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 FINDING, THE JUSTICE CENTER SHALL REQUIRE THE FACILITY OR PROVIDER AGENCY TO DEVELOP AND IMPLEMENT A PLAN OF PREVENTION AND REMEDIATION OF THE DEFICIENT CONDITIONS. SUCH PLAN MUST BE APPROVED BY AND ITS IMPLEMENTATION 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 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.

S 494. AMENDMENTS TO AND APPEALS OF SUBSTANTIATED REPORTS OF ABUSE OR NEGLECT. 1.(A) AT ANY TIME SUBSEQUENT TO THE COMPLETION OF AN INVESTIGATION 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 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.

(B) IF IT IS DETERMINED 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 SUBDIVISION FOUR OF SECTION FOUR HUNDRED NINETY-SIX OF THIS ARTICLE.

2. THE JUSTICE CENTER IS AUTHORIZED TO MAKE ANY APPROPRIATE ORDER RESPECTING THE AMENDMENT OF THE FINDINGS OF A REPORT TO MAKE IT ACCURATE OR CONSISTENT WITH THE REQUIREMENTS OF THIS ARTICLE.

1 S 495. REGISTER OF SUBSTANTIATED CATEGORY ONE CASES OF ABUSE OR
2 NEGLECT. 1. THE JUSTICE CENTER SHALL DEVELOP AND MAINTAIN A REGISTER OF
3 SUBJECTS OF REPORTS WHO HAVE BEEN FOUND TO HAVE A SUBSTANTIATED CATEGORY
4 ONE CASE OF ABUSE OR NEGLECT, IN ACCORDANCE WITH PARAGRAPH (A) OF SUBDI-
5 VISION FOUR OF SECTION FOUR HUNDRED NINETY-THREE OF THIS ARTICLE, AND
6 WHO HAVE: (A) NOT REQUESTED AN AMENDMENT OF THE FINDINGS OF THE REPORT
7 IN THE TIME SPECIFIED IN SUBDIVISION ONE OF SECTION FOUR HUNDRED NINE-
8 TY-FOUR OF THIS ARTICLE; OR (B) BEEN HEARD PURSUANT TO SUCH SUBDIVISION
9 AND ALL THE FINDINGS OF THE REPORT WERE NOT AMENDED TO BE DISCONFIRMED
10 OR INCONCLUSIVE.

11 2. ALL FACILITY AND PROVIDER AGENCIES AS DEFINED IN SUBDIVISION FOUR
12 OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THIS ARTICLE, OTHER PROVIDERS OF
13 SERVICES TO VULNERABLE PERSONS IN PROGRAMS LICENSED, CERTIFIED OR FUNDED
14 BY ANY STATE OVERSIGHT AGENCY AND OTHER PROVIDER AND LICENSING AGENCIES
15 AS DEFINED IN SUBDIVISION THREE OR FOUR OF SECTION FOUR HUNDRED TWENTY-
16 FOUR-A OF THIS CHAPTER SHALL CHECK THE REGISTER OF SUBSTANTIATED CATEGO-
17 RY ONE CASES OF ABUSE OR NEGLECT BEFORE DETERMINING WHETHER TO HIRE OR
18 OTHERWISE ALLOW ANY PERSON AS AN EMPLOYEE, ADMINISTRATOR, CONSULTANT,
19 INTERN, VOLUNTEER OR CONTRACTOR WHO WILL HAVE THE POTENTIAL FOR REGULAR
20 AND SUBSTANTIAL CONTACT WITH A SERVICE RECIPIENT OR BEFORE APPROVING AN
21 APPLICANT FOR A LICENSE, CERTIFICATE, PERMIT OR OTHER APPROVAL TO
22 PROVIDE CARE TO A SERVICE RECIPIENT. (FOR STATE ENTITIES BOUND BY
23 COLLECTIVE BARGAINING, SUCH ACTION ESTABLISHED BY COLLECTIVE BARGAINING
24 SHALL GOVERN.)

25 3. IF A PERSON IS LISTED ON THE REGISTER OF SUBSTANTIATED CATEGORY ONE
26 CASES OF ABUSE OR NEGLECT, A FACILITY OR PROVIDER AGENCY, AS DEFINED IN
27 SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THIS ARTICLE,
28 AND ALL OTHER PROVIDERS OF SERVICES TO VULNERABLE PERSONS IN PROGRAMS
29 LICENSED OR CERTIFIED BY ANY STATE OVERSIGHT AGENCY SHALL NOT HIRE SUCH
30 A PERSON TO HAVE REGULAR AND SUBSTANTIAL CONTACT WITH A SERVICE RECIPI-
31 ENT IN ANY SUCH FACILITY OR PROGRAM. OTHER PROVIDERS OR LICENSING AGEN-
32 CIES AS DEFINED IN SUBDIVISION THREE OR FOUR OF SECTION FOUR HUNDRED
33 TWENTY-FOUR-A OF THIS CHAPTER SHALL DETERMINE WHETHER TO HIRE OR ALLOW
34 SUCH A PERSON TO HAVE REGULAR OR SUBSTANTIAL CONTACT WITH A SERVICE
35 RECIPIENT IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION FIVE OF
36 SECTION FOUR HUNDRED TWENTY-FOUR-A OF THIS CHAPTER.

37 4. AN AGENT OF A FACILITY OR PROVIDER AGENCY SHALL BE SUBJECT TO IMME-
38 DIATE TERMINATION IF HE OR SHE IS CONVICTED OF ANY OFFENSE AS DEFINED IN
39 SUBDIVISION ONE OF SECTION 10.00 OF THE PENAL LAW THAT RELATES DIRECTLY
40 TO THE ABUSE OR NEGLECT OF A VULNERABLE PERSON, OR IS PLACED ON THE
41 REGISTER OF SUBSTANTIATED CATEGORY ONE CASES OF ABUSE OR NEGLECT. (FOR
42 STATE ENTITIES BOUND BY COLLECTIVE BARGAINING, SUCH ACTION ESTABLISHED
43 BY COLLECTIVE BARGAINING SHALL GOVERN.)

44 5. PLACEMENT ON THE REGISTER SHALL BE PERMANENT, UNLESS THE OFFICE IS
45 OFFICIALLY NOTIFIED OF THE INDIVIDUAL'S DEATH.

46 6. NOTHING IN THIS ARTICLE SHALL DIMINISH THE RIGHTS OR REMEDIES
47 OTHERWISE AVAILABLE UNDER LAW, REGULATION OR APPROPRIATE COLLECTIVE
48 BARGAINING AGREEMENTS OF ANY FACILITY OR PROVIDER AGENCY WITH RESPECT TO
49 THE TERMINATION OR DISCIPLINE OF EMPLOYEES.

50 S 496. CONFIDENTIALITY. 1. REPORTS MADE PURSUANT TO THIS ARTICLE AS
51 WELL AS ANY OTHER INFORMATION OBTAINED, REPORTS WRITTEN OR PHOTOGRAPHS
52 TAKEN CONCERNING SUCH REPORTS IN THE POSSESSION OF THE JUSTICE CENTER, A
53 STATE OVERSIGHT AGENCY, A DELEGATE INVESTIGATORY ENTITY, FACILITY OR
54 PROVIDER AGENCY COVERED BY THIS ARTICLE SHALL BE CONFIDENTIAL AND SHALL
55 NOT BE DISCLOSED TO ANY OTHER PARTY UNLESS AUTHORIZED PURSUANT TO BOTH
56 THIS SECTION AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW. IN THE

1 EVENT THAT OTHER APPLICABLE STATE OR FEDERAL LAW PROVISIONS ARE MORE
2 RESTRICTIVE THAN THE PROVISIONS OF THIS SECTION, THE PROVISIONS OF SUCH
3 OTHER STATE OR FEDERAL LAW SHALL APPLY. IN ACCORDANCE WITH THIS SECTION,
4 SUCH INFORMATION SHALL BE MADE AVAILABLE ONLY TO:

5 (A) A PERSON WHO IS THE SUBJECT OF THE REPORT, AS DEFINED IN SUBDIVI-
6 SION THIRTEEN OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THIS ARTICLE;

7 (B) OTHER PERSONS NAMED IN THE REPORT, AS DEFINED IN SUBDIVISION FOUR-
8 TEEN OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THIS ARTICLE;

9 (C) THE JUSTICE CENTER;

10 (D) THE APPLICABLE STATE OPERATING AGENCY, THE APPLICABLE STATE OVER-
11 SIGHT AGENCY, THE DIRECTOR OR OPERATOR OF THE APPLICABLE FACILITY OR
12 PROVIDER AGENCY AND, AS APPROPRIATE, THE LOCAL SOCIAL SERVICES COMMIS-
13 SIONER, THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES,
14 OR THE SCHOOL DISTRICT PLACING THE SERVICE RECIPIENT, OR AN AGENCY
15 PROVIDING ADULT PROTECTIVE SERVICES TO THE SERVICE RECIPIENT;

16 (E) A PHYSICIAN WHO HAS BEFORE HIM OR HER A SERVICE RECIPIENT WHOM HE
17 OR SHE REASONABLY SUSPECTS MAY BE ABUSED OR NEGLECTED;

18 (F) A COURT, UPON A FINDING THAT THE INFORMATION IN THE RECORD IS
19 NECESSARY FOR THE DETERMINATION OF AN ISSUE BEFORE THE COURT;

20 (G) A GRAND JURY, UPON A FINDING THAT THE INFORMATION IN THE RECORD IS
21 NECESSARY FOR THE DETERMINATION OF CHARGES BEFORE THE GRAND JURY;

22 (H) ANY APPROPRIATE STATE LEGISLATIVE COMMITTEE RESPONSIBLE FOR LEGIS-
23 LATION AFFECTING VULNERABLE PERSONS, PROVIDED, HOWEVER, THAT NO INFORMA-
24 TION IDENTIFYING OR TENDING TO IDENTIFY THE SUBJECTS OF THE REPORT OR
25 OTHER PERSONS NAMED IN THE REPORT SHALL BE MADE AVAILABLE;

26 (I) ANY PERSON ENGAGED IN A BONA FIDE RESEARCH PURPOSE; PROVIDED,
27 HOWEVER, THAT NO INFORMATION IDENTIFYING OR TENDING TO IDENTIFY THE
28 SUBJECTS OF THE REPORT OR OTHER PERSONS NAMED IN THE REPORT SHALL BE
29 MADE AVAILABLE TO THE RESEARCHER UNLESS IT IS ABSOLUTELY ESSENTIAL TO
30 THE RESEARCH PURPOSE AND THE JUSTICE CENTER, AFTER CONSULTATION WITH THE
31 COMMISSIONER OF THE APPLICABLE STATE OVERSIGHT AGENCY, GIVES PRIOR
32 APPROVAL;

33 (J) A FACILITY OR PROVIDER AGENCY AS DEFINED IN SUBDIVISION FOUR OF
34 SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE ARTICLE, ALL OTHER PROVIDERS OF
35 SERVICES TO VULNERABLE PERSONS IN PROGRAMS LICENSED OR CERTIFIED BY ANY
36 STATE OVERSIGHT AGENCY, ANY OTHER PROVIDER AGENCY AS DEFINED IN SUBDIVI-
37 SION THREE OF SECTION FOUR HUNDRED TWENTY-FOUR-A OF THIS CHAPTER OR A
38 LICENSING AGENCY AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED
39 TWENTY-FOUR-A OF THIS CHAPTER, IN ACCORDANCE WITH THE PROVISIONS OF
40 SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY-FIVE OF THIS ARTICLE;

41 (K) A PROBATION SERVICE REGARDING A PERSON ABOUT WHOM IT IS CONDUCTING
42 AN INVESTIGATION PURSUANT TO ARTICLE THREE HUNDRED NINETY OF THE CRIMI-
43 NAL PROCEDURE LAW, OR A PROBATION SERVICE OR THE DEPARTMENT OF
44 CORRECTIONS AND COMMUNITY SUPERVISION REGARDING A PERSON TO WHOM THE
45 SERVICE OR DEPARTMENT IS PROVIDING SUPERVISION PURSUANT TO ARTICLE SIXTY
46 OF THE PENAL LAW OR ARTICLE EIGHT OF THE CORRECTION LAW, WHERE THE
47 SERVICE OR DEPARTMENT REQUESTS THE INFORMATION UPON A CERTIFICATION THAT
48 SUCH INFORMATION IS NECESSARY TO CONDUCT ITS INVESTIGATION, THAT THERE
49 IS REASONABLE CAUSE TO BELIEVE THAT THE SUBJECT OF AN INVESTIGATION IS
50 THE SUBJECT OF A SUBSTANTIATED REPORT AND THAT THERE IS REASONABLE CAUSE
51 TO BELIEVE THAT SUCH RECORDS ARE NECESSARY TO THE INVESTIGATION BY THE
52 PROBATION SERVICE OR THE DEPARTMENT, PROVIDED, HOWEVER, THAT ONLY
53 SUBSTANTIATED REPORTS SHALL BE FURNISHED PURSUANT TO THIS SUBDIVISION;

54 (L) A DISTRICT ATTORNEY, AN ASSISTANT DISTRICT ATTORNEY OR INVESTI-
55 GATOR EMPLOYED BY THE OFFICE OF A DISTRICT ATTORNEY, A SWORN OFFICER OF
56 THE DIVISION OF STATE POLICE, OF THE REGIONAL STATE PARK POLICE, OF A

1 CITY POLICE DEPARTMENT, OR OF A COUNTY, TOWN OR VILLAGE POLICE DEPART-
2 MENT OR COUNTY SHERIFF'S OFFICE OR DEPARTMENT UPON WRITTEN VERIFICATION
3 THAT SUCH INFORMATION IS NECESSARY TO CONDUCT A CRIMINAL INVESTIGATION
4 OR CRIMINAL PROSECUTION OF A PERSON, AND THAT THERE IS REASONABLE CAUSE
5 TO BELIEVE THAT SUCH PERSON IS THE SUBJECT OF A REPORT; PROVIDED, HOWEV-
6 ER, THAT ONLY SUBSTANTIATED REPORTS SHALL BE FURNISHED PURSUANT TO THIS
7 SUBDIVISION;

8 (M) THE NEW YORK CITY DEPARTMENT OF INVESTIGATION; PROVIDED, HOWEVER,
9 THAT NO INFORMATION IDENTIFYING THE SUBJECTS OF THE REPORT OR OTHER
10 PERSONS NAMED IN THE REPORT SHALL BE MADE AVAILABLE TO THE DEPARTMENT OF
11 INVESTIGATION UNLESS SUCH INFORMATION IS ESSENTIAL TO AN INVESTIGATION
12 WITHIN THE LEGAL AUTHORITY OF THE DEPARTMENT OF INVESTIGATION AND THE
13 JUSTICE CENTER OR THE APPLICABLE STATE OVERSIGHT AGENCY GIVES PRIOR
14 APPROVAL;

15 (N) A PROVIDER OR COORDINATOR OF SERVICES TO WHICH A FACILITY OR
16 PROVIDER AGENCY, OPERATING STATE AGENCY, OR SOCIAL SERVICES DISTRICT HAS
17 REFERRED A SERVICE RECIPIENT OR A SERVICE RECIPIENT'S FAMILY OR TO WHOM
18 THE SERVICE RECIPIENT OR THE RECIPIENT'S FAMILY HAVE REFERRED THEMSELVES
19 AT THE REQUEST OF SUCH AGENCY OR SOCIAL SERVICES DISTRICT, WHEN SAID
20 SERVICE RECIPIENT IS REPORTED TO THE VULNERABLE PERSONS' CENTRAL REGIS-
21 TER AS THE VULNERABLE PERSON AND WHEN THE RECORDS, REPORTS OR OTHER
22 INFORMATION ARE NECESSARY TO ENABLE THE PROVIDER OR COORDINATOR TO
23 ESTABLISH AND IMPLEMENT A PLAN OF SERVICE FOR THE SERVICE RECIPIENT OR
24 THE SERVICE RECIPIENT'S FAMILY, OR TO MONITOR THE PROVISION AND COORDI-
25 NATION OF SERVICES AND THE CIRCUMSTANCES OF THE SERVICE RECIPIENT AND
26 THE SERVICE RECIPIENT'S FAMILY, OR TO DIRECTLY PROVIDE SERVICES IN
27 ACCORDANCE WITH REQUIREMENTS ESTABLISHED BY THE APPLICABLE STATE OVER-
28 SIGHT AGENCY TO THE EXTENT THAT THE SHARING OF SUCH INFORMATION IS NOT
29 OTHERWISE PROHIBITED BY FEDERAL LAW; PROVIDED, HOWEVER, A PROVIDER OR
30 COORDINATOR OF SERVICES GIVEN ACCESS TO INFORMATION CONCERNING A SERVICE
31 RECIPIENT PURSUANT TO THIS PARAGRAPH SHALL BE AUTHORIZED TO REDISCLOSE
32 SUCH INFORMATION TO OTHER PERSONS OR AGENCIES WHICH ALSO PROVIDE
33 SERVICES TO THE SERVICE RECIPIENT OR THE SERVICE RECIPIENT'S FAMILY ONLY
34 IF AN AGREEMENT HAS BEEN OR WILL BE REACHED BETWEEN THE PROVIDER OR
35 COORDINATOR OF SERVICE AND SUCH FACILITY OR PROVIDER AGENCY, OPERATING
36 STATE AGENCY OR LOCAL DISTRICT. AN AGREEMENT ENTERED INTO PURSUANT TO
37 THIS PARAGRAPH SHALL INCLUDE THE SPECIFIC AGENCIES AND CATEGORIES OF
38 INDIVIDUALS TO WHOM REDISCLOSURE BY THE PROVIDER OR COORDINATOR OF
39 SERVICES IS AUTHORIZED. PERSONS OR AGENCIES GIVEN ACCESS TO INFORMATION
40 PURSUANT TO THIS PARAGRAPH MAY EXCHANGE SUCH INFORMATION IN ORDER TO
41 FACILITATE THE PROVISION OR COORDINATION OF SERVICES TO THE SERVICE
42 RECIPIENT OR THE SERVICE RECIPIENT'S FAMILY;

43 (O) A DISINTERESTED PERSON MAKING AN INVESTIGATION PURSUANT TO SECTION
44 ONE HUNDRED SIXTEEN OF THE DOMESTIC RELATIONS LAW, PROVIDED THAT SUCH
45 DISINTERESTED PERSON SHALL ONLY MAKE THIS INFORMATION AVAILABLE TO THE
46 JUDGE BEFORE WHOM THE ADOPTION PROCEEDING IS PENDING;

47 (P) A CRIMINAL JUSTICE AGENCY CONDUCTING AN INVESTIGATION OF A MISSING
48 CHILD OR VULNERABLE ADULT WHERE THERE IS REASON TO SUSPECT INFORMATION
49 IN A SUBSTANTIATED REPORT UNDER THIS ARTICLE IS NEEDED TO FURTHER SUCH
50 INVESTIGATION;

51 (Q) THE DIRECTOR OR OPERATOR OF THE FACILITY OR PROVIDER AGENCY AND,
52 AS APPROPRIATE, THE LOCAL SOCIAL SERVICES COMMISSIONER, COMMISSIONER OF
53 THE OFFICE OF CHILDREN AND FAMILY SERVICES, OR SCHOOL DISTRICT PLACING A
54 CHILD IN THAT PROGRAM, THE APPLICABLE EXECUTIVE AGENCY, AND, FOR ANY
55 REPORT INVOLVING ABUSE OR NEGLECT OF A CHILD, ANY ATTORNEY APPOINTED TO
56 REPRESENT THE CHILD WHOSE APPOINTMENT HAS BEEN CONTINUED BY A FAMILY

1 COURT JUDGE DURING THE TERM OF THE PLACEMENT AND SUBJECT TO THE LIMITA-
2 TIONS CONTAINED IN SECTION FOUR HUNDRED NINETY-FIVE OF THIS ARTICLE;

3 (R) FOR ANY REPORT ALLEGING ABUSE OR NEGLECT OF A CHILD, A CHILD
4 PROTECTIVE SERVICE OF ANOTHER STATE WHEN SUCH SERVICE CERTIFIES THAT THE
5 RECORDS AND REPORTS ARE NECESSARY IN ORDER TO CONDUCT A CHILD ABUSE OR
6 MALTREATMENT INVESTIGATION WITHIN ITS JURISDICTION OF THE SUBJECT OF THE
7 REPORT AND SHALL ONLY BE USED FOR PURPOSES OF CONDUCTING SUCH INVESTI-
8 GATION AND WILL NOT BE REDISCLOSED TO ANY OTHER PERSON OR AGENCY;

9 (S) AN ATTORNEY FOR A CHILD, APPOINTED PURSUANT TO SECTION ONE THOU-
10 SAND SIXTEEN OF THE FAMILY COURT ACT, AT ANY TIME SUCH APPOINTMENT IS IN
11 EFFECT, IN RELATION TO ANY REPORT IN WHICH THE RESPONDENT IN THE
12 PROCEEDING IN WHICH THE ATTORNEY FOR THE CHILD IS APPOINTED IS THE
13 SUBJECT OR ANOTHER PERSON NAMED IN THE REPORT, PURSUANT TO SECTIONS ONE
14 THOUSAND THIRTY-NINE-A AND ONE THOUSAND FIFTY-TWO-A OF THE FAMILY COURT
15 ACT;

16 (T) OFFICERS AND EMPLOYEES OF THE STATE COMPTROLLER, FOR PURPOSES OF A
17 DULY AUTHORIZED PERFORMANCE AUDIT, PROVIDED THAT SUCH COMPTROLLER SHALL
18 HAVE CERTIFIED TO THE KEEPER OF SUCH RECORDS THAT HE OR SHE HAS INSTI-
19 TUTED PROCEDURES DEVELOPED IN CONSULTATION WITH THE JUSTICE CENTER TO
20 LIMIT ACCESS TO SERVICE RECIPIENT-IDENTIFIABLE INFORMATION TO PERSONS
21 REQUIRING SUCH INFORMATION FOR PURPOSES OF THE AUDIT AND THAT APPROPRI-
22 ATE CONTROLS AND PROHIBITIONS ARE IMPOSED ON THE DISSEMINATION OF
23 SERVICE RECIPIENT-IDENTIFIABLE INFORMATION CONTAINED IN THE CONDUCT OF
24 THE AUDIT.

25 (I) INFORMATION PERTAINING TO THE SUBSTANCE OR CONTENT OF ANY PSYCHO-
26 LOGICAL, PSYCHIATRIC, THERAPEUTIC, CLINICAL OR MEDICAL REPORTS, EVALU-
27 ATIONS OR LIKE MATERIALS OR INFORMATION PERTAINING TO SUCH VULNERABLE
28 PERSON OR SUCH PERSON'S FAMILY SHALL NOT BE MADE AVAILABLE TO SUCH OFFI-
29 CERS AND EMPLOYEES UNLESS DISCLOSURE OF SUCH INFORMATION IS ABSOLUTELY
30 ESSENTIAL TO THE SPECIFIC AUDIT ACTIVITY AND THE JUSTICE CENTER GIVES
31 PRIOR WRITTEN APPROVAL.

32 (II) ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF SERVICE RECI-
33 PIENT-IDENTIFIABLE INFORMATION SHALL SUBJECT SUCH COMPTROLLER OR OFFICER
34 TO DENIAL OF ANY FURTHER ACCESS TO RECORDS UNTIL SUCH TIME AS THE AUDIT
35 AGENCY HAS REVIEWED ITS PROCEDURES CONCERNING CONTROLS AND PROHIBITIONS
36 IMPOSED ON THE DISSEMINATION OF SUCH INFORMATION AND HAS TAKEN ALL
37 REASONABLE AND APPROPRIATE STEPS TO ELIMINATE SUCH LAPSES IN MAINTAINING
38 CONFIDENTIALITY TO THE SATISFACTION OF THE JUSTICE CENTER. SUCH JUSTICE
39 CENTER SHALL ESTABLISH THE GROUNDS FOR DENIAL OF ACCESS TO RECORDS
40 CONTAINED UNDER THIS SECTION AND SHALL RECOMMEND AS NECESSARY A PLAN OF
41 REMEDIATION TO THE AUDIT AGENCY. EXCEPT AS PROVIDED IN THIS SECTION,
42 NOTHING IN THIS SUBPARAGRAPH SHALL BE CONSTRUED AS LIMITING THE POWERS
43 OF SUCH COMPTROLLER OR OFFICER TO ACCESS RECORDS WHICH HE OR SHE IS
44 OTHERWISE AUTHORIZED TO AUDIT OR OBTAIN UNDER ANY OTHER APPLICABLE
45 PROVISION OF LAW. ANY PERSON GIVEN ACCESS TO INFORMATION PURSUANT TO
46 THIS SUBPARAGRAPH WHO RELEASES DATA OR INFORMATION TO PERSONS OR AGEN-
47 CIES NOT AUTHORIZED TO RECEIVE SUCH INFORMATION SHALL BE GUILTY OF A
48 CLASS A MISDEMEANOR;

49 (U) AN ENTITY WITH APPROPRIATE LEGAL AUTHORITY IN ANOTHER STATE TO
50 LICENSE, CERTIFY OR OTHERWISE APPROVE PROSPECTIVE FOSTER AND ADOPTIVE
51 PARENTS WHERE DISCLOSURE OF INFORMATION REGARDING THE PROSPECTIVE FOSTER
52 OR ADOPTIVE PARENTS AND OTHER PERSONS OVER THE AGE OF EIGHTEEN RESIDING
53 IN THE HOME OF SUCH PROSPECTIVE PARENTS IS REQUIRED BY PARAGRAPH TWENTY
54 OF SUBDIVISION (A) OF SECTION SIX HUNDRED SEVENTY-ONE OF TITLE FORTY-TWO
55 OF THE UNITED STATES CODE;

1 (V) A SOCIAL SERVICES OFFICIAL WHO IS INVESTIGATING WHETHER AN ADULT
2 IS IN NEED OF PROTECTIVE SERVICES IN ACCORDANCE WITH THE PROVISIONS OF
3 SECTION FOUR HUNDRED SEVENTY-THREE OF THIS CHAPTER OR A CHILD IS IN NEED
4 OF CHILD PROTECTIVE SERVICES PURSUANT TO THE PROVISIONS OF TITLE SIX OF
5 ARTICLE SIX OF THIS CHAPTER, WHEN SUCH OFFICIAL HAS REASONABLE CAUSE TO
6 BELIEVE THAT SUCH REPORTS AND INFORMATION ARE NEEDED TO FURTHER THE
7 PRESENT INVESTIGATION; AND

8 (W) FOR REPORTS ALLEGING ABUSE OR NEGLECT OF CHILDREN, MEMBERS OF A
9 CITIZEN REVIEW PANEL AS ESTABLISHED PURSUANT TO SECTION THREE HUNDRED
10 SEVENTY-ONE-B OF THIS CHAPTER; PROVIDED, HOWEVER, SUCH MEMBERS SHALL NOT
11 DISCLOSE TO ANY PERSON OR GOVERNMENTAL OFFICIAL ANY IDENTIFYING INFORMA-
12 TION WHICH THE PANEL HAS BEEN PROVIDED AND SHALL NOT MAKE PUBLIC OTHER
13 INFORMATION UNLESS OTHERWISE AUTHORIZED BY STATUTE.

14 2. (A) THE EXECUTIVE DIRECTOR, IN CONSULTATION WITH THE APPLICABLE
15 STATE OVERSIGHT AGENCY MAY DISCLOSE INFORMATION REGARDING THE ABUSE OR
16 NEGLECT OF A VULNERABLE PERSON AS SET FORTH IN THIS SECTION, AND THE
17 INVESTIGATION THEREOF AND ANY SERVICES RELATED THERETO, IF OTHERWISE
18 PERMITTED BY APPLICABLE FEDERAL LAW AND IF HE OR SHE DETERMINES THAT
19 SUCH DISCLOSURE SHALL NOT BE CONTRARY TO THE BEST INTERESTS OF THE
20 VULNERABLE PERSON AND ANY ONE OF THE FOLLOWING FACTORS ARE PRESENT:

21 (I) THE SUBJECT OF THE REPORT HAS BEEN CHARGED IN AN ACCUSATORY
22 INSTRUMENT WITH COMMITTING A CRIME RELATED TO A REPORT MAINTAINED IN THE
23 VULNERABLE PERSONS' CENTRAL REGISTER; OR

24 (II) THE INVESTIGATION OF THE ABUSE OR NEGLECT OF THE VULNERABLE
25 PERSON OR THE PROVISION OF SERVICES BY THE FACILITY OR PROVIDER AGENCY
26 HAS BEEN PUBLICLY DISCLOSED IN A REPORT REQUIRED TO BE DISCLOSED IN THE
27 COURSE OF THEIR OFFICIAL DUTIES, BY A LAW ENFORCEMENT AGENCY OR OFFI-
28 CIAL, A DISTRICT ATTORNEY, ANY OTHER STATE OR LOCAL INVESTIGATIVE AGENCY
29 OR OFFICIAL, OR BY JUDGE OF THE UNIFIED COURT SYSTEM; OR

30 (III) THERE HAS BEEN A PRIOR KNOWING, VOLUNTARY, PUBLIC DISCLOSURE BY
31 AN INDIVIDUAL CONCERNING A REPORT OF ABUSE OR NEGLECT IN WHICH SUCH
32 INDIVIDUAL IS NAMED AS THE SUBJECT OF THE REPORT AS DEFINED BY SUBDIVI-
33 SION THIRTEEN OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THIS ARTICLE; OR

34 (IV) THE VULNERABLE PERSON NAMED IN THE REPORT HAS DIED OR THE REPORT
35 INVOLVES THE NEAR FATALITY OF A VULNERABLE PERSON. FOR THE PURPOSES OF
36 THIS SECTION, "NEAR FATALITY" MEANS AN ACT THAT RESULTS IN THE VULNER-
37 ABLE PERSON BEING PLACED, AS CERTIFIED BY A PHYSICIAN, IN SERIOUS OR
38 CRITICAL CONDITION.

39 (B) FOR THE PURPOSES OF THIS SECTION, ONLY THE FOLLOWING INFORMATION
40 MAY BE DISCLOSED:

41 (I) THE NAME OF THE ABUSED OR NEGLECTED VULNERABLE PERSON;

42 (II) THE DETERMINATION BY THE JUSTICE CENTER AND THE FINDINGS UPON
43 WHICH SUCH DETERMINATION WAS BASED;

44 (III) IDENTIFICATION OF SERVICES PROVIDED OR ACTIONS, IF ANY, TAKEN
45 REGARDING THE VULNERABLE PERSON NAMED IN THE REPORT AND HIS OR HER FAMI-
46 LY AS A RESULT OF ANY SUCH REPORT OR REPORTS;

47 (IV) WHETHER ANY REPORT OF ABUSE OR NEGLECT REGARDING SUCH VULNERABLE
48 PERSON HAS BEEN "SUBSTANTIATED" AS MAINTAINED BY THE VULNERABLE PERSONS'
49 CENTRAL REGISTER;

50 (V) ANY ACTIONS TAKEN BY THE STATE OVERSIGHT AGENCY OR THE FACILITY OR
51 PROVIDER AGENCY IN RESPONSE TO REPORTS OF ABUSE OR NEGLECT OF THE
52 VULNERABLE PERSON TO THE VULNERABLE PERSONS' CENTRAL REGISTER, INCLUDING
53 BUT NOT LIMITED TO ACTIONS TAKEN AFTER EACH AND EVERY REPORT OF ABUSE OR
54 NEGLECT OF SUCH PERSON AND THE DATES OF SUCH REPORTS; AND

55 (VI) ANY EXTRAORDINARY OR PERTINENT INFORMATION CONCERNING THE CIRCUM-
56 STANCES OF THE ABUSE OR NEGLECT OF THE VULNERABLE PERSON AND THE INVES-

1 TIGATION THEREOF, WHERE THE EXECUTIVE DIRECTOR, IN CONSULTATION WITH THE
2 COMMISSIONER OF THE APPLICABLE STATE OVERSIGHT AGENCY DETERMINES SUCH
3 DISCLOSURE IS CONSISTENT WITH THE PUBLIC INTEREST.

4 (C) INFORMATION MAY BE DISCLOSED PURSUANT TO THIS SECTION AS FOLLOWS:

5 (I) INFORMATION RELEASED PRIOR TO THE COMPLETION OF THE INVESTIGATION
6 OF A REPORT SHALL BE LIMITED TO A STATEMENT THAT A REPORT IS "UNDER
7 INVESTIGATION";

8 (II) WHEN THERE HAS BEEN A PRIOR DISCLOSURE PURSUANT TO PARAGRAPH (A)
9 OF THIS SUBDIVISION, INFORMATION RELEASED IN A CASE IN WHICH THE INVE-
10 TIGATION OF THE REPORT HAS BEEN COMPLETED BUT NOT SUBSTANTIATED, INFOR-
11 MATION SHALL BE LIMITED TO THE STATEMENT THAT "THE INVESTIGATION HAS
12 BEEN COMPLETED AND THE REPORT HAS BEEN DISCONFIRMED OR INCONCLUSIVE";

13 (III) IF THE REPORT HAS BEEN "SUBSTANTIATED" THEN INFORMATION MAY BE
14 RELEASED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION.

15 (D) ANY DISCLOSURE OF INFORMATION PURSUANT TO THIS SECTION SHALL BE
16 CONSISTENT WITH THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVISION.
17 SUCH DISCLOSURE SHALL NOT IDENTIFY OR PROVIDE AN IDENTIFYING DESCRIPTION
18 OF THE SOURCE OF THE REPORT, AND SHALL NOT IDENTIFY THE NAME OF THE
19 ABUSED OR NEGLECTED VULNERABLE PERSON'S SIBLINGS OR CHILDREN, THE PARENT
20 OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH PERSON OR ANY OTHER MEMBERS
21 OF SUCH PERSON'S HOUSEHOLD.

22 (E) IN DETERMINING, PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION,
23 WHETHER DISCLOSURE WILL BE CONTRARY TO THE BEST INTERESTS OF THE VULNER-
24 ABLE PERSON, THE EXECUTIVE DIRECTOR SHALL CONSIDER THE INTEREST IN
25 PRIVACY OF THE VULNERABLE PERSON AND SUCH PERSON'S SIBLINGS OR CHILDREN,
26 THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH PERSON OR ANY
27 OTHER MEMBERS OF SUCH PERSON'S HOUSEHOLD.

28 (F) EXCEPT AS IT APPLIES DIRECTLY TO THE CAUSE OF THE ABUSE OR NEGLECT
29 OF THE VULNERABLE PERSON, NOTHING IN THIS SECTION SHALL BE DEEMED TO
30 AUTHORIZE THE RELEASE OR DISCLOSURE OF THE SUBSTANCE OR CONTENT OF ANY
31 PSYCHOLOGICAL, PSYCHIATRIC, THERAPEUTIC, CLINICAL OR MEDICAL REPORTS,
32 EVALUATIONS OR LIKE MATERIALS OR INFORMATION PERTAINING TO SUCH PERSON
33 OR SUCH PERSON'S FAMILY. ANY SUCH INFORMATION THAT APPLIES DIRECTLY TO
34 THE CAUSE OF THE ABUSE OR NEGLECT OF THE VULNERABLE PERSON MAY BE
35 DISCLOSED ONLY IF DISCLOSURE IS NOT OTHERWISE RESTRICTED BY APPLICABLE
36 FEDERAL OR STATE LAWS.

37 3. A PERSON GIVEN ACCESS TO THE NAMES OR OTHER INFORMATION IDENTIFYING
38 THE SUBJECT OF THE REPORT OR OTHER PERSONS NAMED IN THE REPORT SHALL NOT
39 DIVULGE OR MAKE PUBLIC SUCH IDENTIFYING INFORMATION UNLESS HE OR SHE IS
40 A DISTRICT ATTORNEY OR OTHER LAW ENFORCEMENT OFFICIAL AND THE PURPOSE IS
41 TO INITIATE COURT ACTION OR THE DISCLOSURE IS NECESSARY IN CONNECTION
42 WITH THE INVESTIGATION OR PROSECUTION OF THE SUBJECT OF THE REPORT FOR A
43 CRIME ALLEGED TO HAVE BEEN COMMITTED BY THE SUBJECT AGAINST ANOTHER
44 PERSON NAMED IN THE REPORT. NOTHING IN THIS SECTION SHALL BE CONSTRUED
45 TO PERMIT ANY RELEASE, DISCLOSURE OR IDENTIFICATION OF THE NAMES OR
46 IDENTIFYING DESCRIPTIONS OF PERSONS WHO HAVE REPORTED SUSPECTED ABUSE OR
47 NEGLECT TO THE VULNERABLE PERSONS' CENTRAL REGISTER OR THE STATE OVER-
48 SIGHT AGENCY, FACILITY OR PROVIDER AGENCY OR OTHER ENTITY WHERE SUCH
49 PERSONS ARE EMPLOYED OR WITH WHICH THEY ARE ASSOCIATED WITHOUT SUCH
50 PERSONS' WRITTEN PERMISSION EXCEPT TO PERSONS, OFFICIALS, AND AGENCIES
51 ENUMERATED IN PARAGRAPHS (F), (G), (L), (M) AND (V) OF SUBDIVISION ONE
52 OF THIS SECTION. TO THE EXTENT THAT PERSONS OR AGENCIES ARE GIVEN
53 ACCESS TO INFORMATION PURSUANT TO PARAGRAPHS (C), (D), (E), (K), (L),
54 (M), (N) AND (P) OF SUBDIVISION ONE OF THIS SECTION, SUCH PERSONS OR
55 AGENCIES MAY GIVE AND RECEIVE SUCH INFORMATION TO EACH OTHER IN ORDER TO

1 FACILITATE AN INVESTIGATION CONDUCTED, OR THE PROVISION OF SERVICES, BY
2 SUCH PERSONS OR AGENCIES.

3 4. UNLESS AN INVESTIGATION OF A REPORT CONDUCTED PURSUANT TO THIS
4 ARTICLE DETERMINES THAT THERE IS A PREPONDERANCE OF THE EVIDENCE OF THE
5 ALLEGED ABUSE OR NEGLECT, ALL INFORMATION IDENTIFYING THE SUBJECT OF THE
6 REPORT AND OTHER PERSONS NAMED IN THE REPORT SHALL BE SEALED FORTHWITH
7 BY THE VULNERABLE PERSONS' CENTRAL REGISTER. SUCH REPORTS MAY ONLY BE
8 UNSEALED AND MADE AVAILABLE, CONSISTENT WITH ANY OTHER APPLICABLE STATE
9 OR FEDERAL LAW, TO:

10 (A) THE STATE AGENCY OPERATING, LICENSING OR CERTIFYING A FACILITY OR
11 PROGRAM FOR THE PURPOSE OF MONITORING OR LICENSING SUCH FACILITY OR
12 PROGRAM;

13 (B) ANY STATE AGENCY OPERATING, LICENSING, OR CERTIFYING A FACILITY OR
14 PROVIDER AGENCY WHEN INVESTIGATING A REPORT OF SUSPECTED ABUSE OR
15 MALTREATMENT INVOLVING THE SUBJECT OF A PREVIOUSLY SEALED REPORT
16 ACCEPTED BY THE VULNERABLE PERSONS' CENTRAL REGISTER;

17 (C) THE SUBJECT OF THE REPORT;

18 (D) A COURT OF RELEVANT JURISDICTION OR A LAW ENFORCEMENT OFFICIAL
19 WHEN SUCH COURT OR OFFICIAL VERIFIES THAT THE REPORT IS NECESSARY TO
20 CONDUCT AN ACTIVE INVESTIGATION OR PROSECUTION OF A VIOLATION OF SUBDI-
21 VISION FOUR OF SECTION 240.50 OF THE PENAL LAW; OR

22 (E) THE JUSTICE CENTER MEDICAL REVIEW BOARD, FOR THE PURPOSES OF
23 PREPARING A FATALITY REPORT PURSUANT TO SECTION FIVE HUNDRED FIFTY-SIX
24 OF THE EXECUTIVE LAW.

25 WHEN A REPORT IS UNSEALED, PERSONS GIVEN ACCESS TO IT SHALL NOT REDIS-
26 CLOSE SUCH REPORTS EXCEPT AS NECESSARY TO CONDUCT SUCH APPROPRIATE
27 INVESTIGATION OR PROSECUTION AND SHALL REQUEST THAT THE COURT REDACT ANY
28 COPIES OF SUCH REPORTS PRODUCED IN ANY COURT PROCEEDING TO REMOVE THE
29 NAMES OF THOSE PERSONS IRRELEVANT TO THE PROCEEDING SUCH AS THE SOURCE
30 OF THE REPORT, THE NAME OF THE SUBJECT, OR AND OTHER PERSONS NAMED IN
31 THE REPORTS; OR THAT THE COURT ISSUE AN ORDER PROTECTING THE NAMES OF
32 THE SUBJECTS AND OTHER PERSONS NAMED IN THE REPORTS FROM PUBLIC DISCLO-
33 SURE.

34 S 497. IMMUNITY FROM LIABILITY. ANY PERSON PARTICIPATING IN GOOD FAITH
35 IN MAKING A REPORT, TAKING PHOTOGRAPHS, CONDUCTING OR OVERSEEING AN
36 INVESTIGATION, OPERATING THE VULNERABLE PERSONS' CENTRAL REGISTER OR
37 DISCLOSING INFORMATION IN COMPLIANCE WITH THIS ARTICLE SHALL HAVE IMMU-
38 NITY FROM ANY LIABILITY, CIVIL OR CRIMINAL, THAT MIGHT OTHERWISE RESULT
39 BY REASON OF SUCH ACTIONS. FOR THE PURPOSE OF ANY PROCEEDING, CIVIL OR
40 CRIMINAL, THE GOOD FAITH OF ANY SUCH PERSON REQUIRED TO PERFORM ANY OF
41 SUCH FUNCTIONS IN ACCORDANCE WITH THIS ARTICLE SHALL BE PRESUMED,
42 PROVIDED SUCH PERSON, WAS ACTING IN DISCHARGE OF HIS OR HER DUTIES AND
43 WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT OR RESPONSIBILITIES, AND THAT
44 SUCH LIABILITY DID NOT RESULT FROM THE WILLFUL MISCONDUCT OR GROSS
45 NEGLIGENCE OF SUCH PERSON.

46 S 2. This act shall take effect April 1, 2013; provided, however, that
47 effective immediately, the addition, amendment or repeal of any rule or
48 regulation necessary for the implementation of this act on its effective
49 date is authorized to be made on or before such date.

50 PART C

51 Section 1. Subdivisions 6 and 7 of section 677 of the county law,
52 subdivision 6 as amended by chapter 491 of the laws of 1987, subdivision
53 7 as added by chapter 477 of the laws of 1979 and paragraph (a) of

1 subdivision 7 as amended by chapter 330 of the laws of 1993, are amended
2 to read as follows:

3 6. The coroner, coroner's physician or medical examiner shall promptly
4 provide the chairman of the correction medical review board and the
5 commissioner of correctional services with copies of any autopsy report,
6 toxicological report or any report of any examination or inquiry
7 prepared with respect to any death occurring to an inmate of a correc-
8 tional facility as defined by subdivision three of section forty of the
9 correction law within his county; AND SHALL PROMPTLY PROVIDE THE EXECU-
10 TIVE DIRECTOR OF THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH
11 SPECIAL NEEDS WITH COPIES OF ANY AUTOPSY REPORT, TOXICOLOGY REPORT OR
12 ANY REPORT OF ANY EXAMINATION OR INQUIRY PREPARED WITH RESPECT TO THE
13 DEATH OF ANY SERVICE RECIPIENT OCCURRING WHILE HE OR SHE WAS A RESIDENT
14 IN ANY FACILITY OPERATED, LICENSED OR CERTIFIED BY ANY AGENCY WITHIN THE
15 DEPARTMENT OF MENTAL HYGIENE, THE OFFICE OF CHILDREN AND FAMILY
16 SERVICES, THE DEPARTMENT OF HEALTH OR THE STATE EDUCATION DEPARTMENT.
17 If the toxicological report is prepared pursuant to any agreement or
18 contract with any person, partnership, corporation or governmental agen-
19 cy with the coroner or medical examiner, such report shall be promptly
20 provided to the chairman of the correction medical review board [and
21 to], the commissioner of correctional services OR THE EXECUTIVE DIRECTOR
22 OF THE JUSTICE CENTER FOR PEOPLE WITH SPECIAL NEEDS, AS APPROPRIATE, by
23 such person, partnership, corporation or governmental agency.

24 7. (a) Upon the written request of the commissioner of mental health,
25 the commissioner of [mental retardation and] THE OFFICE FOR PERSONS WITH
26 developmental disabilities, the director of the mental hygiene legal
27 service, [the chairman of the commission on quality of care for the
28 mentally disabled] THE EXECUTIVE DIRECTOR OF THE JUSTICE CENTER FOR THE
29 PROTECTION OF PEOPLE WITH SPECIAL NEEDS or the director of a mental
30 hygiene facility, as defined in SUBDIVISION TWO OF section [45.01] FIVE
31 HUNDRED FIFTY of the [mental hygiene] EXECUTIVE law, at which the
32 deceased was a patient or resident, the coroner, coroner's physician or
33 medical examiner shall provide such person with a copy of all reports
34 and records, including, but not limited to, autopsy reports and toxico-
35 logical reports related to the deceased prepared by a person, partner-
36 ship, corporation or governmental agency pursuant to any agreement or
37 contract with the coroner or medical examiner with respect to the death
38 of a patient or resident receiving services [for a mental disability] at
39 such a mental hygiene facility.

40 (b) Upon the written request of the commissioner of mental health, or
41 commissioner of [mental retardation and] developmental disabilities, or
42 a director of a departmental facility as defined in section 1.03 of the
43 mental hygiene law, or the [chairman of the commission on quality of
44 care for the mentally disabled] EXECUTIVE DIRECTOR OF THE JUSTICE CENTER
45 FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, the coroner, coroner's
46 physician or medical examiner shall transmit to the commissioner, or
47 such director, [or chairman,] or any member of the [mental hygiene]
48 JUSTICE CENTER medical review board [designated by the chairman of such
49 commission], original autopsy slides, tissue materials and specimens
50 taken from the body of a deceased patient or resident as defined in
51 paragraph (a) of this section. Such original materials may be used and
52 tested by such office of the department of mental hygiene, or such
53 director, and [mental hygiene] JUSTICE CENTER medical review board
54 pursuant to its authority under section [45.17] FIVE HUNDRED FIFTY-SIX
55 of the [mental hygiene] EXECUTIVE law. Such slides, materials and spec-
56 imens may be retained for a reasonable time, and shall be returned to

1 the office of the coroner or medical examiner in good condition allowing
2 for reasonable use for study and testing purposes.

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

7 (a) The commissioner shall exercise all powers vested in the office.
8 He may delegate any function, power, or duty assigned to him or to the
9 office of mental health to a director of a facility operated by such
10 office or to any other officer or employee of such office, unless other-
11 wise provided by law. He may enter into agreements with the EXECUTIVE
12 DIRECTOR OF THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL
13 NEEDS OR THE other commissioners of the department in order to ensure
14 that programs and services are provided for all of the mentally disa-
15 bled.

16 (d) The commissioner and directors of office facilities may request
17 and upon such request the coroner, coroner's physician or medical exam-
18 iner shall provide to such persons access to original autopsy slides,
19 tissue materials and specimens derived from any autopsy or inquiry with
20 respect to the death of a patient or resident in a mental hygiene facil-
21 ity, as defined in [section 45.01 of this chapter] SUBDIVISION TWO OF
22 SECTION FIVE HUNDRED FIFTY OF THE EXECUTIVE LAW. Such original materials
23 shall be preserved intact, except for unavoidable changes due to neces-
24 sary scientific testing, and shall be returned to the coroner, coroner's
25 physician or medical examiner.

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

29 (b) Such director shall have the responsibility of seeing that there
30 is humane treatment of the patients at his OR HER facility and shall
31 investigate, OR CAUSE TO BE INVESTIGATED, every case of alleged patient
32 abuse or [mistreatment] NEGLECT. IN ACCORDANCE WITH ARTICLE ELEVEN OF
33 THE SOCIAL SERVICES LAW, THE DIRECTOR SHALL REQUIRE THAT ALLEGATIONS OF
34 ABUSE OR NEGLECT ARE REPORTED TO THE VULNERABLE PERSONS' CENTRAL REGIS-
35 TER, WHICH SHALL SCREEN AND IMMEDIATELY FORWARD REPORTS THAT APPEAR TO
36 ALLEGE CRIMES TO THE APPROPRIATE LAW ENFORCEMENT AGENCY. [The director
37 shall notify immediately, and in any event within three working days,
38 the board of visitors of the facility and the mental hygiene legal
39 service located in the same judicial department as the hospital, school,
40 or institution of every complaint of patient abuse or mistreatment and
41 shall inform the board and the mental hygiene legal service of the
42 results of his investigation. If it appears that a crime may have been
43 committed, the director shall give notice thereof to the district attor-
44 ney or other appropriate law enforcement official as soon as possible,
45 and in any event within three working days unless it appears that the
46 crime includes an employee, intern, volunteer, consultant, contractor,
47 or visitor and the alleged conduct caused physical injury or the patient
48 was subject to unauthorized sexual contact, or if it appears the crime
49 is endangering the welfare of an incompetent or physically disabled
50 person pursuant to section 260.25 of the penal law, or if the crime was
51 any felony under state or federal law, then the district attorney or
52 other appropriate law enforcement official must be contacted immediate-
53 ly, and in any event no later than twenty-four hours.]

54 S 4. Subdivisions (a) and (c) of section 13.09 of the mental hygiene
55 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 necessary scientific testing and shall be returned to the coroner, coroner's physician or medical examiner.

S 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 INVESTIGATED, EVERY CASE OF ALLEGED PATIENT ABUSE OR NEGLECT. IN ACCORDANCE WITH ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW, THE DIRECTOR SHALL REQUIRE THAT ALLEGATIONS OF ABUSE OR NEGLECT ARE 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. [A director of a state operations office 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, 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.]

S 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.

S 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 1. There shall be at each developmental center facility listed in
2 section 13.17 of this article, an ombudsman who shall be an employee of
3 the [commission on quality of care and advocacy for persons with disa-
4 bilities] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS
5 under article [forty-five] TWENTY of [this chapter] THE EXECUTIVE LAW
6 and who shall be responsible for receiving and responding to any
7 complaints regarding [individual clients] INDIVIDUALS RECEIVING SERVICES
8 residing in such facility. The ombudsman shall have the following powers
9 and duties:

10 i. to advise and consult with INDIVIDUALS RECEIVING SERVICES, parents,
11 guardians, correspondents and other interested persons with respect to
12 any complaints, or issues related to [the conditions of clients' resi-
13 dents] INDIVIDUALS RECEIVING SERVICES;

14 ii. to review and attempt to remedy specific complaints with responsi-
15 ble and appropriate staff;

16 iii. where it appears that care has not been rendered as required by
17 applicable standards to refer the complaint to the appropriate agency or
18 body for its attention;

19 iv. to receive and keep confidential any complaint, information or
20 inquiry from any source. The records of the ombudsman shall be confiden-
21 tial, and shall not be available to the public;

22 v. to advise and consult with the board of visitors served by the
23 ombudsman with respect to any complaints or issues relating to condi-
24 tions of client's residence, treatment and care and to regularly attend
25 the meetings of such board; and

26 vi. to meet with the commissioner, or a representative of the commis-
27 sioner, on a quarterly basis regarding systemic issues in the ombuds-
28 man's jurisdiction.

29 2. The ombudsman shall be afforded initial training and orientation by
30 the [commission on quality of care and advocacy for persons with disa-
31 bilities] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL
32 NEEDS.

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

35 (B) MAKING REPORTS OF CASES OF ABUSE OR NEGLECT IN ACCORDANCE WITH
36 ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW TO THE VULNERABLE PERSONS'
37 CENTRAL REGISTER, WHICH SHALL SCREEN AND IMMEDIATELY FORWARD ALLEGATIONS
38 THAT APPEAR TO ALLEGE CRIMES TO THE APPROPRIATE LAW ENFORCEMENT AGENCY.
39 SIMILARLY, MAKING REPORTS OF SIGNIFICANT INCIDENTS, AS DEFINED IN SUBDI-
40 VISION TWELVE OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL
41 SERVICES LAW, WHICH SHALL BE ADDRESSED PURSUANT TO THE STANDARDS SET
42 FORTH IN SECTION FOUR HUNDRED NINETY-ONE OF THE SOCIAL SERVICES LAW AND
43 REGULATIONS OF THE OFFICE.

44 S 9. Section 16.29 of the mental hygiene law, as amended by chapter 24
45 of the laws of 2007, subdivision (b) as amended by chapter 37 of the
46 laws of 2011, is amended to read as follows:

47 S 16.29 [Child abuse and maltreatment in residential care] ABUSE,
48 NEGLECT, AND SIGNIFICANT INCIDENTS INVOLVING VULNERABLE
49 PERSONS.

50 (a) The commissioner, IN CONSULTATION WITH THE EXECUTIVE DIRECTOR OF
51 THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS,
52 shall promulgate regulations establishing standards for the protection
53 of [children in residential] SERVICE RECIPIENTS IN THE care OF FACILI-
54 TIES AND PROVIDER AGENCIES OPERATED, LICENSED OR CERTIFIED BY THE OFFICE
55 from abuse [and maltreatment], NEGLECT, AND SIGNIFICANT INCIDENTS PURSU-

ANT 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 history, 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] A SERVICE RECIPIENT who is [reported] ALLEGED TO HAVE BEEN ABUSED OR NEGLECTED 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] PERSONS in care, immediately upon notification that a report of [child] AN ALLEGATION OF abuse or [maltreatment] NEGLECT has been made [with respect to a child in a residential facility];

(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 FIVE 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 a risk to such [child] PERSON if he or she continues to remain in a [residential] facility; and

(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: [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, regulations and procedures governing the protection of [children] VULNERABLE PERSONS from abuse [and maltreatment], NEGLECT, AND SIGNIFICANT INCIDENTS, and other appropriate topics provided, however, that the office may exempt administrators and consultants from such

1 requirements upon demonstration of substantially equivalent knowledge or
2 experience; and

3 (ii) [children] SERVICE RECIPIENTS receive instruction consistent with
4 their age, needs and circumstances as well as the needs and circum-
5 stances within the facility or program, in techniques and procedures
6 which will enable [such children] THEM to ADVOCATE AND protect them-
7 selves from abuse [and maltreatment], NEGLECT, AND SIGNIFICANT
8 INCIDENTS.

9 The commissioner, IN CONSULTATION WITH THE EXECUTIVE DIRECTOR OF THE
10 JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, shall
11 take all reasonable and necessary actions to assure that employees,
12 volunteers and consultants in [residential care] facilities OPERATED OR
13 OVERSEEN BY THE OFFICE are kept apprised on a current basis of all poli-
14 cies and procedures of the office relating to the protection of [chil-
15 dren from abuse and maltreatment] VULNERABLE PERSONS, and shall monitor
16 and supervise the provision of training to such administrators, employ-
17 ees, volunteers, children and consultants. Standards developed pursuant
18 to this subdivision shall, to the extent possible, be consistent with
19 those promulgated by other state agencies for such purposes.

20 (b) The commissioner shall provide necessary assistance to the [state
21 commission on quality of care and advocacy for persons with disabili-
22 ties] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS in
23 the conduct of investigations pursuant to [section 45.07 of this chap-
24 ter] ARTICLE ELEVEN OF THE EXECUTIVE LAW, shall consider its recommenda-
25 tions for appropriate preventive and remedial action including legal
26 actions, and shall provide or direct a residential facility licensed or
27 operated by the office for people with developmental disabilities to
28 provide written reports thereon to the [commission] JUSTICE CENTER as to
29 the implementation of plans of prevention and remediation approved by
30 such office.

31 (c) The commissioner shall provide for the development and implementa-
32 tion of a plan of prevention and remediation with respect to [an indi-
33 cated] A SUBSTANTIATED report of [child] abuse or [maltreatment]
34 NEGLECT. Such action shall include:

35 (i) within ten days of receipt of [an indicated] A SUBSTANTIATED
36 report of [child] abuse or [maltreatment] NEGLECT, development and
37 implementation of a plan of prevention and remediation to be taken [with
38 respect to a custodian or the residential facility in order] to assure
39 the continued health [and], safety AND WELFARE of [children] SERVICE
40 RECIPIENTS and to provide for the prevention of future acts of abuse [or
41 maltreatment], NEGLECT, OR SIGNIFICANT INCIDENTS; and

42 (ii) development and implementation of a plan of prevention and reme-
43 diation, in the event an investigation of a report of alleged [child]
44 abuse or [maltreatment] determines that some credible evidence of abuse
45 or maltreatment exists] NEGLECT IS SUBSTANTIATED and such abuse or
46 [maltreatment] NEGLECT may be attributed in whole or in part to noncom-
47 pliance by the facility with the provisions of this chapter or regu-
48 lations of the office applicable to the operation of such [residential]
49 facility. Any plan of prevention and remediation required to be devel-
50 oped pursuant to this subdivision by a facility supervised by the office
51 shall be submitted to and approved by such office in accordance with
52 time limits established by regulations of such office. Implementation
53 of the plan shall be monitored by such office. In reviewing the contin-
54 ued qualifications of a residential facility or program for an operating
55 certificate, the office shall evaluate such facility's compliance with

plans of prevention and remediation developed and implemented pursuant to this subdivision.

S 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:

S 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 ABUSE, NEGLECT, AND SIGNIFICANT 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 history, 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] SERVICE RECIPIENT who is [reported] ALLEGED TO HAVE BEEN ABUSED OR NEGLECTED 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] PERSONS in care, immediately upon notification that a report of [child] AN ALLEGATION OF abuse or [maltreatment] NEGLECT has been made [with respect to a child's custodian in a residential facility];

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 FIVE 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 A PROGRAM COVERED BY THIS ARTICLE;

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

1 SHALL ADOPT standards [shall also establish] AS ESTABLISHED BY THE
2 JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, that:

3 (i) administrators, employees, volunteers and consultants receive
4 training in at least the following: [child] abuse prevention and iden-
5 tification, safety and security procedures, the principles of child
6 development, the characteristics of [children] PERSONS in care and tech-
7 niques of group [and child] management including crisis intervention,
8 the laws, rules and regulations and procedures governing the protection
9 of [children] VULNERABLE PERSONS from abuse [and maltreatment], NEGLECT,
10 AND SIGNIFICANT INCIDENTS and other appropriate topics; provided, howev-
11 er, that [either] THE office may exempt administrators and consultants
12 from such requirements upon demonstration of substantially equivalent
13 knowledge or experience; and

14 (ii) [children] SERVICE RECIPIENTS receive instruction consistent with
15 their age, needs and circumstances as well as the needs and circum-
16 stances within the facility or program, in techniques and procedures
17 that will enable [such children] THEM to ADVOCATE AND protect themselves
18 from abuse [and maltreatment], NEGLECT, AND SIGNIFICANT INCIDENTS.

19 The commissioner, IN CONSULTATION WITH THE EXECUTIVE DIRECTOR OF THE
20 JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, shall
21 take all reasonable and necessary actions to assure that employees,
22 volunteers or consultants in [residential care] facilities OPERATED OR
23 OVERSEEN BY THE OFFICE are kept apprised on a current basis of all poli-
24 cies and procedures [of the office] relating to the protection of [chil-
25 dren from abuse and maltreatment,] VULNERABLE PERSONS and shall monitor
26 and supervise the provision of training to such administrators, employ-
27 ees, volunteers, children and consultants. Standards developed pursuant
28 to this subdivision shall, to the extent possible, be consistent with
29 those promulgated by other state agencies for such purposes.

30 (b) The commissioner shall provide necessary assistance to the [state
31 commission on quality of care and advocacy for persons with disabili-
32 ties] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS in
33 the conduct of investigations pursuant to [section 45.07 of this chap-
34 ter] ARTICLE ELEVEN OF THE EXECUTIVE LAW, shall consider its recommenda-
35 tions for appropriate preventive and remedial action including legal
36 actions, and shall provide or direct a residential facility licensed or
37 operated by the office of mental health to provide written reports ther-
38 eon to such [commission] JUSTICE CENTER as to the implementation of
39 plans of prevention and remediation.

40 (c) The commissioner shall provide for the development and implementa-
41 tion of a plan of prevention and remediation with respect to [an indi-
42 cated] A SUBSTANTIATED report of [child] abuse or [maltreatment]
43 NEGLECT. Such action shall include:

44 1. within ten days of receipt of [an indicated] A SUBSTANTIATED report
45 of [child] abuse or [maltreatment] NEGLECT, development and implementa-
46 tion of a plan of prevention and remediation to be taken [with respect
47 to a custodian or residential facility in order] to assure the continued
48 health, SAFETY, and [safety] WELFARE of [children] SERVICE RECIPIENTS
49 and to provide for the prevention of future acts of abuse [or maltreat-
50 ment] NEGLECT, AND SIGNIFICANT INCIDENTS; and

51 2. development and implementation of a plan of prevention and remedi-
52 ation, in the event an investigation of a report of alleged [child]
53 abuse or [maltreatment] NEGLECT determines that a report of [child]
54 abuse or [maltreatment] NEGLECT is [indicated] SUBSTANTIATED and such
55 abuse or [maltreatment] NEGLECT may be attributed in whole or in part to
56 noncompliance by the facility with provisions of this chapter or regu-

lations 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. In reviewing the continued qualification of a residential facility or program for an operating certificate, the office having supervisory responsibilities shall evaluate such facility's compliance with plans of prevention and remediation developed pursuant to this subdivision.

S 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 disabilities] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS.

S 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:

S 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] NEGLECT of, AND SIGNIFICANT 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 evaluated 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 maltreatment, established pursuant to section four hundred twenty-two of the social services law.]

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

3 (a) Records and documents pertaining to allegations and investigations
4 into patient abuse [or mistreatment], NEGLECT, AND SIGNIFICANT INCIDENTS
5 at a facility, as defined in subdivision six of section 1.03 of this
6 chapter, including but not limited to all complaints and reports made
7 pursuant to [subdivision (c) of section 45.07 and section 45.17 of this
8 title] ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW, shall be released to a
9 qualified person, as defined in paragraph six of subdivision (a) of
10 section 33.16 of this article, upon a written request by such qualified
11 person. Such records and documents shall be made available by the appro-
12 priate office within twenty-one days of the conclusion of its investi-
13 gation, provided that the names and other personally identifying infor-
14 mation of other patients and employees shall not be included unless such
15 patients and employees authorize disclosure.

16 S 14. This act shall take effect April 1, 2013.

17 PART D

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

21 (a) In the case of the death of a child whose care and custody or
22 custody and guardianship has been transferred to an authorized agency,
23 OTHER THAN A VULNERABLE PERSON AS DEFINED IN ARTICLE ELEVEN OF THIS
24 CHAPTER, or the death of a child for whom any local department of social
25 services has an open child protective services or preventive services
26 case, or in the case of a report made to the STATEWIDE central register
27 OF CHILD ABUSE AND MALTREATMENT involving the death of a child, the
28 office of children and family services shall (i) investigate or provide
29 for an investigation of the cause of and circumstances surrounding such
30 death, (ii) review such investigation, and (iii) prepare and issue a
31 report on such death, except where a report is issued by an approved
32 local or regional fatality review team in accordance with section four
33 hundred twenty-two-b of this chapter.

34 S 2. Paragraph (b) of subdivision 5 of section 412 of the social
35 services law is REPEALED.

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

39 1. An "abused child" means[:

40 (a)] a child under eighteen years of age [not in "residential care,"
41 as defined in subdivision four of section four hundred twelve-a of this
42 title,] and who is defined as an abused child by the family court act[;
43 or

44 (b) a child under the age of eighteen years who is defined as an
45 abused child in residential care pursuant to subdivision one of section
46 four hundred twelve-a of this title];

47 2. A "maltreated child" includes[:

48 (a)] a child under eighteen years of age [not in "residential care" as
49 defined in subdivision four of section four hundred twelve-a of this
50 title]:

51 [(i)] (A) defined as a neglected child by the family court act, or

52 [(ii)] (B) who has had serious physical injury inflicted upon him or
53 her by other than accidental means; [or

1 (b) a child who is a neglected child in residential care as defined in
2 subdivision two of section four hundred twelve-a of this title;]

3 4. "Subject of the report" means[: (a)] any parent of, guardian of, or
4 other person eighteen years of age or older legally responsible for, as
5 defined in subdivision (g) of section one thousand twelve of the family
6 court act, a child reported to the statewide central register of child
7 abuse and maltreatment who is allegedly responsible for causing injury,
8 abuse or maltreatment to such child or who allegedly allows such injury,
9 abuse or maltreatment to be inflicted on such child; or a director or an
10 operator of, or employee or volunteer in, a home operated or supervised
11 by an authorized agency, the office of children and family services, [or
12 an office of the department of mental hygiene] or in a family day-care
13 home, a day-care center, a group family day care home, a school-age
14 child care program or a day-services program who is allegedly responsi-
15 ble for causing injury, abuse or maltreatment to a child who is reported
16 to the statewide central register of child abuse or maltreatment or who
17 allegedly allows such injury, abuse or maltreatment to be inflicted on
18 such child; [or

19 (b) a subject of a report of an abused or neglected child in residen-
20 tial care as defined in subdivision eight of section four hundred
21 twelve-a of this title;]

22 S 2-b. Section 412-a of the social services law is REPEALED.

23 S 3. Paragraphs (a) and (c) of subdivision 1 of section 413 of the
24 social services law, paragraph (a) as amended by chapter 91 of the laws
25 of 2011 and paragraph (c) as amended by chapter 366 of the laws of 2008,
26 are amended to read as follows:

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

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

5 (c) A medical or other public or private institution, school, facility
6 or agency shall not take any retaliatory personnel action, as such term
7 is defined in paragraph (e) of subdivision one of section seven hundred
8 forty of the labor law, against an employee because such employee
9 believes that he or she has reasonable cause to suspect that a child is
10 an abused or maltreated child and that employee therefore makes a report
11 in accordance with this title. No school, school official, child care
12 provider, foster care provider, residential care facility provider,
13 hospital, medical institution provider or mental health facility provid-
14 er shall impose any conditions, including prior approval or prior
15 notification, upon a member of their staff specifically required to
16 report under this title. At the time of the making of a report, or at
17 any time thereafter, such person or official may exercise the right to
18 request, pursuant to paragraph (A) of subdivision four of section four
19 hundred twenty-two of this title, the findings of an investigation made
20 pursuant to this title [or section 45.07 of the mental hygiene law].

21 S 3-a. Section 415 of the social services law, as amended by chapter
22 323 of the laws of 2008, is amended to read as follows:

23 S 415. Reporting procedure. Reports of suspected child abuse or
24 maltreatment made pursuant to this title shall be made immediately by
25 telephone or by telephone facsimile machine on a form supplied by the
26 commissioner of the office of children and family services. Oral reports
27 shall be followed by a report in writing within forty-eight hours after
28 such oral report. Oral reports shall be made to the statewide central
29 register of child abuse and maltreatment unless the appropriate local
30 plan for the provision of child protective services provides that oral
31 reports should be made to the local child protective service. In those
32 localities in which oral reports are made initially to the local child
33 protective service, the child protective service shall immediately make
34 an oral or electronic report to the statewide central register. Written
35 reports shall be made to the appropriate local child protective service
36 except that written reports involving children [in residential care, as
37 defined in subdivision four of section four hundred twelve-a of this
38 title, or] being cared for in a home operated or supervised by an
39 authorized agency[, OR THE office of children and family services[, or
40 an office of the department of mental hygiene,] shall be made to the
41 statewide central register of child abuse and maltreatment which shall
42 transmit the reports to the agency responsible for investigating the
43 report, in accordance with [paragraph (a) or (c) of subdivision eleven
44 of section four hundred twenty-two or] section four hundred
45 twenty-four-b of this title[, as applicable]. Written reports shall be
46 made in a manner prescribed and on forms supplied by the commissioner of
47 the office of children and family services and shall include the follow-
48 ing information: the names and addresses of the child and his or her
49 parents or other person responsible for his or her care, if known, and,
50 as the case may be, the name and address of the [residential care facil-
51 ity or] program in which the child [resides or] is receiving care; the
52 child's age, sex and race; the nature and extent of the child's inju-
53 ries, abuse or maltreatment, including any evidence of prior injuries,
54 abuse or maltreatment to the child or, as the case may be, his or her
55 siblings; the name of the person or persons alleged to be responsible
56 for causing the injury, abuse or maltreatment, if known; family composi-

1 tion, where appropriate; the source of the report; the person making the
2 report and where he or she can be reached; the actions taken by the
3 reporting source, including the taking of photographs and x-rays,
4 removal or keeping of the child or notifying the medical examiner or
5 coroner; and any other information which the commissioner of the office
6 of children and family services may, by regulation, require, or the
7 person making the report believes might be helpful, in the furtherance
8 of the purposes of this title. Notwithstanding the privileges set forth
9 in article forty-five of the civil practice law and rules, and any other
10 provision of law to the contrary, mandated reporters who make a report
11 which initiates an investigation of an allegation of child abuse or
12 maltreatment are required to comply with all requests for records made
13 by a child protective service relating to such report, including records
14 relating to diagnosis, prognosis or treatment, and clinical records, of
15 any patient or client that are essential for a full investigation of
16 allegations of child abuse or maltreatment pursuant to this title;
17 provided, however, that disclosure of substance abuse treatment records
18 shall be made pursuant to the standards and procedures for disclosure of
19 such records delineated in federal law. Written reports from persons or
20 officials required by this title to report shall be admissible in
21 evidence in any proceedings relating to child abuse or maltreatment.

22 S 4. Section 418 of the social services law, as amended by chapter 485
23 of the laws of 2006, is amended to read as follows:

24 S 418. Mandatory reporting to and post-mortem investigation of deaths
25 by medical examiner or coroner. Any person or official required to
26 report cases of suspected child abuse or maltreatment, including workers
27 of the local child protective service[, as well as an employee of or
28 official of a state agency responsible for the investigation of a report
29 of abuse or maltreatment of a child in residential care,] who has
30 reasonable cause to suspect that a child died as a result of child abuse
31 or maltreatment shall report that fact to the appropriate medical exam-
32 iner or coroner. The medical examiner or coroner shall accept the
33 report for investigation and shall issue a preliminary written report of
34 his or her finding within sixty days of the date of death, absent
35 extraordinary circumstances, and his or her final written report prompt-
36 ly, absent extraordinary circumstances, to the police, the appropriate
37 district attorney, the local child protective service, the office of
38 children and family services, and, if the institution making the report
39 is a hospital, the hospital. The office of children and family services
40 shall promptly provide a copy of the preliminary and final reports to
41 the statewide central register of child abuse and maltreatment.

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

47 Responsibility of the [department] OFFICE. The [department] OFFICE
48 shall: 1. in conjunction with local departments, both jointly and indi-
49 vidually, within the appropriation available, conduct a continuing
50 publicity and education program for local department staff, persons and
51 officials required to report including district attorneys, assistant
52 district attorneys, police officers, peace officers, investigators
53 employed in the office of a district attorney, and any other appropriate
54 persons to encourage the fullest degree of reporting of suspected child
55 abuse or maltreatment. Such program shall be developed and implemented
56 in coordination with those established pursuant to section 31.06 of the

1 mental hygiene law, section twenty-eight hundred five-n of the public
2 health law, section thirty-two hundred nine-a of the education law
3 [and], sections two hundred fourteen-a and eight hundred forty of the
4 executive law AND ARTICLE ELEVEN OF THIS CHAPTER. The program shall
5 include but not be limited to responsibilities, obligations and powers
6 under this title and chapter as well as the diagnosis of child abuse and
7 maltreatment, the procedures of the child protective service, the family
8 court and other duly authorized agencies and the prevention, treatment
9 and remediation of abuse and maltreatment of children in residential
10 care.

11 S 6. Subparagraph (r) of paragraph (A) of subdivision 4 of section
12 422 of the social services law is REPEALED, and the opening paragraph,
13 subparagraphs (j), (z) and (aa) and the first undesignated paragraph of
14 paragraph (A) of subdivision 4 of section 422 of the social services
15 law, the opening paragraph, subparagraph (j) and the first undesignated
16 paragraph of paragraph (A) of subdivision 4 as amended by chapter 12 of
17 the laws of 1996, subparagraph (z) as amended and subparagraph (aa) as
18 added by chapter 440 of the laws of 2011, are amended to read as
19 follows:

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

25 (j) [the state commission on quality of care for the mentally disabled
26 in connection with an investigation being conducted by the commission
27 pursuant to article forty-five of the mental hygiene law] THE JUSTICE
28 CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS OR A DELEGATE
29 INVESTIGATORY ENTITY IN CONNECTION WITH AN INVESTIGATION BEING CONDUCTED
30 UNDER ARTICLE ELEVEN OF THIS CHAPTER;

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

38 (aa) a social services official who is investigating whether an adult
39 is in need of protective services in accordance with the provisions of
40 section four hundred seventy-three of this chapter, when such official
41 has reasonable cause to believe such adult may be in need of protective
42 services due to the conduct of an individual or individuals who had
43 access to such adult when such adult was a child and that such reports
44 and information are needed to further the present investigation.

45 After a child, other than a child in residential care, who is reported
46 to the central register of abuse or maltreatment reaches the age of
47 eighteen years, access to a child's record under subparagraphs (a) and
48 (b) of this paragraph shall be permitted only if a sibling or off-spring
49 of such child is before such person and is a suspected victim of child
50 abuse or maltreatment. In addition, a person or official required to
51 make a report of suspected child abuse or maltreatment pursuant to
52 section four hundred thirteen of this chapter shall receive, upon
53 request, the findings of an investigation made pursuant to this title
54 [or section 45.07 of the mental hygiene law]. However, no information
55 may be released unless the person or official's identity is confirmed by
56 the [department] OFFICE. If the request for such information is made

1 prior to the completion of an investigation of a report, the released
2 information shall be limited to whether the report is "indicated",
3 "unfounded" or "under investigation", whichever the case may be. If the
4 request for such information is made after the completion of an investi-
5 gation of a report, the released information shall be limited to whether
6 the report is "indicated" or "unfounded", whichever the case may be. A
7 person given access to the names or other information identifying the
8 subjects of the report, or other persons named in the report, except the
9 subject of the report or other persons named in the report, shall not
10 divulge or make public such identifying information unless he or she is
11 a district attorney or other law enforcement official and the purpose is
12 to initiate court action or the disclosure is necessary in connection
13 with the investigation or prosecution of the subject of the report for a
14 crime alleged to have been committed by the subject against another
15 person named in the report. Nothing in this section shall be construed
16 to permit any release, disclosure or identification of the names or
17 identifying descriptions of persons who have reported suspected child
18 abuse or maltreatment to the statewide central register or the agency,
19 institution, organization, program or other entity where such persons
20 are employed or the agency, institution, organization or program with
21 which they are associated without such persons' written permission
22 except to persons, officials, and agencies enumerated in subparagraphs
23 (e), (f), (h), (j), (l), (m) and (v) of this paragraph.

24 S. 7. The opening paragraph, subparagraph (iii) of paragraph (a) and
25 paragraph (b) of subdivision 5 and subdivision 6 of section 422 of the
26 social services law, the opening paragraph, subparagraph (iii) of para-
27 graph (a) and paragraph (b) of subdivision 5 as amended by chapter 555
28 of the laws of 2000 and subdivision 6 as amended by chapter 323 of the
29 laws of 2008, are amended to read as follows:

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

38 (iii) to a local child protective service, the office of children and
39 family services, OR all members of a local or regional multidisciplinary
40 investigative team[, the commission on quality of care for the mentally
41 disabled, or the department of mental hygiene,] OR THE JUSTICE CENTER
42 FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS when investigating a
43 subsequent report of suspected abuse, NEGLECT or maltreatment involving
44 a subject of the unfounded report, a child named in the unfounded
45 report, or a child's sibling named in the unfounded report PURSUANT TO
46 THIS ARTICLE OR ARTICLE ELEVEN OF THIS CHAPTER;

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

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

19 6. In all other cases, the record of the report to the statewide
20 central register shall be expunged ten years after the eighteenth birth-
21 day of the youngest child named in the report. In the case of a child in
22 residential care [as defined in subdivision four of section four hundred
23 twelve-a of this title,] the record of the report to the statewide
24 central register shall be expunged ten years after the reported child's
25 eighteenth birthday. In any case and at any time, the commissioner of
26 the office of children and family services may amend any record upon
27 good cause shown and notice to the subjects of the report and other
28 persons named in the report.

29 S 8. Subdivisions 3, 4, 5 and 6 of section 424-a of the social
30 services law, subdivision 3 as amended by chapter 578 of the laws of
31 1997, subdivision 4 as amended by chapter 465 of the laws of 1992,
32 subdivision 5 as added by chapter 677 of the laws of 1985, paragraph (a)
33 of subdivision 5 as amended by chapter 634 of the laws of 1988 and
34 subdivision 6 as amended by chapter 587 of the laws of 1997, are amended
35 and a new subdivision 7 is added to read as follows:

36 3. For purposes of this [chapter] SECTION, the term "provider" or
37 "provider agency" shall mean an authorized agency, the [division for
38 youth] OFFICE OF CHILDREN AND FAMILY SERVICES, juvenile detention facil-
39 ities subject to the certification of such [division] OFFICE, programs
40 established pursuant to article nineteen-H of the executive law, non-re-
41 sidential or residential programs or facilities licensed or operated by
42 the office of mental health or the office [of mental retardation and]
43 FOR PERSONS WITH developmental disabilities except family care homes,
44 licensed child day care centers, including head start programs which are
45 funded pursuant to title V of the federal economic opportunity act of
46 nineteen hundred sixty-four, as amended, early intervention service
47 established pursuant to section twenty-five hundred forty of the public
48 health law, preschool services established pursuant to section forty-
49 four hundred ten of the education law, school-age child care programs,
50 special act school districts as enumerated in chapter five hundred
51 sixty-six of the laws of nineteen hundred sixty-seven, as amended,
52 programs and facilities licensed by the office of alcoholism and
53 substance abuse services [and], residential schools which are operated,
54 supervised or approved by the education department, AND ANY OTHER FACIL-
55 ITY OR PROVIDER AGENCY, AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR
56 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[,] OR thirteen-B [or thirteen-C] 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 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 DISABILITIES, 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 maltreatment, 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 [supercede] 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 subdivision two of section four hundred ten-p of this article may inquire of the [department] OFFICE OF CHILDREN AND FAMILY SERVICES and the [depart-

1 ment] OFFICE shall, upon receipt of such inquiry and subject to the
2 provisions of paragraph (e) of subdivision one of this section, inform
3 such program and the subject of such inquiry whether any person who has
4 requested and agreed to be included in a list of substitute child day
5 care caregivers for employment by registered or licensed day care
6 providers maintained by such program in accordance with regulations
7 promulgated by the [department] OFFICE, is the subject of an indicated
8 child abuse and maltreatment report on file with the statewide central
9 register of child abuse and maltreatment. Inquiries made to the [depart-
10 ment] OFFICE by such programs pursuant to this subdivision shall be made
11 no more often than once in any six month period and no less often than
12 once in any twelve month period. Notwithstanding any provision of law to
13 the contrary, a child care resource and referral program may redisclose
14 such information only if the purpose of such redisclosure is to respond
15 to a request for such information by a registered or licensed provider
16 and only if after an individual included in the list of substitute child
17 day care caregivers for employment by registered or licensed day care
18 providers has consented to be referred for employment to such inquiring
19 agency. Upon such referral, the provisions related to notice and fair
20 hearing rights of this section shall otherwise apply. Inquiries made
21 pursuant to this subdivision shall be in lieu of the inquiry require-
22 ments set forth in paragraph (b) of subdivision one of this section.

23 7. ANY FACILITY, PROVIDER AGENCY, OR PROGRAM THAT IS REQUIRED TO
24 CONDUCT AN INQUIRY PURSUANT TO SECTION FOUR HUNDRED NINETY-FIVE OF THIS
25 CHAPTER SHALL FIRST CONDUCT THE INQUIRY REQUIRED UNDER SUCH SECTION. IF
26 THE RESULT OF THE INQUIRY UNDER SECTION FOUR HUNDRED NINETY-FIVE OF THIS
27 CHAPTER IS THAT THE PERSON ABOUT WHOM THE INQUIRY IS MADE IS ON THE
28 REGISTER OF SUBSTANTIATED CATEGORY ONE CASES OF ABUSE OR NEGLECT AND THE
29 FACILITY OR PROVIDER AGENCY IS REQUIRED TO DENY THE APPLICATION IN
30 ACCORDANCE WITH ARTICLE ELEVEN OF THIS CHAPTER, THE FACILITY OR PROVIDER
31 AGENCY SHALL NOT BE REQUIRED TO MAKE AN INQUIRY OF THE OFFICE UNDER THIS
32 SECTION.

33 S 8-a. Paragraph (b) and subparagraph (iv) of paragraph (e) of subdi-
34 vision 1 and paragraph (a) of subdivision 2 of section 424-a of the
35 social services law, paragraph (b) of subdivision 1 as amended by chap-
36 ter 677 of the laws of 1985, subparagraph (iv) of paragraph (e) of
37 subdivision 1 as amended by chapter 323 of the laws of 2008, and para-
38 graph (a) of subdivision 2 as amended by chapter 441 of the laws of
39 1993, are amended to read as follows:

40 (b) (i) [A] SUBJECT TO THE PROVISIONS OF SUBDIVISION SEVEN OF THIS
41 SECTION, A provider agency shall inquire of the [department] OFFICE and
42 the [department] OFFICE shall, subject to the provisions of paragraph
43 (e) of this subdivision, inform such agency and the subject of the
44 inquiry whether any person who is actively being considered for employ-
45 ment and who will have the potential for regular and substantial contact
46 with [children] INDIVIDUALS who are cared for by the agency, is the
47 subject of an indicated child abuse and maltreatment report on file with
48 the statewide central register of child abuse and maltreatment prior to
49 permitting such person to have unsupervised contact with [children] SUCH
50 INDIVIDUALS. Such agency may inquire of the [department] OFFICE and the
51 [department] OFFICE shall inform such agency and the subject of the
52 inquiry whether any person who is currently employed and who has the
53 potential for regular and substantial contact with [children] INDIVID-
54 UALS who are cared for by such agency is the subject of an indicated
55 child abuse and maltreatment report on file with the statewide central
56 register of child abuse and maltreatment. A provider agency shall also

1 inquire of the [department] OFFICE and the [department] OFFICE shall
2 inform such agency and the subject of the inquiry whether any person who
3 is employed by an individual, corporation, partnership or association
4 which provides goods or services to such agency who has the potential
5 for regular and substantial contact with [children] INDIVIDUALS who are
6 cared for by the agency, is the subject of an indicated child abuse and
7 maltreatment report on file with the statewide central register of child
8 abuse and maltreatment prior to permitting such person to have unsuper-
9 vised contact with [children] SUCH INDIVIDUALS. Inquiries made to the
10 [department] OFFICE pursuant to this subparagraph by a provider agency
11 on current employees shall be made no more often than once in any six
12 month period.

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

22 (iii) A provider agency may inquire of the [department] OFFICE and the
23 [department] OFFICE shall, upon receipt of such inquiry and subject to
24 the provisions of paragraph (e) of this subdivision, inform such agency
25 and the subject of the inquiry whether any person who has volunteered
26 his or her services to such agency and who will have the potential for
27 regular and substantial contact with [children] INDIVIDUALS who are
28 cared for by the agency, is the subject of an indicated child abuse and
29 maltreatment report on file with the statewide central register of child
30 abuse and maltreatment.

31 (iv) The [department] OFFICE shall promulgate regulations which effec-
32 tuate the provisions of this paragraph.

33 (iv) If it is determined after a review by the office [of children and
34 family services] of all records, reports and information in its
35 possession concerning the subject of the report that there is a [fair]
36 preponderance of the evidence to find that the subject committed the act
37 or acts of CHILD abuse or [neglect] MALTREATMENT giving rise to the
38 indicated report, the office [of children and family services] shall
39 also determine whether such act or acts are relevant and reasonably
40 related to issues concerning the employment of the subject by a provider
41 agency or the subject being allowed to have regular and substantial
42 contact with [children] INDIVIDUALS cared for by a provider agency or
43 the approval or disapproval of an application which has been submitted
44 by the subject to a licensing agency, based on guidelines developed
45 pursuant to subdivision five of this section. If it is determined that
46 such act or acts are not relevant and related to such issues, the office
47 [of children and family services] shall be precluded from informing the
48 provider or licensing agency which made the inquiry to the office [of
49 children and family services] pursuant to this section that the person
50 about whom the inquiry is made is the subject of an indicated report of
51 child abuse or maltreatment.

52 (a) Upon notification by the [department] OFFICE or by a child care
53 resource and referral program in accordance with subdivision six of this
54 section that any person who has applied to a licensing agency for a
55 license, certificate or permit or who seeks to become an employee of a
56 provider agency, or to accept a child for adoptive placement or who will

1 be hired as a consultant or used as a volunteer by a provider agency, or
2 that any other person about whom an inquiry is made to the [department]
3 OFFICE pursuant to the provisions of this section is the subject of an
4 indicated report, the licensing or provider agency shall determine on
5 the basis of information it has available whether to approve such appli-
6 cation or retain the employee or hire the consultant or use the volun-
7 teer or permit an employee of another person, corporation, partnership
8 or association to have access to the [children] INDIVIDUALS cared for by
9 the provider agency, provided, however, that if such application is
10 approved, or such employee is retained or consultant hired or volunteer
11 used or person permitted to have access to the children cared for by
12 such agency the licensing or provider agency shall maintain a written
13 record, as part of the application file or employment record, of the
14 specific reasons why such person was determined to be appropriate to
15 receive a foster care or adoption placement or to provide day care
16 services, to be the director of a camp subject to the provisions of
17 article thirteen-A[,] OR thirteen-B [or thirteen-C] of the public health
18 law, to be employed, to be retained as an employee, to be hired as a
19 consultant, used as a volunteer or to have access to the [children]
20 INDIVIDUALS cared for by the agency.

21 S 9. Section 424-b of the social services law, as amended by chapter
22 323 of the laws of 2008, is amended to read as follows:

23 S 424-b. Children in the care of certain public and private agencies.
24 Notwithstanding any inconsistent provisions of law, when a report of
25 child abuse or maltreatment involves a child being cared for in a home
26 operated or supervised by an authorized agency[,] OR the office of chil-
27 dren and family services, [or an office of the department of mental
28 hygiene,] such report shall be accepted and maintained by the office of
29 children and family services and shall be referred for the purposes of
30 conducting an investigation to the appropriate staff within the office
31 of children and family services [or the appropriate office of the
32 department of mental hygiene,] where the child is in the care of such
33 agency; and where the child is in a home operated or supervised by an
34 authorized agency, to the social services district wherein such home is
35 located. The [agency] OFFICE or social services district receiving such
36 referral shall undertake an appropriate investigation of the report, in
37 accordance with the terms and conditions set forth in [subdivisions one
38 through eight of section four hundred twenty-four-c of] this title. Any
39 person who is alleged to have abused or maltreated a child in a report
40 accepted and referred pursuant to this section shall be accorded the
41 procedural rights set forth in section four hundred twenty-two and in
42 subdivision six of section four hundred twenty-four of this title. Noth-
43 ing in this section shall impose any duty or responsibility on any child
44 protective service pursuant to section four hundred twenty-two, four
45 hundred twenty-four or any other provision of this article.

46 S 10. Subdivision 1 of section 425 of the social services law, as
47 amended by chapter 634 of the laws of 1988, is amended to read as
48 follows:

49 1. To effectuate the purposes of this title, the commissioner may
50 request and shall receive from departments, boards, bureaus, or other
51 agencies of the state, or any of its political subdivisions, or any duly
52 authorized agency, or any other agency providing services under the
53 local child protective services plan such assistance and data as will
54 enable the department and local child protective services to fulfill
55 their responsibilities properly. [In relation to an investigation of a
56 report of abuse or maltreatment involving a child in residential care,

1 such data may include, but need not be limited to, the case records of
2 the child who allegedly was abused or maltreated and any other child who
3 allegedly witnessed the abuse or maltreatment and, consistent with
4 appropriate collective bargaining agreements and applicable provisions
5 of the civil service law, those portions of the employment record of the
6 subject of the report considered by the subject's employer to be rele-
7 vant and reasonably related to the allegations being investigated by the
8 department.] Nothing contained in this subdivision shall limit the
9 department's authority under sections three hundred seventy-two, four
10 hundred sixty-c and four hundred sixty-e of this chapter to access the
11 records of authorized agencies.

12 S 11. Section 426 of the social services law, as amended by chapter
13 676 of the laws of 1985, is amended to read as follows:

14 S 426. Annual reports. The commissioner shall prepare for inclusion in
15 the annual report required by subdivision (d) of section seventeen of
16 this chapter to be filed with the governor and the legislature prior to
17 December fifteenth of each year, a report on the operations of the state
18 central register of child abuse and maltreatment and the various local
19 child protective services. The report shall include a full statistical
20 analysis of the reports made to the central register together with a
21 report on the implementation of this title, his OR HER evaluation of
22 services offered under this chapter and his OR HER recommendations for
23 additional legislation to fulfill the purposes of this title. Such
24 report shall indicate the number of child abuse and maltreatment reports
25 and cases received by the statewide central register of child abuse and
26 maltreatment by each district in the preceding year, the number of such
27 cases determined to have been indicated and the number of such cases
28 determined to be unfounded by each district in the preceding year, the
29 number of such cases which have not been indicated or unfounded within
30 the time period required by subdivision seven of section four hundred
31 twenty-four of this [chapter] ARTICLE by each district in the preceding
32 year and the number of workers assigned to the child protective service
33 in each district in the preceding year. [The report shall also contain
34 data on the protection of children in residential care from abuse and
35 maltreatment, including reports received, results of investigations by
36 types of facilities and programs, types of corrective action taken, as
37 well as efforts undertaken by the department, the division for youth
38 and the state education department to provide training pursuant to stan-
39 dards established by section four hundred sixty-two of this chapter,
40 section five hundred one of the executive law and sections forty-four
41 hundred three, forty-three hundred fourteen, forty-three hundred fifty-
42 eight and forty-two hundred twelve of the education law.]

43 S 12. Section 460 of the social services law, as added by chapter 669
44 of the laws of 1977, is amended to read as follows:

45 S 460. Declaration of policy and statement of purpose. Residential
46 care programs for adults and children of the highest quality, efficient-
47 ly produced and properly utilized at a reasonable cost, are a matter of
48 vital concern to the people of this state. In order to more effectively
49 protect and assure the life, health, safety and comfort of adults and
50 children who must be cared for away from their own homes, the department
51 of social services acting directly or through social services districts,
52 and with the cooperation of other state agencies, shall have the compre-
53 hensive responsibility for the development and administration of
54 programs, standards and methods of operation, and all other matters of
55 state policy, with respect to residential care programs for children and
56 adults and all facilities and agencies, whether public or private, which

1 are subject to the provisions of this article. FOR THE PURPOSES OF THIS
2 ARTICLE, WITH RESPECT TO RESIDENTIAL CARE PROGRAMS FOR CHILDREN, THE
3 TERM "DEPARTMENT" SHALL MEAN THE OFFICE OF CHILDREN AND FAMILY SERVICES
4 AND WITH RESPECT TO RESIDENTIAL CARE PROGRAMS FOR ADULTS, THE TERM SHALL
5 MEAN THE OFFICE OF CHILDREN AND FAMILY SERVICES IN RELATION TO FAMILY
6 TYPE HOMES FOR ADULTS AND RESIDENTIAL PROGRAMS FOR VICTIMS OF DOMESTIC
7 VIOLENCE, THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE IN RELATION
8 TO SHELTERS FOR ADULTS AND SHELTERS FOR FAMILIES; AND THE DEPARTMENT OF
9 HEALTH IN RELATION TO ALL OTHER RESIDENTIAL CARE PROGRAMS FOR ADULTS.

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

14 2-a. Special procedures relating to abuse and neglect of [children in
15 residential care] VULNERABLE PERSONS. (a) If the report of an investi-
16 gation of [child] abuse or [maltreatment] NEGLECT is [indicated]
17 SUBSTANTIATED IN ACCORDANCE WITH ARTICLE ELEVEN OF THIS CHAPTER, the
18 director or operator of a residential facility or program[, including a
19 program described in paragraph (j) of subdivision four of section four
20 hundred twelve-a of this chapter,] shall submit to the [office of chil-
21 dren and family services] DEPARTMENT, within ten business days of
22 receipt of notice of the [indicated] SUBSTANTIATED report, a written
23 plan of prevention and remediation to be taken with respect to the
24 subject of [the indicated] SUCH report to [assure] PROTECT the continued
25 health [and], safety AND WELFARE of [children] THE SERVICE RECIPIENTS
26 and provide for the prevention of future acts of abuse or [maltreatment]
27 NEGLECT. The [office of children and family services] DEPARTMENT shall
28 approve or disapprove such plan and specify necessary revisions within
29 ten days of its receipt and shall monitor its implementation pursuant to
30 the provisions of this chapter.

31 (b) In the event an investigation of a report of alleged [child] abuse
32 or [maltreatment] NEGLECT determines that [some credible] A PREPONDER-
33 ANCE OF evidence of abuse or [maltreatment] NEGLECT exists and such
34 abuse or [maltreatment] NEGLECT may be attributed in whole or in part to
35 noncompliance by the facility or program[, including a program described
36 in paragraph (j) of subdivision four of section four hundred twelve-a of
37 this chapter,] with provisions of this chapter or regulations of the
38 [office of children and family services] DEPARTMENT applicable to the
39 operation of such residential facility or program, the director or oper-
40 ator of such facility or program shall, in consultation with officials
41 of the department responsible for the approval of operating certificates
42 and for monitoring the provision of protective services to [children]
43 SERVICE RECIPIENTS, develop a plan of prevention and remediation which
44 shall be submitted to and approved by the [office of children and family
45 services] DEPARTMENT in accordance with time limits established by regu-
46 lations of the [office of children and family services] DEPARTMENT.
47 Implementation of such plan shall be jointly monitored by officials of
48 the [office of children and family services] DEPARTMENT responsible for
49 the approval of operating certificates and for monitoring the provision
50 of protective services to [children] SERVICE RECIPIENTS. In reviewing
51 the continuing qualification of a residential [child care] facility or
52 program for an operating certificate, the [office of children and family
53 services] DEPARTMENT shall evaluate such facility's or program's compli-
54 ance with plans of prevention and remediation developed and implemented
55 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.

S 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:

S 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.

S 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:

S 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 facilities 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 commenced less than seventy-two hours from the time such complaint is received by the department. Upon the conclusion of the investigation by the department 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.

S 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 chapter 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:

S 462. Responsibility for standards. 1. (a) The [department of social services] OFFICE OF CHILDREN AND FAMILY SERVICES shall promulgate regulations concerning standards of care and treatment and fiscal, administrative, 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 OR NEGLECT and [maltreatment of]

FOR SIGNIFICANT 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 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, 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 appropriate 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] NEGLECT 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;

[(vi)] (VII) 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.

(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

1 (ii) subject to the amounts appropriated therefor, children receive
2 instruction, consistent with their age, needs and circumstances as well
3 as the needs and circumstances within the facility or program, in tech-
4 niques and procedures which will enable such children to ADVOCATE FOR
5 AND protect themselves from abuse and [maltreatment] NEGLECT; and

6 (iii) the [department] OFFICE, IN CONSULTATION WITH THE EXECUTIVE
7 DIRECTOR OF THE JUSTICE CENTER FOR PERSONS WITH SPECIAL NEEDS shall take
8 all reasonable and necessary actions to assure that employees, volun-
9 teers and consultants in residential care facilities and programs are
10 kept apprised on a current basis of all [department] OFFICE policies and
11 procedures relating to the protection of children from abuse and
12 [maltreatment] NEGLECT AND SIGNIFICANT INCIDENTS, and shall monitor and
13 supervise the provision of training to such administrators, employees,
14 volunteers, children and consultants.

15 (d) Such regulations shall be developed in consultation with other
16 state departments and agencies responsible for human services programs
17 including, but not limited to, the department of education, the depart-
18 ment of health, [the department of mental hygiene, the division for
19 youth and the board of social welfare,] THE OFFICE OF MENTAL HEALTH, THE
20 OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THE OFFICE OF ALCO-
21 HOLISM AND SUBSTANCE ABUSE SERVICES AND THE JUSTICE CENTER FOR THE
22 PROTECTION OF PEOPLE WITH SPECIAL NEEDS and shall, to the extent possi-
23 ble, be consistent with those promulgated by other state agencies for
24 such purposes.

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

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

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

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

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

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

55 (c) The department of mental hygiene and the [division for youth]
56 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.

S 17. This act shall take effect April 1, 2013; provided, however, that the amendments to section 426 of the social services law made by section eleven of this act shall only remain in effect until section 6 of chapter 377 of the laws of 2011, takes effect; provided further, 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 effective date.

PART E

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

5. "Educational setting" shall mean the building and grounds of a public school district, the vehicles provided by the school district for the transportation of students to and from school buildings, field trips, co-curricular and extra-curricular activities both on and off school district grounds, all co-curricular and extra-curricular activity sites, and any other location where direct contact between an employee or volunteer and a child has allegedly occurred. SUCH TERM SHALL NOT INCLUDE A SPECIAL ACT SCHOOL DISTRICT AS DEFINED IN SECTION FOUR THOUSAND ONE OF THIS CHAPTER WHICH SHALL BE SUBJECT TO ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW.

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

(a) Promulgate regulations, PURSUANT TO THIS SECTION AND ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW, concerning standards for the protection of children in residential care from abuse and [maltreatment] NEGLECT including procedures for:

(i) 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 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 to

1 the [state] VULNERABLE PERSONS' central register IN ACCORDANCE WITH
2 SECTION FOUR HUNDRED NINETY-TWO OF THE SOCIAL SERVICES LAW as well as
3 other children in care, immediately upon notification that a report of
4 [child] abuse or [maltreatment] NEGLECT has been made with respect to a
5 child in such residential facility or program;

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

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

12 (VII) CONSISTENT WITH APPLICABLE COLLECTIVE BARGAINING AGREEMENTS,
13 ASSURING THAT AN INDIVIDUAL WHO HAS COMMITTED A CATEGORY ONE OFFENSE, AS
14 DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED
15 NINETY-THREE OF THE SOCIAL SERVICES LAW, THAT IS INCLUDED ON THE VULNER-
16 ABLE PERSONS' CENTRAL REGISTER IS NOT HIRED OR OTHERWISE USED IN ANY
17 POSITION IN WHICH SUCH INDIVIDUAL WOULD HAVE REGULAR AND SUBSTANTIAL
18 CONTACT WITH A SERVICE RECIPIENT IN ANY PROGRAM DESCRIBED IN PARAGRAPH
19 (D) OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE
20 SOCIAL SERVICES LAW.

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

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

32 (B) subject to the amounts appropriated therefor, children receive
33 instruction, consistent with their age, needs and circumstances as well
34 as the needs and circumstances within the program, in techniques and
35 procedures which will enable such children to protect themselves from
36 abuse, NEGLECT and maltreatment.

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

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

1 (c)] Provide for the development and implementation of a plan of
2 prevention and remediation with respect to [an indicated] A SUBSTANTI-
3 ATED report of [child] abuse or [maltreatment] NEGLECT. Such action
4 shall include: (i) within ten days of receipt of [an indicated] A
5 SUBSTANTIATED report of [child] abuse or [maltreatment] NEGLECT, devel-
6 opment and implementation of a plan of prevention and remediation to be
7 taken with respect to a custodian or the residential facility in order
8 to assure the continued health and safety of children and to provide for
9 the prevention of future acts of abuse or [maltreatment] NEGLECT; and
10 (ii) development and implementation of a plan of prevention and remedi-
11 ation, in the event an investigation of a report of alleged child abuse
12 or [maltreatment] NEGLECT determines that some credible evidence of
13 abuse or [maltreatment] NEGLECT exists and such abuse or [maltreatment]
14 NEGLECT may be attributed in whole or in part to noncompliance by the
15 residential facility or program with provisions of this chapter or regu-
16 lations of the department applicable to the operation of a residential
17 facility or program. Any plan of prevention and remediation required to
18 be developed [pursuant to paragraph (ii) of this subdivision] by a
19 facility supervised by the department shall be submitted to and approved
20 by the department in accordance with time limits established by regu-
21 lations of the department. Implementation of the plan shall be monitored
22 by the department. In reviewing the continued qualifications of a resi-
23 dential facility or program for an operating certificate, the department
24 shall evaluate such facility's compliance with plans of prevention and
25 remediation developed and implemented pursuant to this subdivision.

26 S 2. Section 4314 of the education law, as added by chapter 677 of the
27 laws of 1985, subdivisions (a), (b) and (c) as amended by chapter 32 of
28 the laws of 1992, is amended to read as follows:

29 S 4314. Protection of pupils. The department shall:

30 (a) Promulgate regulations, IN ACCORDANCE WITH THIS SECTION AND ARTI-
31 CLE ELEVEN OF THE SOCIAL SERVICES LAW, concerning standards for the
32 protection of children in residential care from abuse and [maltreatment]
33 NEGLECT, including procedures for:

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

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

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

50 (iv) demonstrating by a residential facility or program that appropri-
51 ate action is taken to assure the safety of the child who is [reported]
52 ALLEGED TO HAVE BEEN ABUSED OR NEGLECTED IN A REPORT to the [state]
53 VULNERABLE PERSONS' central register IN ACCORDANCE WITH SECTION FOUR
54 HUNDRED NINETY-TWO OF THE SOCIAL SERVICES LAW as well as other children
55 in care, immediately upon notification that a report of [child] AN ALLE-

1 GATION OF abuse or [maltreatment] NEGLECT has been made [with respect to
2 a child in such residential facility or program];

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

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

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

10 (1) subject to the amounts appropriated therefor, administrators,
11 employees, volunteers and consultants receive training in at least the
12 following: child abuse prevention and identification, safety and secu-
13 rity procedures, the principles of child development, the character-
14 istics of children in care and techniques of group and child management
15 including crisis intervention, the laws, regulations and procedures
16 governing the protection of children from abuse, NEGLECT and maltreat-
17 ment, and other appropriate topics, provided however, that the depart-
18 ment may exempt administrators and consultants from such requirements
19 upon demonstration of substantially equivalent knowledge or experience;
20 and

21 (2) subject to the amounts appropriated therefor, children receive
22 instruction, consistent with their age, needs and circumstances as well
23 as the needs and circumstances within the facility or program, in tech-
24 niques and procedures which will enable such children to protect them-
25 selves from abuse, NEGLECT and maltreatment.

26 The department, IN CONSULTATION WITH THE EXECUTIVE DIRECTOR OF THE
27 JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, shall
28 take all reasonable and necessary actions to assure that employees,
29 volunteers and consultants in residential facilities are kept apprised
30 on a current basis of all department policies and procedures relating to
31 the protection of children from abuse, NEGLECT and maltreatment and
32 shall monitor and supervise the provision of training to such employees,
33 volunteers and consultants. Regulations and standards developed pursuant
34 to this section shall, to the extent possible, be consistent with those
35 promulgated by other state agencies for such purposes;

36 (b) [Cooperate with the state department of social services to protect
37 the health and safety of pupils at the school pursuant to title six of
38 article six of the social services law. Such cooperation shall include:
39 the making of reports of alleged child abuse or maltreatment; providing
40 necessary assistance to the state department of social services in the
41 department's investigation thereof and considering the recommendations
42 of the state department of social services for preventive and remedial
43 action including legal action and provide or direct the residential
44 facility to provide such written reports thereon to the department of
45 social services as to the implementation of plans of prevention and
46 remediation approved by the department; and

47 (c)] Provide for the development and implementation of a plan of
48 prevention and remediation with respect to [an indicated] A SUBSTANTI-
49 ATED report of child abuse or [maltreatment] NEGLECT. Such action shall
50 include: (i) within ten days of receipt of [an indicated] A SUBSTANTI-
51 ATED report of child abuse or [maltreatment] NEGLECT, development and
52 implementation of a plan of prevention and remediation to be taken with
53 respect to a custodian or the residential facility in order to assure
54 the continued health and safety of children and to provide for the
55 prevention of future acts of abuse or [maltreatment] NEGLECT; and (ii)
56 development and implementation of a plan of prevention and remediation,

1 in the event an investigation of a report of alleged [child] abuse or
2 [maltreatment] NEGLECT determines that some credible evidence of abuse
3 or [maltreatment] NEGLECT exists and such abuse or [maltreatment]
4 NEGLECT may be attributed in whole or in part to noncompliance by the
5 residential facility or program with provisions of this chapter or regu-
6 lations of the department applicable to the operation of such residen-
7 tial facility or program. Any plan of prevention and remediation
8 required to be developed pursuant to [paragraph (ii) of] this subdivi-
9 sion by a facility supervised by the department shall be submitted to
10 and approved by the department in accordance with time limits estab-
11 lished by regulations of the department. Implementation of the plan
12 shall be monitored by the department. In reviewing the continued quali-
13 fications of a residential facility or program for an operating certifi-
14 cate, the department shall evaluate such facility's compliance with
15 plans of prevention and remediation developed and implemented pursuant
16 to this subdivision.

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

20 S 4358. Protection of pupils. The department shall:

21 (a) Promulgate regulations concerning standards for the protection of
22 children in residential care from abuse [and maltreatment] AND NEGLECT
23 IN ACCORDANCE WITH THIS SECTION AND ARTICLE ELEVEN OF THE SOCIAL
24 SERVICES LAW, including procedures for:

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

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

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

41 (iv) demonstrating by a residential facility or program that appropri-
42 ate action is taken to assure the safety of the child who is [reported]
43 ALLEGED TO HAVE BEEN ABUSED OR NEGLECTED IN A REPORT to the [state]
44 VULNERABLE PERSONS' central register IN ACCORDANCE WITH SECTION FOUR
45 HUNDRED NINETY-TWO OF THE SOCIAL SERVICES LAW as well as other children
46 in care, immediately upon notification that a report of [child] AN ALLE-
47 GATION OF abuse [or maltreatment] OR NEGLECT has been made [with respect
48 to a child in such facility or program];

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

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

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

55 (A) subject to the amounts appropriated therefor, administrators,
56 employees, volunteers and consultants receive training in at least the

1 following: child abuse prevention and identification, safety and securi-
2 ty procedures, the principles of child development, the characteristics
3 of children in care and techniques of group and child management includ-
4 ing crisis intervention, the laws, regulations and procedures governing
5 the protection of children from abuse, NEGLECT and maltreatment, and
6 other appropriate topics, provided however, that the department may
7 exempt administrators and consultants from such requirements upon demon-
8 stration of substantially equivalent knowledge or experience; and

9 (B) subject to the amounts appropriated therefor, children receive
10 instruction, consistent with their age, needs and circumstances as well
11 as the needs and circumstances of the facility, in techniques and proce-
12 dures which will enable such children to protect themselves from abuse,
13 NEGLECT and maltreatment.

14 The department shall take all reasonable and necessary actions to
15 assure that employees, volunteers and consultants in residential facili-
16 ties and programs are kept apprised on a current basis of all department
17 policies and procedures relating to the protection of children from
18 abuse, NEGLECT and maltreatment and shall monitor and supervise the
19 provision of training to such administrators, employees, volunteers,
20 children and consultants. Regulations and standards developed pursuant
21 to this section shall, to the extent possible, be consistent with those
22 promulgated by other state agencies for such purposes;

23 (b) [Cooperate with the state department of social services to protect
24 the health and safety of pupils at the school pursuant to title six of
25 article six of the social services law. Such cooperation shall include:
26 the making of reports of alleged child abuse or maltreatment; providing
27 necessary assistance to the state department of social services in the
28 department's investigation thereof and considering the recommendations
29 of the state department of social services for preventive and remedial
30 action including legal action and provide or direct the residential
31 facility to provide such written reports to the department of social
32 services as to the implementation of plans of prevention and remediation
33 approved by the department; and

34 (c)] Provide for the development and implementation of a plan of
35 prevention and remediation with respect to [an indicated] A SUBSTANTI-
36 ATED report of child abuse [or maltreatment] OR NEGLECT. Such action
37 shall include: (i) within ten days of receipt of [an indicated] A
38 SUBSTANTIATED report of child abuse [or maltreatment] OR NEGLECT, devel-
39 opment and implementation of a plan of prevention and remediation to be
40 taken with respect to a custodian or the residential facility in order
41 to assure the continued health and safety of children and to provide for
42 the prevention of future acts of abuse or [maltreatment] NEGLECT; and
43 (ii) development and implementation of a plan of prevention and remedi-
44 ation, in the event an investigation of a report of alleged [child]
45 abuse [or maltreatment] OR NEGLECT determines that some credible
46 evidence of abuse [or maltreatment] OR NEGLECT exists and such abuse [or
47 maltreatment] OR NEGLECT may be attributed in whole or in part to
48 noncompliance by the residential facility or program with provisions of
49 this chapter or regulations of the department applicable to the opera-
50 tion of such residential facility or program. Any plan of prevention and
51 remediation required to be developed pursuant to [paragraph (ii) of]
52 this subdivision by a facility supervised by the department shall be
53 submitted to and approved by the department in accordance with time
54 limits established by regulations of the department. Implementation of
55 the plan shall be monitored by the department. In reviewing the contin-
56 ued qualifications of a residential facility or program for an operating

1 certificate, the department shall evaluate such facility's compliance
2 with plans of prevention and remediation developed and implemented
3 pursuant to this subdivision.

4 S 4. Subdivisions 11, 12, 13, 14, 15, 16, 17, 18, 19 and 19-a of
5 section 4403 of the education law, subdivisions 11, 12 and 13 as amended
6 by chapter 32 of the laws of 1992, subdivisions 14, 15 and 16 as added
7 by chapter 53 of the laws of 1986, subdivision 17 as amended by chapter
8 53 of the laws of 1987, subdivision 18 as added by chapter 428 of the
9 laws of 1992, subdivision 19 as added by chapter 600 of the laws of 1994
10 and subdivision 19-a as amended by chapter 378 of the laws of 2007, are
11 amended to read as follows:

12 11. To promulgate regulations concerning standards for the protection
13 of children in residential care from abuse and [maltreatment] NEGLECT IN
14 ACCORDANCE WITH THIS SECTION AND ARTICLE ELEVEN OF THE SOCIAL SERVICES
15 LAW, including procedures for:

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

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

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

32 (d) demonstrating by a residential facility or program that appropri-
33 ate action is taken to assure the safety of the child who is [reported]
34 ALLEGED TO HAVE BEEN ABUSED OR NEGLECTED IN A REPORT to the [state]
35 VULNERABLE PERSONS' central register IN ACCORDANCE WITH SECTION FOUR
36 HUNDRED NINETY-TWO OF THE SOCIAL SERVICES LAW as well as other children
37 in care, immediately upon notification that a report of [child] AN ALLE-
38 GATION OF abuse [or maltreatment] OR NEGLECT has been made with respect
39 to a child in such residential facility or program;

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

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

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

47 (A) subject to amounts appropriated therefor, administrators, employ-
48 ees, volunteers and consultants receive training in at least the follow-
49 ing: child abuse prevention and identification, safety and security
50 procedures, the principles of child development, the characteristics of
51 children in care, and techniques of group and child management including
52 crisis intervention, the laws, regulations and procedures governing the
53 protection of children from abuse, NEGLECT and maltreatment, and other
54 appropriate topics, provided however, that the department may exempt
55 administrators and consultants from such requirements upon demonstration
56 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] AND NEGLECT.

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, NEGLECT and maltreatment 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 thereon 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 SUBSTANTIATED report of [child] abuse or [maltreatment] NEGLECT. Such action shall include: (a) within ten days of receipt of [an indicated] A SUBSTANTIATED report of [child] abuse or [maltreatment] NEGLECT, 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] NEGLECT; and (b) development and implementation of a plan of prevention and remediation, in the event an investigation of a report of alleged [child] abuse or [maltreatment] NEGLECT determines that some credible evidence of abuse or [maltreatment] NEGLECT exists and such abuse or [maltreatment] NEGLECT 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.

1 [15] 14. To provide technical assistance to school districts to
2 assist in the adaptation of curriculum for the instruction of children
3 with handicapping conditions.

4 [16] 15. To provide technical assistance to school districts to
5 assist in developing criteria for placement in special education and
6 criteria for reviewing the ability of a pupil to participate in regular
7 education.

8 [17] 16. Commencing with the nineteen hundred eighty-seven--eighty-
9 eight school year, to provide for instruction during the months of July
10 and August of students with handicapping conditions who have received
11 state appointments pursuant to article eighty-five, eighty-seven or
12 eighty-eight of this chapter and whose handicapping conditions, in the
13 judgment of the commissioner, are severe enough to exhibit the need for
14 a structured learning environment of twelve months duration to maintain
15 developmental levels, by making such appointments for twelve months;
16 provided that the initial term of appointment of a student with a handi-
17 capping condition who is the minimum age eligible for such a state
18 appointment shall not commence during the months of July or August.

19 [18] 17. To approve the provision of early intervention services, as
20 defined in section twenty-five hundred forty-one of the public health
21 law, by agencies which are approved providers of special services or
22 programs pursuant to section forty-four hundred ten of this article
23 based on such agency's compliance with the coordinated standards and
24 procedures for early intervention services established pursuant to title
25 II-A of article twenty-five of the public health law and, where applica-
26 ble, teacher certification requirements.

27 [19] 18. To establish guidelines for determining when a child is at
28 risk of a future placement in a residential school, and for the
29 provision by committees on special education of information to parents
30 and other persons in parental relationship concerning the availability
31 of community support services to meet the needs of the family. The
32 guidelines shall be developed by the department after consultation with
33 the office of mental health, the office of mental retardation and devel-
34 opmental disabilities, the office of alcoholism and substance abuse
35 services, the department of health, the department of social services
36 and the division for youth.

37 [19-a] 19. To adopt regulations prescribing the state complaint
38 procedures pursuant to sections 300.151 through 300.153 of title thir-
39 ty-four of the code of federal regulations, where an individual or
40 organization files a written complaint alleging that a public agency has
41 violated part B of the individuals with disabilities education act. Such
42 regulations shall include, but not be limited to, remedies for denial of
43 appropriate services, including, as appropriate, the awarding of mone-
44 tary reimbursement, compensatory services or other corrective action
45 appropriate to the needs of the child.

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

48 2. The commissioner, in consultation with the [state commission on
49 quality care and advocacy for persons with disabilities] JUSTICE CENTER
50 FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, shall promulgate rules
51 and regulations requiring every school bus driver operating a school bus
52 which has or will have one or more students with a disability as passen-
53 gers to receive training and instruction relating to the understanding
54 of, and attention to, the special needs of such students. Such training
55 and instruction may be included with the training and instruction
56 required pursuant to paragraph a of subdivision one of this section and

1 shall be provided at least once per year or more frequently as deter-
2 mined by the commissioner in consultation with the state comprehensive
3 school bus driver safety training council. For the purposes of this
4 subdivision, the term "student with a disability" shall have the same
5 meaning as such term is defined in subdivision one of section forty-four
6 hundred one of this chapter. Any person employed as a school bus driver
7 on January first, two thousand nine who is subject to the provisions of
8 this subdivision shall comply with the requirements of this subdivision
9 by July first, two thousand nine. Any school bus driver hired after
10 January first, two thousand nine who is subject to the requirements of
11 this subdivision shall complete such training and instruction prior to
12 assuming his or her duties.

13 S 6. Subdivision 4 of section 1229-d of the vehicle and traffic law,
14 as added by chapter 181 of the laws of 2007, is amended to read as
15 follows:

16 (4) The commissioner of education, in consultation with the [state
17 commission on quality care and advocacy for persons with disabilities]
18 JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, shall
19 promulgate rules and regulations requiring that every school bus attend-
20 ant serving a student or students with a disability receive training and
21 instruction relating to the understanding of and attention to the
22 special needs of such students. Such training and instruction may be
23 included with the training and instruction required pursuant to subdivi-
24 sion three of this section and shall be provided at least once per year
25 or more frequently as determined by the commissioner of education in
26 consultation with the state comprehensive school bus driver safety
27 training council. For the purposes of this subdivision, the term
28 "student with a disability" shall have the same meaning as such term is
29 defined in subdivision one of section forty-four hundred one of the
30 education law. Any person employed as a school bus attendant serving a
31 student or students with a disability on January first, two thousand
32 nine shall comply with the requirements of this subdivision by July
33 first, two thousand nine. Any person hired after January first, two
34 thousand nine shall complete such training, instruction and testing
35 prior to assuming his or her duties as a school bus attendant serving a
36 student or students with a disability.

37 S 7. This act shall take effect April 1, 2013; provided, however, that
38 the amendments to subdivision 18 of section 4403 of the education law
39 made by section four of this act shall not affect the repeal of such
40 subdivision and shall be deemed repealed therewith; provided further
41 that the amendments to subdivision 19-a of section 4403 of the education
42 law made by section four of this act shall not affect the expiration of
43 such subdivision and shall be deemed to expire therewith.

44

PART F

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

48 (a) Every provider of services who contracts with or is approved or
49 otherwise authorized by the office to provide services, except (1) a
50 department facility, (2) a hospital as defined in article twenty-eight
51 of the public health law, or (3) a licensed professional under title
52 eight of the education law who does not have employees or volunteers who
53 will have regular and substantial unsupervised or unrestricted physical
54 contact with the clients of such provider, and every applicant to be

1 such a provider of services except (i) a department facility, (ii) a
2 hospital as defined in article twenty-eight of the public health law, or
3 (iii) a licensed professional under title eight of the education law and
4 who does not have employees or volunteers who will have regular and
5 substantial unsupervised or unrestricted physical contact with the
6 clients of such provider, shall request that the [office] JUSTICE CENTER
7 FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS check, and upon such
8 request [the office] SUCH JUSTICE CENTER shall request and shall be
9 authorized to receive from the division of criminal justice services
10 criminal history information, as such phrase is defined in paragraph (c)
11 of subdivision one of section eight hundred forty-five-b of the execu-
12 tive law, concerning each (A) prospective operator, employee or volun-
13 teer of such provider who will have regular and substantial unsupervised
14 or unrestricted physical contact with the clients of such provider, or
15 (B) other person over the age of eighteen who is to reside in a family
16 care home, except any person receiving family care services, who will
17 have regular and substantial unsupervised or unrestricted physical
18 contact with the clients of such provider. For purposes of this section,
19 "operator" shall include any natural person with an ownership interest
20 in the provider of services.

21 S 2. The mental hygiene law is amended by adding a new section 19.20
22 to read as follows:

23 S 19.20 REVIEW OF CRIMINAL HISTORY INFORMATION CONCERNING CERTAIN
24 PROSPECTIVE PROVIDERS, EMPLOYEES, AND INDIVIDUALS CREDEN-
25 TIALED BY THE OFFICE.

26 (A) EVERY PROVIDER OF SERVICES WHO CONTRACTS WITH OR IS APPROVED OR
27 OTHERWISE AUTHORIZED BY THE OFFICE TO PROVIDE SERVICES, EXCEPT (1) A
28 DEPARTMENT FACILITY, (2) A HOSPITAL AS DEFINED IN ARTICLE TWENTY-EIGHT
29 OF THE PUBLIC HEALTH LAW, OR (3) A LICENSED PROFESSIONAL UNDER TITLE
30 EIGHT OF THE EDUCATION LAW WHO DOES NOT HAVE EMPLOYEES OR VOLUNTEERS WHO
31 WILL HAVE REGULAR AND SUBSTANTIAL UNSUPERVISED OR UNRESTRICTED PHYSICAL
32 CONTACT WITH THE CLIENTS OF SUCH PROVIDER, AND EVERY APPLICANT TO BE
33 SUCH A PROVIDER OF SERVICES EXCEPT (I) A DEPARTMENT FACILITY, (II) A
34 HOSPITAL AS DEFINED IN ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, OR
35 (III) A LICENSED PROFESSIONAL UNDER TITLE EIGHT OF THE EDUCATION LAW WHO
36 DOES NOT HAVE EMPLOYEES OR VOLUNTEERS WHO WILL HAVE REGULAR AND SUBSTAN-
37 TIAL UNSUPERVISED OR UNRESTRICTED PHYSICAL CONTACT WITH THE CLIENTS OF
38 SUCH PROVIDER, SHALL REQUEST THAT THE JUSTICE CENTER FOR THE PROTECTION
39 OF PEOPLE WITH SPECIAL NEEDS CHECK, AND UPON SUCH REQUEST SUCH JUSTICE
40 CENTER SHALL REQUEST AND SHALL BE AUTHORIZED TO RECEIVE FROM THE DIVI-
41 SION OF CRIMINAL JUSTICE SERVICES CRIMINAL HISTORY INFORMATION, AS SUCH
42 PHRASE IS DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION EIGHT
43 HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW, CONCERNING EACH PROSPECTIVE
44 OPERATOR, EMPLOYEE OR VOLUNTEER OF SUCH PROVIDER WHO WILL HAVE REGULAR
45 AND SUBSTANTIAL UNSUPERVISED OR UNRESTRICTED PHYSICAL CONTACT WITH THE
46 CLIENTS OF SUCH PROVIDER. FOR PURPOSES OF THIS SECTION, "OPERATOR" SHALL
47 INCLUDE ANY NATURAL PERSON WITH AN OWNERSHIP INTEREST IN THE PROVIDER OF
48 SERVICES.

49 (B) THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS
50 SHALL BE AUTHORIZED TO REQUEST AND RECEIVE FROM THE DIVISION OF CRIMINAL
51 JUSTICE SERVICES CRIMINAL HISTORY INFORMATION, AS SUCH PHRASE IS DEFINED
52 IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED
53 FORTY-FIVE-B OF THE EXECUTIVE LAW, FOR EVERY INDIVIDUAL CREDENTIALLED, OR
54 SEEKING TO BE CREDENTIALLED, BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE
55 ABUSE SERVICES TO PROVIDE SUBSTANCE USE DISORDER SERVICES.

1 (C) ACCESS TO AND USE OF SUCH INFORMATION SHALL BE GOVERNED BY THE
2 PROVISIONS OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

3 S 3. Subdivision (a) of section 31.35 of the mental hygiene law, as
4 amended by chapter 575 of the laws of 2004, is amended to read as
5 follows:

6 (a) Every provider of services who contracts with or is approved or
7 otherwise authorized by the office to provide services, except (1) a
8 department facility, (2) a hospital as defined in article twenty-eight
9 of the public health law, or (3) a licensed professional under title
10 eight of the education law who does not have employees or volunteers who
11 will have regular and substantial unsupervised or unrestricted physical
12 contact with the clients of such provider, and every applicant to be
13 such a provider of services except (i) a department facility, (ii) a
14 hospital as defined in article twenty-eight of the public health law, or
15 (iii) a licensed professional under title eight of the education law who
16 does not have employees or volunteers who will have regular and substan-
17 tial unsupervised or unrestricted physical contact with the clients of
18 such provider, shall request that the [office] JUSTICE CENTER FOR THE
19 PROTECTION OF PEOPLE WITH SPECIAL NEEDS check, and upon such request
20 [the office] SUCH JUSTICE CENTER shall request and shall be authorized
21 to receive from the division of criminal justice services criminal
22 history information, as such phrase is defined in paragraph (c) of
23 subdivision one of section eight hundred forty-five-b of the executive
24 law, concerning each prospective operator, employee or volunteer of such
25 provider who will have regular and substantial unsupervised or unre-
26 stricted physical contact with the clients of such provider. For
27 purposes of this section, "operator" shall include any natural person
28 with an ownership interest in the provider of services.

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

31 1. [Subject to rules and regulations of the division of criminal
32 justice services, an] EVERY authorized agency WHICH OPERATES A RESIDEN-
33 TIAL PROGRAM FOR CHILDREN AND THE OFFICE OF CHILDREN AND FAMILY SERVICES
34 shall [have access to conviction records maintained by state law
35 enforcement agencies pertaining to persons who have applied for and are
36 under active consideration for employment by such authorized agency in
37 positions where such persons will be engaged directly in the care and
38 supervision of children] REQUEST THAT THE JUSTICE CENTER FOR THE
39 PROTECTION OF PEOPLE WITH SPECIAL NEEDS CHECK, AND UPON SUCH REQUEST,
40 SUCH JUSTICE CENTER SHALL REQUEST AND SHALL BE AUTHORIZED TO RECEIVE
41 FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES CRIMINAL HISTORY INFORMA-
42 TION, AS SUCH PHRASE IS DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF
43 SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW CONCERNING EACH
44 PROSPECTIVE OPERATOR, EMPLOYEE OR VOLUNTEER OF SUCH RESIDENTIAL PROGRAM
45 WHO WILL HAVE REGULAR AND SUBSTANTIAL UNSUPERVISED OR UNRESTRICTED PHYS-
46 ICAL CONTACT WITH CHILDREN IN SUCH PROGRAM. FOR THE PURPOSES OF THIS
47 SECTION, "OPERATOR" SHALL INCLUDE ANY NATURAL PERSON WITH AN OWNERSHIP
48 INTEREST IN THE AUTHORIZED AGENCY. ACCESS TO AND THE USE OF SUCH INFOR-
49 MATION SHALL BE GOVERNED BY THE PROVISIONS OF SECTION EIGHT HUNDRED
50 FORTY-FIVE-B OF THE EXECUTIVE LAW.

51 S 5. Subdivision 2 and paragraph (a) of subdivision 5 of section 845-b
52 of the executive law, subdivision 2 as amended by chapter 769 of the
53 laws of 2005 and paragraph (a) of subdivision 5 as amended by chapter
54 331 of the laws of 2006, are amended to read as follows:

55 2. Where a provider is authorized or required to request a check of
56 criminal history information by an authorized agency pursuant to section

16.33 [or], 31.35, 19.07 OR 19.20 of the mental hygiene law [or], 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, 260.10, 260.24, 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.

S 6. This act shall take effect on April 1, 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 to the statewide central register OR VULNERABLE PERSONS' CENTRAL REGISTER.

S 2. Paragraph (h) of subdivision 3 of section 130.05 of the penal law, as amended by chapter 264 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. FOR PURPOSES OF THIS PARAGRAPH, "EMPLOYEE" MEANS EITHER AN EMPLOYEE OF THE AGENCY OPERATING THE RESIDENTIAL FACILITY, 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 OFFICERS OR OTHER EMPLOYEES, CONSULTANTS, CONTRACTORS OR VOLUNTEERS OF THE RESIDENTIAL FACILITY, WHO KNOW OR REASONABLY SHOULD KNOW THAT THE PERSON IS A RESIDENT OF SUCH FACILITY; PROVIDED, 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.

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

S 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.

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

S 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] E FELONY.

S 5. The closing paragraph of section 260.32 of the penal law, as amended by chapter 14 of the laws of 2010, is amended to read as follows:

1 Endangering the welfare of a vulnerable elderly person, or an incompe-
2 tent or physically disabled person in the second degree is a class [E] D
3 felony.

4 S 6. The closing paragraph of section 260.34 of the penal law, as
5 amended by chapter 14 of the laws of 2010, is amended to read as
6 follows:

7 Endangering the welfare of a vulnerable elderly person, or an incompe-
8 tent or physically disabled person in the first degree is a class [D] C
9 felony.

10 S 7. This act shall take effect on the thirtieth day after it shall
11 have become a law.

12 PART H

13 Section 1. Chapter 606 of the laws of 2011, amending the mental
14 hygiene law relating to creating an abuse prevention notification
15 system, is REPEALED.

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

19 S 3. This act shall take effect April 1, 2013.

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

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