

S T A T E O F N E W Y O R K

4212--A

2009-2010 Regular Sessions

I N S E N A T E

April 16, 2009

Introduced by Sens. MARCELLINO, ADAMS, HASSELL-THOMPSON, HUNTLEY, C. JOHNSON, LARKIN, ONORATO -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services -- recommitted to the Committee on Social Services in accordance with Senate Rule 6, sec. 8 -- committee discharged and said bill committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to requiring filing with the office of children and family services by nursery school operators and authorizing certain nursery schools to submit fingerprints of applicants for the purpose of a search of criminal history records of the division of criminal justice services

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

1 Section 1. Section 390 of the social services law, as added by chapter
2 750 of the laws of 1990, paragraphs (d) and (e) of subdivision 1 and
3 paragraph (b) of subdivision 12 as amended by chapter 587 of the laws of
4 1997, subparagraphs (i) and (ii) of paragraph (d) of subdivision 2,
5 paragraphs (a), (c) and (d) of subdivision 3, paragraph (a) of subdivi-
6 sion 4, subdivision 10, paragraphs (a) and (b) of subdivision 11 as
7 amended, paragraphs (e) and (f) of subdivision 3 as relettered, subdivi-
8 sion 2-a and paragraphs (c) and (d) of subdivision 11 as added by chap-
9 ter 416 of the laws of 2000, paragraph (a) of subdivision 7 and subdivi-
10 sion 13 as amended by chapter 160 of the laws of 2003, subdivision 8-a,
11 as added by chapter 354 of the laws of 2009, and paragraph (c) of subdivi-
12 sion 12 as added by chapter 319 of the laws of 2006, is amended to
13 read as follows:
14 S 390. Child day care AND NURSERY SCHOOLS; license [or], registration
15 OR FILING required. 1. Definitions. (a) (i) "Child day care" shall mean
16 care for a child on a regular basis provided away from the child's resi-

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

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1 dence for less than twenty-four hours per day by someone other than the
2 parent, step-parent, guardian, or relative within the third degree of
3 consanguinity of the parents or step-parents of such child.

4 (ii) Child day care shall not refer to care provided in:

5 (A) a day camp, as defined in the state sanitary code;

6 (B) an after-school program operated for the purpose of religious
7 education, sports, or recreation;

8 (C) a facility:

9 (1) providing day services under an operating certificate issued by
10 the [department] OFFICE;

11 (2) providing day treatment under an operating certificate issued by
12 the office of mental health or office of mental retardation and develop-
13 mental disabilities; or

14 (D) a kindergarten, pre-kindergarten, [or nursery school for children
15 three years of age or older,] or after-school program for children oper-
16 ated by a public school district or by a private school or academy which
17 is providing elementary or secondary education or both, in accordance
18 with the compulsory education requirements of the education law,
19 provided that the kindergarten, pre-kindergarten, [nursery school,] or
20 after school program is located on the premises or campus where the
21 elementary or secondary education is provided.

22 (b) "Child day care provider" shall mean any individual, association,
23 corporation, partnership, institution or agency whose activities include
24 providing child day care or operating a home or facility where child day
25 care is provided.

26 (c) "Child day care center" shall mean any program or facility caring
27 for children for more than three hours per day per child in which child
28 day care is provided by a child day care provider except those programs
29 operating as a group family day care home as such term is defined in
30 paragraph (d) of this subdivision, a family day care home, as such term
31 is defined in paragraph (e) of this subdivision, and a school-age child
32 care program, as such term is defined in paragraph (f) of this subdivi-
33 sion.

34 (d) "Group family day care home" shall mean a program caring for chil-
35 dren for more than three hours per day per child in which child day care
36 is provided in a family home for seven to ten children of all ages, or
37 up to twelve children where all of such children are over two years of
38 age, except for those programs operating as a family day care home, as
39 such term is defined in paragraph (e) of this subdivision, which care
40 for seven or eight children. A group family day care provider may
41 provide child day care services to two additional children if such addi-
42 tional children are of school age and such children receive services
43 only before or after the period such children are ordinarily in school
44 or during school lunch periods, or school holidays, or during those
45 periods of the year in which school is not in session. There shall be
46 one caregiver for every two children under two years of age in the group
47 family home. A group family day care home must have at least one assist-
48 ant to the operator present when child day care is being provided to
49 seven or more children. This assistant shall be selected by the group
50 family day care operator and shall meet the qualifications established
51 for such position by the regulations of the [department] OFFICE.

52 (e) "Family day care home" shall mean a program caring for children
53 for more than three hours per day per child in which child day care is
54 provided in a family home for three to six children. A family day care
55 provider may, however, care for seven or eight children at any one time
56 if no more than six of the children are less than school age and the

1 school-aged children receive care primarily before or after the period
2 such children are ordinarily in school, during school lunch periods, on
3 school holidays, or during those periods of the year in which school is
4 not in session in accordance with the regulations of the [department]
5 OFFICE and the [department] OFFICE inspects such home to determine
6 whether the provider can care adequately for seven or eight children.

7 (f) "School age child care" shall mean a program caring for more than
8 six school-aged children who are under thirteen years of age or who are
9 incapable of caring for themselves. Such programs shall be in operation
10 consistent with the local school calendar. School age child care
11 programs shall offer care during the school year to an enrolled group of
12 children at a permanent site before or after the period children
13 enrolled in such program are ordinarily in school or during school lunch
14 periods and may also provide such care on school holidays and those
15 periods of the year in which school is not in session.

16 (G) "NURSERY SCHOOL" SHALL MEAN ANY PROGRAM OR FACILITY OPERATED BY AN
17 INDIVIDUAL, ASSOCIATION, CORPORATION, PARTNERSHIP, INSTITUTION, OR AGEN-
18 CY, NOT INCLUDING THE PARENT, STEPPARENT, GUARDIAN, OR RELATIVE WITHIN
19 THE THIRD DEGREE OF CONSANGUINITY, WHICH PROVIDES EARLY CARE AND/OR
20 EDUCATION TO THREE OR MORE PRESCHOOL CHILDREN FOR THREE OR LESS HOURS
21 PER DAY PER CHILD. MORE THAN ONE ADULT SHALL BE AVAILABLE AT ALL TIMES
22 WHEN CHILDREN ARE PRESENT AT A NURSERY SCHOOL PROGRAM.

23 (H) "PRESCHOOL CHILD" SHALL MEAN A CHILD OF FIVE YEARS OF AGE OR LESS.

24 (I) "OFFICE" SHALL MEAN THE OFFICE OF CHILDREN AND FAMILY SERVICES.

25 2. (a) Child day care centers caring for seven or more children and
26 group family day care programs, as defined in subdivision one of this
27 section, shall obtain a license from the [department] OFFICE and shall
28 operate in accordance with the terms of such license and the regulations
29 of the [department] OFFICE.

30 (b) Family day care homes, child day care centers caring for at least
31 three but fewer than seven children, and school-age child care programs
32 shall register with the [department] OFFICE and shall operate in compli-
33 ance with the regulations of the [department] OFFICE.

34 (B-1) NURSERY SCHOOLS CARING FOR AT LEAST THREE CHILDREN SHALL FILE
35 WITH THE OFFICE AND SHALL OPERATE IN COMPLIANCE WITH THE REGULATIONS OF
36 THE OFFICE.

37 (c) Any child day care provider not required to obtain a license
38 pursuant to paragraph (a) of this subdivision or to register with the
39 [department] OFFICE pursuant to paragraph (b) of this subdivision may
40 register with the [department] OFFICE.

41 (d) (i) The office [of children and family services] shall promulgate
42 regulations for licensure and for registration of child day care AND
43 FILING FOR NURSERY SCHOOLS pursuant to this section. Procedures for
44 obtaining a license or registration or renewing a license shall include
45 a satisfactory inspection of the facility by the office [of children and
46 family services] prior to issuance of the license or registration or
47 renewal of the license.

48 (ii) (A) Registration shall be valid for a period of up to two years,
49 so long as the provider remains in compliance with applicable law and
50 regulations during such period.

51 (B) After initial registration by the child day care provider, the
52 office [of children and family services] shall not accept any subsequent
53 registration by such provider, unless:

54 (1) such provider has met the training requirements set forth in
55 section three hundred ninety-a of this title;

1 (2) such provider has met the requirements of section three hundred
2 ninety-b of this title relating to criminal history screening;

3 (3) such provider has complied with the requirements of section four
4 hundred twenty-four-a of this article; and

5 (4) the office [of children and family services] has received no
6 complaints about the home, center, or program alleging statutory or
7 regulatory violations, or, having received such complaints, the office
8 [of children and family services] has determined, after inspection
9 pursuant to paragraph (a) of subdivision three of this section, that the
10 home, center, or program is operated in compliance with applicable stat-
11 utory and regulatory requirements.

12 (C) Where the office [of children and family services] has determined
13 that a registration should not be continued because the requirements of
14 clause (B) of this subparagraph have not been satisfied, the office [of
15 children and family services] may terminate the registration. If the
16 office [of children and family services] does not terminate the regis-
17 tration, the office [of children and family services] shall inspect the
18 home or program before acknowledging any subsequent registration. Where
19 the home or program has failed to meet the requirements of this section,
20 the office [of children and family services] may reject any subsequent
21 registration of a provider. Nothing herein shall prohibit the office [of
22 children and family services] from terminating or suspending registra-
23 tion pursuant to subdivision ten of this section where the office [of
24 children and family services] determines that termination or suspension
25 is necessary.

26 (iv) Child day care providers who have been issued a license OR NURS-
27 ERY SCHOOL OPERATORS WHO HAVE FILED WITH THE OFFICE shall openly display
28 such license OR OFFICE VERIFICATION OF THE FILING in the facility or
29 home for which the license OR FILING is issued. Child day care providers
30 who have registered OR FILED with the [department] OFFICE shall provide
31 proof of registration OR FILING upon request.

32 (e) Notwithstanding any other provision of this section, where a child
33 is cared for by a parent, guardian or relative within the third degree
34 of consanguinity of the parent of such child and such person simultane-
35 ously provides child day care for other children, only the other chil-
36 dren shall be considered in determining whether such person must be
37 registered, FILED or licensed, provided that such person is not caring,
38 in total, for more than eight children.

39 2-a. (a) The office [of children and family services] shall promulgate
40 regulations which establish minimum quality program requirements for
41 licensed and registered child day care homes, programs and facilities.
42 Such requirements shall include but not be limited to (i) the need for
43 age appropriate activities, materials and equipment to promote cogni-
44 tive, educational, social, cultural, physical, emotional, language and
45 recreational development of children in care in a safe, healthy and
46 caring environment (ii) principles of childhood development (iii) appro-
47 priate staff/child ratios for family day care homes, group family day
48 care homes, school age day care programs and day care centers, provided
49 however that such staff/child ratios shall not be less stringent than
50 applicable staff/child ratios as set forth in part four hundred four-
51 teen, four hundred sixteen, four hundred seventeen or four hundred eigh-
52 teen of title eighteen of the New York code of rules and regulations as
53 of January first, two thousand (iv) appropriate levels of supervision of
54 children in care (v) minimum standards for sanitation, health, infection
55 control, nutrition, buildings and equipment, safety, security proce-
56 dures, first aid, fire prevention, fire safety, evacuation plans and

1 drills, prevention of child abuse and maltreatment, staff qualifications
2 and training, record keeping, and child behavior management.

3 (b) The use of electronic monitors as a sole means of supervision of
4 children in day care shall be prohibited, except that electronic moni-
5 tors may be used in family day care homes and group family day care
6 homes as an indirect means of supervision where the parents of any child
7 to be supervised have agreed in advance to the use of such monitors as
8 an indirect means of supervision and the use of such monitors is
9 restricted to situations where the children so supervised are sleeping.

10 (c) No child less than six weeks of age may be cared for by a licensed
11 or registered day care provider, except in extenuating circumstances
12 where prior approval for care of such children has been given by the
13 office [of children and family services]. Extenuating circumstances for
14 the purposes of this section shall include but not be limited to the
15 medical or health needs of the parent or child, or the economic hardship
16 of the parent.

17 3. (a) The office [of children and family services] may make announced
18 or unannounced inspections of the records and premises of any child day
19 care provider, whether or not such provider has a license from, or is
20 registered with, the office [of children and family services]. The
21 office [of children and family services] shall make unannounced
22 inspections of the records and premises of any child day care provider
23 OR NURSERY SCHOOL OPERATOR within fifteen days after the office [of
24 children and family services] receives a complaint that, if true, would
25 indicate such provider OR OPERATOR does not comply with the regulations
26 of the office [of children and family services] or with statutory
27 requirements. If the complaint indicates that there may be imminent
28 danger to the children, the office [of children and family services]
29 shall investigate the complaint no later than the next day of operation
30 of the provider OR OPERATOR. The office [of children and family
31 services] may provide for inspections through the purchase of services.

32 (b) Where inspections have been made and violations of applicable
33 statutes or regulations have been found, the [department] OFFICE shall
34 advise the child day care provider OR OPERATOR in writing, within ten
35 days, of the violations and require the provider to correct such
36 violations. If the child day care provider OR NURSERY SCHOOL OPERATOR
37 fails to correct such violations within thirty days after notice, the
38 [department] OFFICE may act pursuant to subdivisions ten and eleven of
39 this section.

40 (c) (i) The office [of children and family services] shall establish a
41 toll-free statewide telephone number to receive inquiries about child
42 day care homes, programs and facilities and complaints of violations of
43 the requirements of this section or regulations promulgated under this
44 section. The office [of children and family services] shall develop a
45 system for investigation, which shall include inspection, of such
46 complaints. The office [of children and family services] may provide for
47 such investigations through purchase of services. The office [of chil-
48 dren and family services] shall develop a process for publicizing such
49 toll-free telephone number to the public for making inquiries or
50 complaints about child day care homes, programs or facilities.

51 (ii) Information to be maintained and available to the public through
52 such toll-free telephone number shall include, but not be limited to:

53 (A) current license and registration status of child day care homes,
54 programs and facilities including whether a license or registration is
55 in effect or has been revoked or suspended; and

1 (B) child care resource and referral programs providing services
2 pursuant to title five-B of this article and other resources known to
3 the office [of children and family services] which relate to child day
4 care homes, programs and facilities in the state.

5 (iii) Upon written request identifying a particular child day care
6 home, program or facility, the office [of children and family services]
7 shall provide the information set forth below. The office [of children
8 and family services] may charge reasonable fees for copies of documents
9 provided, consistent with the provisions of article six of the public
10 officers law. The information available pursuant to this clause shall
11 be:

12 (A) the results of the most recent inspection for licensure or regis-
13 tration and any subsequent inspections by the office [of children and
14 family services];

15 (B) complaints filed against child day care homes, programs or facili-
16 ties which describes the nature of the complaint and states how the
17 complaint was resolved, including the status of the office [of children
18 and family services] investigation, the steps taken to rectify the
19 complaint, and the penalty, if any, imposed; and

20 (C) child day care homes, programs or facilities which have requested
21 or received a waiver from any applicable rule or regulation, and the
22 regulatory requirement which was waived.

23 (iv) Nothing in this paragraph shall be construed to require or permit
24 the disclosure either orally or in writing of any information that is
25 confidential pursuant to law.

26 (d) Where investigation or inspection reveals that a child day care
27 provider which must be licensed or registered is not, the office [of
28 children and family services] shall advise the child day care provider
29 in writing that the provider is in violation of the licensing or regis-
30 tration requirements and shall take such further action as is necessary
31 to cause the provider to comply with the law, including directing an
32 unlicensed or unregistered provider to cease operation. In addition, the
33 office [of children and family services] shall require the provider to
34 notify the parents or guardians of children receiving care from the
35 provider that the provider is in violation of the licensing or registra-
36 tion requirements and shall require the provider to notify the office
37 [of children and family services] that the provider has done so. Any
38 provider who is directed to cease operations pursuant to this paragraph
39 shall be entitled to a hearing before the office [of children and family
40 services]. If the provider requests a hearing to contest the directive
41 to cease operations, such hearing must be scheduled to commence as soon
42 as possible but in no event later than thirty days after the receipt of
43 the request by the office [of children and family services]. The provid-
44 er may not operate the center, home or program after being directed to
45 cease operations, regardless of whether a hearing is requested. If the
46 provider does not cease operations, the office [of children and family
47 services] may impose a civil penalty pursuant to subdivision eleven of
48 this section, seek an injunction pursuant to section three hundred nine-
49 ty-one of this title, or both.

50 (e) (i) Where an authorized agency is subsidizing child day care
51 pursuant to any provision of this chapter, the authorized agency may
52 submit to the [department] OFFICE justification for a need to impose
53 additional requirements upon child day care providers and a plan to
54 monitor compliance with such additional requirements. No such additional
55 requirements or monitoring may be imposed without the written approval
56 of the [department] OFFICE.

1 (ii) An authorized agency may refuse to allow a child day care provid-
2 er who is not in compliance with this section and regulations issued
3 hereunder or any approved additional requirements of the authorized
4 agency to provide child day care to the child. In accordance with the
5 plan approved by the [department] OFFICE, an authorized agency shall
6 have the right to make announced or unannounced inspections of the
7 records and premises of any provider who provides care for such chil-
8 dren, including the right to make inspections prior to subsidized chil-
9 dren receiving care in a home where the inspection is for the purpose of
10 determining whether the child day care provider is in compliance with
11 applicable law and regulations and any additional requirements imposed
12 upon such provider by the authorized agency. Where an authorized agency
13 makes such inspections, the authorized agency shall notify the [depart-
14 ment] OFFICE immediately of any violations of this section or regu-
15 lations promulgated hereunder, and shall provide the [department] OFFICE
16 with an inspection report whether or not violations were found, docu-
17 menting the results of such inspection.

18 (iii) Nothing contained in this paragraph shall diminish the authority
19 of the [department] OFFICE to conduct inspections or provide for
20 inspections through purchase of services as otherwise provided for in
21 this section. Nothing contained in this paragraph shall obligate the
22 [department] OFFICE to take any action to enforce any additional
23 requirements imposed on child day care providers by an authorized agen-
24 cy.

25 (E-1) (I) WHERE A COMPLAINT IS RECEIVED ALLEGING THAT A NURSERY SCHOOL
26 OPERATOR WHO IS REQUIRED TO FILE HAS NOT DONE SO, THE OFFICE, WITHIN TEN
27 DAYS OF RECEIPT OF THE COMPLAINT, SHALL ADVISE IN WRITING THE NURSERY
28 SCHOOL OPERATOR OF THE COMPLAINT, OF THE FILING STANDARDS AND REQUIRE-
29 MENTS, AND OF THE OPERATOR'S OBLIGATION TO FILE IF SUCH PERSON IS
30 SUBJECT TO FILING. THE OFFICE SHALL FURTHER DIRECT THE ALLEGED NURSERY
31 SCHOOL OPERATOR TO RESPOND WITHIN THIRTY DAYS OF RECEIPT OF THE OFFICE'S
32 LETTER. UNLESS SUCH NURSERY SCHOOL OPERATOR FILES, SUCH RESPONSE SHALL
33 STATE WHY THE ALLEGED OPERATOR IS NOT SUBJECT TO THE FILING REQUIREMENTS
34 OF THIS SECTION.

35 (II) SHOULD A NURSERY SCHOOL OPERATOR FAIL TO FILE OR SUBMIT THE
36 RESPONSE REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH WITHIN THE TIME
37 LIMIT THEREIN SPECIFIED, THE OFFICE SHALL TAKE SUCH FURTHER ACTION AS IS
38 NECESSARY TO CAUSE THE OPERATOR TO COMPLY WITH THE LAW.

39 (f) Individual local social services districts may alter their partic-
40 ipation in activities related to arranging for, subsidizing, delivering
41 and monitoring the provision of subsidized child day care provided,
42 however, that the total participation of an individual district in all
43 activities related to the provision of subsidized child day care shall
44 be no less than the participation level engaged in by such individual
45 district on the effective date of this section.

46 4. (a) The office [of children and family services] on an annual basis
47 shall inspect at least twenty percent of all registered family day care
48 homes, registered child day care centers, NURSERY SCHOOLS FILED WITH THE
49 OFFICE and registered school age child care programs to determine wheth-
50 er such homes, centers and programs are operating in compliance with
51 applicable statutes and regulations. The office [of children and family
52 services] shall increase the percentage of family day care homes, child
53 day care centers and school age child care programs which are inspected
54 pursuant to this subdivision as follows: to at least thirty percent by
55 the thirty-first of December two thousand; and to at least fifty percent
56 by the thirty-first of December two thousand one. The office [of chil-

1 dren and family services] may provide for such inspections through
2 purchase of services. Priority shall be given to family day care homes
3 which have never been licensed or certified prior to initial registra-
4 tion.

5 (b) Any family day care home or school-age child care program
6 licensed, registered, or certified by the [department] OFFICE or by any
7 authorized agency on the effective date of this section shall be deemed
8 registered until the expiration of its then-current license or certif-
9 icate unless such license or certificate is suspended or revoked pursu-
10 ant to subdivision ten of this section. Family day care homes and
11 school-age child care programs not licensed, registered, or certified on
12 the effective date of this section shall register pursuant to subdivi-
13 sion two of this section.

14 5. Child day care providers required to have a license from the
15 [department] OFFICE or to be registered with the [department] OFFICE
16 pursuant to this section shall not be exempt from such requirement
17 through registration with another state agency, or certification, regis-
18 tration, or licensure by any local governmental agency or any authorized
19 agency.

20 6. Unless otherwise limited by law, a parent with legal custody or a
21 legal guardian of any child in a child day care program OR NURSERY
22 SCHOOL shall have unlimited and on demand access to such child or ward.
23 Such parent or guardian unless otherwise limited by law, also shall have
24 the right to inspect on demand during its hours of operation any area of
25 a child day care center, group family day care home, school-age child
26 care program, or family day care home to which the child or ward of such
27 parent or guardian has access or which could present a hazard to the
28 health and safety of the child or ward.

29 7. (a) The [department] OFFICE shall implement on a statewide basis
30 programs to educate parents and other potential consumers of child day
31 care programs AND NURSERY SCHOOLS about their selection and use. The
32 [department] OFFICE may provide for such implementation through the
33 purchase of services. Such education shall include, but not be limited
34 to, the following topics:

35 (i) types of child day care programs;

36 (ii) factors to be considered in selecting and evaluating child day
37 care programs;

38 (iii) regulations of the [department] OFFICE governing the operation
39 of different types of programs;

40 (iv) rights of parents or guardians in relation to access to children
41 and inspection of child day care programs;

42 (v) information concerning the availability of child day care subsi-
43 dies;

44 (vi) information about licensing [and], registration AND FILING
45 requirements;

46 (vii) prevention of child abuse and maltreatment in child day care
47 programs, including screening of child day care providers and employees;

48 (viii) tax information; and

49 (ix) factors to be considered in selecting and evaluating child day
50 care programs when a child needs administration of medications during
51 the time enrolled.

52 (b) The [department] OFFICE shall implement a statewide campaign to
53 educate the public as to the legal requirements for registration of
54 family day care and school-age child care, THE FILING OF NURSERY
55 SCHOOLS, and the benefits of such [registration] PROCEDURES. The

1 [department] OFFICE may provide for such implementation through the
2 purchase of services. The campaign shall:
3 (i) use various types of media;
4 (ii) include the development of public educational materials for fami-
5 lies, [family day care providers,] employers and community agencies;
6 (iii) explain the role and functions of child care resource and refer-
7 ral programs, as such term is used in title five-B of this article;
8 (iv) explain the role and functions of the [department] OFFICE in
9 regard to registered LICENSED AND FILED programs; and
10 (v) publicize the [department's] OFFICE'S toll-free telephone number
11 for making complaints of violations of [child day care] requirements
12 related to programs which are required to be licensed [or], registered
13 OR FILED.

14 8. The [department] OFFICE shall establish and maintain a list of all
15 current FILED, registered and licensed [child day care] programs and a
16 list of all programs whose license [or], registration OR FILING has been
17 revoked, rejected, terminated, or suspended. Such information shall be
18 available to the public, pursuant to procedures developed by the
19 [department] OFFICE.

20 8-a. The office [of children and family services] shall not make
21 available to the public online any group family day care home provider's
22 or family day care provider's home street address or map showing the
23 location of such provider's home where such provider has requested to
24 opt out of the online availability of this information. The office shall
25 provide a written form informing a provider of their right to opt out of
26 providing information online, and shall also permit a provider to
27 request to opt out through the office's website.

28 9. The [department] OFFICE shall make available, directly or through
29 purchase of services, to registered [child day care] providers informa-
30 tion concerning:

31 (a) liability insurance;
32 (b) start-up grants;
33 (c) United States department of agriculture food programs;
34 (d) subsidies available for child day care;
35 (e) tax information; and
36 (f) support services required to be provided by child care resource
37 and referral programs as set forth in subdivision three of section four
38 hundred ten-r of this article.

39 10. Any home or facility providing child day care shall be operated in
40 accordance with applicable statutes and regulations. Any violation of
41 applicable statutes or regulations shall be a basis to deny, limit,
42 suspend, revoke, or terminate a license or registration. Consistent with
43 articles twenty-three and twenty-three-A of the correction law, and
44 guidelines referenced in subdivision two of section four hundred twen-
45 ty-five of this article, if the office [of children and family services]
46 is made aware of the existence of a criminal conviction or pending crim-
47 inal charge concerning an operator of a family day care home, group
48 family day care home, school-age child care program, or child day care
49 center or concerning any assistant, employee or volunteer in such homes,
50 programs or centers, or any persons age eighteen or over who reside in
51 such homes, such conviction or charge may be a basis to deny, limit,
52 suspend, revoke, reject, or terminate a license or registration. Before
53 any license issued pursuant to the provisions of this section is
54 suspended or revoked, before registration pursuant to this section is
55 suspended or terminated, or when an application for such license is
56 denied or registration rejected, the applicant for or holder of such

1 registration or license is entitled, pursuant to section twenty-two of
2 this chapter and the regulations of the office [of children and family
3 services], to a hearing before the office [of children and family
4 services]. However, a license or registration shall be temporarily
5 suspended or limited without a hearing upon written notice to the opera-
6 tor of the facility following a finding that the public health, or an
7 individual's safety or welfare, [are] IS in imminent danger. The holder
8 of a license or registrant is entitled to a hearing before the office
9 [of children and family services] to contest the temporary suspension or
10 limitation. If the holder of a license or registrant requests a hearing
11 to contest the temporary suspension or limitation, such hearing must be
12 scheduled to commence as soon as possible but in no event later than
13 thirty days after the receipt of the request by the office [of children
14 and family services]. Suspension shall continue until the condition
15 requiring suspension or limitation is corrected or until a hearing deci-
16 sion has been issued. If the office [of children and family services]
17 determines after a hearing that the temporary suspension or limitation
18 was proper, such suspension or limitation shall be extended until the
19 condition requiring suspension or limitation has been corrected or until
20 the license or registration has been revoked.

21 11. (a) (i) (A) The office [of children and family services] shall
22 adopt regulations establishing civil penalties of no more than five
23 hundred dollars per day to be assessed against child day care centers,
24 school age child care programs, group family day care homes or family
25 day care homes for violations of this section, sections three hundred
26 ninety-a and three hundred ninety-b of this title and any regulations
27 promulgated thereunder. The regulations establishing civil penalties
28 shall specify the violations subject to penalty.

29 (B) THE OFFICE SHALL ALSO ADOPT REGULATIONS ESTABLISHING CIVIL PENAL-
30 TIES OF NO MORE THAN TWO HUNDRED FIFTY DOLLARS PER DAY TO BE ASSESSED
31 AGAINST NURSERY SCHOOL OPERATORS WHO OPERATE NURSERY SCHOOLS WITHOUT
32 HAVING MADE THE FILING REQUIRED BY THIS SECTION.

33 (ii) The office [of children and family services] shall adopt regu-
34 lations establishing civil penalties of no more than five hundred
35 dollars per day to be assessed against child day care providers who
36 operate child day care centers or group family day care homes without a
37 license or who operate family day care homes, school-age child care
38 programs, or child day care centers required to be registered without
39 obtaining such registration.

40 (iii) In addition to any other civil or criminal penalty provided by
41 law, the office [of children and family services] shall have the power
42 to assess civil penalties in accordance with its regulations adopted
43 pursuant to this subdivision after a hearing conducted in accordance
44 with procedures established by regulations of the office [of children
45 and family services]. Such procedures shall require that notice of the
46 time and place of the hearing, together with a statement of charges of
47 violations, shall be served in person or by certified mail addressed to
48 the school age child care program, group family day care home, family
49 day care home, NURSERY SCHOOL OPERATOR or child day care center at least
50 thirty days prior to the date of the hearing. The statement of charges
51 shall set forth the existence of the violation or violations, the amount
52 of penalty for which the program may become liable, the steps which must
53 be taken to rectify the violation, and where applicable, a statement
54 that a penalty may be imposed regardless of rectification. A written
55 answer to the charges of violations shall be filed with the office [of
56 children and family services] not less than ten days prior to the date

1 of hearing with respect to each of the charges and shall include all
2 material and relevant matters which, if not disclosed in the answer,
3 would not likely be known to the office [of children and family
4 services].

5 (iv) The hearing shall be held by the commissioner of the office [of
6 children and family services] or the commissioner's designee. The burden
7 of proof at such hearing shall be on the office [of children and family
8 services] to show that the charges are supported by a preponderance of
9 the evidence. The commissioner of the office [of children and family
10 services] or the commissioner's designee, in his or her discretion, may
11 allow the child day care center operator or provider to attempt to prove
12 by a preponderance of the evidence any matter not included in the
13 answer. Where the child day care provider satisfactorily demonstrates
14 that it has rectified the violations in accordance with the requirements
15 of paragraph (c) of this subdivision, no penalty shall be imposed except
16 as provided in paragraph (c) of this subdivision.

17 (b)(i) In assessing penalties pursuant to this subdivision, the office
18 [of children and family services] may consider the completeness of any
19 rectification made and the specific circumstances of such violations as
20 mitigating factors.

21 (ii) Upon the request of the office [of children and family services],
22 the attorney general shall commence an action in any court of competent
23 jurisdiction against any child day care program subject to the
24 provisions of this subdivision and against any person, entity or corpo-
25 ration operating such center or school age child care program, group
26 family day care home or family day care home for the recovery of any
27 penalty assessed by the office [of children and family services] in
28 accordance with the provisions of this subdivision.

29 (iii) Any such penalty assessed by the office [of children and family
30 services] may be released or compromised by the office [of children and
31 family services] before the matter has been referred to the attorney
32 general; when such matter has been referred to the attorney general,
33 such penalty may be released or compromised and any action commenced to
34 recover the same may be settled and discontinued by the attorney general
35 with the consent of the office [of children and family services].

36 (c)(i) Except as provided for in this paragraph, a child day care
37 provider may avoid payment of a penalty imposed pursuant to this subdivi-
38 sion where the provider has rectified the condition resulting in the
39 imposition of the penalty within thirty days of notification of the
40 imposition of the penalty.

41 (ii) [Clause] SUBPARAGRAPH (i) of this paragraph notwithstanding,
42 rectification shall not preclude the imposition of a penalty pursuant to
43 this subdivision where:

44 (A) the child day care provider has operated a child day care center
45 or group family day care home without a license, has refused to seek a
46 license for the operation of such a center or home, or has continued to
47 operate such a center or home after denial of a license application,
48 revocation of an existing license or suspension of an existing license;

49 (B) the child day care provider has operated a family day care home,
50 school-age child care program or child day care center required to be
51 registered without being registered, has refused to seek registration
52 for the operation of such home, program or center or has continued to
53 operate such a home, program or center after denial of a registration
54 application, revocation of an existing registration or suspension of an
55 existing registration;

(C) there has been a total or substantial failure of the facility's fire detection or prevention systems or emergency evacuation procedures;

(D) the child day care provider or an assistant, employee or volunteer OR NURSERY SCHOOL has failed to provide adequate and competent supervision;

(E) the child day care provider or an assistant, employee or volunteer OR NURSERY SCHOOL has failed to provide adequate sanitation;

(F) the child day care provider or an assistant, employee or volunteer OR NURSERY SCHOOL has abused or maltreated a child in care; or

(G) the child day care provider OR NURSERY SCHOOL has violated the same statutory or regulatory standard more than once within a six month period.

(d) Any civil penalty received by the office [of children and family services] pursuant to this subdivision shall be deposited to the credit of the "quality child care and protection fund" established pursuant to section ninety-seven-www of the state finance law, AS ADDED BY CHAPTER FOUR HUNDRED SIXTEEN OF THE LAWS OF TWO THOUSAND.

(E) RECTIFICATION SHALL NOT PRECLUDE THE ASSESSMENT OF A PENALTY WHERE THE OFFICE, AFTER A HEARING, DETERMINES THAT A NURSERY SCHOOL OPERATOR HAS OPERATED A NURSERY SCHOOL WITHOUT HAVING MADE THE FILING REQUIRED BY THIS SECTION, OR CONTINUED TO OPERATE SUCH NURSERY SCHOOL AFTER DENIAL OF A FILING OR REVOCATION OR SUSPENSION OF AN EXISTING FILING WITHOUT REGARD TO ANY FINDING OF HARM TO OR ENDANGERMENT OF A CHILD IN CARE. RECTIFICATION SHALL NOT PRECLUDE THE ASSESSMENT OF A PENALTY WHERE THE OFFICE, AFTER A HEARING, DETERMINES THAT A NURSERY SCHOOL OPERATOR HAS OPERATED A NURSERY SCHOOL, REQUIRED TO FILE WITHOUT HAVING FILED, AND HAS REFUSED TO FILE OR CONTINUED TO OPERATE SUCH NURSERY SCHOOL AFTER DENIAL OF FILING OR REVOCATION OR SUSPENSION OF AN EXISTING FILING WITHOUT REGARD TO ANY FINDING OF HARM TO OR ENDANGERMENT OF A CHILD IN CARE.

12.(a) Notwithstanding any other provision of law, except as may be required as a condition of licensure [or], registration OR FILING by regulations promulgated pursuant to this section, no village, town (outside the area of any incorporated village), city or county shall adopt or enact any law, ordinance, rule or regulation which would impose, mandate or otherwise enforce standards for sanitation, health, fire safety or building construction on a one or two family dwelling or multiple dwelling used to provide group family day care or family day care than would be applicable were such child day care not provided on the premises. Nothing in this paragraph shall preclude local authorities with enforcement jurisdiction of the applicable sanitation, health, fire safety or building construction code from making appropriate inspections to assure compliance with such standards. The [department of social services] OFFICE shall provide to the secretary of state on a monthly basis, a list of child day care registrants.

(b) Notwithstanding any other provision of law: for the purposes of this subdivision, no local government may prohibit use of a single family dwelling for family day care or group family day care where a permit for such use has been issued in accordance with regulations issued pursuant to this section; nor may any local government prohibit use for family day care or group family day care, of a multiple dwelling classified as fireproof or prohibit use for family day care or group family day care, of a dwelling unit located on the ground floor of a multiple dwelling not classified as fireproof, where in either case a registration or license for such use has been issued in accordance with regulations adopted pursuant to this section and such use is otherwise permitted under state fire and safety standards (the state code) and

1 under any other existing standard for permitted uses of the multiple
2 dwelling.

3 (c) Notwithstanding any other provision of law, but pursuant to
4 section five hundred eighty-one-b of the real property tax law, no
5 assessing unit, as defined in subdivision one of section one hundred two
6 of the real property tax law, in the assessment of the value of any
7 parcel used for residential purposes and registered as a family day care
8 home pursuant to this section, shall consider the use or registration of
9 such parcel as a family day care home.

10 13. Notwithstanding any other provision of law, this section[, except
11 for paragraph (a-1) of subdivision two-a of this section,] shall not
12 apply to child day care centers in the city of New York, OR ANY NURSERY
13 SCHOOL WHICH IS ASSOCIATED WITH A SCHOOL DISTRICT, THAT ALREADY IMPL-
14 MENTS A FINGERPRINTING PROCESS.

15 S 2. The section heading and subdivisions 1 and 2 of section 390-a of
16 the social services law, the section heading as amended by chapter 750
17 of the laws of 1990, subdivisions 1 and 2 as amended by chapter 416 of
18 the laws of 2000, paragraph (e) of subdivision 2 as added by chapter 230
19 of the laws of 2001, are amended to read as follows:

20 Standards and training for child day care AND NURSERY SCHOOLS. 1. All
21 office of children and family services and municipal staff employed to
22 accept registrations AND FILINGS, issue licenses or conduct inspections
23 of child day care homes, programs or facilities, subject to the amounts
24 appropriated therefor, shall receive training in at least the following:
25 regulations promulgated by the office of children and family services
26 pursuant to section three hundred ninety of this title; child abuse
27 prevention and identification; safety and security procedures in child
28 day care settings; the principles of childhood development, and the
29 laws, regulations and procedures governing the protection of children
30 from abuse or maltreatment.

31 2. No license or registration shall be issued to, OR FILING ACCEPTED
32 FROM a family day care home, group family day care home, school age
33 child care program [or], child day care center OR NURSERY SCHOOL OPERA-
34 TOR and no such registration, FILING or license shall be renewed until
35 it can be demonstrated by the employer or licensing agency that there is
36 a procedure developed and implemented, in accordance with section three
37 hundred ninety-b of this title and pursuant to regulations of the office
38 of children and family services, to:

39 (a) review and evaluate the backgrounds of and information supplied by
40 any person applying to be a child day care center or school-age child
41 care program employee or volunteer or group family day care assistant, a
42 provider of family day care or group family day care, or a director of a
43 child day care center, head start day care center, NURSERY SCHOOL or
44 school-age child care program. Such procedures shall include but not be
45 limited to the following requirements: that the applicant set forth his
46 or her employment history, provide personal and employment references;
47 submit such information as is required for screening with the statewide
48 central register of child abuse and maltreatment in accordance with the
49 provisions of section four hundred twenty-four-a of this article; sign a
50 sworn statement indicating whether, to the best of his or her knowledge,
51 he or she has ever been convicted of a crime in this state or any other
52 jurisdiction; and provide his or her fingerprints for submission to the
53 division of criminal justice services in accordance with the provisions
54 of section three hundred ninety-b of this title;

1 (b) establish relevant minimal experiential and educational qualifica-
2 tions for employees and directors of child day care centers or head
3 start day care center programs;

4 (c) assure adequate and appropriate supervision of employees and
5 volunteers of group family day care homes, family day care homes, child
6 day care centers, NURSERY SCHOOLS and school-age child care programs;
7 [and]

8 (d) demonstrate, in the case of child day care centers, group family
9 day care homes, family day care homes, NURSERY SCHOOLS and school-age
10 child care programs the existence of specific procedures which will
11 assure the safety of a child who is reported to the state central regis-
12 ter of child abuse and maltreatment as well as other children provided
13 care by such homes, centers or programs, immediately upon notification
14 that a report has been made with respect to a child named in such report
15 while the child was in attendance at such homes, centers or programs[.];
16 AND

17 (e) establish necessary rules to provide for uniform visitor control
18 procedures, including visitor identification.

19 S 3. Paragraph (a) of subdivision 1 of section 424-a of the social
20 services law, as amended by chapter 634 of the laws of 1988, is amended
21 to read as follows:

22 (a) A licensing agency shall inquire of the [department] OFFICE OF
23 CHILDREN AND FAMILY SERVICES and the [department] OFFICE OF CHILDREN AND
24 FAMILY SERVICES shall, subject to the provisions of paragraph (e) of
25 this subdivision, inform such agency and the subject of the inquiry
26 whether an applicant for a certificate, license or permit, assistants to
27 group family day care providers, the director of a camp subject to the
28 provisions of article thirteen-A[,] OR thirteen-B [or thirteen-C] of the
29 public health law, and any person over the age of eighteen who resides
30 in the home of a person who has applied to become an adoptive parent or
31 a foster parent or to operate a family day care home, NURSERY SCHOOL or
32 group family day care home has been or is currently the subject of an
33 indicated child abuse and maltreatment report on file with the statewide
34 central register of child abuse and maltreatment.

35 S 4. Section 390-b of the social services law, as added by chapter
36 416 of the laws of 2000, is amended to read as follows:

37 S 390-b. Criminal history review of child care providers, generally.
38 1. (a) Notwithstanding any other provision of law to the contrary, and
39 subject to rules and regulations of the division of criminal justice
40 services, the office of children and family services shall perform a
41 criminal history record check with the division of criminal justice
42 services regarding any operator, employee or volunteer of a child day
43 care center or school age child care provider, as defined in paragraphs
44 (c) and (f) of subdivision one of section three hundred ninety of this
45 title. Child day care center operators, school age child care operators
46 and any employees or volunteers, who previously did not have a criminal
47 history record check performed in accordance with this subdivision shall
48 have such a criminal history record check performed when the child day
49 care center or school age child care provider applies for license or
50 registration renewal. Child day care centers which are not subject to
51 the provisions of section three hundred ninety of this title, shall not
52 be subject to the provisions of this section. The provisions of this
53 section shall apply to a volunteer only where the volunteer has the
54 potential for regular and substantial contact with children enrolled in
55 the program.

1 (b) Notwithstanding any other provision of law to the contrary, and
2 subject to rules and regulations of the division of criminal justice
3 services, the office of children and family services shall perform a
4 criminal history record check with the division of criminal justice
5 services regarding the operator, any assistants, employees or volunteers
6 of a group family day care home [or], family day care home OR NURSERY
7 SCHOOL, as defined in paragraphs (d) [and], (e) AND (G) of subdivision
8 one of section three hundred ninety of this title, and any person age
9 eighteen or over residing on the premises of the group family day care
10 home [or], family day care home OR NURSERY SCHOOL which is to be
11 licensed [or], registered OR FOR WHICH A FILING MUST BE MADE in accord-
12 ance with section three hundred ninety of this title. Group family day
13 care home operators, family day care home operators, NURSERY SCHOOL
14 OPERATORS, any assistants, employees or volunteers, and persons who are
15 age eighteen or over residing on the premises of a licensed group family
16 day care home [or], registered family day care home OR NURSERY SCHOOL
17 who previously did not have a criminal history record check performed in
18 accordance with this subdivision shall have such a criminal history
19 record check performed when the group family day care home [or], family
20 day care home OR NURSERY SCHOOL applies for renewal of the home's
21 license [or], registration OR FILING. The provisions of this section
22 shall apply to a volunteer only where the volunteer has the potential
23 for regular and substantial contact with children enrolled in the
24 program.

25 2. (a) As part of the provider's application for, or renewal of, a
26 child day care center or school age child care license or registration,
27 the provider shall furnish the office of children and family services
28 with fingerprint cards of any operator of a child day care center or
29 school age child care program, and any employee or volunteer, who previ-
30 ously did not have a criminal history record check performed in accord-
31 ance with this section, together with such other information as is
32 required by the office of children and family services and the division
33 of criminal justice services.

34 (b) Every child day care center or school age child care provider
35 shall obtain a set of fingerprints for each prospective employee or
36 volunteer and such other information as is required by the office of
37 children and family services and the division of criminal justice
38 services. The child day care center or school age child care program
39 shall furnish to the applicant blank fingerprint cards and a description
40 of how the completed fingerprint cards will be used. The child day care
41 center or school age child care program shall promptly transmit such
42 fingerprint cards to the office of children and family services.

43 (c) As part of the provider's application for, or renewal of, a group
44 family day care home license or family day care home registration, the
45 provider shall furnish the office of children and family services with
46 fingerprint cards of any operator of a group family day care home or
47 family day care home, and any assistant, employee or volunteer, and any
48 person age eighteen or over residing on the premises of the group family
49 day care home or family day care home, who previously did not have a
50 criminal history record check performed in accordance with this section,
51 together with such other information as is required by the office of
52 children and family services and the division of criminal justice
53 services.

54 (d) Every group family day care home or family day care home provider
55 shall obtain a set of fingerprints for each prospective assistant,
56 employee, volunteer and any person age eighteen or over who will be

1 residing on the premises of the group family day care home or family day
2 care home, and such other information as is required by the office of
3 children and family services and the division of criminal justice
4 services. The group family day care home or family day care home provid-
5 er shall furnish to the applicant blank fingerprint cards and a
6 description of how the completed fingerprint cards will be used. The
7 group family day care home or family day care home provider shall
8 promptly transmit such fingerprint cards to the office of children and
9 family services.

10 (e) AS PART OF THE PROVIDER'S APPLICATION FOR, OR RENEWAL OF, A NURS-
11 ERY SCHOOL FILING, THE PROVIDER SHALL FURNISH THE OFFICE OF CHILDREN AND
12 FAMILY SERVICES WITH FINGERPRINT CARDS OF ANY OPERATOR OF A NURSERY
13 SCHOOL, AND ANY EMPLOYEE OR VOLUNTEER, WHO PREVIOUSLY DID NOT HAVE A
14 CRIMINAL HISTORY RECORD CHECK PERFORMED IN ACCORDANCE WITH THIS SECTION,
15 TOGETHER WITH SUCH OTHER INFORMATION AS IS REQUIRED BY THE OFFICE OF
16 CHILDREN AND FAMILY SERVICES AND THE DIVISION OF CRIMINAL JUSTICE
17 SERVICES.

18 (F) EVERY NURSERY SCHOOL PROVIDER SHALL OBTAIN A SET OF FINGERPRINTS
19 FOR EACH PROSPECTIVE EMPLOYEE OR VOLUNTEER AND SUCH OTHER INFORMATION AS
20 IS REQUIRED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE DIVI-
21 SION OF CRIMINAL JUSTICE SERVICES. THE NURSERY SCHOOL PROGRAM SHALL
22 FURNISH TO THE APPLICANT BLANK FINGERPRINT CARDS AND A DESCRIPTION OF
23 HOW THE COMPLETED FINGERPRINT CARDS WILL BE USED. THE NURSERY SCHOOL
24 PROGRAM SHALL PROMPTLY TRANSMIT SUCH FINGERPRINT CARDS TO THE OFFICE OF
25 CHILDREN AND FAMILY SERVICES.

26 (G) The office of children and family services shall pay the process-
27 ing fee imposed pursuant to subdivision eight-a of section eight hundred
28 thirty-seven of the executive law. The office of children and family
29 services shall promptly submit the fingerprint cards and the processing
30 fee to the division of criminal justice services for its full search and
31 retain processing.

32 [(f)] (H) A licensed or registered child day care center, school-age
33 child care program, group family day care home or family day care home
34 may temporarily approve an applicant to be an employee, assistant or
35 volunteer for such provider while the results of the criminal history
36 record check are pending, but shall not allow such person to have unsu-
37 pervised contact with children during such time.

38 3. Notwithstanding any other provision of law to the contrary, after
39 reviewing any criminal history record information provided by the divi-
40 sion of criminal justice services, of an individual who is subject to a
41 criminal history record check pursuant to this section, the office of
42 children and family services and the provider shall take the following
43 actions:

44 (a) (i) Where the criminal history record of an applicant to be an
45 operator of a child day care center, school age child care program,
46 group family day care home, family day care home, NURSERY SCHOOL, or any
47 person over the age of eighteen residing in such a home OR SCHOOL,
48 reveals a felony conviction at any time for a sex offense, crime against
49 a child, or a crime involving violence, or a felony conviction within
50 the past five years for a drug-related offense, the office of children
51 and family services shall deny the application OR FILING unless the
52 office determines, in its discretion, that approval of the application
53 OR FILING will not in any way jeopardize the health, safety or welfare
54 of the children in the center, program or home; or

55 (ii) Where the criminal history record of an applicant to be an opera-
56 tor of a child day care center, school age child care program, group

1 family day care home, family day care home, NURSERY SCHOOL, or any
2 person over the age of eighteen residing in such a home OR SCHOOL,
3 reveals a conviction for a crime other than one set forth in subpara-
4 graph (i) of this paragraph, the office of children and family services
5 may deny the application OR FILING, consistent with article twenty-
6 three-A of the correction law; or

7 (iii) Where the criminal history record of an applicant to be an oper-
8 ator of a child day care center, school age child care program, group
9 family day care home, family day care home, NURSERY SCHOOL, or any other
10 person over the age of eighteen residing in such a home, reveals a
11 charge for any crime, the office of children and family services shall
12 hold the application OR FILING in abeyance until the charge is finally
13 resolved.

14 (b) (i) Where the criminal history record of a current operator of a
15 child day care center, school age child care program, group family day
16 care home, family day care home, NURSERY SCHOOL, or any other person
17 over the age of eighteen residing in such a home OR SCHOOL, reveals a
18 conviction for a crime set forth in subparagraph (i) of paragraph (a) of
19 this subdivision, the office of children and family services shall
20 conduct a safety assessment of the program and take all appropriate
21 steps to protect the health and safety of the children in the program.
22 The office of children and family services shall deny, limit, suspend,
23 revoke, reject or terminate a license [or], registration OR FILING based
24 on such a conviction, unless the office determines, in its discretion,
25 that continued operation of the center, program [or], home OR SCHOOL
26 will not in any way jeopardize the health, safety or welfare of the
27 children in the center, program [or], home OR SCHOOL;

28 (ii) Where the criminal history record of a current operator of a
29 child day care center, school age child care program, group family day
30 care home, family day care home, NURSERY SCHOOL, or any other person
31 over the age of eighteen residing in such a home OR SCHOOL, reveals a
32 conviction for a crime other than one set forth in subparagraph (i) of
33 paragraph (a) of this subdivision, the office of children and family
34 services shall conduct a safety assessment of the program and take all
35 appropriate steps to protect the health and safety of the children in
36 the program. The office may deny, limit, suspend, revoke, reject or
37 terminate a license [or], registration OR FILING based on such a
38 conviction, consistent with article twenty-three-A of the correction
39 law;

40 (iii) Where the criminal history record of a current operator of a
41 child day care center, school age child care program, group family day
42 care home, family day care home, NURSERY SCHOOL, or any other person
43 over the age of eighteen residing in such a home OR SCHOOL, reveals a
44 charge for any crime, the office of children and family services shall
45 conduct a safety assessment of the program and take all appropriate
46 steps to protect the health and safety of the children in the program.
47 The office may suspend a license [or], registration OR FILING based on
48 such a charge where necessary to protect the health and safety of the
49 children in the program.

50 (c) (i) Where the criminal history record of an applicant to be an
51 employee or volunteer at a child day care center [or], school age child
52 care program OR NURSERY SCHOOL reveals a conviction for a crime set
53 forth in subparagraph (i) of paragraph (a) of this subdivision, the
54 office of children and family services shall direct the provider to deny
55 the application unless the office determines, in its discretion, that

1 approval of the application will not in any way jeopardize the health,
2 safety or welfare of the children in the center or program;

3 (ii) Where the criminal history record of an applicant to be an
4 employee or volunteer at a child day care center [or], school age child
5 care program OR NURSERY SCHOOL reveals a conviction for a crime other
6 than one set forth in subparagraph (i) of paragraph (a) of this subdivi-
7 sion, the office of children and family services may, consistent with
8 article twenty-three-A of the correction law, direct the provider to
9 deny the application;

10 (iii) Where the criminal history record of an applicant to be an
11 employee or volunteer at a child day care center [or], school age child
12 care program OR NURSERY SCHOOL reveals a charge for any crime, the
13 office of children and family services shall hold the application in
14 abeyance until the charge is finally resolved.

15 (d) (i) Where the criminal history record of a current employee or
16 volunteer at a child day care center [or], school age child care program
17 OR NURSERY SCHOOL reveals a conviction for a crime set forth in subpara-
18 graph (i) of paragraph (a) of this subdivision, the office of children
19 and family services shall conduct a safety assessment of the program and
20 take all appropriate steps to protect the health and safety of the chil-
21 dren in the program. The office shall direct the provider to terminate
22 the employee or volunteer based on such a conviction, unless the office
23 determines, in its discretion, that the continued presence of the
24 employee or volunteer in the center or program will not in any way jeop-
25 ardize the health, safety or welfare of the children in the center or
26 program;

27 (ii) Where the criminal history record of a current employee or volun-
28 teer at a child day care center [or], school age child care program OR
29 NURSERY SCHOOL reveals a conviction for a crime other than one set forth
30 in subparagraph (i) of paragraph (a) of this subdivision, the office of
31 children and family services shall conduct a safety assessment of the
32 program and take all appropriate steps to protect the health and safety
33 of the children in the program. The office may direct the provider to
34 terminate the employee or volunteer based on such a conviction, consist-
35 ent with article twenty-three-A of the correction law;

36 (iii) Where the criminal history record of a current employee or
37 volunteer at a child day care center [or], school age child care program
38 OR NURSERY SCHOOL reveals a charge for any crime, the office of children
39 and family services shall conduct a safety assessment of the program and
40 take all appropriate steps to protect the health and safety of the chil-
41 dren in the program.

42 (e) (i) Where the criminal history record of an applicant to be an
43 employee, assistant or volunteer at a group family day care home or
44 family day care home reveals a conviction for a crime set forth in
45 subparagraph (i) of paragraph (a) of this subdivision, the office of
46 children and family services shall direct the provider to deny the
47 application unless the office determines, in its discretion, that
48 approval of the application will not in any way jeopardize the health,
49 safety or welfare of the children in the home;

50 (ii) Where the criminal history record of an applicant to be an
51 employee, assistant or volunteer at a group family day care home or
52 family day care home reveals a conviction for a crime other than one set
53 forth in subparagraph (i) of paragraph (a) of this subdivision, the
54 office of children and family services may, consistent with article
55 twenty-three-A of the correction law, direct the provider to deny the
56 application;

1 (iii) Where the criminal history record of an applicant to be an
2 employee, assistant or volunteer at a group family day care home or
3 family day care home reveals a charge for any crime, the office of chil-
4 dren and family services shall hold the application in abeyance until
5 the charge is finally resolved.

6 (f) (i) Where the criminal history record of a current employee,
7 assistant or volunteer at a group family day care home or family day
8 care home reveals a conviction for a crime set forth in subparagraph (i)
9 of paragraph (a) of this subdivision, the office of children and family
10 services shall conduct a safety assessment of the program and take all
11 appropriate steps to protect the health and safety of the children in
12 the home. The office of children and family services shall direct the
13 provider to terminate the employee, assistant or volunteer based on such
14 a conviction, unless the office determines, in its discretion, that the
15 continued presence of the employee, assistant or volunteer in the home
16 will not in any way jeopardize the health, safety or welfare of the
17 children in the home;

18 (ii) Where the criminal history record of a current employee, assist-
19 ant or volunteer at a group family day care home or family day care home
20 reveals a conviction for a crime other than one set forth in subpara-
21 graph (i) of paragraph (a) of this subdivision, the office of children
22 and family services shall conduct a safety assessment of the home and
23 take all appropriate steps to protect the health and safety of the chil-
24 dren in the home. The office may direct the provider to terminate the
25 employee, assistant or volunteer based on such a conviction, consistent
26 with article twenty-three-A of the correction law;

27 (iii) Where the criminal history record of a current employee, assist-
28 ant or volunteer at a group family day care home or family day care home
29 reveals a charge for any crime, the office of children and family
30 services shall conduct a safety assessment of the home and take all
31 appropriate steps to protect the health and safety of the children in
32 the home.

33 (g) Advise the provider that the individual has no criminal history
34 record.

35 4. Prior to making a determination to deny an application pursuant to
36 subdivision three of this section, the office of children and family
37 services shall afford the applicant an opportunity to explain, in writ-
38 ing, why the application should not be denied.

39 5. Notwithstanding any other provision of law to the contrary, the
40 office of children and family services, upon receipt of a criminal
41 history record from the division of criminal justice services, may
42 request, and is entitled to receive, information pertaining to any crime
43 contained in such criminal history record from any state or local law
44 enforcement agency, district attorney, parole officer, probation officer
45 or court for the purposes of determining whether any ground relating to
46 such criminal conviction or pending criminal charge exists for denying a
47 license, registration, FILING, application or employment.

48 6. The notification by the office of children and family services to
49 the child day care provider pursuant to this section shall include a
50 summary of the criminal history record, if any, provided by the division
51 of criminal justice services.

52 7. Where the office of children and family services directs a child
53 day care provider to deny an application based on the criminal history
54 record, the provider must notify the applicant that such record is the
55 basis of the denial.

1 8. Any safety assessment required pursuant to this section shall
2 include a review of the duties of the individual, the extent to which
3 such individual may have contact with children in the program or house-
4 hold and the status and nature of the criminal charge or conviction.
5 Where the office of children and family services performs the safety
6 assessment, it shall thereafter take all appropriate steps to protect
7 the health and safety of children receiving care in the child day care
8 center, school age child care program, family day care home [or], group
9 family day care home OR NURSERY SCHOOL.

10 9. Any criminal history record provided by the division of criminal
11 justice services, and any summary of the criminal history record
12 provided by the office of children and family services to a child day
13 care provider pursuant to this section, is confidential and shall not be
14 available for public inspection; provided, however, nothing herein shall
15 prevent a child day care provider or the office of children and family
16 services from disclosing criminal history information at any administra-
17 tive or judicial proceeding relating to the denial or revocation of an
18 application, employment, license [or], registration OR FILING. The
19 subject of a criminal history review conducted pursuant to this section
20 shall be entitled to receive, upon written request, a copy of the summa-
21 ry of the criminal history record provided by the office of children and
22 family services to the child day care provider. Unauthorized disclosure
23 of such records or reports shall subject the provider to civil penalties
24 in accordance with the provisions of subdivision eleven of section three
25 hundred ninety of this title.

26 10. A child day care provider shall advise the office of children and
27 family services when an individual who is subject to criminal history
28 record review in accordance with subdivision one or two of this section
29 is no longer subject to such review. The office of children and family
30 services shall inform the division of criminal justice services when an
31 individual who is subject to criminal history review is no longer
32 subject to such review so that the division of criminal justice services
33 may terminate its retain processing with regard to such person. At least
34 once a year, the office of children and family services will be required
35 to conduct a validation of the records maintained by the division of
36 criminal justice services.

37 S 5. This act shall take effect on the one hundred eightieth day after
38 it shall have become a law, provided, however, that any rules or regu-
39 lations necessary to implement the provisions of this act on its effec-
40 tive date shall be promulgated on or before such date.