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I N S E N A T E

April 29, 2014

Introduced by Sen. GALLIVAN -- (at request of the Justice Center for the Protection of People with Special Needs) -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, the education law and the social services law, in relation to making technical changes to the protection of people with special needs act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 401-a of the correction law, as
2 amended by section 6 of part A of chapter 501 of the laws of 2012, is
3 amended to read as follows:
4 1. The justice center for the protection of people with special needs
5 shall be responsible for monitoring the quality of mental health care
6 provided to inmates pursuant to article [forty-five of the mental
7 hygiene law] TWENTY OF THE EXECUTIVE LAW. The justice center shall have
8 direct and immediate access to all areas where state prisoners are
9 housed, and to clinical and department records relating to inmates'
10 clinical conditions. The justice center shall maintain the confidential-
11 ity of all patient-specific information.
12 S 2. Subdivision (b) of section 4212 of the education law, as amended
13 by section 1-a of part E of chapter 501 of the laws of 2012, is amended
14 to read as follows:
15 (b) Provide for the development and implementation of a plan of
16 prevention and remediation with respect to a substantiated report of [a
17 reportable incident] ABUSE OR NEGLECT. Such action shall include: (i)
18 within ten days of receipt of such a SUBSTANTIATED report [of a report-
19 able incident], development and implementation of a plan of prevention
20 and remediation to be taken with respect to a custodian or the residen-
21 tial facility in order to assure the continued health and safety of
22 children and to provide for the prevention of future acts constituting
23 reportable incidents; and (ii) development and implementation of a plan
24 of prevention and remediation, in the event an investigation of a report
25 of an [alleged reportable incident] ALLEGATION OF ABUSE OR NEGLECT

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

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1 determines that [some credible] A PREPONDERANCE OF THE evidence of such
2 [reportable incident] ALLEGATION exists and such [reportable incident]
3 SUBSTANTIATED ALLEGATION may be attributed in whole or in part to
4 noncompliance by the residential facility or program with provisions of
5 this chapter or regulations of the department applicable to the opera-
6 tion of a residential facility or program. Any plan of prevention and
7 remediation required to be developed by a facility supervised by the
8 department shall be submitted to and approved by the department in
9 accordance with time limits established by regulations of the depart-
10 ment. Implementation of the plan shall be monitored by the department.
11 In reviewing the continued qualifications of a residential facility or
12 program for an operating certificate, the department shall evaluate such
13 facility's compliance with plans of prevention and remediation developed
14 and implemented pursuant to this subdivision.

15 S 3. Subdivision (b) of section 4314 of the education law, as amended
16 by section 2 of part E of chapter 501 of the laws of 2012, is amended
17 and a new paragraph (vii) is added to subdivision (a) to read as
18 follows:

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

28 (b) Provide for the development and implementation of a plan of
29 prevention and remediation with respect to a substantiated report of [a
30 reportable incident] ABUSE OR NEGLECT. Such action shall include: (i)
31 within ten days of receipt of such a SUBSTANTIATED report [of a report-
32 able incident], development and implementation of a plan of prevention
33 and remediation to be taken with respect to a custodian or the residen-
34 tial facility in order to assure the continued health and safety of
35 children and to provide for the prevention of future acts constituting
36 reportable incidents; and (ii) development and implementation of a plan
37 of prevention and remediation, in the event an investigation of a report
38 of an [alleged reportable incident] ALLEGATION OF ABUSE OR NEGLECT
39 determines that [some credible] A PREPONDERANCE OF THE evidence of such
40 [reportable incident] ALLEGATION exists and such [reportable incident]
41 SUBSTANTIATED ALLEGATION may be attributed in whole or in part to
42 noncompliance by the residential facility or program with provisions of
43 this chapter or regulations of the department applicable to the opera-
44 tion of such residential facility or program. Any plan of prevention and
45 remediation required to be developed pursuant to this subdivision by a
46 facility supervised by the department shall be submitted to and approved
47 by the department in accordance with time limits established by regu-
48 lations of the department. Implementation of the plan shall be monitored
49 by the department. In reviewing the continued qualifications of a resi-
50 dential facility or program for an operating certificate, the department
51 shall evaluate such facility's compliance with plans of prevention and
52 remediation developed and implemented pursuant to this subdivision.

53 S 4. Subdivision (b) of section 4358 of the education law, as amended
54 by section 3 of part E of chapter 501 of the laws of 2012, is amended
55 and a new paragraph (vii) is added to subdivision (a) to read as
56 follows:

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

(b) Provide for the development and implementation of a plan of prevention and remediation with respect to a substantiated report of [a reportable incident] ABUSE OR NEGLECT. Such action shall include: (i) within ten days of receipt of such a SUBSTANTIATED report [of a reportable incident], development and implementation of a plan of prevention and remediation to be taken with respect to a custodian or the residential facility in order to assure the continued health and safety of children and to provide for the prevention of future acts constituting reportable incidents; and (ii) development and implementation of a plan of prevention and remediation, in the event an investigation of a report of an [alleged reportable incident] ALLEGATION OF ABUSE OR NEGLECT determines that [some credible] A PREPONDERANCE OF THE evidence of such [reportable incident] ALLEGATION exists and such [reportable incident] SUBSTANTIATED ALLEGATION 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 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.

S 5. Subdivision 12 of section 4403 of the education law, as amended by section 4 of part E of chapter 501 of the laws of 2012, is amended and a new paragraph (g) is added to subdivision 11 to read as follows:

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

12. To provide for the development and implementation of a plan of prevention and remediation with respect to a substantiated report of [a reportable incident] ABUSE OR NEGLECT. Such action shall include: (a) within ten days of receipt of SUCH a substantiated report [of a reportable incident], development and implementation of a plan of prevention and remediation to be taken with respect to a custodian or the residential facility in order to assure the continued health and safety of children and to provide for the prevention of future acts constituting reportable incidents; and (b) development and implementation of a plan of prevention and remediation, in the event an investigation of [a

1 report of an alleged reportable incident] AN ALLEGATION OF ABUSE OR
2 NEGLECT determines that [some credible] A PREPONDERANCE OF THE evidence
3 of such [reportable incident] ALLEGATION exists and such [reportable
4 incident] SUBSTANTIATED ALLEGATION may be attributed in whole or in part
5 to noncompliance by the residential facility or program with provisions
6 of this chapter or regulations of the department applicable to the oper-
7 ation of such residential facility or program. Any plan of prevention
8 and remediation required to be developed pursuant to this subdivision by
9 a facility supervised by the department shall be submitted to and
10 approved by the department in accordance with time limits established by
11 regulations of the department. Implementation of the plan shall be moni-
12 tored by the department. In reviewing the continued qualifications of a
13 residential facility or program for an operating certificate, the
14 department shall evaluate such facility's compliance with plans of
15 prevention and remediation developed and implemented pursuant to this
16 subdivision.

17 S 6. Paragraph (a) of subdivision 1 of section 413 of the social
18 services law, as amended by chapter 554 of the laws of 2013, is amended
19 to read as follows:

20 (a) The following persons and officials are required to report or
21 cause a report to be made in accordance with this title when they have
22 reasonable cause to suspect that a child coming before them in their
23 professional or official capacity is an abused or maltreated child, or
24 when they have reasonable cause to suspect that a child is an abused or
25 maltreated child where the parent, guardian, custodian or other person
26 legally responsible for such child comes before them in their profes-
27 sional or official capacity and states from personal knowledge facts,
28 conditions or circumstances which, if correct, would render the child an
29 abused or maltreated child: any physician; registered physician assist-
30 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
31 osteopath; optometrist; chiropractor; podiatrist; resident; intern;
32 psychologist; registered nurse; social worker; emergency medical techni-
33 cian; licensed creative arts therapist; licensed marriage and family
34 therapist; licensed mental health counselor; licensed psychoanalyst;
35 licensed behavior analyst; certified behavior analyst assistant; hospi-
36 tal personnel engaged in the admission, examination, care or treatment
37 of persons; a Christian Science practitioner; school official, which
38 includes but is not limited to school teacher, school guidance counse-
39 lor, school psychologist, school social worker, school nurse, school
40 administrator or other school personnel required to hold a teaching or
41 administrative license or certificate; social services worker; director
42 of a children's overnight camp, summer day camp or traveling summer day
43 camp, as such camps are defined in section thirteen hundred ninety-two
44 of the public health law; day care center worker; school-age child care
45 worker; provider of family or group family day care; EMPLOYEE OR VOLUN-
46 TEER IN A RESIDENTIAL CARE FACILITY FOR CHILDREN THAT IS LICENSED,
47 CERTIFIED OR OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES; or
48 any other child care or foster care worker; mental health professional;
49 substance abuse counselor; alcoholism counselor; all persons creden-
50 tialled by the office of alcoholism and substance abuse services; peace
51 officer; police officer; district attorney or assistant district attor-
52 ney; investigator employed in the office of a district attorney; or
53 other law enforcement official.

54 S 7. Paragraph (a) of subdivision 1 of section 424-a of the social
55 services law, as amended by chapter 634 of the laws of 1988, is amended
56 to read as follows:

1 (a) A licensing agency shall inquire of the department and the depart-
2 ment shall, subject to the provisions of paragraph (e) of this subdivi-
3 sion, inform such agency and the subject of the inquiry whether an
4 applicant for a certificate, license or permit, assistants to group
5 family day care providers, the director of a camp subject to the
6 provisions of article [thirteen-A,] thirteen-B [or thirteen-C] of the
7 public health law, and any person over the age of eighteen who resides
8 in the home of a person who has applied to become an adoptive parent or
9 a foster parent or to operate a family day care home or group family day
10 care home has been or is currently the subject of an indicated child
11 abuse and maltreatment report on file with the statewide central regis-
12 ter of child abuse and maltreatment.

13 S 8. Paragraph (a) of subdivision 2 of section 424-a of the social
14 services law, as amended by section 8-a of part D of chapter 501 of the
15 laws of 2012, is amended to read as follows:

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

40 S 9. Subdivision 4 of section 424-a of the social services law, as
41 amended by section 8 of part D of chapter 501 of the laws of 2012, is
42 amended to read as follows:

43 4. For purposes of this section, the term "licensing agency" shall
44 mean an authorized agency which has received an application to become an
45 adoptive parent or an authorized agency which has received an applica-
46 tion for a certificate or license to receive, board or keep any child
47 pursuant to the provisions of section three hundred seventy-six or three
48 hundred seventy-seven of this article or an authorized agency which has
49 received an application from a relative within the second degree or
50 third degree of consanguinity of the parent of a child or a relative
51 within the second degree or third degree of consanguinity of the step-
52 parent of a child or children, or the child's legal guardian for
53 approval to receive, board or keep such child or a state or local
54 governmental agency which receives an application to provide child day
55 care services in a child day care center, school-age child care program,
56 family day care home or group family day care home pursuant to the

1 provisions of section three hundred ninety of this article, or the
2 department of health and mental hygiene of the city of New York, when
3 such department receives an application for a certificate of approval to
4 provide child day care services in a child day care center pursuant to
5 the provisions of the health code of the city of New York, or the office
6 of mental health or the office for people with developmental disabili-
7 ties when such office receives an application for an operating certif-
8 icate pursuant to the provisions of the mental hygiene law to operate a
9 family care home [which will serve children], or a state or local
10 governmental official who receives an application for a permit to oper-
11 ate a camp which is subject to the provisions of article [thirteen-A or]
12 thirteen-B of the public health law or the office of children and family
13 services which has received an application for a certificate to receive,
14 board or keep any child at a foster family home pursuant to articles
15 nineteen-G and nineteen-H of the executive law or any other facility or
16 provider agency, as defined in subdivision four of section four hundred
17 eighty-eight of this chapter, in regard to any licensing or certif-
18 ication function carried out by such facility or agency.

19 S 10. Subdivision 2 of section 425 of the social services law, as
20 added by chapter 677 of the laws of 1985, is amended to read as follows:

21 2. The department, after consultation with the division for youth, the
22 division of criminal justice services, the department of mental hygiene,
23 the commission on quality of care for the mentally disabled and the
24 state education department shall develop guidelines to be utilized by
25 appropriate state and local governmental agencies and authorized agen-
26 cies as defined by subdivision ten of section three hundred seventy-one
27 of this [chapter] ARTICLE which have responsibility for the care and
28 protection of children, in evaluating persons who have a criminal
29 conviction record and who have applied to such agencies or provider
30 agencies, as defined in subdivision three of section four hundred twen-
31 ty-four-a of this [chapter] TITLE for employment or who have applied to
32 such state agencies or licensing agency as defined in subdivision four
33 of section four hundred twenty-four-a of this [chapter] TITLE, for a
34 license, certificate, permit or approval to be an adoptive parent,
35 provider of day care services in a day care center, family day care home
36 or group family day care home, an operator of a camp subject to the
37 provisions of article [thirteen-A,] thirteen-B [or thirteen-C] of the
38 public health law, or an operator of a foster family home subject to the
39 provisions of subdivision seven of section five hundred one, section
40 five hundred two or subdivision three of section five hundred thirty-
41 two-a[,] of the executive law or section three hundred seventy-six and
42 three hundred seventy-seven of [the social services law] THIS ARTICLE.

43 S 11. Paragraph (d) of subdivision 4 of section 488 of the social
44 services law, as added by section 1 of part B of chapter 501 of the laws
45 of 2012, is amended to read as follows:

46 (d) ANY overnight, summer day and traveling summer day camps for chil-
47 dren with developmental disabilities as defined in regulations promul-
48 gated by the commissioner of health; or

49 S 12. Paragraph (a) of subdivision 3 and subdivision 4 of section 491
50 of the social services law, as added by section 1 of part B of chapter
51 501 of the laws of 2012, are amended to read as follows:

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

1 4. A medical or other public or private institution, state agency,
2 school, facility or provider agency OR ITS VENDORS OR CONTRACTORS shall
3 not take any retaliatory personnel action, as such term is defined in
4 paragraph (e) of subdivision one of section seven hundred forty of the
5 labor law, against an employee or agent OR VENDOR OR CONTRACTOR because
6 such employee or agent OR VENDOR OR CONTRACTOR believes that he or she
7 has reasonable cause to suspect that a vulnerable person has been
8 subjected to a reportable incident and that employee or agent OR VENDOR
9 OR CONTRACTOR therefore makes a report in accordance with this section
10 AND/OR COOPERATED WITH THE INVESTIGATION OF A REPORTABLE INCIDENT. A
11 court of competent jurisdiction may grant injunctive relief to any
12 person determined to have been subjected to such retaliation.

13 S 13. This act shall take effect immediately; provided, however, that
14 if section 12 of chapter 554 of the laws of 2013 shall not have taken
15 effect on or before such date then section six of this act shall take
16 effect on the same date and in the same manner as such chapter of the
17 laws of 2013 takes effect.