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

S. 7749 A. 10721

S E N A T E - A S S E M B L Y

June 17, 2012

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

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

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

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

LBD12169-02-2

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

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

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

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

PART A

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

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

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

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

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

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

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

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

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

ARTICLE 20

PROTECTION OF PEOPLE WITH SPECIAL NEEDS

SECTION 550. DEFINITIONS.
551. THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS.
552. ORGANIZATION OF THE JUSTICE CENTER.
553. POWERS AND DUTIES OF THE JUSTICE CENTER.
554. CODES OF CONDUCT.
555. JUSTICE CENTER MEDICAL REVIEW BOARD; ORGANIZATION.
556. FUNCTIONS, POWERS AND DUTIES OF THE BOARD.
557. REPORTS TO THE JUSTICE CENTER.
558. ACCESS TO RECORDS AND FACILITIES.
559. NEW YORK STATE INTERAGENCY COORDINATING COUNCIL FOR SERVICES TO PERSONS WHO ARE DEAF, DEAF-BLIND, OR HARD OF HEARING.
560. ANNUAL REPORT.
561. ADVISORY COUNCIL.
562. ABUSE AND NEGLECT NOTIFICATION.

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

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

2. "MENTAL HYGIENE FACILITY" SHALL MEAN A FACILITY AS DEFINED IN SUBDIVISION SIX OF SECTION 1.03 OF THE MENTAL HYGIENE LAW AND FACILITIES FOR THE OPERATION OF WHICH AN OPERATING CERTIFICATE IS REQUIRED PURSUANT

TO ARTICLE SIXTEEN OR THIRTY-ONE OF THE MENTAL HYGIENE LAW AND INCLUDING FAMILY CARE HOMES. "MENTAL HYGIENE FACILITY" ALSO MEANS A SECURE TREATMENT FACILITY AS DEFINED BY ARTICLE TEN OF THE MENTAL HYGIENE LAW.

3. "REPORTABLE INCIDENT" SHALL HAVE THE SAME MEANING AS DEFINED IN SUBDIVISION ONE OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW.

4. "STATE OVERSIGHT AGENCY" SHALL MEAN THE STATE AGENCY THAT OPERATES, LICENSES OR CERTIFIES AN APPLICABLE FACILITY OR PROVIDER AGENCY AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW; PROVIDED HOWEVER THAT SUCH TERM SHALL ONLY INCLUDE THE FOLLOWING ENTITIES: THE OFFICE OF MENTAL HEALTH, THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE DEPARTMENT OF HEALTH AND THE STATE EDUCATION DEPARTMENT. "STATE OVERSIGHT AGENCY" DOES NOT INCLUDE AGENCIES THAT ARE CERTIFICATION AGENCIES PURSUANT TO FEDERAL LAW OR REGULATION. FOR PURPOSES OF THIS ARTICLE, "STATE OVERSIGHT AGENCY" SHALL INCLUDE THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS.

5. "VULNERABLE PERSON" SHALL MEAN A PERSON WHO, DUE TO PHYSICAL OR COGNITIVE DISABILITIES, OR THE NEED FOR SERVICES OR PLACEMENT, IS RECEIVING SERVICES FROM A FACILITY OR PROVIDER AGENCY AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW.

6. "INDIVIDUAL WITH A DISABILITY," EXCEPT AS USED IN SUBDIVISION (B) OF SECTION FIVE HUNDRED FIFTY-EIGHT OF THIS ARTICLE, SHALL MEAN A PERSON WITH A DISABILITY AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION TWO HUNDRED NINETY-TWO OF THIS CHAPTER.

S 551. THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS. 1. THERE IS HEREBY CREATED WITHIN THE EXECUTIVE DEPARTMENT A JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS ("JUSTICE CENTER" OR "CENTER"). SUCH JUSTICE CENTER SHALL BE HEADED BY AN EXECUTIVE DIRECTOR, WHO SHALL BE APPOINTED BY THE GOVERNOR, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE. THE EXECUTIVE DIRECTOR MAY APPOINT STAFF AND PERFORM SUCH OTHER FUNCTIONS FOR THE EFFICIENT OPERATION OF THE JUSTICE CENTER WITHIN THE AMOUNTS MADE AVAILABLE THEREFOR BY APPROPRIATION.

2. THE EXECUTIVE DIRECTOR SHALL RECOMMEND POLICIES AND PROCEDURES TO THE STATE OVERSIGHT AGENCY FOR THE PROTECTION OF VULNERABLE PERSONS, INCLUDING BUT NOT LIMITED TO POLICIES AND PROCEDURES: (A) FOR THE PROTECTION OF VULNERABLE PERSONS WHO RESIDE IN OR RECEIVE SERVICES FROM FACILITIES OR PROVIDER AGENCIES AS SET FORTH IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW; (B) RELATING TO ASSURING, ON BEHALF OF THE STATE, THAT VULNERABLE PERSONS ARE AFFORDED CARE THAT IS OF A UNIFORMLY HIGH STANDARD; (C) RELATING TO ASSURING, ON BEHALF OF THE STATE, THAT VULNERABLE PERSONS ARE AFFORDED THE OPPORTUNITY TO EXERCISE ALL OF THE RIGHTS AND RESPONSIBILITIES ACCORDED TO RESIDENTS OF THE STATE; AND (D) TO HARMONIZE AND IMPROVE THE PROCEDURES FOR AND QUALITY OF INVESTIGATIONS OF REPORTABLE INCIDENTS INVOLVING VULNERABLE PERSONS WITHIN THE DIFFERENT SYSTEMS OF CARE IN THE STATE.

3. THE EXECUTIVE DIRECTOR MAY, IN CONSULTATION WITH THE ADVISORY COUNCIL, PROMULGATE, ADOPT, AMEND OR RESCIND RULES AND REGULATIONS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ARTICLE; PROVIDED, HOWEVER, THAT SUCH RULES AND REGULATIONS SHALL BE STRICTLY LIMITED IN THEIR APPLICATION TO THE MEANS AND METHODS OF COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE.

S 552. ORGANIZATION OF THE JUSTICE CENTER. 1. THE JUSTICE CENTER SHALL HOUSE THE VULNERABLE PERSONS' CENTRAL REGISTER CREATED IN SECTION FOUR HUNDRED NINETY-TWO OF THE SOCIAL SERVICES LAW AND SHALL PERFORM ALL OF THE NECESSARY FUNCTIONS RELATED TO THE RECEIPT AND ACCEPTANCE OF REPORTS OF ALLEGATIONS OF REPORTABLE INCIDENTS INVOLVING VULNERABLE PERSONS, THE INVESTIGATION OF SUCH ACCEPTED REPORTS AND THE REVIEW OF SUBSTANTIATED FINDINGS OF ABUSE OR NEGLECT, AS DEFINED IN SUBDIVISION ELEVEN OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW, INCLUDING CONDUCTING ANY DISCIPLINARY PROCEEDINGS FOR STATE EMPLOYEES RESULTING FROM SUCH SUBSTANTIATED FINDINGS (FOR STATE ENTITIES BOUND BY COLLECTIVE BARGAINING, THE DISCIPLINARY PROCESS ESTABLISHED THROUGH COLLECTIVE BARGAINING SHALL GOVERN). THE JUSTICE CENTER SHALL CONTAIN TWO SEPARATE UNITS, HEADED BY TWO DISTINCT DEPUTIES, ONE RESPONSIBLE FOR THE PROSECUTION OF CRIMINAL MATTERS AND ONE FOR THE RESOLUTION OF NON-CRIMINAL MATTERS. IF, DURING AN INVESTIGATION, WHAT APPEARED TO BE A NON-CRIMINAL MATTER WARRANTS CONSIDERATION FOR CRIMINAL CHARGES, THE MATTER SHALL BE PROMPTLY REFERRED TO THE CRIMINAL UNIT. INFORMATION COLLECTED DURING SUCH INVESTIGATIONS MAY ONLY BE SHARED BETWEEN SUCH UNITS IN ACCORDANCE WITH STATE AND FEDERAL CONSTITUTIONAL PROTECTIONS AND LAWS AND THE SECRECY PROVISIONS CONTAINED IN ARTICLE ONE HUNDRED NINETY OF THE CRIMINAL PROCEDURE LAW, UNLESS SO ORDERED BY A COURT IN A PENDING PROCEEDING.

2. (A) THE JUSTICE CENTER ALSO SHALL EMPLOY A SPECIAL PROSECUTOR AND INSPECTOR GENERAL FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS ("SPECIAL PROSECUTOR"), WHO SHALL BE APPOINTED BY THE GOVERNOR. OTHER STATE AGENCIES SHALL BE REQUIRED TO MAKE FACILITIES AVAILABLE FOR OFFICE SPACE THROUGHOUT THE STATE AND TO ASSIST WHEN REQUESTED WITH RESPECT TO THE DUTIES OF THE OFFICE. PURSUANT TO THE PROVISIONS OF THIS SECTION, SUCH SPECIAL PROSECUTOR SHALL HAVE THE DUTY AND POWER: (I) TO INVESTIGATE AND PROSECUTE OFFENSES INVOLVING ABUSE OR NEGLECT, AS DEFINED IN SUBDIVISION ELEVEN OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW, COMMITTED AGAINST VULNERABLE PERSONS BY CUSTODIANS AS DEFINED IN SUBDIVISION TWO OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW; AND (II) TO COOPERATE WITH AND ASSIST DISTRICT ATTORNEYS AND OTHER LOCAL LAW ENFORCEMENT OFFICIALS IN THEIR EFFORTS AGAINST SUCH ABUSE OR NEGLECT OF VULNERABLE PERSONS. PROVIDED THAT NOTHING HEREIN SHALL INTERFERE WITH THE ABILITY OF DISTRICT ATTORNEYS AT ANY TIME TO RECEIVE COMPLAINTS, INVESTIGATE AND PROSECUTE ANY SUSPECTED ABUSE OR NEGLECT OR FOR ANY PERSONS, WHETHER A MANDATED REPORTER OR NOT, TO REPORT A COMPLAINT TO A DISTRICT ATTORNEY OR OTHER APPROPRIATE LAW ENFORCEMENT OFFICIAL. THE SPECIAL PROSECUTOR MAY REQUEST AND SHALL RECEIVE, FROM ANY AGENCY, DEPARTMENT, DIVISION, BOARD, BUREAU OR COMMISSION OF THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF, COOPERATION AND ASSISTANCE IN THE PERFORMANCE OF HIS OR HER DUTIES, AND MAY PROVIDE TECHNICAL AND OTHER ASSISTANCE TO ANY DISTRICT ATTORNEY OR LAW ENFORCEMENT OFFICIAL REQUESTING ASSISTANCE IN THE INVESTIGATION OR PROSECUTION OF ABUSE OR NEGLECT OF VULNERABLE PERSONS.

(B) THE SPECIAL PROSECUTOR IS EMPOWERED TO APPLY FOR SEARCH WARRANTS PURSUANT TO ARTICLE SIX HUNDRED NINETY OF THE CRIMINAL PROCEDURE LAW, AND, EXCEPT IN EXIGENT CIRCUMSTANCES, SHALL GIVE PRIOR NOTICE OF THE APPLICATION TO THE DISTRICT ATTORNEY OF THE COUNTY IN WHICH SUCH A WARRANT IS TO BE EXECUTED, AND IN SUCH EXIGENT CIRCUMSTANCES SHALL GIVE SUCH NOTICE AS SOON THEREAFTER AS IS PRACTICABLE; PROVIDED, HOWEVER THAT THE FAILURE TO GIVE NOTICE OF A SEARCH WARRANT APPLICATION TO A DISTRICT ATTORNEY SHALL NOT BE A GROUND TO SUPPRESS THE EVIDENCE SEIZED IN EXECUTING THE WARRANT. HE OR SHE MAY DESIGNATE AN ASSISTANT TO EXERCISE ANY OF SUCH POWERS.

(C) THE SPECIAL PROSECUTOR OR ONE OF HIS OR HER ASSISTANTS MAY, AFTER CONSULTATION WITH THE DISTRICT ATTORNEY AS TO THE TIME AND PLACE OF SUCH ATTENDANCE OR APPEARANCE, ATTEND IN PERSON ANY TERM OF THE COUNTY COURT OR SUPREME COURT HAVING APPROPRIATE JURISDICTION, INCLUDING AN EXTRAORDINARY SPECIAL OR TRIAL TERM OF THE SUPREME COURT WHEN ONE IS APPOINTED PURSUANT TO SECTION ONE HUNDRED FORTY-NINE OF THE JUDICIARY LAW, OR APPEAR BEFORE THE GRAND JURY THEREOF, FOR THE PURPOSE OF MANAGING AND CONDUCTING IN SUCH COURT OR BEFORE SUCH JURY A CRIMINAL ACTION OR PROCEEDING CONCERNED WITH AN OFFENSE WHERE ANY CONDUCT CONSTITUTING OR REQUISITE TO THE COMPLETION OF OR IN ANY OTHER MANNER RELATED TO SUCH OFFENSE INVOLVED THE ABUSE OR NEGLECT OF A VULNERABLE PERSON, AS DEFINED IN SUBDIVISION ELEVEN OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW. IN SUCH CASE, SUCH SPECIAL PROSECUTOR OR HIS OR HER ASSISTANT SO ATTENDING MAY EXERCISE ALL THE POWERS AND PERFORM ALL THE DUTIES IN RESPECT OF SUCH ACTIONS OR PROCEEDINGS WHICH THE DISTRICT ATTORNEY WOULD OTHERWISE BE AUTHORIZED OR REQUIRED TO EXERCISE OR PERFORM.

S 553. POWERS AND DUTIES OF THE JUSTICE CENTER. THE JUSTICE CENTER SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

1. TO CREATE AND ESTABLISH THE STATEWIDE VULNERABLE PERSONS' CENTRAL REGISTER, AS SET FORTH IN SECTION FOUR HUNDRED NINETY-TWO OF THE SOCIAL SERVICES LAW, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) ESTABLISHING PROCEDURES FOR THE TIMELY RESPONSE TO, AND EFFECTIVE INVESTIGATION OF, ALLEGATIONS OF REPORTABLE INCIDENTS THAT ARE ACCEPTED BY THE STATEWIDE VULNERABLE PERSONS' CENTRAL REGISTER;

(B) ESTABLISHING PROCEDURES FOR THE NOTIFICATION OF APPROPRIATE PERSONS AND ENTITIES WITH RESPECT TO REPORTS AND FINDINGS OF REPORTABLE INCIDENTS;

(C) REPRESENTING THE STATE IN ALL ADMINISTRATIVE HEARINGS AND OTHER ADMINISTRATIVE PROCEEDINGS RELATING TO DISCIPLINE OF STATE EMPLOYEES AND ADJUDICATION OF INDIVIDUALS CHARGED WITH HAVING COMMITTED OR FOUND TO HAVE COMMITTED ABUSE OR NEGLECT, AS DEFINED IN SUBDIVISION ELEVEN OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW (FOR STATE ENTITIES BOUND BY COLLECTIVE BARGAINING, THE DISCIPLINARY PROCESS ESTABLISHED THROUGH COLLECTIVE BARGAINING SHALL GOVERN);

(D) IDENTIFYING A PROCESS FOR A COORDINATED APPROACH TO AVOID DUPLICATION AND PROVIDE FOR TIMELY RESPONSES TO ALLEGATIONS OF REPORTABLE INCIDENTS IN DUALLY LICENSED OR CO-LOCATED FACILITIES AND PROVIDER AGENCIES, WHICH SHALL INCLUDE DESIGNATION OF A LEAD AGENCY PRIMARILY RESPONSIBLE FOR CARRYING OUT THE RESPONSIBILITIES OF A FACILITY OR PROVIDER AGENCY PURSUANT TO ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW, INCLUDING BUT NOT LIMITED TO INCIDENT MANAGEMENT AND REPORTING, PROVIDED THAT IN MAKING ANY SUCH DESIGNATION OR RE-DESIGNATION OF SUCH LEAD AGENCY, CONSIDERATION SHALL BE GIVEN TO THE FOLLOWING FACTORS: THE PROPORTION OF SERVICES PROVIDED OR RECIPIENTS SERVED IN THE DUALLY LICENSED OR CO-LOCATED FACILITIES AND PROVIDER AGENCIES PURSUANT TO EACH LICENSE OR CERTIFICATION GRANTED BY A STATE OVERSIGHT AGENCY, THE RECOMMENDATIONS OF THE RESPECTIVE STATE OVERSIGHT AGENCIES THAT GRANTED SUCH LICENSURE OR CERTIFICATION, AND THE DESIGNATION OR RE-DESIGNATION THAT WOULD BEST PROTECT THE HEALTH, SAFETY AND WELFARE OF VULNERABLE PERSONS SERVED BY SUCH FACILITIES AND PROVIDER AGENCIES; PROVIDED, FURTHER THAT ONCE DESIGNATED, A LEAD AGENCY SHALL ONLY BE RE-DESIGNATED AS NECESSARY TO PROTECT THE HEALTH, SAFETY AND WELFARE OF VULNERABLE PERSONS SERVED BY SUCH FACILITIES AND PROVIDER AGENCIES;

(E) WHERE APPLICABLE, ESTABLISHING UNIFORM PROCEDURES FOR CHARACTER AND COMPETENCE REVIEWS OF PROVIDER AGENCIES INITIALLY, AND UPON RENEWAL

OF LICENSES AND OPERATING CERTIFICATES REQUIRING A REVIEW OF PERFORMANCE RECORDS REGARDING INCIDENT MANAGEMENT, THE ROLE OF THE BOARD OF DIRECTORS IN MAINTAINING OVERSIGHT OVER AGENCY PERFORMANCE IN THIS AREA, AND THE MANAGEMENT OF REPORTABLE INCIDENTS AFFECTING THE SAFETY OF VULNERABLE PERSONS, INCLUDING CASES OF SYSTEMIC PROBLEMS; AND

(F) ESTABLISHING TRAINING CURRICULA FOR EMPLOYERS AND EMPLOYEES WHO PROVIDE CARE AND TREATMENT TO VULNERABLE PERSONS, AND THOSE WHO ARE IN SUPERVISORY POSITIONS WITH RESPECT TO SUCH EMPLOYEES, REGARDING THEIR OBLIGATIONS TO REPORT, INVESTIGATE AND PREVENT REPORTABLE INCIDENTS. TRAINING AND CURRICULA SHALL ADDRESS TOPICS, INCLUDING BUT NOT LIMITED TO: (I) HOW TO IDENTIFY AND REPORT REPORTABLE INCIDENTS; (II) THE PREVENTION OF ABUSE AND NEGLECT; (III) THE DUTY TO REPORT REPORTABLE INCIDENTS; (IV) HOW TO ADHERE TO APPLICABLE CODES OF CONDUCT; (V) THE DISCIPLINARY PROCESS AND EMPLOYEES' RIGHTS PURSUANT TO THIS ARTICLE; AND (VI) HOW SUPERVISORY STAFF AND MANAGEMENT CAN PROMOTE COMPLIANCE WITH THIS ARTICLE BY NEW AND EXISTING EMPLOYEES. SUCH TRAINING, WHICH SHALL BE GIVEN ON A PERIODIC BASIS, SHALL INCLUDE, BUT NOT BE LIMITED TO, LIVE TRAINING AND SUPPLEMENTAL COURSES ACCESSIBLE VIA THE INTERNET. PRIOR TO IMPLEMENTATION OF THIS ARTICLE, THE JUSTICE CENTER SHALL PROVIDE ADEQUATE INTERACTIVE TRAINING, WHICH SHALL INCLUDE LIVE TRAINING TO THE EXTENT PRACTICABLE. EMPLOYEES MAY CALL THE HOTLINE ESTABLISHED PURSUANT TO SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY-TWO OF THE SOCIAL SERVICES LAW, AND UPON INQUIRY, BE GIVEN ADVICE AND ASSISTANCE IN COMPLYING WITH THEIR OBLIGATIONS AND DUTIES PURSUANT TO THIS ARTICLE.

2. TO MAINTAIN A CENTRAL REPOSITORY FOR DATA RELATING TO THE INVESTIGATION OF ALL REPORTABLE INCIDENTS;

3. TO ESTABLISH PROCEDURES FOR REVIEW OF REPORTABLE INCIDENTS, TO IDENTIFY PREVENTIVE AND CORRECTIVE ACTIONS AND TO DEVELOP AND IMPLEMENT SUCH ACTIONS AND PLANS OF IMPROVEMENT SUBJECT TO THE REQUIREMENTS OF ANY FEDERAL OVERSIGHT ENTITY;

4. TO DEVELOP STANDARDS AND TRAINING CURRICULA FOR INVESTIGATORS WHO WILL BE ASSIGNED TO INVESTIGATE REPORTABLE INCIDENTS INVOLVING VULNERABLE PERSONS, AND TO PROVIDE PERIODIC TRAINING TO SUCH INVESTIGATORS. SUCH STANDARDS, CURRICULA AND TRAINING SHALL ADDRESS TOPICS INCLUDING, BUT NOT LIMITED TO: (A) HOW TO IDENTIFY AND INVESTIGATE REPORTABLE INCIDENTS; (B) THE DUTY TO REPORT REPORTABLE INCIDENTS; (C) THE REQUIREMENTS OF ALL CODES OF CONDUCT; (D) ALL APPLICABLE DISCIPLINARY PROCESSES; AND (E) EMPLOYEES' RIGHTS PURSUANT TO THIS ARTICLE;

5. TO REVIEW AND EVALUATE THE CRIMINAL HISTORY INFORMATION FOR ANY PERSON APPLYING TO BE AN EMPLOYEE, VOLUNTEER OR CONSULTANT FOR WHOM A CRIMINAL BACKGROUND CHECK IS REQUIRED BY LAW AS A CONDITION OF EMPLOYMENT AT ANY FACILITIES OR PROVIDER AGENCIES AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW THAT ARE OPERATED, LICENSED OR CERTIFIED BY THE OFFICE OF MENTAL HEALTH, THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES AND THE OFFICE OF CHILDREN AND FAMILY SERVICES. SUCH REVIEW AND EVALUATION SHALL INCLUDE BUT NOT BE LIMITED TO A REQUIREMENT THAT THE APPLICANT SIGN A SWORN STATEMENT WHETHER, TO THE BEST OF HIS OR HER KNOWLEDGE, HE OR SHE HAS EVER BEEN CONVICTED OF A CRIME IN THIS STATE OR ANY OTHER JURISDICTION;

6. TO CONDUCT PERIODIC ORIENTATION, TRAINING AND INFORMATIONAL PROGRAMS UPON APPOINTMENT OR REAPPOINTMENT, AND AS OTHERWISE NEEDED, TO ASSIST THE MEMBERS OF THE BOARDS OF VISITORS OF MENTAL HYGIENE FACILITIES TO FULFILL THEIR RESPONSIBILITIES PURSUANT TO LAW;

7. (A) TO VISIT, INSPECT AND APPRAISE THE MANAGEMENT OF FACILITIES OR PROVIDER AGENCIES AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW PROVIDING SERVICES TO VULNERABLE

PERSONS WITH SPECIFIC ATTENTION TO THE SAFETY, SECURITY AND QUALITY OF CARE PROVIDED TO PATIENTS AND RESIDENTS;

(B) TO PROVIDE STAFF AND OTHER NECESSARY ASSISTANCE UPON REQUEST TO BOARDS OF VISITORS OF DEPARTMENT OF MENTAL HYGIENE FACILITIES IN PERFORMING THEIR DUTIES PURSUANT TO LAW;

(C) TO RECEIVE AND REVIEW PERIODIC AND ANNUAL REPORTS OF THE BOARDS OF VISITORS OF EACH DEPARTMENT OF MENTAL HYGIENE FACILITY;

(D) TO PLACE SUCH MEMBERS OF ITS STAFF AS IT DEEMS APPROPRIATE AS MONITORS IN ANY FACILITY OR PROVIDER AGENCY AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW WHICH, IN THE JUDGMENT OF THE EXECUTIVE DIRECTOR, PRESENTS AN IMMINENT DANGER TO THE HEALTH OR SAFETY OF THE PATIENTS, RESIDENTS OR EMPLOYEES OF SUCH FACILITY;

8. TO ACCEPT, AS AGENT OF THE STATE, ANY GRANT, INCLUDING FEDERAL GRANTS, OR ANY GIFT FOR ANY OF THE PURPOSES OF THIS ARTICLE. ANY MONEYS SO RECEIVED MAY BE EXPENDED BY THE JUSTICE CENTER TO EFFECTUATE ANY PURPOSE OF THIS ARTICLE, SUBJECT TO THE SAME LIMITATIONS AS TO APPROVAL OF EXPENDITURES AND AUDIT AS ARE PRESCRIBED FOR STATE MONEYS APPROPRIATED FOR THE PURPOSES OF THIS ARTICLE;

9. TO ENTER INTO CONTRACTS WITH ANY PERSON, FIRM, CORPORATION, MUNICIPALITY OR GOVERNMENTAL AGENCY FOR THE PERFORMANCE OF FUNCTIONS AUTHORIZED BY LAW;

10. TO ADMINISTER AN ADULT HOME AND RESIDENCE FOR ADULTS RESIDENT ADVOCACY PROGRAM TO ASSIST RESIDENTS, WHO HAVE AT ANY TIME RECEIVED OR ARE RECEIVING SERVICES FROM A MENTAL HYGIENE PROVIDER, OF ADULT HOMES AND RESIDENCES FOR ADULTS, AS DEFINED IN SECTION TWO OF THE SOCIAL SERVICES LAW, WHERE AT LEAST TWENTY-FIVE PERCENT OR TWENTY-FIVE RESIDENTS, WHICHEVER IS LESS, HAVE AT ANY TIME RECEIVED OR ARE RECEIVING SERVICES FROM A MENTAL HYGIENE PROVIDER WHICH IS LICENSED, OPERATED OR FUNDED BY THE OFFICE OF MENTAL HEALTH OR OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, IN UNDERSTANDING THEIR LEGAL RIGHTS, AND TO PROMOTE AND PROTECT THE RIGHTS OF SUCH RESIDENTS.

11. TO ADVISE AND ASSIST VULNERABLE PERSONS AND INDIVIDUALS WITH DISABILITIES, FAMILY MEMBERS, ADVOCATES, SERVICE PROVIDERS AND COMMUNITY ORGANIZATIONS IN THE FORMATION OF STRATEGIES TO IDENTIFY AND MEET THE NEEDS OF VULNERABLE PERSONS AND INDIVIDUALS WITH DISABILITIES FOR SERVICES, SUPPORTS AND ADVOCACY;

12. TO ADVISE AND ASSIST THE GOVERNOR AND PUBLIC AND PRIVATE ENTITIES IN THE DEVELOPMENT AND IMPLEMENTATION OF STATE POLICIES WHICH MEET THE NEEDS OF VULNERABLE PERSONS AND INDIVIDUALS WITH DISABILITIES IN A MANNER THAT IS RESPECTFUL OF THE RIGHTS AND CHOICES OF VULNERABLE PERSONS AND INDIVIDUALS WITH DISABILITIES;

13. TO SERVE AS A CLEARINGHOUSE FOR INFORMATION RELATING TO SERVICES, SUPPORTS AND ADVOCACY FOR VULNERABLE PERSONS AND INDIVIDUALS WITH DISABILITIES AND PROVIDE A STATEWIDE SYSTEM OF INFORMATION AND REFERRAL TO LINK PERSONS SEEKING INFORMATION AND ASSISTANCE WITH PUBLIC AND PRIVATE SECTOR SERVICES, SUPPORTS AND ADVOCACY WHICH MAY BE APPROPRIATE TO MEET THEIR NEEDS;

14. TO ADVISE AND ASSIST THE GOVERNOR, STATE AGENCIES, VULNERABLE PERSONS, INDIVIDUALS WITH DISABILITIES AND PUBLIC AND PRIVATE SECTOR ENTITIES IN THE DESIGN AND IMPLEMENTATION OF INITIATIVES TO INCREASE ACCESS TO TECHNOLOGY RELATED ASSISTANCE FOR VULNERABLE PERSONS AND INDIVIDUALS WITH DISABILITIES;

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

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

17. TO ADVISE AND ASSIST POLITICAL SUBDIVISIONS OF THE STATE IN THE DEVELOPMENT OF LOCAL PROGRAMS FOR VULNERABLE PERSONS AND INDIVIDUALS WITH DISABILITIES;

18. TO ADVISE AND ASSIST EDUCATIONAL INSTITUTIONS IN THE STATE IN THE DEVELOPMENT OF COURSES OF STUDY FOR PERSONS ENGAGED IN PUBLIC AND PRIVATE PROGRAMS FOR VULNERABLE PERSONS AND INDIVIDUALS WITH DISABILITIES;

19. TO CONDUCT OR CAUSE TO BE CONDUCTED SUCH STUDIES OF THE NEEDS OF VULNERABLE PERSONS AND INDIVIDUALS WITH DISABILITIES AS MAY BE APPROPRIATE;

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

21. TO RECEIVE AND REVIEW REPORTS REQUIRED PURSUANT TO SECTION 16.19 OF THE MENTAL HYGIENE LAW AND TAKE ANY ACTION AS REQUIRED BY LAW. THE JUSTICE CENTER ALSO SHALL ASSIST THE COMMISSIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES IN DEVELOPING AND PREPARING RECOMMENDATIONS REQUIRED BY PARAGRAPH THREE OF SUBDIVISION (D) OF SECTION 16.19 OF THE MENTAL HYGIENE LAW FOR SUBMISSION TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE AND SPEAKER OF THE ASSEMBLY;

22. TO PREPARE AND DISSEMINATE AN EDUCATIONAL PAMPHLET, AND SERVE AS AN INFORMATION CLEARINGHOUSE, ON THE RIGHTS OF PARENTS AND LEGAL REPRESENTATIVES AND ADVOCATES TO ACCESS RECORDS AND REPORTS RELATING TO PATIENT CARE AND TREATMENT AND ALL OTHER RELEVANT DOCUMENTS FROM PROGRAMS AND FACILITIES THAT ARE LICENSED, CERTIFIED OR OPERATED BY THE OFFICES OF MENTAL HEALTH, PEOPLE WITH DEVELOPMENTAL DISABILITIES, ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, AND CHILDREN AND FAMILY SERVICES, AND THE DEPARTMENT OF HEALTH AND THE STATE EDUCATION DEPARTMENT. SUCH PAMPHLET SHALL INCLUDE A DISCUSSION OF HOW TO APPEAL A DECISION DENYING A REQUESTED RECORD OR REPORT;

23. TO CONSULT WITH THE COMMISSIONER OF EDUCATION REGARDING THE PROMULGATION OF RULES AND REGULATIONS REQUIRING THAT EVERY SCHOOL BUS DRIVER AND SCHOOL BUS ATTENDANT SERVING STUDENTS WITH DISABILITIES RECEIVE TRAINING AND INSTRUCTION RELATING TO THE UNDERSTANDING OF AND ATTENTION TO THE SPECIAL NEEDS OF SUCH STUDENTS PURSUANT TO SUBDIVISION ONE OF SECTION THIRTY-SIX HUNDRED FIFTY OF THE EDUCATION LAW AND SUBDIVISION FOUR OF SECTION TWELVE HUNDRED TWENTY-NINE-D OF THE VEHICLE AND TRAFFIC LAW;

24. TO MONITOR AND MAKE RECOMMENDATIONS REGARDING THE QUALITY OF CARE PROVIDED TO INMATES WITH SERIOUS MENTAL ILLNESS, INCLUDING THOSE WHO ARE IN A RESIDENTIAL MENTAL HEALTH TREATMENT UNIT OR SEGREGATED CONFINEMENT IN FACILITIES OPERATED BY THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, AND OVERSEE COMPLIANCE WITH PARAGRAPHS (D) AND (E) OF SUBDIVISION SIX OF SECTION ONE HUNDRED THIRTY-SEVEN, AND SECTION FOUR HUNDRED ONE OF THE CORRECTION LAW. SUCH RESPONSIBILITIES SHALL BE CARRIED OUT IN ACCORDANCE WITH SECTION FOUR HUNDRED ONE-A OF THE CORRECTION LAW;

25. (A) TO MAKE A PRELIMINARY DETERMINATION WHETHER MATTERS REFERRED TO ITS ATTENTION, WARRANT INVESTIGATION AND, IF SO, CONDUCT AN INVESTIGATION OF SUCH SCOPE AND DURATION AS IT DEEMS NECESSARY AND PROPER;

(B) MAKE FINDINGS CONCERNING SUCH MATTERS REFERRED TO ITS ATTENTION AND, WHERE IT DEEMS APPROPRIATE, MAKE A REPORT AND RECOMMENDATIONS, WHICH SHALL BE PROVIDED TO THE COMMISSIONER AND TO THE DIRECTOR OF THE FACILITY INVOLVED. SUCH COMMISSIONER AND DIRECTOR SHALL EACH MAKE A

WRITTEN RESPONSE, WITHIN NINETY DAYS OF RECEIPT OF SUCH REPORT, OF ACTION TAKEN REGARDING EACH OF THE RECOMMENDATIONS IN THE REPORT;

26. TO REVIEW THE COST EFFECTIVENESS OF MENTAL HYGIENE PROGRAMS AND PROCEDURES PROVIDED FOR BY LAW WITH PARTICULAR ATTENTION TO EFFICIENCY, EFFECTIVENESS AND ECONOMY IN THE MANAGEMENT, SUPERVISION AND DELIVERY OF SUCH PROGRAMS. SUCH REVIEW MAY INCLUDE BUT IS NOT LIMITED TO: (A) DETERMINING REASONS FOR RISING COSTS AND POSSIBLE MEANS OF CONTROLLING THEM; (B) ANALYZING AND COMPARING EXPENDITURES IN MENTAL HYGIENE TO DETERMINE THE FACTORS ASSOCIATED WITH VARIATIONS IN COSTS; AND (C) ANALYZING AND COMPARING ACHIEVEMENTS IN SELECTED SAMPLES TO DETERMINE THE FACTORS ASSOCIATED WITH VARIATIONS IN PROGRAM SUCCESS AND THEIR RELATIONSHIP TO MENTAL HYGIENE COSTS; AND

27. IN ITS DISCRETION, TO REVIEW THE POLICIES AND PRACTICES RELATING TO THE PREVENTION OF ABUSE OR NEGLECT IN FACILITIES OR PROVIDER AGENCIES, INCLUDING STAFFING PATTERNS OF VARIOUS SERVICE MODELS AND THE SUPERVISION REQUIRED TO HELP ENSURE THE SAFETY OF SERVICE RECIPIENTS.

S 554. CODES OF CONDUCT. 1. THE JUSTICE CENTER SHALL ADOPT AND AMEND, AS APPROPRIATE, CODES OF CONDUCT FOR ALL CUSTODIANS AS DEFINED IN SUBDIVISION TWO OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW WHO HAVE OR WILL HAVE REGULAR AND DIRECT CONTACT WITH VULNERABLE PERSONS WHO RESIDE IN OR RECEIVE SERVICES FROM SUCH FACILITIES OR PROVIDER AGENCIES. SUCH CODES SHALL GOVERN THE CONDUCT OF SUCH CUSTODIANS WITH RESPECT TO THE SAFETY, DIGNITY AND WELFARE OF VULNERABLE PERSONS TO WHOM THEY PROVIDE CARE. THE JUSTICE CENTER SHALL ESTABLISH A PROCESS BY WHICH EACH CUSTODIAN IS PROVIDED WITH A COPY OF THE APPLICABLE CODE OF CONDUCT AND IS REQUIRED, AT THE TIME OF HIS OR HER INITIAL EMPLOYMENT, AND AT LEAST ANNUALLY THEREAFTER, TO ACKNOWLEDGE THAT HE OR SHE HAS READ AND UNDERSTANDS SUCH CODE OF CONDUCT. SUCH PROCESS SHALL ALSO PROVIDE FOR THE ENFORCEMENT OF SUCH CODES CONSISTENT WITH APPROPRIATE COLLECTIVE BARGAINING AGREEMENTS.

2. MINIMUM REQUIREMENTS FOR CODES OF CONDUCT. SUCH CODES OF CONDUCT SHALL INCLUDE, AT A MINIMUM: A. PROVISIONS REGARDING THE RESPONSIBILITY OF SUCH CUSTODIANS TO SUPPORT THE EMOTIONAL, PHYSICAL AND PERSONAL WELL-BEING OF THE VULNERABLE PERSONS THEY SERVE, INCLUDING THEIR PROTECTION FROM ABUSE AND NEGLECT, AND TO SEEK GUIDANCE AND ADVICE TO RESOLVE ISSUES AS NEEDED WHEN MAKING DECISIONS RELATING TO THE PERSONS THEY SERVE.

B. PROVISIONS REGARDING THE RESPONSIBILITY OF SUCH CUSTODIANS TO ASSIST THE VULNERABLE PERSONS THEY SUPPORT TO DIRECT THE COURSE OF THEIR OWN LIVES, HONORING, WHERE APPROPRIATE, THEIR RIGHT TO ASSUME RISK IN A SAFE MANNER AND RECOGNIZING THEIR POTENTIAL FOR LIFELONG LEARNING AND GROWTH.

C. PROVISIONS REGARDING THE RESPONSIBILITY OF CUSTODIANS TO PARTICIPATE IN AVAILABLE, APPROPRIATE TRAINING TO MAINTAIN THEIR COMPETENCY AND SKILL-LEVEL, AND TO MODEL AND SHAPE THE BEHAVIOR OF THEIR CO-WORKERS.

D. PROVISIONS REGARDING THE RESPONSIBILITY OF SUCH CUSTODIANS TO PROMOTE AND PRACTICE JUSTICE, FAIRNESS AND EQUITY FOR THE VULNERABLE PERSONS THEY SUPPORT, UPHOLD AND RESPECT THEIR HUMAN AND CIVIL RIGHTS AND RESPECT THEIR HUMAN DIGNITY AND UNIQUENESS.

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

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

FOR THEIR NEEDS, INTEREST, JUSTICE, INCLUSION AND FULL COMMUNITY PARTICIPATION.

G. PROVISIONS REQUIRING SUCH CUSTODIANS TO REPORT REPORTABLE INCIDENTS AS REQUIRED IN SECTION FOUR HUNDRED NINETY-ONE OF THE SOCIAL SERVICES LAW.

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

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

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

(D) ALL RECORDS OF THE PROCEEDINGS AND THE DELIBERATIONS OF THE JUSTICE CENTER MEDICAL REVIEW BOARD SHALL NOT BE SUBJECT TO DISCLOSURE UNDER ARTICLE THIRTY-ONE OF THE CIVIL PRACTICE LAW AND RULES.

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

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

(A) MAKE A PRELIMINARY DETERMINATION WHETHER THE DEATH OF A PATIENT OR RESIDENT IN A RESIDENTIAL FACILITY WITHIN THE MEANING OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW THAT IS OPERATED, LICENSED OR CERTIFIED BY AN OFFICE OF THE DEPARTMENT OF MENTAL HYGIENE OR THE OFFICE OF CHILDREN AND FAMILY SERVICES, WHICH HAS BEEN BROUGHT TO ITS ATTENTION IS UNUSUAL OR WHETHER SUCH DEATH REASONABLY APPEARS TO HAVE RESULTED FROM OTHER THAN NATURAL CAUSES AND WARRANTS INVESTIGATION;

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

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

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

(E) UPON REVIEW OF THE CAUSE OF AND CIRCUMSTANCES SURROUNDING THE DEATH OF ANY PATIENT OR RESIDENT, SUBMIT ITS REPORT THEREON TO THE EXECUTIVE DIRECTOR AND, WHERE APPROPRIATE, MAKE RECOMMENDATIONS TO PREVENT THE RECURRENCE OF SAME TO THE APPROPRIATE COMMISSIONER OF THE DEPARTMENT OF MENTAL HYGIENE OR THE COMMISSIONER OF CHILDREN AND FAMILY SERVICES AND TO THE DIRECTOR OF THE FACILITY; AND

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

S 557. REPORTS TO THE JUSTICE CENTER. EVERY DIRECTOR OR OTHER PERSON IN CHARGE OF A RESIDENTIAL FACILITY WITHIN THE MEANING OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW OPERATED, LICENSED OR CERTIFIED BY AN OFFICE OF THE DEPARTMENT OF MENTAL HYGIENE OR THE OFFICE OF CHILDREN AND FAMILY SERVICES, SHALL REPORT IMMEDIATELY TO THE EXECUTIVE DIRECTOR AND THE JUSTICE CENTER MEDICAL REVIEW BOARD THE DEATH OF A PATIENT OR RESIDENT OF ANY SUCH FACILITY IN SUCH MANNER AND SUCH FORM AS THE JUSTICE CENTER SHALL PRESCRIBE, TOGETHER WITH AN AUTOPSY REPORT, IF ANY.

S 558. ACCESS TO RECORDS AND FACILITIES. (A) THE JUSTICE CENTER MUST BE GRANTED ACCESS AT ANY AND ALL TIMES TO ANY FACILITY OR PROVIDER AGENCY AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW, AND, CONSISTENT WITH FEDERAL LAW, TO ALL BOOKS, RECORDS, AND DATA PERTAINING TO ANY SUCH FACILITY OR PROVIDER AGENCY DEEMED NECESSARY FOR CARRYING OUT THE JUSTICE CENTER'S FUNCTIONS, POWERS AND DUTIES. THE JUSTICE CENTER OR ANY EMPLOYEE OF THE JUSTICE CENTER DESIGNATED BY THE EXECUTIVE DIRECTOR MAY REQUIRE FROM THE OFFICERS OR EMPLOYEES OF SUCH FACILITY OR PROVIDER AGENCY OR FROM THE COMMISSIONERS OF THE STATE OVERSIGHT AGENCIES AS DEFINED IN SUBDIVISION FOUR-A OF SUCH SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW, ANY INFORMATION DEEMED NECESSARY FOR THE PURPOSE OF CARRYING OUT THE JUSTICE CENTER'S FUNCTIONS, POWERS AND DUTIES, INCLUDING OTHERWISE CONFIDENTIAL INFORMATION AND SUCH ENTITIES SHALL BE REQUIRED TO PROVIDE SUCH REQUESTED INFORMATION. THE EXECUTIVE DIRECTOR OR ANY EMPLOYEE OF THE JUSTICE CENTER DESIGNATED BY THE EXECUTIVE DIRECTOR MAY REQUIRE FROM ANY HOSPITAL, AS DEFINED UNDER ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, ANY INFORMATION, REPORT OR RECORD NECESSARY FOR THE PURPOSE OF CARRYING OUT THE FUNCTIONS, POWERS AND DUTIES OF THE JUSTICE CENTER RELATED TO THE INVESTIGATION OF DEATHS AND COMPLAINTS OF ABUSE OR NEGLECT CONCERNING VULNERABLE PERSONS WHO HAVE BEEN TREATED AT SUCH HOSPITALS, AND FROM ANY ADULT CARE FACILITY AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION TWO OF THE SOCIAL SERVICES LAW, SUCH INFORMATION, REPORT OR RECORD, INCLUDING ACCESS TO SUCH FACILITY NECESSARY FOR THE PURPOSE OF CARRYING OUT THE FUNCTIONS, POWERS AND DUTIES OF THE JUSTICE CENTER RELATED TO THE INVESTIGATION OF DEATHS CONCERNING PATIENTS OF MENTAL HYGIENE FACILITIES WHO RESIDED AT SUCH RESIDENTIAL CARE FACILITIES AT THE TIME OF THEIR DEATH OR WERE FORMER RESIDENTS OF SUCH RESIDENTIAL CARE FACILITIES AND THE JUSTICE CENTER DETERMINES THAT SUCH INFORMATION, REPORT OR RECORD IS NECESSARY FOR THE COMPLETION OF ITS

INVESTIGATION. SUCH HOSPITALS AND ADULT CARE FACILITIES SHALL BE REQUIRED TO PROVIDE SUCH REQUESTED INFORMATION, REPORTS, RECORDS AND ACCESS. THE RESULTS OF INVESTIGATIONS INVOLVING SUCH RESIDENTS OF ADULT CARE FACILITIES SHALL BE PROVIDED PROMPTLY TO THE COMMISSIONER OF THE DEPARTMENT OF HEALTH AND SHALL BE TREATED AS A RECORD OR PERSONAL INFORMATION WITHIN THE MEANING OF SECTION NINETY-SIX OF THE PUBLIC OFFICERS LAW AND SHALL NOT BE DISCLOSED EXCEPT IN ACCORDANCE WITH SUCH SECTION NINETY-SIX. INFORMATION, BOOKS, RECORDS OR DATA WHICH ARE CONFIDENTIAL AS PROVIDED BY LAW SHALL BE KEPT CONFIDENTIAL BY THE JUSTICE CENTER AND ANY LIMITATIONS ON THE RELEASE THEREOF IMPOSED BY LAW UPON THE PARTY FURNISHING THE INFORMATION, BOOKS, RECORDS OR DATA SHALL APPLY TO THE JUSTICE CENTER EXCEPT AS MAY OTHERWISE BE PROVIDED BY ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW.

(B) (I) THE GOVERNOR SHALL DESIGNATE AN INDEPENDENT PUBLIC OR PRIVATE AGENCY, HEREINAFTER "INDEPENDENT AGENCY", TO CONDUCT AND COORDINATE THE PROTECTION AND ADVOCACY AND CLIENT ASSISTANCE PROGRAMS, AS ESTABLISHED BY FEDERAL LAW TO PROVIDE FEDERAL OVERSIGHT OF THE STATE'S SYSTEM OF CARE FOR INDIVIDUALS WITH DISABILITIES, AS DEFINED IN FEDERAL LAWS AND TO ASSIST SUCH PERSONS WITH ACCESSING VOCATIONAL REHABILITATION SERVICES. FOR PURPOSES OF THIS SUBDIVISION, INDIVIDUALS WITH DISABILITIES SHALL HAVE THE SAME MEANING AS PROVIDED BY FEDERAL LAWS. THE AGENCY DESIGNATED MUST HAVE PROFESSIONAL EXPERIENCE IN EMPOWERING, PROTECTING AND ADVOCATING ON BEHALF OF INDIVIDUALS WITH DISABILITIES. SUCH AGENCY SHALL BE INDEPENDENT OF ANY AGENCY THAT PROVIDES TREATMENT, SERVICES OR REHABILITATION TO INDIVIDUALS COVERED BY SUCH PROTECTION AND ADVOCACY AND CLIENT ASSISTANCE PROGRAMS. TO THE EXTENT PERMITTED BY FEDERAL LAW, THE INDEPENDENT AGENCY SHALL BE GOVERNED BY A BOARD, A MAJORITY OF THE MEMBERS OF WHICH SHALL BE INDIVIDUALS WITH DISABILITIES, PARENTS, FAMILY MEMBERS, GUARDIANS, ADVOCATES, OR AUTHORIZED REPRESENTATIVES OF INDIVIDUALS WITH DISABILITIES.

(II) THE INDEPENDENT AGENCY SHALL CONDUCT AND COORDINATE THE PROTECTION AND ADVOCACY AND CLIENT ASSISTANCE PROGRAMS, AS ESTABLISHED BY FEDERAL LAW TO PROVIDE OVERSIGHT OF THE STATE'S SYSTEM OF CARE FOR INDIVIDUALS WITH DISABILITIES AND TO ASSIST SUCH INDIVIDUALS WITH ACCESSING VOCATIONAL AND REHABILITATION SERVICES, INCLUDING BUT NOT LIMITED TO:

(A) PROVIDING INFORMATION, REFERRALS AND TECHNICAL ASSISTANCE TO ADDRESS THE NEEDS OF INDIVIDUALS WITH DISABILITIES;

(B) PURSUING LEGAL, ADMINISTRATIVE AND OTHER APPROPRIATE REMEDIES OR APPROACHES TO ENSURE THE PROTECTION OF AND ADVOCACY FOR THE RIGHTS OF INDIVIDUALS WITH DISABILITIES;

(C) INVESTIGATING INCIDENTS OF ABUSE AND NEGLECT OF INDIVIDUALS WITH DISABILITIES IF THE INCIDENTS ARE REPORTED TO THE INDEPENDENT AGENCY OR IF THERE IS PROBABLE CAUSE TO BELIEVE THAT THE INCIDENTS OCCURRED; AND

(D) ESTABLISHING A GRIEVANCE PROCEDURE FOR CLIENTS OR PROSPECTIVE CLIENTS OF THE SYSTEM TO ENSURE THAT INDIVIDUALS WITH DISABILITIES HAVE FULL ACCESS TO SERVICES OF THE SYSTEM.

(III) PURSUANT TO THE REQUIREMENTS OF FEDERAL LAW, UPON RECEIPT OF A COMPLAINT OF AN INCIDENT OF ABUSE OR NEGLECT OF AN INDIVIDUAL WITH A DISABILITY, OR IF THERE IS PROBABLE CAUSE TO BELIEVE THAT SUCH AN INCIDENT OCCURRED, THE INDEPENDENT AGENCY SHALL HAVE PROMPT ACCESS, AT REASONABLE TIMES: TO ANY FACILITY OR PART THEREOF SERVING SUCH INDIVIDUAL THAT IS OPERATED, CERTIFIED OR LICENSED BY ANY OFFICE OR AGENCY OF THE STATE; TO ALL BOOKS, RECORDS AND DATA PERTAINING TO SUCH A FACILITY; TO SUCH INDIVIDUAL WITH A DISABILITY IN A LOCATION IN WHICH SERVICES, SUPPORTS AND OTHER ASSISTANCE ARE PROVIDED TO SUCH INDIVIDUAL; TO

RECORDS OF A FACILITY OR PROVIDER AGENCY CONCERNING SUCH INDIVIDUAL; AND TO ANY OTHER RECORDS THAT ARE RELEVANT TO CONDUCTING AN INVESTIGATION. THE INDEPENDENT AGENCY ALSO SHALL HAVE ACCESS TO RECORDS OF THE JUSTICE CENTER AS SET FORTH IN PARAGRAPH (F) OF SUBDIVISION ONE AND PARAGRAPH (Y) OF SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY-SIX OF THE SOCIAL SERVICES LAW.

(IV) ALL RECORDS AND DOCUMENTS RECEIVED BY THE INDEPENDENT AGENCY SHALL BE RECEIVED SUBJECT TO ANY CONFIDENTIALITY REQUIREMENTS APPLICABLE PURSUANT TO STATE AND FEDERAL LAW.

(V) THE GOVERNOR SHALL BE AUTHORIZED TO RE-DESIGNATE THE AGENCY IMPLEMENTING THE PROTECTION AND ADVOCACY PROGRAM AND CLIENT ASSISTANCE PROGRAMS ONLY IF THERE IS GOOD CAUSE FOR THE RE-DESIGNATION AND IN ACCORDANCE WITH FEDERAL REQUIREMENTS.

(VI) THE INDEPENDENT AGENCY MAY ASSIST IN THE DEVELOPMENT OF RESIDENTIAL COUNCILS AT FACILITIES AND PROGRAMS.

(VII) TO THE EXTENT CONSISTENT WITH FEDERAL LAW, THE INDEPENDENT AGENCY SHALL MAKE COPIES OF ANY OF ITS REPORTS AVAILABLE TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY.

(VIII) THE INDEPENDENT AGENCY SHALL TAKE AFFIRMATIVE STEPS TO ASSURE THAT ITS PROGRAMS AND SERVICES ARE GEOGRAPHICALLY REPRESENTATIVE OF THE STATE AND, TO THE EXTENT PRACTICABLE, ENSURE REGIONAL ACCESS, AND REFLECT THE DIVERSITY OF THE STATE WITH RESPECT TO RACE AND ETHNICITY.

(C) IN THE EXERCISE OF ITS FUNCTIONS, POWERS AND DUTIES, THE EXECUTIVE DIRECTOR AND ANY EMPLOYEE DESIGNATED BY HIM OR HER IS AUTHORIZED TO ISSUE AND ENFORCE A SUBPOENA AND A SUBPOENA DUCES TECUM, CONDUCT HEARINGS, ADMINISTER OATHS AND EXAMINE PERSONS UNDER OATH, IN ACCORDANCE WITH AND PURSUANT TO CIVIL PRACTICE LAW AND RULES.

(D) IN ANY CASE WHERE A PERSON IN CHARGE OR CONTROL OF SUCH FACILITY OR AN OFFICER OR EMPLOYEE THEREOF SHALL FAIL TO COMPLY WITH THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION, THE JUSTICE CENTER MAY APPLY TO THE SUPREME COURT FOR AN ORDER DIRECTED TO SUCH PERSON REQUIRING COMPLIANCE THEREWITH. UPON SUCH APPLICATION THE COURT MAY ISSUE SUCH ORDER AS MAY BE JUST AND A FAILURE TO COMPLY WITH THE ORDER OF THE COURT SHALL BE A CONTEMPT OF COURT AND PUNISHABLE AS SUCH.

S 559. NEW YORK STATE INTERAGENCY COORDINATING COUNCIL FOR SERVICES TO PERSONS WHO ARE DEAF, DEAF-BLIND, OR HARD OF HEARING. 1. SUBJECT TO AN APPROPRIATION, THE JUSTICE CENTER SHALL HAVE THE CENTRAL RESPONSIBILITY FOR ADMINISTERING THE PROVISIONS OF THIS SECTION AND OTHERWISE COORDINATING THE ACTIVITIES OF THE STATE INTERAGENCY COORDINATING COUNCIL FOR SERVICES TO PERSONS WHO ARE DEAF, DEAF-BLIND, OR HARD OF HEARING WITH RESPECT TO SERVING RESIDENTS OF THE STATE WHO ARE DEAF, DEAF-BLIND, OR HARD OF HEARING, IN CONSULTATION WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE OFFICE FOR THE AGING, THE PUBLIC SERVICE COMMISSION, THE DEPARTMENT OF HEALTH, THE DEPARTMENT OF LABOR, THE DEPARTMENT OF EDUCATION, AND OTHER STATE AGENCIES AS APPROPRIATE. THE COUNCIL SHALL MEET A MINIMUM OF THREE TIMES A YEAR.

2. THE FOLLOWING DEFINITIONS DESCRIBE THE FUNCTIONAL CHARACTERISTICS OF PERSONS WHO ARE DEAF, DEAF-BLIND, OR HARD OF HEARING, AS USED IN THIS SECTION.

(A) DEAF. DESCRIBES PERSONS WHO HAVE A PROFOUND HEARING LOSS AND WHO PRIMARILY RELY ON VISUAL COMMUNICATION, SUCH AS SIGN LANGUAGE, WRITING, LIP READING, AND GESTURES, WHICH MAY BE USED EXCLUSIVELY OR IN COMBINATION. SUCH PERSONS GENERALLY USE A FORM OF AMERICAN SIGN LANGUAGE AS THEIR PRIMARY MODE OF COMMUNICATION. IN ADDITION, THERE IS A GROUP OF PROFOUNDLY DEAF INDIVIDUALS WHO COMMUNICATE ORALLY AND MAY USE SIGN LANGUAGE TO SUPPORT THEIR UNDERSTANDING OF THE SPOKEN LANGUAGE. HEARING

AIDS AND OTHER ASSISTIVE TECHNOLOGY MAY ALSO BE USED TO AID IN COMMUNICATION.

(B) DEAF-BLIND. AN INDIVIDUAL WITH A CONCOMITANT HEARING AND VISUAL IMPAIRMENT, THE COMBINATION OF WHICH CAUSES SUCH SEVERE COMMUNICATION AND OTHER DEVELOPMENTAL AND EDUCATIONAL PROBLEMS THAT THE INDIVIDUAL CANNOT BE ACCOMMODATED IN PROGRAMS FOR INDIVIDUALS WHO ARE SOLELY DEAF OR BLIND.

(C) HARD OF HEARING. A HARD OF HEARING PERSON IS SOMEONE WITH A MEASURABLE HEARING LOSS AND WHO SELF-IDENTIFIES AS BEING HARD OF HEARING, ALTHOUGH AUDIOLOGICALLY HE OR SHE MAY HAVE A PROFOUND HEARING LOSS. ADDITIONALLY, THIS PERSON TYPICALLY USES HIS OR HER RESIDUAL HEARING, SPEECH AND SPEECH READING SKILLS, AND HEARING AIDS TO COMMUNICATE; HE OR SHE MAY RELY ON ASSISTIVE LISTENING DEVICES TO AUGMENT HIS OR HER ABILITY TO HEAR AND SPEAK.

3. SUBJECT TO AN APPROPRIATION, THE JUSTICE CENTER SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

(A) TO COORDINATE THE ACTIVITIES OF THE STATE INTERAGENCY COORDINATING COUNCIL AND TO PROMOTE, IN COOPERATION WITH THE APPROPRIATE STATE AGENCIES, THE IMPLEMENTATION OF A COMPREHENSIVE STATEWIDE PROGRAM OF COORDINATED SERVICES FOR PERSONS WHO ARE DEAF, DEAF-BLIND, OR HARD OF HEARING THAT INCLUDES EDUCATIONAL, MEDICAL, HOUSING, TRANSPORTATION, TECHNOLOGY SUPPORTS, PERSONAL CARE, FAMILY SUPPORTS, DAY PROGRAM SERVICES, AND OTHER ESSENTIAL SERVICES THAT MAXIMIZE EXISTING RESOURCES AND ADMINISTRATIVE MECHANISMS TO ADDRESS ISSUES AND LEGAL OBLIGATIONS.

(B) TO MAINTAIN DATA ON THE INCIDENCE OF DEAFNESS, DEAF-BLINDNESS, AND OTHER HEARING LOSS.

(C) TO SERVE AS A CLEARINGHOUSE FOR INFORMATION ON SERVICES AVAILABLE TO PERSONS WHO ARE DEAF, DEAF-BLIND, OR HARD OF HEARING, INCLUDING, BUT NOT LIMITED TO, RESOURCES THAT SUPPORT THE DEVELOPMENT AND IMPLEMENTATION OF COMMUNITY-BASED SERVICES AND REHABILITATION.

(D) TO DISSEMINATE GENERAL INFORMATION ON DEAFNESS AND THE UNIQUE COMMUNICATION NEEDS OF PERSONS WHO ARE DEAF, DEAF-BLIND, AND HARD OF HEARING, AND TO INFORM THE DEAF, DEAF-BLIND, AND HARD OF HEARING COMMUNITIES ABOUT AVAILABLE SERVICES AND HOW SUCH SERVICES CAN BE ACCESSED.

(E) TO RECEIVE COMPLAINTS IN MATTERS AFFECTING THE DEAF, DEAF-BLIND, OR HARD OF HEARING COMMUNITIES AND TO REFER SUCH COMPLAINTS TO THE APPROPRIATE REGULATORY AGENCIES WHERE IT DEEMS NECESSARY OR APPROPRIATE.

(F) TO CONDUCT AN ONGOING EVALUATION OF THE NEEDS OF THE DEAF, DEAF-BLIND, AND HARD OF HEARING COMMUNITIES, INCLUDING TECHNOLOGY NEEDS.

(G) TO REPORT TO THE GOVERNOR AND THE LEGISLATURE, ON OR BEFORE NOVEMBER FIRST OF EACH YEAR, ON MATTERS WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO:

(I) THE STATUS OF CURRENT EFFORTS TO ACHIEVE THE PURPOSES OF THIS SECTION, WHICH WILL BE UPDATED IN SUBSEQUENT REPORTS; AND

(II) RECOMMENDATIONS FOR STANDARDS, POLICIES, PROCEDURES, AND STRATEGIES NECESSARY TO ASSURE COMMUNICATION ACCESSIBILITY AND COMMUNITY-BASED SERVICES, INCLUDING NEEDED STATUTORY REVISIONS.

4. (A) SUBJECT TO AN APPROPRIATION, THE STATE INTERAGENCY COORDINATING COUNCIL FOR SERVICES TO PERSONS WHO ARE DEAF, DEAF-BLIND, OR HARD OF HEARING IS HEREBY ESTABLISHED AND SHALL CONSIST OF THE FOLLOWING PERSONS TO BE APPOINTED BY THE GOVERNOR:

(I) SEVEN AGENCY HEADS OR THEIR DESIGNEES, ACTING IN AN EX OFFICIO CAPACITY: THE EXECUTIVE DIRECTOR OF THE JUSTICE CENTER, WHO SHALL SERVE AS THE CHAIR OF THE STATE INTERAGENCY COORDINATING COUNCIL, THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE DIRECTOR OF THE OFFICE FOR AGING, THE CHAIR OF THE PUBLIC SERVICE COMMISSION, THE

COMMISSIONER OF HEALTH, THE COMMISSIONER OF LABOR, AND THE COMMISSIONER OF EDUCATION;

(II) SIX PERSONS WHO ARE RESIDENTS OF NEW YORK STATE AND WHO SHALL BE PERSONS WHO ARE DEAF, DEAF-BLIND, OR HARD OF HEARING, ONE OF WHOM SHALL BE APPOINTED ON THE NOMINATION OF THE TEMPORARY PRESIDENT OF THE SENATE, ONE OF WHOM SHALL BE APPOINTED ON THE NOMINATION OF THE SPEAKER OF THE ASSEMBLY, ONE OF WHOM SHALL BE APPOINTED ON THE NOMINATION OF THE MINORITY LEADER OF THE SENATE, AND ONE OF WHOM SHALL BE APPOINTED ON THE NOMINATION OF THE MINORITY LEADER OF THE ASSEMBLY; AND

(III) TWO PERSONS WHO ARE RESIDENTS OF NEW YORK STATE AND WHO ARE REPRESENTATIVES OF THE PUBLIC AND HAVE A DEMONSTRATED EXPERTISE AND INTEREST IN THE NEEDS OF PERSONS WHO ARE DEAF, DEAF-BLIND, OR HARD OF HEARING.

(B) OF THE EIGHT PERSONS APPOINTED PURSUANT TO SUBPARAGRAPHS (II) AND (III) OF PARAGRAPH (A) OF THIS SUBDIVISION, TWO SHALL SERVE FOR A TERM OF ONE YEAR, TWO SHALL SERVE FOR A TERM OF TWO YEARS, AND TWO SHALL SERVE FOR A TERM OF THREE YEARS, AS DETERMINED BY THE GOVERNOR. SUBSEQUENT APPOINTMENTS UPON THE EXPIRATION OF TERM SHALL BE FOR A TERM OF THREE YEARS AND SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

(C) THE EIGHT MEMBERS OF THE STATE INTERAGENCY COORDINATING COUNCIL DESCRIBED IN SUBPARAGRAPHS (II) AND (III) OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES PURSUANT TO THIS SECTION, SUBJECT TO THE APPROVAL OF THE JUSTICE CENTER.

5. SUBJECT TO AN APPROPRIATION, THE STATE INTERAGENCY COORDINATING COUNCIL IS CHARGED WITH RECOMMENDING LONG RANGE STRATEGIC OBJECTIVES, GOALS, AND PRIORITIES FOR PROMOTING THE AVAILABILITY OF A COMPREHENSIVE STATEWIDE PROGRAM OF COORDINATED SERVICES FOR PERSONS WHO ARE DEAF, DEAF-BLIND, OR HARD OF HEARING THAT IS CONSISTENT WITH SUBDIVISION ONE OF THIS SECTION. IT SHALL ALSO PROVIDE ADVICE ON THE PLANNING, COORDINATION, AND DEVELOPMENT OF NEEDED SERVICES AND TECHNOLOGY, INCLUDING THE MANNER IN WHICH SUCH SERVICES SHALL BE FUNDED OR OTHERWISE SUPPORTED.

S 560. ANNUAL REPORT. THE JUSTICE CENTER SHALL MAKE AN ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE CONCERNING ITS WORK DURING THE PRECEDING YEAR. SUCH REPORT SHALL BE POSTED ON THE JUSTICE CENTER'S WEBSITE AND SHALL BE PROVIDED TO THE INDEPENDENT AGENCY DESIGNATED PURSUANT TO SUBDIVISION (B) OF SECTION FIVE HUNDRED FIFTY-EIGHT OF THIS ARTICLE. IT SHALL INCLUDE, BUT NOT BE LIMITED TO, DATA REGARDING THE NUMBER OF REPORTS RECEIVED BY THE VULNERABLE PERSONS' CENTRAL REGISTER, RESULTS OF INVESTIGATIONS BY TYPES OF FACILITIES AND PROGRAMS, TYPES OF CORRECTIVE ACTIONS TAKEN, RESULTS OF ITS REVIEW OF PATTERNS AND TRENDS IN THE REPORTING OF AND RESPONSE TO REPORTABLE INCIDENTS AND ITS RECOMMENDATIONS FOR APPROPRIATE PREVENTIVE AND CORRECTIVE ACTIONS, AND EFFORTS UNDERTAKEN BY SUCH JUSTICE CENTER TO PROVIDE TRAINING PURSUANT TO SUBDIVISION FOUR OF SECTION FIVE HUNDRED FIFTY-THREE OF THIS ARTICLE.

S 561. ADVISORY COUNCIL. 1. THERE SHALL BE WITHIN THE JUSTICE CENTER AN ADVISORY COUNCIL CONSISTING OF NO LESS THAN FIFTEEN MEMBERS TO BE APPOINTED BY THE GOVERNOR, WITH THE ADVICE AND CONSENT OF THE SENATE. MEMBERS SHALL BE APPOINTED ON THE BASIS OF THEIR PROFESSIONAL AND PERSONAL KNOWLEDGE IN THE CARE AND TREATMENT OF AND IN THE PROVISION OF SERVICES, SUPPORTS, AND ADVOCACY TO AND ON BEHALF OF SERVICE RECIPIENTS, AS DEFINED IN SUBDIVISION NINE OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW, AND INDIVIDUALS WITH DISABILITIES, OR THEIR ACTIVE INTEREST IN THE SYSTEM OF SERVICES FOR SUCH SERVICE RECIPIENTS OR

INDIVIDUALS WITH DISABILITIES. IN MAKING SUCH APPOINTMENTS, THE GOVERNOR SHALL ENDEAVOR TO ENSURE THE OVERALL MEMBERSHIP OF THE COUNCIL ADEQUATELY REFLECTS THE PROGRAMS AND SERVICES WITHIN THE JUSTICE CENTER'S JURISDICTION AND THAT AT LEAST ONE-HALF OF THE MEMBERS ARE INDIVIDUALS OR PARENTS OR RELATIVES OF INDIVIDUALS WHO ARE OR HAVE PARTICIPATED IN OR ARE OR HAVE BEEN RECIPIENTS OF PROGRAMS AND SERVICES WITHIN THE JUSTICE CENTER'S JURISDICTION. THE COUNCIL SHALL INCLUDE BUT SHALL NOT BE LIMITED TO:

(A) MEMBERS OF BOARDS OF VISITORS APPOINTED PURSUANT TO ARTICLES SEVEN AND THIRTEEN OF THE MENTAL HYGIENE LAW;

(B) CONSUMER REPRESENTATIVES, INCLUDING CURRENT OR FORMER SERVICE RECIPIENTS OF AN APPLICABLE FACILITY OR PROVIDER AGENCY;

(C) PARENTS, RELATIVES OR GUARDIANS OF SUCH SERVICE RECIPIENTS;

(D) PROVIDERS OF SERVICES TO VULNERABLE PERSONS;

(E) DIRECTORS OF FACILITIES, COMMUNITY SERVICES OR MEMBERS OF COMMUNITY SERVICES BOARDS;

(F) CURRENT AND FORMER CONSUMERS OF SERVICES FOR INDIVIDUALS WITH PHYSICAL DISABILITIES;

(G) MEMBERS OF ORGANIZATIONS THAT ADVOCATE ON BEHALF OF VULNERABLE PERSONS AND INDIVIDUALS WITH DISABILITIES; AND

(H) AN EMPLOYEE OF A FACILITY OR PROVIDER AGENCY AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW.

2. MEMBERS SHALL BE APPOINTED FOR TERMS OF THREE YEARS PROVIDED, HOWEVER, THAT OF THE MEMBERS FIRST APPOINTED, ONE-THIRD SHALL BE APPOINTED FOR ONE-YEAR TERMS AND ONE-THIRD SHALL BE APPOINTED FOR TWO-YEAR TERMS. A MEMBER MAY BE REMOVED BY THE GOVERNOR FOR GOOD CAUSE AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD ON THE CHARGES. VACANCIES SHALL BE FILLED IN THE SAME MANNER AS ORIGINAL APPOINTMENTS FOR THE REMAINDER OF ANY UNEXPIRED TERM.

3. THE GOVERNOR SHALL DESIGNATE ONE MEMBER OF THE COUNCIL AS ITS CHAIR TO SERVE AS SUCH AT THE PLEASURE OF THE GOVERNOR.

4. COUNCIL MEMBERS SHALL NOT RECEIVE COMPENSATION, BUT EACH MEMBER SHALL BE ENTITLED TO RECEIVE HIS OR HER REASONABLE AND NECESSARY EXPENSES INCURRED IN CONNECTION WITH HIS OR HER SERVICES AS A MEMBER WITHIN THE AMOUNTS APPROPRIATED THEREFOR.

5. THE COUNCIL SHALL HAVE AN EXECUTIVE SECRETARY DESIGNATED BY THE EXECUTIVE DIRECTOR OF THE JUSTICE CENTER. THE EXECUTIVE DIRECTOR MAY ALSO ASSIGN SUCH OTHER EMPLOYEES OF THE JUSTICE CENTER AS THE COUNCIL MAY FROM TIME TO TIME REQUIRE TO ASSIST IT IN THE PERFORMANCE OF ITS DUTIES.

6. THE COUNCIL SHALL ADVISE AND ASSIST THE JUSTICE CENTER IN DEVELOPING POLICIES, PROPOSED REGULATIONS, PLANS AND PROGRAMS TO CARRY OUT ITS FUNCTIONS, POWERS AND DUTIES PURSUANT TO THIS SECTION. THE COUNCIL MAY CONSIDER ANY MATTER RELATED TO IMPROVING THE QUALITY OF LIFE OF CITIZENS OF THE STATE WHO HAVE DISABILITIES AND SHALL ADVISE THE JUSTICE CENTER ON ANY SUCH MATTER.

7. THE COUNCIL SHALL MEET AT LEAST FOUR TIMES A YEAR. THE COUNCIL SHALL MEET AT THE REQUEST OF ITS CHAIR OR THE EXECUTIVE DIRECTOR OF THE JUSTICE CENTER.

S 562. ABUSE AND NEGLECT NOTIFICATION. 1. UPON RECEIVING A REQUEST FOR CRIMINAL HISTORY INFORMATION, PURSUANT TO SECTION EIGHT HUNDRED FORTY-FIVE-B OF THIS CHAPTER, FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER OF A FACILITY OR PROVIDER LICENSED, OPERATED, OR CERTIFIED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THE JUSTICE CENTER SHALL FURNISH A SUMMARY OF ANY SUBSTANTIATED REPORTS IN ITS POSSESSION REGARD-

ING A FINDING OF CATEGORY TWO CONDUCT PURSUANT TO SECTION FOUR HUNDRED NINETY-THREE OF THE SOCIAL SERVICES LAW, BY A PROSPECTIVE EMPLOYEE OR VOLUNTEER, IF ALL RELEVANT HEARINGS AND APPEALS HAVE BEEN EXHAUSTED. THE JUSTICE CENTER SHALL PROVIDE SUCH SUMMARY REPORT TO THE AUTHORIZED PERSON AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THIS CHAPTER AND AT THAT SAME TIME FURNISH SUCH DOCUMENTS TO THE PROSPECTIVE EMPLOYEE OR VOLUNTEER AT THE ADDRESS FOR SUCH PERSON LISTED ON THE REQUEST.

2. THE SUMMARY REPORT PROVIDED BY THE JUSTICE CENTER TO A PROVIDER OF SERVICES PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL BE RECEIVED BY THE PROVIDER SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF SUBDIVISION SEVEN OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THIS CHAPTER.

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

32. "District attorney" means a district attorney, an assistant district attorney or a special district attorney, and, where appropriate, the attorney general, an assistant attorney general, a deputy attorney general [or], a special deputy attorney general, OR THE SPECIAL PROSECUTOR AND INSPECTOR GENERAL FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS OR HIS OR HER ASSISTANTS WHEN ACTING PURSUANT TO THEIR DUTIES IN MATTERS ARISING UNDER ARTICLE TWENTY OF THE EXECUTIVE LAW.

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

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

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

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

2. The [commission] JUSTICE CENTER shall monitor the quality of care in residential mental health treatment programs and shall ensure compliance with paragraphs (d) and (e) of subdivision six of section one

hundred thirty-seven of this chapter and section four hundred one of this article. The [commission] JUSTICE CENTER may recommend to the department and the office of mental health that inmates in segregated confinement pursuant to subdivision six of section one hundred thirty-seven of this chapter be evaluated for placement in a residential mental health treatment unit. It may also recommend ways to further the goal of diverting and removing inmates with serious mental illness from segregated confinement to residential mental health treatment units. The [commission] JUSTICE CENTER shall include in its annual report to the governor and the legislature pursuant to [subdivision (g) of] section [45.07] FIVE HUNDRED SIXTY of the [mental hygiene] EXECUTIVE law, a description of the state's progress in complying with this article, which shall be publicly available.

3. The [commission] JUSTICE CENTER shall appoint an advisory committee on psychiatric correctional care ("committee"), which shall be composed of independent mental health experts and mental health advocates, and may include family members of former inmates with serious mental illness. Such committee shall advise the [commission] JUSTICE CENTER on its oversight responsibilities pursuant to this section [and article forty-five of the mental hygiene law]. The committee may also make recommendations to the [commission] JUSTICE CENTER regarding improvements to prison-based mental health care. Nothing in this subdivision shall be deemed to authorize members of the committee to have access to a correctional or mental hygiene facility or any part of such a facility. Provided, however, newly appointed members of the advisory committee shall be provided with a tour of a segregated confinement unit and a residential mental health treatment unit, as selected by the commissioner. Any such tour shall be arranged on a date and at a time selected by the commissioner and upon such terms and conditions as are within the sole discretion of the commissioner.

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

(c) Nothing in this subdivision shall prohibit the [state commission on quality of care and advocacy for persons with disabilities] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS or any agency or person within or under contract with the [commission] JUSTICE CENTER which provides protection and advocacy services from requiring any information, report or record from a hospital in accordance with the provisions of section [45.09] FIVE HUNDRED FIFTY-EIGHT of the [mental hygiene] EXECUTIVE law.

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

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

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

S 11. Completion of unfinished business. Any business or other matter undertaken or commenced by the state commission on quality of care and advocacy for persons with disabilities, the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services, the office of children and family services, the department of health and the state education department pertaining to or connected with the functions, powers, obligations and duties hereby transferred and assigned to the justice center for the protection of people with special needs and pending on the effective date of this act, may be conducted and completed by such justice center in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the state commission on quality of care and advocacy for persons with disabilities.

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

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

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

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

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

remaining unexpended or unencumbered balance thereof, whether allocated or unallocated and whether obligated or unobligated, are hereby transferred to and made available for use and expenditure by the justice center for the protection of people with special needs subject to the approval of the director of the budget for the same purposes for which originally appropriated or reappropriated and shall be payable on vouchers certified or approved by the executive director of such justice center on audit and warrant of the comptroller. In addition to such authority otherwise granted pursuant to law to interchange, transfer and suballocate amounts appropriated for the office for people with developmental disabilities, the office of mental health, the office of alcoholism and substance abuse services, the department of health and the office of children and family services, such amounts appropriated for state operations for such agencies may also be interchanged, transferred and suballocated for the purpose of planning, developing and/or implementing the alignment of the operations within and between such agencies sufficient to fulfill the purposes of this act for the state fiscal year beginning April 1, 2012.

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

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

PART B

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

ARTICLE 11

PROTECTION OF PEOPLE WITH SPECIAL NEEDS

SECTION 488. DEFINITIONS.
489. APPLICABILITY.
490. INCIDENT MANAGEMENT PROGRAMS.
491. DUTY TO REPORT INCIDENTS.
492. VULNERABLE PERSONS' CENTRAL REGISTER.
493. ABUSE AND NEGLECT FINDINGS; CONSEQUENCES.
494. AMENDMENTS TO AND APPEALS OF SUBSTANTIATED REPORTS OF ABUSE OR NEGLECT.
495. REGISTER OF SUBSTANTIATED CATEGORY ONE CASES OF ABUSE OR NEGLECT.
496. CONFIDENTIALITY.
497. IMMUNITY FROM LIABILITY.

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

1. "REPORTABLE INCIDENT" SHALL MEAN THE FOLLOWING CONDUCT THAT A MANDATED REPORTER IS REQUIRED TO REPORT TO THE VULNERABLE PERSONS' CENTRAL REGISTER:

(A) "PHYSICAL ABUSE," WHICH SHALL MEAN CONDUCT BY A CUSTODIAN INTENTIONALLY OR RECKLESSLY CAUSING, BY PHYSICAL CONTACT, PHYSICAL INJURY OR SERIOUS OR PROTRACTED IMPAIRMENT OF THE PHYSICAL, MENTAL OR EMOTIONAL CONDITION OF A SERVICE RECIPIENT OR CAUSING THE LIKELIHOOD OF SUCH INJURY OR IMPAIRMENT. SUCH CONDUCT MAY INCLUDE BUT SHALL NOT BE LIMITED TO: SLAPPING, HITTING, KICKING, BITING, CHOKING, SMOTHERING, SHOVING, DRAGGING, THROWING, PUNCHING, SHAKING, BURNING, CUTTING OR THE USE OF CORPORAL PUNISHMENT. PHYSICAL ABUSE SHALL NOT INCLUDE REASONABLE EMERGENCY INTERVENTIONS NECESSARY TO PROTECT THE SAFETY OF ANY PERSON.

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

(C) "PSYCHOLOGICAL ABUSE," WHICH SHALL MEAN CONDUCT BY A CUSTODIAN INTENTIONALLY OR RECKLESSLY CAUSING, BY VERBAL OR NON-VERBAL CONDUCT, A SUBSTANTIAL DIMINUTION OF A SERVICE RECIPIENT'S EMOTIONAL, SOCIAL OR BEHAVIORAL DEVELOPMENT OR CONDITION, SUPPORTED BY A CLINICAL ASSESSMENT PERFORMED BY A PHYSICIAN, PSYCHOLOGIST, PSYCHIATRIC NURSE PRACTITIONER, LICENSED CLINICAL OR MASTER SOCIAL WORKER OR LICENSED MENTAL HEALTH COUNSELOR, OR CAUSING THE LIKELIHOOD OF SUCH DIMINUTION. SUCH CONDUCT MAY INCLUDE BUT SHALL NOT BE LIMITED TO INTIMIDATION, THREATS, THE DISPLAY OF A WEAPON OR OTHER OBJECT THAT COULD REASONABLY BE PERCEIVED BY A SERVICE RECIPIENT AS A MEANS FOR INFLICTION OF PAIN OR INJURY, IN A MANNER THAT CONSTITUTES A THREAT OF PHYSICAL PAIN OR INJURY, TAUNTS, DEROGATORY COMMENTS OR RIDICULE.

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

(E) "USE OF AVERSIVE CONDITIONING," WHICH SHALL MEAN THE APPLICATION OF A PHYSICAL STIMULUS THAT IS INTENDED TO INDUCE PAIN OR DISCOMFORT IN ORDER TO MODIFY OR CHANGE THE BEHAVIOR OF A PERSON RECEIVING SERVICES IN THE ABSENCE OF A PERSON-SPECIFIC AUTHORIZATION BY THE OPERATING, LICENSING OR CERTIFYING STATE AGENCY PURSUANT TO GOVERNING STATE AGENCY REGULATIONS. AVERSIVE CONDITIONING MAY INCLUDE BUT IS NOT LIMITED TO, THE USE OF PHYSICAL STIMULI SUCH AS NOXIOUS ODORS, NOXIOUS TASTES, BLINDFOLDS, THE WITHHOLDING OF MEALS AND THE PROVISION OF SUBSTITUTE FOODS IN

AN UNPALATABLE FORM AND MOVEMENT LIMITATIONS USED AS PUNISHMENT, INCLUDING BUT NOT LIMITED TO HELMETS AND MECHANICAL RESTRAINT DEVICES.

(F) "OBSTRUCTION OF REPORTS OF REPORTABLE INCIDENTS," WHICH SHALL MEAN CONDUCT BY A CUSTODIAN THAT IMPEDES THE DISCOVERY, REPORTING OR INVESTIGATION OF THE TREATMENT OF A SERVICE RECIPIENT BY FALSIFYING RECORDS RELATED TO THE SAFETY, TREATMENT OR SUPERVISION OF A SERVICE RECIPIENT, ACTIVELY PERSUADING A MANDATED REPORTER FROM MAKING A REPORT OF A REPORTABLE INCIDENT TO THE STATEWIDE VULNERABLE PERSONS' CENTRAL REGISTER WITH THE INTENT TO SUPPRESS THE REPORTING OF THE INVESTIGATION OF SUCH INCIDENT, INTENTIONALLY MAKING A FALSE STATEMENT OR INTENTIONALLY WITHHOLDING MATERIAL INFORMATION DURING AN INVESTIGATION INTO SUCH A REPORT; INTENTIONAL FAILURE OF A SUPERVISOR OR MANAGER TO ACT UPON SUCH A REPORT IN ACCORDANCE WITH GOVERNING STATE AGENCY REGULATIONS, POLICIES OR PROCEDURES; OR, FOR A MANDATED REPORTER WHO IS A CUSTODIAN AS DEFINED IN SUBDIVISION TWO OF THIS SECTION, FAILING TO REPORT A REPORTABLE INCIDENT UPON DISCOVERY.

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

(H) "NEGLECT," WHICH SHALL MEAN ANY ACTION, INACTION OR LACK OF ATTENTION THAT BREACHES A CUSTODIAN'S DUTY AND THAT RESULTS IN OR IS LIKELY TO RESULT IN PHYSICAL INJURY OR SERIOUS OR PROTRACTED IMPAIRMENT OF THE PHYSICAL, MENTAL OR EMOTIONAL CONDITION OF A SERVICE RECIPIENT. NEGLECT SHALL INCLUDE, BUT IS NOT LIMITED TO: (I) FAILURE TO PROVIDE PROPER SUPERVISION, INCLUDING A LACK OF PROPER SUPERVISION THAT RESULTS IN CONDUCT BETWEEN PERSONS RECEIVING SERVICES THAT WOULD CONSTITUTE ABUSE AS DESCRIBED IN PARAGRAPHS (A) THROUGH (G) OF THIS SUBDIVISION IF COMMITTED BY A CUSTODIAN; (II) FAILURE TO PROVIDE ADEQUATE FOOD, CLOTHING, SHELTER, MEDICAL, DENTAL, OPTOMETRIC OR SURGICAL CARE, CONSISTENT WITH THE RULES OR REGULATIONS PROMULGATED BY THE STATE AGENCY OPERATING, CERTIFYING OR SUPERVISING THE FACILITY OR PROVIDER AGENCY, PROVIDED THAT THE FACILITY OR PROVIDER AGENCY HAS REASONABLE ACCESS TO THE PROVISION OF SUCH SERVICES AND THAT NECESSARY CONSENTS TO ANY SUCH MEDICAL, DENTAL, OPTOMETRIC OR SURGICAL TREATMENT HAVE BEEN SOUGHT AND OBTAINED FROM THE APPROPRIATE INDIVIDUALS; OR (III) FAILURE TO PROVIDE ACCESS TO EDUCATIONAL INSTRUCTION, BY A CUSTODIAN WITH A DUTY TO ENSURE THAT AN INDIVIDUAL RECEIVES ACCESS TO SUCH INSTRUCTION IN ACCORDANCE WITH THE PROVISIONS OF PART ONE OF ARTICLE SIXTY-FIVE OF THE EDUCATION LAW AND/OR THE INDIVIDUAL'S INDIVIDUALIZED EDUCATION PROGRAM.

(I) "SIGNIFICANT INCIDENT" SHALL MEAN AN INCIDENT, OTHER THAN AN INCIDENT OF ABUSE OR NEGLECT, THAT BECAUSE OF ITS SEVERITY OR THE SENSITIVITY OF THE SITUATION MAY RESULT IN, OR HAS THE REASONABLY FORESEEABLE POTENTIAL TO RESULT IN, HARM TO THE HEALTH, SAFETY OR WELFARE OF A PERSON RECEIVING SERVICES AND SHALL INCLUDE BUT SHALL NOT BE LIMITED TO:

(1) CONDUCT BETWEEN PERSONS RECEIVING SERVICES THAT WOULD CONSTITUTE ABUSE AS DESCRIBED IN PARAGRAPHS (A) THROUGH (G) OF THIS SUBDIVISION IF COMMITTED BY A CUSTODIAN; OR

(2) CONDUCT ON THE PART OF A CUSTODIAN, WHICH IS INCONSISTENT WITH A SERVICE RECIPIENT'S INDIVIDUAL TREATMENT PLAN OR INDIVIDUALIZED EDUCATIONAL PROGRAM, GENERALLY ACCEPTED TREATMENT PRACTICES AND/OR APPLICABLE FEDERAL OR STATE LAWS, REGULATIONS OR POLICIES AND WHICH IMPAIRS OR

CREATES A REASONABLY FORESEEABLE POTENTIAL TO IMPAIR THE HEALTH, SAFETY OR WELFARE OF A PERSON RECEIVING SERVICES, INCLUDING BUT NOT LIMITED TO:

(A) UNAUTHORIZED SECLUSION, WHICH SHALL MEAN THE PLACEMENT OF A PERSON RECEIVING SERVICES IN A ROOM OR AREA FROM WHICH HE OR SHE CANNOT, OR PERCEIVES THAT HE OR SHE CANNOT, LEAVE AT WILL;

(B) UNAUTHORIZED USE OF TIME-OUT, WHICH SHALL MEAN THE USE OF A PROCEDURE IN WHICH A PERSON RECEIVING SERVICES IS REMOVED FROM REGULAR PROGRAMMING AND ISOLATED IN A ROOM OR AREA FOR THE CONVENIENCE OF A CUSTODIAN, OR AS A SUBSTITUTE FOR PROGRAMMING BUT SHALL NOT INCLUDE THE USE OF A TIME-OUT AS AN EMERGENCY INTERVENTION TO PROTECT THE HEALTH OR SAFETY OF THE INDIVIDUAL OR OTHER PERSONS;

(C) EXCEPT AS PROVIDED FOR IN PARAGRAPH (G) OF SUBDIVISION ONE OF THIS SECTION, THE ADMINISTRATION OF A PRESCRIBED OR OVER-THE-COUNTER MEDICATION, WHICH IS INCONSISTENT WITH A PRESCRIPTION OR ORDER ISSUED FOR A SERVICE RECIPIENT BY A LICENSED, QUALIFIED HEALTH CARE PRACTITIONER, AND WHICH HAS AN ADVERSE EFFECT ON A SERVICE RECIPIENT. FOR PURPOSES OF THIS PARAGRAPH, "ADVERSE EFFECT" SHALL MEAN THE UNANTICIPATED AND UNDESIRABLE SIDE EFFECT FROM THE ADMINISTRATION OF A PARTICULAR MEDICATION WHICH UNFAVORABLY AFFECTS THE WELL-BEING OF A SERVICE RECIPIENT;

(D) INAPPROPRIATE USE OF RESTRAINTS, WHICH SHALL MEAN THE USE OF A RESTRAINT WHEN THE TECHNIQUE THAT IS USED, THE AMOUNT OF FORCE THAT IS USED OR THE SITUATION IN WHICH THE RESTRAINT IS USED IS INCONSISTENT WITH A SERVICE RECIPIENT'S INDIVIDUAL PLAN, GENERALLY ACCEPTED TREATMENT PRACTICES AND/OR APPLICABLE FEDERAL OR STATE LAWS, REGULATIONS OR POLICIES. FOR THE PURPOSES OF THIS SUBDIVISION, A "RESTRAINT" SHALL INCLUDE THE USE OF ANY MANUAL, PHARMACOLOGICAL OR MECHANICAL MEASURE OR DEVICE TO IMMOBILIZE OR LIMIT THE ABILITY OF A PERSON RECEIVING SERVICES TO FREELY MOVE HIS OR HER ARMS, LEGS OR BODY; OR

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

2. "CUSTODIAN" MEANS A DIRECTOR, OPERATOR, EMPLOYEE OR VOLUNTEER OF A FACILITY OR PROVIDER AGENCY; OR A CONSULTANT OR AN EMPLOYEE OR VOLUNTEER OF A CORPORATION, PARTNERSHIP, ORGANIZATION OR GOVERNMENTAL ENTITY WHICH PROVIDES GOODS OR SERVICES TO A FACILITY OR PROVIDER AGENCY PURSUANT TO CONTRACT OR OTHER ARRANGEMENT THAT PERMITS SUCH PERSON TO HAVE REGULAR AND SUBSTANTIAL CONTACT WITH INDIVIDUALS WHO ARE CARED FOR BY THE FACILITY OR PROVIDER AGENCY.

3. "EXECUTIVE DIRECTOR" SHALL MEAN THE EXECUTIVE DIRECTOR OF THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS AS ESTABLISHED BY ARTICLE TWENTY OF THE EXECUTIVE LAW.

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

(A) A FACILITY OR PROGRAM IN WHICH SERVICES ARE PROVIDED AND WHICH IS OPERATED, LICENSED OR CERTIFIED BY THE OFFICE OF MENTAL HEALTH, THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES OR THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, INCLUDING BUT NOT LIMITED TO PSYCHIATRIC CENTERS, INPATIENT PSYCHIATRIC UNITS OF A GENERAL HOSPITAL, DEVELOPMENTAL CENTERS, INTERMEDIATE CARE FACILITIES, COMMUNITY RESIDENCES, GROUP HOMES AND FAMILY CARE HOMES, PROVIDED, HOWEVER, THAT SUCH TERM SHALL NOT INCLUDE A SECURE TREATMENT FACILITY AS DEFINED IN SECTION 10.03 OF THE MENTAL HYGIENE LAW, OR SERVICES PROVIDED IN PROGRAMS OR FACILITIES THAT ARE OPERATED BY THE OFFICE OF MENTAL HEALTH AND LOCATED IN STATE CORRECTIONAL FACILITIES UNDER THE JURISDICTION OF THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION;

(B) ANY PROGRAM OR FACILITY THAT IS OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES FOR JUVENILE DELINQUENTS OR JUVENILE OFFENDERS

PLACED IN THE CUSTODY OF THE COMMISSIONER OF SUCH OFFICE AND ANY RESIDENTIAL PROGRAMS OR FACILITIES LICENSED OR CERTIFIED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES, EXCLUDING FOSTER FAMILY HOMES AND RESIDENTIAL PROGRAMS FOR VICTIMS OF DOMESTIC VIOLENCE;

(C) ADULT CARE FACILITIES, WHICH SHALL MEAN ADULT HOMES OR ENRICHED HOUSING PROGRAMS LICENSED PURSUANT TO ARTICLE SEVEN OF THIS CHAPTER: (I) (A) THAT HAVE A LICENSED CAPACITY OF EIGHTY OR MORE BEDS; AND (B) IN WHICH AT LEAST TWENTY-FIVE PERCENT OF THE RESIDENTS ARE PERSONS WITH SERIOUS MENTAL ILLNESS AS DEFINED BY SUBDIVISION FIFTY-TWO OF SECTION 1.03 OF THE MENTAL HYGIENE LAW; (II) BUT NOT INCLUDING AN ADULT HOME OR ENRICHED HOUSING PROGRAM WHICH IS AUTHORIZED TO OPERATE FIFTY-FIVE PERCENT OR MORE OF ITS TOTAL LICENSED CAPACITY OF BEDS AS ASSISTED LIVING PROGRAM BEDS PURSUANT TO SECTION FOUR HUNDRED SIXTY-ONE-L OF THIS CHAPTER;

(D) OVERNIGHT SUMMER DAY AND TRAVELING SUMMER DAY CAMPS FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES AS DEFINED IN REGULATIONS PROMULGATED BY THE COMMISSIONER OF HEALTH; OR

(E) THE NEW YORK STATE SCHOOL FOR THE BLIND AND THE NEW YORK STATE SCHOOL FOR THE DEAF, WHICH OPERATE PURSUANT TO ARTICLES EIGHTY-SEVEN AND EIGHTY-EIGHT OF THE EDUCATION LAW; AN INSTITUTION FOR THE INSTRUCTION OF THE DEAF AND THE BLIND WHICH HAS A RESIDENTIAL COMPONENT AND IS SUBJECT TO THE VISITATION OF THE COMMISSIONER OF EDUCATION PURSUANT TO ARTICLE EIGHTY-FIVE OF THE EDUCATION LAW WITH RESPECT TO ITS DAY AND RESIDENTIAL COMPONENTS; SPECIAL ACT SCHOOL DISTRICTS SERVING STUDENTS WITH DISABILITIES; OR IN-STATE PRIVATE SCHOOLS WHICH HAVE BEEN APPROVED BY THE COMMISSIONER OF EDUCATION FOR SPECIAL EDUCATION SERVICES OR PROGRAMS, AND WHICH HAVE A RESIDENTIAL PROGRAM, INCLUDING A SCHOOL APPROVED ON A CHILD-SPECIFIC BASIS FOR EMERGENCY INTERIM PLACEMENTS PURSUANT TO GOVERNING STATE REGULATIONS, WITH RESPECT TO ITS DAY AND RESIDENTIAL COMPONENTS.

4-A. "STATE OVERSIGHT AGENCY" SHALL MEAN THE STATE AGENCY THAT OPERATES, LICENSES OR CERTIFIES AN APPLICABLE FACILITY OR PROVIDER AGENCY; PROVIDED HOWEVER THAT SUCH TERM SHALL ONLY INCLUDE THE FOLLOWING ENTITIES: THE OFFICE OF MENTAL HEALTH, THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE DEPARTMENT OF HEALTH AND THE STATE EDUCATION DEPARTMENT. "STATE OVERSIGHT AGENCY" DOES NOT INCLUDE AGENCIES THAT ARE CERTIFICATION AGENCIES PURSUANT TO FEDERAL LAW OR REGULATION.

5. "MANDATED REPORTER" SHALL MEAN A CUSTODIAN OR A HUMAN SERVICES PROFESSIONAL, BUT SHALL NOT INCLUDE A SERVICE RECIPIENT.

5-A. "HUMAN SERVICES PROFESSIONAL" SHALL MEAN ANY: PHYSICIAN; REGISTERED PHYSICIAN ASSISTANT; SURGEON; MEDICAL EXAMINER; CORONER; DENTIST; DENTAL HYGIENIST; OSTEOPATH; OPTOMETRIST; CHIROPRACTOR; PODIATRIST; RESIDENT; INTERN; PSYCHOLOGIST; REGISTERED NURSE; LICENSED PRACTICAL NURSE; NURSE PRACTITIONER; SOCIAL WORKER; EMERGENCY MEDICAL TECHNICIAN; LICENSED CREATIVE ARTS THERAPIST; LICENSED MARRIAGE AND FAMILY THERAPIST; LICENSED MENTAL HEALTH COUNSELOR; LICENSED PSYCHOANALYST; LICENSED SPEECH/LANGUAGE PATHOLOGIST OR AUDIOLOGIST; LICENSED PHYSICAL THERAPIST; LICENSED OCCUPATIONAL THERAPIST; HOSPITAL PERSONNEL ENGAGED IN THE ADMISSION, EXAMINATION, CARE OR TREATMENT OF PERSONS; CHRISTIAN SCIENCE PRACTITIONER; SCHOOL OFFICIAL, WHICH INCLUDES BUT IS NOT LIMITED TO SCHOOL TEACHER, SCHOOL GUIDANCE COUNSELOR, SCHOOL PSYCHOLOGIST, SCHOOL SOCIAL WORKER, SCHOOL NURSE, SCHOOL ADMINISTRATOR OR OTHER SCHOOL PERSONNEL REQUIRED TO HOLD A TEACHING OR ADMINISTRATIVE LICENSE OR CERTIFICATE; SOCIAL SERVICES WORKER; ANY OTHER CHILD CARE OR FOSTER CARE

WORKER; MENTAL HEALTH PROFESSIONAL; PERSON CREDENTIALED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES; PEACE OFFICER; POLICE OFFICER; DISTRICT ATTORNEY OR ASSISTANT DISTRICT ATTORNEY; INVESTIGATOR EMPLOYED IN THE OFFICE OF A DISTRICT ATTORNEY; OR OTHER LAW ENFORCEMENT OFFICIAL.

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

7. "DELEGATE INVESTIGATORY ENTITY" SHALL MEAN A FACILITY OR PROVIDER AGENCY, OR ANY OTHER ENTITY AUTHORIZED BY THE REGULATIONS OF A STATE OVERSIGHT AGENCY OR THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS TO CONDUCT AN INVESTIGATION OF A REPORTABLE INCIDENT.

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

9. "PERSON RECEIVING SERVICES," OR "SERVICE RECIPIENT" SHALL MEAN AN INDIVIDUAL WHO RESIDES OR IS AN INPATIENT IN A RESIDENTIAL FACILITY OR WHO RECEIVES SERVICES FROM A FACILITY OR PROVIDER AGENCY.

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

11. "ABUSE OR NEGLECT" SHALL MEAN THE CONDUCT DESCRIBED IN PARAGRAPHS (A) THROUGH (H) OF SUBDIVISION ONE OF THIS SECTION.

12. "SUBJECT OF THE REPORT" SHALL MEAN A CUSTODIAN, AS DEFINED IN SUBDIVISION TWO OF THIS SECTION, WHO IS REPORTED TO THE VULNERABLE PERSONS' CENTRAL REGISTER FOR THE ALLEGED ABUSE OR NEGLECT OF A VULNERABLE PERSON AS DEFINED IN SUBDIVISION ELEVEN OF THIS SECTION.

13. "OTHER PERSONS NAMED IN THE REPORT" SHALL MEAN AND BE LIMITED TO THE FOLLOWING PERSONS WHO ARE NAMED IN A REPORT TO THE VULNERABLE PERSONS' CENTRAL REGISTER OTHER THAN THE SUBJECT OF THE REPORT: THE SERVICE RECIPIENT WHOSE CARE AND TREATMENT IS THE CONCERN OF A REPORT TO THE VULNERABLE PERSONS' CENTRAL REGISTER, AND THE PERSONAL REPRESENTATIVE, IF ANY, AS DEFINED IN SUBDIVISION TEN OF THIS SECTION.

14. "VULNERABLE PERSONS' CENTRAL REGISTER" SHALL MEAN THE STATEWIDE CENTRAL REGISTER OF REPORTABLE INCIDENTS INVOLVING VULNERABLE PERSONS, WHICH SHALL OPERATE IN ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-TWO OF THIS ARTICLE.

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

16. "INTENTIONALLY" AND "RECKLESSLY" SHALL HAVE THE SAME MEANINGS AS PROVIDED IN SUBDIVISIONS ONE AND THREE OF SECTION 15.05 OF THE PENAL LAW.

S 489. APPLICABILITY. THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO FACILITIES AND PROVIDER AGENCIES PROVIDED, HOWEVER, NOTHING IN THIS ARTICLE SHALL BE DEEMED TO RELIEVE ANY FACILITY OR PROVIDER AGENCY OR CUSTODIAN THEREOF COVERED BY THIS ARTICLE OF ITS OR THEIR OBLIGATIONS TO COMPLY WITH THE REQUIREMENTS OF FEDERAL LAWS OR REGULATIONS TO WHICH THAT FACILITY, PROVIDER AGENCY OR CUSTODIAN THEREOF IS SUBJECT, INCLUDING ANY REQUIREMENTS THAT ARE A CONDITION OF FEDERAL FINANCIAL PARTICIPATION IN MEDICAL ASSISTANCE PAYMENTS. TO THE EXTENT THAT FEDERAL REQUIREMENTS CONFLICT WITH ANY OF THE PROVISIONS IN THIS ARTICLE, THE FEDERAL REQUIREMENTS SHALL SUPERSEDE THE CONFLICTING PROVISIONS IN THIS ARTICLE WITH RESPECT TO ANY SUCH FACILITY OR PROVIDER AGENCY.

S 490. INCIDENT MANAGEMENT PROGRAMS. 1. EACH STATE OVERSIGHT AGENCY, AS DEFINED IN THIS ARTICLE, SHALL PROMULGATE REGULATIONS APPROVED BY THE JUSTICE CENTER, THAT CONTAIN PROCEDURES AND REQUIREMENTS CONSISTENT WITH GUIDELINES AND STANDARDS DEVELOPED BY THE JUSTICE CENTER, ADDRESSING THE FOLLOWING ISSUES RELATING TO AN INCIDENT MANAGEMENT PROGRAM; PROVIDED, HOWEVER, THAT REGULATIONS OF THE STATE EDUCATION DEPARTMENT NEED NOT BE APPROVED BY THE JUSTICE CENTER, BUT SHALL BE DEVELOPED IN CONSULTATION WITH THE JUSTICE CENTER:

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

(B) ALL REPORTABLE INCIDENTS ARE PROMPTLY INVESTIGATED;

(C) INDIVIDUAL REPORTABLE INCIDENTS, AND INCIDENT PATTERNS AND TRENDS, ARE REVIEWED TO IDENTIFY AND IMPLEMENT PREVENTIVE AND CORRECTIVE ACTIONS, WHICH MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, STAFF RETRAINING OR ANY APPROPRIATE DISCIPLINARY ACTION ALLOWED BY LAW OR CONTRACT, AS WELL AS OPPORTUNITIES FOR IMPROVEMENT;

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

(E) INFORMATION REGARDING INDIVIDUAL REPORTABLE INCIDENTS, INCIDENT PATTERNS AND TRENDS, AND PATTERNS AND TRENDS IN THE REPORTING AND RESPONSE TO REPORTABLE INCIDENTS IS SHARED, CONSISTENT WITH APPLICABLE LAW, WITH THE JUSTICE CENTER, IN THE FORM AND MANNER REQUIRED BY THE JUSTICE CENTER AND, FOR FACILITIES OR PROVIDER AGENCIES THAT ARE NOT STATE OPERATED, WITH THE APPLICABLE STATE OVERSIGHT AGENCY WHICH SHALL PROVIDE SUCH INFORMATION TO THE JUSTICE CENTER; AND

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

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EXCEPT AS MAY BE PROVIDED BY SECTION 33.25 OF THE MENTAL HYGIENE LAW, RECORDS, REPORTS OR OTHER INFORMATION MAINTAINED BY THE JUSTICE CENTER, STATE OVERSIGHT AGENCIES, DELEGATE INVESTIGATORY ENTITIES, AND FACILITIES AND PROVIDER AGENCIES REGARDING THE DELIBERATIONS OF AN INCIDENT REVIEW COMMITTEE SHALL BE CONFIDENTIAL, PROVIDED THAT NOTHING IN THIS ARTICLE SHALL BE DEEMED TO DIMINISH OR OTHERWISE DEROGATE THE LEGAL PRIVILEGE AFFORDED TO PROCEEDINGS, RECORDS, REPORTS OR OTHER INFORMATION RELATING TO A QUALITY ASSURANCE FUNCTION, INCLUDING THE INVESTIGATION OF AN INCIDENT REPORTED PURSUANT TO SECTION 29.29 OF THE MENTAL HYGIENE LAW, AS PROVIDED IN SECTION SIXTY-FIVE HUNDRED TWENTY-SEVEN OF THE EDUCATION LAW. FOR

PURPOSES OF THIS SECTION, A QUALITY ASSURANCE FUNCTION IS A PROCESS FOR SYSTEMATICALLY MONITORING AND EVALUATING VARIOUS ASPECTS OF A PROGRAM, SERVICE OR FACILITY TO ENSURE THAT STANDARDS OF CARE ARE BEING MET.

3. NO MEMBER OF AN INCIDENT REVIEW COMMITTEE PERFORMING A QUALITY ASSURANCE FUNCTION SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING WITH RESPECT TO QUALITY ASSURANCE FINDINGS, RECOMMENDATIONS, EVALUATIONS, OPINIONS OR ACTIONS TAKEN, EXCEPT THAT THIS PROVISION IS NOT INTENDED TO RELIEVE ANY STATE OVERSIGHT AGENCY, DELEGATE INVESTIGATORY ENTITY, FACILITY OR PROVIDER AGENCY, OR AN AGENT THEREOF, FROM LIABILITY ARISING FROM TREATMENT OF A SERVICE RECIPIENT.

4. THERE SHALL BE NO MONETARY LIABILITY ON THE PART OF, AND NO CAUSE OF ACTION FOR DAMAGES SHALL ARISE AGAINST, ANY PERSON ON ACCOUNT OF PARTICIPATING IN GOOD FAITH AND WITH REASONABLE CARE IN THE COMMUNICATION OF INFORMATION IN THE POSSESSION OF SUCH PERSON TO AN INCIDENT REVIEW COMMITTEE, OR ON ACCOUNT OF ANY RECOMMENDATION OR EVALUATION REGARDING THE CONDUCT OR PRACTICES OF ANY CUSTODIAN THAT IS MADE IN GOOD FAITH AND WITH REASONABLE CARE.

5. WITH RESPECT TO THE IMPLEMENTATION OF INCIDENT MANAGEMENT PLANS IN RESIDENTIAL SCHOOLS OR FACILITIES LOCATED OUTSIDE OF NEW YORK STATE, EACH STATE OVERSIGHT AGENCY SHALL REQUIRE THAT: (A) THE JUSTICE CENTER, THE APPLICABLE STATE OVERSIGHT AGENCY AND ANY LOCAL SOCIAL SERVICES DISTRICT AND/OR LOCAL EDUCATIONAL AGENCY PLACING AN INDIVIDUAL WITH SUCH FACILITY OR SCHOOL OR STATE AGENCY FUNDING THE PLACEMENT OF AN INDIVIDUAL OR STUDENT BE NOTIFIED IMMEDIATELY OF ANY ALLEGATION OF ABUSE OR NEGLECT INVOLVING THAT INDIVIDUAL OR STUDENT; (B) AN INVESTIGATION BE CONDUCTED BY THE JUSTICE CENTER, OR WHERE THAT IS NOT PRACTICABLE, BY A STATE AGENCY OR OTHER ENTITY AUTHORIZED OR REQUIRED TO INVESTIGATE COMPLAINTS OF ABUSE OR NEGLECT UNDER THE LAWS OF THE STATE IN WHICH THE FACILITY OR SCHOOL IS LOCATED; AND (C) THE FINDINGS OF SUCH INVESTIGATION BE FORWARDED TO THE JUSTICE CENTER AND EACH PLACING ENTITY OR FUNDING AGENCY IN NEW YORK STATE WITHIN NINETY DAYS. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION SHALL BE GROUNDS FOR REVOCATION OR SUSPENSION OF THE LICENSE OR APPROVAL OF THE OUT OF STATE FACILITY OR SCHOOL.

6. RECORDS OF FACILITIES OR PROVIDER AGENCIES NOT OTHERWISE SUBJECT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION AND COPYING, WHEN SUCH RECORDS RELATE TO ABUSE AND NEGLECT OF VULNERABLE PERSONS, TO THE SAME EXTENT THAT THOSE RECORDS WOULD BE AVAILABLE FROM A STATE AGENCY, AS DEFINED IN SUCH ARTICLE. REQUESTS FOR SUCH RECORDS SHALL BE MADE IN WRITING TO THE JUSTICE CENTER. THE JUSTICE CENTER MAY DENY ACCESS TO RECORDS OF SUCH FACILITIES OR PROVIDER AGENCIES, OR PORTIONS THEREOF, THAT THE JUSTICE CENTER DETERMINES WOULD BE EXEMPT FROM DISCLOSURE BY A STATE AGENCY PURSUANT TO SUCH ARTICLE. THE REQUESTING PARTY MAY APPEAL A DENIAL OF ACCESS TO SUCH RECORDS TO THE EXECUTIVE DIRECTOR OF THE JUSTICE CENTER. A REQUESTING PARTY DENIED ACCESS TO A RECORD IN SUCH APPEAL DETERMINATION MAY BRING A PROCEEDING FOR REVIEW OF SUCH DENIAL PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. THE EXECUTIVE DIRECTOR OF THE JUSTICE CENTER SHALL PROMULGATE REGULATIONS, CONSISTENT WITH THE PROVISIONS OF ARTICLE SIX OF THE PUBLIC OFFICERS LAW PROVIDING FOR THE PROMPT RESPONSE TO SUCH REQUESTS. FACILITIES OR PROVIDER AGENCIES COVERED BY THIS SUBDIVISION SHALL COOPERATE WITH THE JUSTICE CENTER AND PROVIDE ANY RECORDS THAT THE JUSTICE CENTER DEEMS SUBJECT TO DISCLOSURE.

S 491. DUTY TO REPORT INCIDENTS. 1. (A) MANDATED REPORTERS SHALL REPORT ALLEGATIONS OF REPORTABLE INCIDENTS TO THE VULNERABLE PERSONS'

CENTRAL REGISTER AS ESTABLISHED BY SECTION FOUR HUNDRED NINETY-TWO OF THIS ARTICLE AND IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH THEREIN.

(B) ALLEGATIONS OF REPORTABLE INCIDENTS SHALL BE REPORTED IMMEDIATELY TO THE VULNERABLE PERSONS' CENTRAL REGISTER UPON DISCOVERY. FOR PURPOSES OF THIS ARTICLE, "DISCOVERY" OCCURS WHEN THE MANDATED REPORTER WITNESSES A SUSPECTED REPORTABLE INCIDENT OR WHEN ANOTHER PERSON, INCLUDING THE VULNERABLE PERSON, COMES BEFORE THE MANDATED REPORTER IN THE MANDATED REPORTER'S PROFESSIONAL OR OFFICIAL CAPACITY AND PROVIDES THE MANDATED REPORTER WITH REASONABLE CAUSE TO SUSPECT THAT THE VULNERABLE PERSON HAS BEEN SUBJECTED TO A REPORTABLE INCIDENT. A REPORT TO THE REGISTER SHALL INCLUDE THE NAME, TITLE AND CONTACT INFORMATION OF EVERY PERSON KNOWN TO THE MANDATED REPORTER TO HAVE THE SAME INFORMATION AS THE MANDATED REPORTER CONCERNING THE REPORTABLE INCIDENT. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO PROHIBIT A MANDATED REPORTER FROM CONTACTING OR REPORTING TO LAW ENFORCEMENT OR EMERGENCY SERVICES BEFORE OR AFTER REPORTING TO THE VULNERABLE PERSONS' CENTRAL REGISTER.

(C) THE SUBSTANCE OR CONTENT OF ANY PSYCHOLOGICAL, PSYCHIATRIC, THERAPEUTIC, CLINICAL OR MEDICAL REPORTS, EVALUATIONS OR LIKE MATERIALS OR INFORMATION PERTAINING TO THE TREATMENT OF A PATIENT OR CLIENT OF A MANDATORY REPORTER WHO REPORTS A REPORTABLE INCIDENT OF SUCH PATIENT OR CLIENT PURSUANT TO THIS ARTICLE, MUST BE PROVIDED BY SUCH MANDATORY REPORTER UPON REQUEST OF THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS IF SUCH RECORDS ARE ESSENTIAL FOR A FULL INVESTIGATION OF SUCH ALLEGATION, NOTWITHSTANDING ANY APPLICABLE PRIVILEGE WHICH WOULD OTHERWISE BAR THE DISCLOSURE OF SUCH MATERIALS AND RECORDS PURSUANT TO ARTICLE FORTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES OR OTHER PROVISION OF LAW EXCEPT APPLICABLE FEDERAL LAW GOVERNING THE DISCLOSURE OF PATIENT AND RELATED MEDICAL RECORDS.

2. ANY PERSON OR OFFICIAL REQUIRED TO REPORT ALLEGATIONS OF REPORTABLE INCIDENTS PURSUANT TO THIS SECTION MAY TAKE OR CAUSE TO BE TAKEN COLOR PHOTOGRAPHS OF VISIBLE TRAUMA AND THE FACE OF THE VULNERABLE PERSON NAMED IN THE REPORT AND UPON THE CONSENT OF A PERSON AUTHORIZED TO CONSENT TO MEDICAL CARE FOR THE VULNERABLE PERSON, SHALL, IF MEDICALLY INDICATED, CAUSE TO BE PERFORMED A RADIOLOGICAL EXAMINATION OF THE VULNERABLE PERSON. ANY PHOTOGRAPHS OR RADIOLOGICAL EXAMINATIONS TAKEN SHALL BE PROVIDED TO THE JUSTICE CENTER FOR USE ONLY FOR THE PURPOSES OF AN INVESTIGATION OF A REPORTABLE INCIDENT.

3. (A) ANY HUMAN SERVICES PROFESSIONAL REQUIRED BY THIS ARTICLE TO REPORT A CASE OF SUSPECTED ABUSE OR NEGLECT TO THE VULNERABLE PERSONS' CENTRAL REGISTER WHO KNOWINGLY AND WILLFULLY FAILS TO DO SO SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

(B) A MANDATED REPORTER WHO KNOWINGLY AND WILLFULLY FAILS TO REPORT A CASE OF SUSPECTED ABUSE OR NEGLECT TO THE VULNERABLE PERSONS' CENTRAL REGISTER MAY BE SUBJECT TO TERMINATION, SUBJECT TO ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT. ANY PERSON OR OFFICIAL REQUIRED BY THIS ARTICLE TO REPORT A CASE OF SUSPECTED ABUSE OR NEGLECT TO THE VULNERABLE PERSONS' CENTRAL REGISTER WHO KNOWINGLY AND WILLFULLY FAILS TO DO SO SHALL BE CIVILLY LIABLE FOR THE DAMAGES PROXIMATELY CAUSED BY SUCH FAILURE.

4. A MEDICAL OR OTHER PUBLIC OR PRIVATE INSTITUTION, STATE AGENCY, SCHOOL, FACILITY OR PROVIDER AGENCY SHALL NOT TAKE ANY RETALIATORY PERSONNEL ACTION, AS SUCH TERM IS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION SEVEN HUNDRED FORTY OF THE LABOR LAW, AGAINST AN EMPLOYEE OR AGENT BECAUSE SUCH EMPLOYEE OR AGENT BELIEVES THAT HE OR SHE HAS REASONABLE CAUSE TO SUSPECT THAT A VULNERABLE PERSON HAS BEEN SUBJECTED TO A REPORTABLE INCIDENT AND THAT EMPLOYEE OR AGENT THEREFORE

MAKES A REPORT IN ACCORDANCE WITH THIS SECTION. A COURT OF COMPETENT JURISDICTION MAY GRANT INJUNCTIVE RELIEF TO ANY PERSON DETERMINED TO HAVE BEEN SUBJECTED TO SUCH RETALIATION.

S 492. VULNERABLE PERSONS' CENTRAL REGISTER. 1. THERE SHALL BE ESTABLISHED IN THE JUSTICE CENTER A STATEWIDE VULNERABLE PERSONS' CENTRAL REGISTER. THE REGISTER SHALL: (A) RECEIVE REPORTS OF ALLEGATIONS OF REPORTABLE INCIDENTS INVOLVING PERSONS RECEIVING SERVICES IN FACILITIES OR PROVIDER AGENCIES SUBJECT TO THE REQUIREMENTS OF THIS ARTICLE; (B) AS WARRANTED, REFER REPORTS ALLEGING CRIMES TO APPROPRIATE LAW ENFORCEMENT AUTHORITIES; (C) NOTIFY APPROPRIATE PERSONS AND OFFICIALS OF RECEIVED AND ACCEPTED REPORTS; AND (D) MAINTAIN AN ELECTRONIC DATABASE OF EACH REPORT AND THE FINDING ASSOCIATED WITH EACH REPORT. IN ACCORDANCE WITH THIS SECTION, THE EXECUTIVE DIRECTOR SHALL ESTABLISH STANDARDS AND PROCEDURES FOR THE OPERATION OF THE VULNERABLE PERSONS' CENTRAL REGISTER.

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

(B) THE VULNERABLE PERSONS' CENTRAL REGISTER SHALL RECEIVE REPORTS OF ALLEGATIONS OF REPORTABLE INCIDENTS TWENTY-FOUR HOURS PER DAY, SEVEN DAYS A WEEK. MANDATED REPORTERS SHALL MAKE SUCH REPORTS IN ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-ONE OF THIS ARTICLE; PROVIDED, HOWEVER, ANY PERSON WHO HAS REASONABLE CAUSE TO SUSPECT THAT A PERSON RECEIVING SERVICES HAS BEEN SUBJECTED TO A REPORTABLE INCIDENT MAY MAKE SUCH A REPORT. IN NO EVENT SHALL A REPORT BY A MANDATED REPORTER TO THE VULNERABLE PERSONS' CENTRAL REGISTER ELIMINATE THE OBLIGATION OF A MANDATED REPORTER TO REPORT INCIDENTS IN ACCORDANCE WITH THE APPLICABLE LAWS, REGULATIONS AND POLICY OF THE APPLICABLE STATE OVERSIGHT AGENCY.

(C) REPORTS OF ALLEGATIONS OF REPORTABLE INCIDENTS SHALL BE SUBMITTED, BY A STATEWIDE, TOLL-FREE TELEPHONE NUMBER (A "HOTLINE") OR BY ELECTRONIC TRANSMISSION, IN A MANNER AND ON FORMS PRESCRIBED BY THE EXECUTIVE DIRECTOR. THE INFORMATION REQUIRED ON THE REPORTING FORM SHALL INCLUDE BUT IS NOT LIMITED TO: THE NAME AND CONTACT INFORMATION OF THE PERSON OR PERSONS MAKING THE REPORT, IF AVAILABLE, AND, IF THE REPORT IS MADE BY A CUSTODIAN, ANY OTHER STAFF WHO HAVE THE SAME INFORMATION; THE NAME AND ADDRESS OF THE FACILITY OR PROVIDER AGENCY; THE DATE, TIME, SPECIFIC LOCATION AND DESCRIPTION OF THE INCIDENT; THE NAME AND CONTACT INFORMATION OF THE SUBJECT OF THE REPORTABLE INCIDENT, IF KNOWN; THE NAME OF THE VULNERABLE PERSON ALLEGED TO HAVE BEEN SUBJECTED TO A REPORTABLE INCIDENT; THE NAMES OF PERSONAL REPRESENTATIVES FOR THE VULNERABLE PERSON WHO IS ALLEGED TO HAVE BEEN SUBJECTED TO A REPORTABLE INCIDENT, IF KNOWN; AND ANY OTHER INFORMATION OR DOCUMENTATION THAT THE EXECUTIVE DIRECTOR BELIEVES MAY BE HELPFUL. THE INABILITY OF A PERSON MAKING A REPORT TO IDENTIFY A SUBJECT SHALL, IN NO CIRCUMSTANCE, CONSTITUTE CAUSE TO REJECT SUCH ALLEGATION FOR INVESTIGATION OR TO FAIL TO REFER SUCH

ALLEGATION FOR CORRECTIVE ACTION. THE HOTLINE SHALL ACCEPT ANONYMOUS CALLS.

3. (A) WHEN ANY ALLEGATION THAT COULD REASONABLY CONSTITUTE A REPORTABLE INCIDENT IS RECEIVED BY THE REGISTER, THE REGISTER SHALL ACCEPT AND IMMEDIATELY TRANSMIT NOTICE OF THE REPORT ORALLY OR ELECTRONICALLY TO THE APPROPRIATE STATE OVERSIGHT AGENCY AND, AS APPROPRIATE, TO THE DIRECTOR OR OPERATOR OF THAT FACILITY OR PROVIDER AGENCY.

(B) WHENEVER A TELEPHONE CALL OR ELECTRONIC TRANSMISSION TO THE VULNERABLE PERSONS' CENTRAL REGISTER ALLEGES AN ACT OR CIRCUMSTANCES THAT MAY CONSTITUTE A CRIMINAL OFFENSE OR AN IMMEDIATE THREAT TO A VULNERABLE PERSON'S HEALTH, SAFETY OR WELFARE, THE REGISTER SHALL CONVEY, BY THE MOST EXPEDIENT MEANS AVAILABLE, THE INFORMATION CONTAINED IN SUCH CALL OR TRANSMISSION TO THE APPROPRIATE LAW ENFORCEMENT AGENCY OR DISTRICT ATTORNEY AND, TO THE EXTENT NECESSARY, THE APPROPRIATE EMERGENCY RESPONDER, AND THE STATE OVERSIGHT AGENCY.

(C) THE JUSTICE CENTER IS RESPONSIBLE FOR COMMENCING AN INVESTIGATION OF ALL ALLEGATIONS OF REPORTABLE INCIDENTS THAT ARE ACCEPTED BY THE VULNERABLE PERSONS' CENTRAL REGISTER. WITH RESPECT TO SUCH AN INVESTIGATION, THE JUSTICE CENTER SHALL:

(I) UPON ACCEPTANCE OF A REPORT OF A REPORTABLE INCIDENT BY THE VULNERABLE PERSONS' CENTRAL REGISTER, PROMPTLY COMMENCE AN APPROPRIATE INVESTIGATION;

(II) TAKE ALL APPROPRIATE MEASURES TO PROTECT THE LIFE AND HEALTH OF THE PERSON WHO IS THE ALLEGED VICTIM OF A REPORTABLE INCIDENT, WHICH MAY INCLUDE WORKING WITH THE STATE OVERSIGHT AGENCY TO TAKE IMMEDIATE STEPS TO REMOVE THE VULNERABLE PERSON FROM HIS OR HER CURRENT FACILITY OR PROGRAM OR TO REMOVE OR SUSPEND A SUBJECT FROM A FACILITY OR PROGRAM, SUBJECT TO ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT, IF THE JUSTICE CENTER HAS REASONABLE CAUSE TO BELIEVE THAT THE CIRCUMSTANCES OR CONDITION OF THE VULNERABLE PERSON ARE SUCH THAT CONTINUING THE VULNERABLE PERSON IN HIS OR HER PLACE OF RESIDENCE OR PROGRAM, OR THAT CONTINUING SUCH SUBJECT IN HIS OR HER CURRENT FACILITY OR PROGRAM, PRESENTS AN IMMINENT DANGER TO THE VULNERABLE PERSON'S LIFE OR HEALTH;

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

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

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

(VI) NOTIFY THE PERSONAL REPRESENTATIVE OF THE PERSON ALLEGED TO HAVE BEEN ABUSED OR NEGLECTED AND, EXCEPT IN THE CASE OF A CRIMINAL INVESTIGATION, OR IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE DETERMINES THAT DOING SO WOULD INTERFERE WITH ANY ONGOING INVESTIGATION, NOTIFY THE SUBJECT OR SUBJECTS OF THE REPORT AND ANY OTHER PERSONS NAMED IN THE REPORT IN WRITING OF THE EXISTENCE OF THE REPORT; PROVIDED, HOWEVER,

THAT SUCH NOTIFICATION MAY BE LIMITED IN ACCORDANCE WITH SUBDIVISION (C) OF SECTION 33.16 OF THE MENTAL HYGIENE LAW;

(VII) IF A REPORT OF A REPORTABLE INCIDENT TO THE VULNERABLE PERSONS' CENTRAL REGISTER INVOLVES THE DEATH OF A PERSON, THE JUSTICE CENTER SHALL GIVE TELEPHONE NOTICE AND IMMEDIATELY SEND A COPY OF THE REPORT TO THE APPROPRIATE DISTRICT ATTORNEY AND TO THE MEDICAL EXAMINER OR CORONER. THE MEDICAL EXAMINER OR CORONER SHALL CONDUCT A PROMPT INVESTIGATION AND SHALL FORWARD A PRELIMINARY WRITTEN REPORT OF HIS OR HER FINDINGS WITHIN SIXTY DAYS OF THE DATE OF DEATH, ABSENT EXTRAORDINARY CIRCUMSTANCES, AND HIS OR HER FINAL WRITTEN REPORT PROMPTLY, ABSENT EXTRAORDINARY CIRCUMSTANCES, TO THE APPROPRIATE DISTRICT ATTORNEY, THE APPROPRIATE LAW ENFORCEMENT OFFICIAL, THE STATE AGENCY RESPONSIBLE FOR OVERSEEING THE INVESTIGATION, THE JUSTICE CENTER MEDICAL REVIEW BOARD AND, IF THE DEATH OCCURRED IN A HOSPITAL, THE HOSPITAL;

(VIII) SUBMIT REPORTABLE INCIDENT FINDINGS TO THE VULNERABLE PERSONS' CENTRAL REGISTER IN ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-THREE OF THIS ARTICLE;

(IX) NOTIFY THE APPLICABLE STATE OVERSIGHT AGENCY AND THE DIRECTOR OR OPERATOR, WHERE APPROPRIATE, TO DEVELOP A PLAN OF PREVENTION OR REMEDIATION THAT THE FACILITY OR PROGRAM MUST IMPLEMENT IN RESPONSE TO THE REPORT'S FINDINGS WHICH MUST BE APPROVED AND ITS IMPLEMENTATION MONITORED BY THE JUSTICE CENTER OR THE STATE OVERSIGHT AGENCY, AS APPROPRIATE; AND

(X) REFER SUSPECTED CASES OF FALSELY REPORTING ABUSE OR NEGLECT IN VIOLATION OF SUBDIVISION FOUR OF SECTION 240.50 OF THE PENAL LAW TO THE APPROPRIATE LAW ENFORCEMENT AGENCY OR DISTRICT ATTORNEY FOR INVESTIGATION AND PROSECUTION.

(D) WHENEVER A TELEPHONE CALL OR ELECTRONIC TRANSMISSION TO THE VULNERABLE PERSONS' CENTRAL REGISTER CANNOT BE ACCEPTED AS A REPORT, BUT THE INFORMATION PROVIDED ALLEGES OTHER POTENTIAL WRONGDOING AT A FACILITY OR PROVIDER AGENCY, THE REGISTER SHALL FORWARD THE REPORT TO THE APPLICABLE STATE OVERSIGHT AGENCY FOR INVESTIGATION AND PROTECTIVE ACTIONS, AS NEEDED, PURSUANT TO SECTION FOUR HUNDRED NINETY-ONE OF THIS ARTICLE.

4. THE JUSTICE CENTER SHALL MAINTAIN AND KEEP UP-TO-DATE RECORDS OF ALL INCIDENTS REPORTED, TOGETHER WITH ANY ADDITIONAL INFORMATION OBTAINED DURING AN INVESTIGATION OF SUCH A REPORT AND A RECORD OF THE FINAL DISPOSITION OF THE REPORT.

5. THE VULNERABLE PERSONS' CENTRAL REGISTER SHALL MAINTAIN AN ELECTRONIC DATABASE OF ALL ACCEPTED REPORTS OF REPORTABLE INCIDENTS. STATE OVERSIGHT AGENCIES SHALL HAVE ACCESS TO INFORMATION IN THE DATABASE, LIMITED TO CASES INVOLVING FACILITIES OR PROVIDER AGENCIES UNDER THEIR JURISDICTION.

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

(B) THE REGISTER SHALL INCLUDE THE FOLLOWING INFORMATION FOR EACH REPORT: A RECORD OF THE FINAL DISPOSITION OF THE REPORT; THE NAMES AND IDENTIFYING DATA; DATES AND CIRCUMSTANCES OF ANY PERSON REQUESTING OR RECEIVING INFORMATION FROM THE REGISTER; WHETHER THE PERSON MAKING THE REPORT AUTHORIZED THE DISCLOSURE OF HIS OR HER NAME AND PERSONALLY IDENTIFIABLE INFORMATION; AND ANY OTHER INFORMATION THAT THE EXECUTIVE DIRECTOR, IN CONSULTATION WITH THE COMMISSIONERS OF THE STATE OVERSIGHT AGENCIES COVERED BY THIS ARTICLE, IDENTIFIES AS FURTHERING THE PURPOSES OF THIS ARTICLE AND COMPLYING WITH STATE AND FEDERAL REGULATIONS REGARDING THE SECURITY AND CONFIDENTIALITY OF INDIVIDUALLY IDENTIFYING HEALTH INFORMATION.

6. THE JUSTICE CENTER SHALL REVIEW SUCH ELECTRONIC DATABASE TO IDENTIFY INCIDENT PATTERNS AND TRENDS, AND IMPLEMENT PREVENTIVE AND CORRECTIVE ACTIONS, AND TO IDENTIFY PATTERNS AND TRENDS IN THE REPORTING AND RESPONSE TO ALLEGATIONS OF REPORTABLE INCIDENTS AND DEVELOP PLANS OF IMPROVEMENT BASED ON SUCH REVIEWS.

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

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

(C) THE JUSTICE CENTER, IN COLLABORATION WITH THE STATE AGENCIES OPERATING, LICENSING OR CERTIFYING FACILITIES OR THE PROVIDER AGENCIES COVERED BY THIS ARTICLE, SHALL PROVIDE MANDATED REPORTERS WITH WRITTEN INFORMATION EXPLAINING THE REPORTING REQUIREMENTS IN ACCORDANCE WITH THIS ARTICLE.

(D) THE JUSTICE CENTER SHALL DEVELOP AND IMPLEMENT PROGRAMS TO PUBLICLY RECOGNIZE AND VALUE THE CONTRIBUTIONS OF REPORTERS OF ALLEGATIONS OF REPORTABLE INCIDENTS WHOSE ACTIONS PROMPT CORRECTIONS AND IMPROVEMENTS IN THE SERVICE SYSTEM; PROVIDED, HOWEVER, THAT THE NAME AND OTHER PERSONALLY IDENTIFIABLE INFORMATION OF SUCH REPORTER SHALL NOT BE SHARED UNLESS SUCH PERSON AUTHORIZES DISCLOSURE.

8. IN A CASE WHERE A SUBJECT OF A REPORT OF ALLEGED ABUSE OR NEGLECT RESIGNS FROM HIS OR HER POSITION OR IS TERMINATED WHILE UNDER INVESTIGATION, THE STATE OPERATING AGENCY OR THE APPLICABLE FACILITY OR PROVIDER AGENCY SHALL PROMPTLY REPORT SUCH RESIGNATION OR TERMINATION TO THE JUSTICE CENTER. THE INVESTIGATION OF THE REPORT SHALL CONTINUE DESPITE THE RESIGNATION OR TERMINATION OF SUCH SUBJECT.

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

2. FOR SUBSTANTIATED REPORTS OF ABUSE OR NEGLECT IN FACILITIES OR PROVIDER AGENCIES IN RECEIPT OF MEDICAL ASSISTANCE, SUCH INFORMATION SHALL ALSO BE FORWARDED BY THE JUSTICE CENTER TO THE OFFICE OF THE MEDICAID INSPECTOR GENERAL WHEN SUCH ABUSE OR NEGLECT MAY BE RELEVANT TO AN INVESTIGATION OF UNACCEPTABLE PRACTICES AS SUCH PRACTICES ARE DEFINED IN REGULATIONS OF THE OFFICE OF THE MEDICAID INSPECTOR GENERAL.

3. (A) A FINDING SHALL BE BASED ON A PREPONDERANCE OF THE EVIDENCE AND SHALL INDICATE WHETHER: (I) THE ALLEGED ABUSE OR NEGLECT IS SUBSTANTIATED BECAUSE IT IS DETERMINED THAT THE INCIDENT OCCURRED AND THE SUBJECT OF THE REPORT WAS RESPONSIBLE OR, IF NO SUBJECT CAN BE IDENTIFIED AND AN INCIDENT OCCURRED, THAT, THE FACILITY OR PROVIDER AGENCY WAS RESPONSIBLE; OR (II) THE ALLEGED ABUSE OR NEGLECT IS UNSUBSTANTIATED BECAUSE IT IS DETERMINED NOT TO HAVE OCCURRED OR THE SUBJECT OF THE REPORT WAS NOT

RESPONSIBLE, OR BECAUSE IT CANNOT BE DETERMINED THAT THE INCIDENT OCCURRED OR THAT THE SUBJECT OF THE REPORT WAS RESPONSIBLE. A REPORT SHALL NOT BE DETERMINED TO BE SUBSTANTIATED OR UNSUBSTANTIATED SOLELY BECAUSE THE SUBJECT OF A REPORT RESIGNS DURING AN INVESTIGATION.

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

(C) THE JUSTICE CENTER SHALL NOTIFY THE SUBJECT OF THE REPORT, THE FACILITY OR PROVIDER AGENCY WHERE THE ABUSE OR NEGLECT WAS ALLEGED TO HAVE OCCURRED, THE APPLICABLE STATE OVERSIGHT AGENCY AND OTHER PERSONS NAMED IN THE REPORT, WHICH INCLUDES THE SERVICE RECIPIENT'S PARENT, GUARDIAN OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH PERSON, OF THE FINDINGS OF THE INVESTIGATION AND, AS APPLICABLE, THE LOCAL SOCIAL SERVICES COMMISSIONER OR SCHOOL DISTRICT THAT PLACED THE INDIVIDUAL IN THE FACILITY OR PROVIDER AGENCY, THE OFFICE OF CHILDREN AND FAMILY SERVICES AND ANY ATTORNEY FOR THE INDIVIDUAL WHOSE APPOINTMENT HAS BEEN CONTINUED BY A FAMILY COURT JUDGE DURING THE TERM OF AN INDIVIDUAL'S PLACEMENT, IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS GOVERNING THE USE AND DISCLOSURE OF RECORDS. IF THE REPORT IS SUBSTANTIATED, THE JUSTICE CENTER SHALL ALSO NOTIFY THE SUBJECT OF THE REPORT OF HIS OR HER RIGHTS TO REQUEST THAT THE REPORT BE AMENDED AND THE PROCEDURE BY WHICH HE OR SHE MAY SEEK TO AMEND THE REPORT IN ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-FOUR OF THIS ARTICLE.

(D) A REPORT THAT IS FOUND TO BE UNSUBSTANTIATED SHALL BE SEALED IMMEDIATELY.

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

(A) CATEGORY ONE CONDUCT IS SERIOUS PHYSICAL ABUSE, SEXUAL ABUSE OR OTHER SERIOUS CONDUCT BY CUSTODIANS, WHICH INCLUDES AND SHALL BE LIMITED TO:

(I) INTENTIONALLY OR RECKLESSLY CAUSING PHYSICAL INJURY AS DEFINED IN SUBDIVISION NINE OF SECTION 10.00 OF THE PENAL LAW, OR DEATH, SERIOUS DISFIGUREMENT, SERIOUS IMPAIRMENT OF HEALTH OR LOSS OR IMPAIRMENT OF THE FUNCTION OF ANY BODILY ORGAN OR PART, OR CONSCIOUSLY DISREGARDING A SUBSTANTIAL AND UNJUSTIFIABLE RISK THAT SUCH PHYSICAL INJURY, DEATH, IMPAIRMENT OR LOSS WILL OCCUR;

(II) A KNOWING, RECKLESS OR CRIMINALLY NEGLIGENT FAILURE TO PERFORM A DUTY THAT: RESULTS IN PHYSICAL INJURY THAT CREATES A SUBSTANTIAL RISK OF DEATH; CAUSES DEATH OR SERIOUS DISFIGUREMENT, SERIOUS IMPAIRMENT OF HEALTH OR LOSS OR IMPAIRMENT OF THE FUNCTION OF ANY BODILY ORGAN OR PART, A SUBSTANTIAL AND PROTRACTED DIMINUTION OF A SERVICE RECIPIENT'S PSYCHOLOGICAL OR INTELLECTUAL FUNCTIONING, SUPPORTED BY A CLINICAL ASSESSMENT PERFORMED BY A PHYSICIAN, PSYCHOLOGIST, PSYCHIATRIC NURSE PRACTITIONER, LICENSED CLINICAL OR MASTER SOCIAL WORKER OR LICENSED MENTAL HEALTH COUNSELOR; OR IS LIKELY TO RESULT IN EITHER;

(III) THREATS, TAUNTS OR RIDICULE THAT IS LIKELY TO RESULT IN A SUBSTANTIAL AND PROTRACTED DIMINUTION OF A SERVICE RECIPIENT'S PSYCHOLOGICAL OR INTELLECTUAL FUNCTIONING, SUPPORTED BY A CLINICAL ASSESSMENT PERFORMED BY A PHYSICIAN, PSYCHOLOGIST, PSYCHIATRIC NURSE PRACTITIONER, LICENSED CLINICAL OR MASTER SOCIAL WORKER OR LICENSED MENTAL HEALTH COUNSELOR;

(IV) ENGAGING IN OR ENCOURAGING OTHERS TO ENGAGE IN CRUEL OR DEGRADING TREATMENT, WHICH MAY INCLUDE A PATTERN OF CRUEL AND DEGRADING PHYSICAL CONTACT, OF A SERVICE RECIPIENT, THAT RESULTS IN A SUBSTANTIAL AND PROTRACTED DIMINUTION OF A SERVICE RECIPIENT'S PSYCHOLOGICAL OR INTELLECTUAL FUNCTIONING, SUPPORTED BY A CLINICAL ASSESSMENT PERFORMED BY A

PHYSICIAN, PSYCHOLOGIST, PSYCHIATRIC NURSE PRACTITIONER, LICENSED CLINICAL OR MASTER SOCIAL WORKER OR LICENSED MENTAL HEALTH COUNSELOR;

(V) ENGAGING IN OR ENCOURAGING OTHERS TO ENGAGE IN ANY CONDUCT IN VIOLATION OF ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW WITH A SERVICE RECIPIENT;

(VI) ANY CONDUCT THAT IS INCONSISTENT WITH A SERVICE RECIPIENT'S INDIVIDUAL TREATMENT PLAN OR APPLICABLE FEDERAL OR STATE LAWS, REGULATIONS OR POLICIES, THAT ENCOURAGES, FACILITATES OR PERMITS ANOTHER TO ENGAGE IN ANY CONDUCT IN VIOLATION OF ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, WITH A SERVICE RECIPIENT;

(VII) ANY CONDUCT ENCOURAGING OR PERMITTING ANOTHER TO PROMOTE A SEXUAL PERFORMANCE, AS DEFINED IN SUBDIVISION ONE OF SECTION 263.00 OF THE PENAL LAW, BY A SERVICE RECIPIENT, OR PERMITTING OR USING A SERVICE RECIPIENT IN ANY PROSTITUTION-RELATED OFFENSE;

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

(IX) UNLAWFULLY ADMINISTERING A CONTROLLED SUBSTANCE, AS DEFINED BY ARTICLE THIRTY-THREE OF THE PUBLIC HEALTH LAW TO A SERVICE RECIPIENT;

(X) INTENTIONALLY FALSIFYING RECORDS RELATED TO THE SAFETY, TREATMENT OR SUPERVISION OF A SERVICE RECIPIENT, INCLUDING BUT NOT LIMITED TO MEDICAL RECORDS, FIRE SAFETY INSPECTIONS AND DRILLS AND SUPERVISION CHECKS WHEN THE FALSE STATEMENT CONTAINED THEREIN IS MADE WITH THE INTENT TO MISLEAD A PERSON INVESTIGATING A REPORTABLE INCIDENT AND IT IS REASONABLY FORESEEABLE THAT SUCH FALSE STATEMENT MAY ENDANGER THE HEALTH, SAFETY OR WELFARE OF A SERVICE RECIPIENT;

(XI) KNOWINGLY AND WILLFULLY FAILING TO REPORT, AS REQUIRED BY PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED NINETY-ONE OF THIS ARTICLE, ANY OF THE CONDUCT IN SUBPARAGRAPHS (I) THROUGH (IX) OF THIS PARAGRAPH UPON DISCOVERY;

(XII) FOR SUPERVISORS, FAILING TO ACT UPON A REPORT OF CONDUCT IN SUBPARAGRAPHS (I) THROUGH (X) OF THIS PARAGRAPH AS DIRECTED BY REGULATION, PROCEDURE OR POLICY;

(XIII) INTENTIONALLY MAKING A MATERIALLY FALSE STATEMENT DURING AN INVESTIGATION INTO A REPORT OF CONDUCT DESCRIBED IN SUBPARAGRAPHS (I) THROUGH (X) OF THIS PARAGRAPH WITH THE INTENT TO OBSTRUCT SUCH INVESTIGATION; AND

(XIV) INTIMIDATING A MANDATED REPORTER WITH THE INTENTION OF PREVENTING HIM OR HER FROM REPORTING CONDUCT DESCRIBED IN SUBPARAGRAPHS (I) THROUGH (X) OF THIS PARAGRAPH OR RETALIATING AGAINST ANY CUSTODIAN MAKING SUCH A REPORT IN GOOD FAITH.

(B) CATEGORY TWO IS SUBSTANTIATED CONDUCT BY CUSTODIANS THAT IS NOT OTHERWISE DESCRIBED IN CATEGORY ONE, BUT CONDUCT IN WHICH THE CUSTODIAN SERIOUSLY ENDANGERS THE HEALTH, SAFETY OR WELFARE OF A SERVICE RECIPIENT BY COMMITTING AN ACT OF ABUSE OR NEGLECT. CATEGORY TWO CONDUCT UNDER THIS PARAGRAPH SHALL BE ELEVATED TO CATEGORY ONE CONDUCT WHEN SUCH CONDUCT OCCURS WITHIN THREE YEARS OF A PREVIOUS FINDING THAT SUCH CUSTODIAN ENGAGED IN CATEGORY TWO CONDUCT. REPORTS THAT RESULT IN A CATEGORY TWO FINDING NOT ELEVATED TO A CATEGORY ONE FINDING SHALL BE SEALED AFTER FIVE YEARS.

(C) CATEGORY THREE IS ABUSE OR NEGLECT BY CUSTODIANS THAT IS NOT OTHERWISE DESCRIBED IN CATEGORIES ONE AND TWO. REPORTS THAT RESULT IN A CATEGORY THREE FINDING SHALL BE SEALED AFTER FIVE YEARS.

(D) CATEGORY FOUR SHALL BE CONDITIONS AT A FACILITY OR PROVIDER AGENCY THAT EXPOSE SERVICE RECIPIENTS TO HARM OR RISK OF HARM WHERE STAFF CULPABILITY IS MITIGATED BY SYSTEMIC PROBLEMS SUCH AS INADEQUATE MANAGE-

MENT, STAFFING, TRAINING OR SUPERVISION. CATEGORY FOUR ALSO SHALL INCLUDE INSTANCES IN WHICH IT HAS BEEN SUBSTANTIATED THAT A SERVICE RECIPIENT HAS BEEN ABUSED OR NEGLECTED, BUT THE PERPETRATOR OF SUCH ABUSE OR NEGLECT CANNOT BE IDENTIFIED.

5. (A) CATEGORY ONE FINDINGS SHALL RESULT IN PERMANENT PLACEMENT OF THE SUBJECT OF THE REPORT ON THE VULNERABLE PERSONS' CENTRAL REGISTER IN ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-FIVE OF THIS ARTICLE.

(B) EXCEPT WHEN A CUSTODIAN HAS A CATEGORY TWO FINDING ELEVATED TO A CATEGORY ONE FINDING PURSUANT TO THIS SECTION, A CUSTODIAN WITH A CATEGORY TWO FINDING SHALL BE SUBJECT TO PROGRESSIVE DISCIPLINE. (FOR STATE ENTITIES BOUND BY COLLECTIVE BARGAINING, SUCH DISCIPLINE ESTABLISHED BY COLLECTIVE BARGAINING SHALL GOVERN.) IN CONJUNCTION WITH SUCH DISCIPLINARY ACTION, THE FACILITY OR PROVIDER AGENCY SHALL DEVELOP A PLAN FOR TRAINING AND ANY OTHER ACTIONS TO REDUCE THE RISK OF RECURRENCE OF SUCH CONDUCT. SUCH PLAN MUST BE APPROVED BY AND ITS IMPLEMENTATION MONITORED BY THE JUSTICE CENTER OR THE STATE OVERSIGHT AGENCY, AS APPROPRIATE.

(C) WITH RESPECT TO A CATEGORY THREE OR FOUR FINDING, THE JUSTICE CENTER SHALL REQUIRE THE FACILITY OR PROVIDER AGENCY TO DEVELOP AND IMPLEMENT A PLAN OF PREVENTION AND REMEDIATION OF THE DEFICIENT CONDITIONS. SUCH PLAN SHALL IDENTIFY ANY SYSTEMIC PROBLEM THAT LED TO THE DETERMINATION OF A CATEGORY THREE OR FOUR FINDING AND INCLUDE SUGGESTED CORRECTIVE MEASURES. SUCH PLAN MUST BE APPROVED BY AND ITS IMPLEMENTATION MONITORED BY THE JUSTICE CENTER OR THE STATE OVERSIGHT AGENCY, AS APPROPRIATE. IN REVIEWING THE CONTINUED QUALIFICATIONS OF A FACILITY OR PROVIDER AGENCY FOR AN OPERATING CERTIFICATE, THE STATE OVERSIGHT AGENCY SHALL EVALUATE SUCH FACILITY OR PROVIDER AGENCY'S COMPLIANCE WITH ANY PLANS OF PREVENTION AND REMEDIATION RESULTING FROM CATEGORY THREE OR FOUR REPORTS AND TAKE APPROPRIATE ENFORCEMENT ACTION, WHICH MAY INCLUDE, BUT NOT BE LIMITED TO, CLOSING INTAKE TO THE FACILITY OR PROVIDER AGENCY OR TERMINATING OPERATING CERTIFICATES FOR PROLONGED OR REPEATED FAILURE TO CORRECT IDENTIFIED PROBLEMS IN ACCORDANCE WITH APPLICABLE STATE LAW OR REGULATION.

S 494. AMENDMENTS TO AND APPEALS OF SUBSTANTIATED REPORTS OF ABUSE OR NEGLECT. 1. (A) AT ANY TIME SUBSEQUENT TO THE COMPLETION OF AN INVESTIGATION OF AN ALLEGATION OF ABUSE OR NEGLECT, BUT IN NO EVENT LATER THAN THIRTY DAYS AFTER THE SUBJECT OF THE REPORT IS NOTIFIED THAT THE REPORT IS SUBSTANTIATED, THE SUBJECT MAY REQUEST THAT THE VULNERABLE PERSONS' CENTRAL REGISTER AMEND THE FINDINGS OF THE REPORT. IF THE REGISTER DOES NOT AMEND THE FINDINGS OF THE REPORT IN ACCORDANCE WITH SUCH REQUEST, THE SUBJECT SHALL HAVE THE RIGHT TO BE HEARD BEFORE AN ADMINISTRATIVE LAW JUDGE, TO DETERMINE WHETHER THE FINDINGS OF THE REPORT SHOULD BE AMENDED ON THE GROUNDS THAT THEY ARE INACCURATE OR INCONSISTENT WITH THE PROVISIONS IN THIS ARTICLE. THE OFFICE SHALL ESTABLISH AN APPEALS PROCESS BY WHICH THE SUBJECT OF THE REPORT IS NOTIFIED OF THE RIGHT TO APPEAL AND THE PROCEDURE BY WHICH HE OR SHE MAY CHALLENGE THE DETERMINATION THAT A REPORT IS SUBSTANTIATED, WITH A DE NOVO STANDARD OF REVIEW.

(B) IF THE ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE JUSTICE CENTER FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THE FINDING THAT THE SUBJECT COMMITTED THE ACT OR ACTS OF ABUSE OR NEGLECT, THE JUSTICE CENTER SHALL AMEND THE RECORD TO REFLECT THAT SUCH A FINDING WAS MADE, AND SHALL PROMPTLY NOTIFY THE SUBJECT OF THE REPORT AND ANY OTHER PERSONS OR ENTITIES PREVIOUSLY NOTIFIED OF THE EXISTENCE OF THE REPORT OF THE AMENDED FINDING. SUCH REPORT SHALL BE SEALED IN ACCORDANCE WITH THE STANDARDS SET FORTH IN SECTION FOUR HUNDRED NINETY-SIX OF THIS ARTICLE.

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

S 495. REGISTER OF SUBSTANTIATED CATEGORY ONE CASES OF ABUSE OR NEGLECT. 1. THE JUSTICE CENTER SHALL DEVELOP AND MAINTAIN A REGISTER OF SUBJECTS OF REPORTS WHO HAVE BEEN FOUND TO HAVE A SUBSTANTIATED CATEGORY ONE CASE OF ABUSE OR NEGLECT, IN ACCORDANCE WITH PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED NINETY-THREE OF THIS ARTICLE, AND WHO HAVE: (A) NOT REQUESTED AN AMENDMENT OF THE FINDINGS OF THE REPORT IN THE TIME SPECIFIED IN SUBDIVISION ONE OF SECTION FOUR HUNDRED NINETY-FOUR OF THIS ARTICLE; OR (B) BEEN HEARD PURSUANT TO SUCH SUBDIVISION AND ALL THE FINDINGS OF THE REPORT WERE NOT AMENDED TO BE UNSUBSTANTIATED.

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

3. IF A PERSON IS LISTED ON THE REGISTER OF SUBSTANTIATED CATEGORY ONE CASES OF ABUSE OR NEGLECT, A FACILITY OR PROVIDER AGENCY AND ALL OTHER PROVIDERS OF SERVICES TO VULNERABLE PERSONS IN PROGRAMS LICENSED OR CERTIFIED BY ANY STATE OVERSIGHT AGENCY SHALL NOT HIRE SUCH A PERSON TO HAVE REGULAR AND SUBSTANTIAL CONTACT WITH A SERVICE RECIPIENT IN ANY SUCH FACILITY OR PROGRAM. OTHER PROVIDERS OR LICENSING AGENCIES AS DEFINED IN SUBDIVISION THREE OR FOUR OF SECTION FOUR HUNDRED TWENTY-FOUR-A OF THIS CHAPTER SHALL DETERMINE WHETHER TO HIRE OR ALLOW SUCH A PERSON TO HAVE REGULAR OR SUBSTANTIAL CONTACT WITH A SERVICE RECIPIENT IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION FIVE OF SECTION FOUR HUNDRED TWENTY-FOUR-A OF THIS CHAPTER.

4. A CUSTODIAN SHALL BE SUBJECT TO IMMEDIATE TERMINATION IF HE OR SHE IS CONVICTED OF ANY CRIME AS DEFINED IN SUBDIVISION SIX OF SECTION 10.00 OF THE PENAL LAW THAT RELATES DIRECTLY TO THE ABUSE OR NEGLECT OF A VULNERABLE PERSON, OR IS PLACED ON THE REGISTER OF SUBSTANTIATED CATEGORY ONE CASES OF ABUSE OR NEGLECT. (FOR STATE ENTITIES BOUND BY COLLECTIVE BARGAINING, SUCH ACTION ESTABLISHED BY COLLECTIVE BARGAINING SHALL GOVERN.)

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

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

S 496. CONFIDENTIALITY. 1. UNLESS AN INVESTIGATION OF A REPORT CONDUCTED PURSUANT TO THIS ARTICLE HAS BEEN SUBSTANTIATED, ALL INFORMATION, INCLUDING INFORMATION IDENTIFYING THE SUBJECT OF THE REPORT AND OTHER PERSONS NAMED IN THE REPORT, SHALL BE SEALED FORTHWITH BY THE VULNERABLE PERSONS' CENTRAL REGISTER, THE STATE OVERSIGHT AGENCY AND THE FACILITY OR PROVIDER AGENCY. SUCH REPORTS MAY ONLY BE UNSEALED AND MADE

AVAILABLE, CONSISTENT WITH ANY OTHER APPLICABLE STATE OR FEDERAL LAW, TO:

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

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

(C) THE SUBJECT OF THE REPORT;

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

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

(F) THE INDEPENDENT AGENCY DESIGNATED PURSUANT TO SUBDIVISION (B) OF SECTION FIVE HUNDRED FIFTY-EIGHT OF THE EXECUTIVE LAW, PROVIDED THAT SUCH INFORMATION IS RELEVANT TO A MATTER WITHIN THE LEGAL AUTHORITY OF SUCH AGENCY; OR

(G) OTHER PERSONS NAMED IN THE REPORT, AS DEFINED IN SUBDIVISION THIRTEEN OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THIS ARTICLE WHICH INCLUDES, BUT IS NOT LIMITED TO, THE SERVICE RECIPIENT'S PARENT, GUARDIAN OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH PERSON; PROVIDED, HOWEVER, THAT THE NAMES AND OTHER PERSONALLY IDENTIFYING INFORMATION OF CUSTODIANS AND OTHER SERVICE RECIPIENTS SHALL NOT BE INCLUDED UNLESS SUCH CUSTODIANS AND SERVICE RECIPIENTS AUTHORIZE DISCLOSURE. NOTWITHSTANDING THE PROHIBITIONS ON NON-REDISCLOSURE SET FORTH IN THE CLOSING SENTENCE OF THIS SUBDIVISION, THE SERVICE RECIPIENT, AND SUCH SERVICE RECIPIENT'S PARENT, GUARDIAN OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH SERVICE RECIPIENT MAY DISCLOSE INFORMATION AND REPORTS MADE AVAILABLE PURSUANT TO THIS PARAGRAPH TO AN ATTORNEY, WHO SHALL NOT FURTHER DISCLOSE EXCEPT AS IS NECESSARY FOR USE BY SUCH ATTORNEY IN RENDERING ADVICE, ASSISTANCE AND REPRESENTATION.

WHEN A REPORT IS UNSEALED, PERSONS GIVEN ACCESS TO IT SHALL NOT REDISCLOSE SUCH REPORTS EXCEPT AS NECESSARY TO CONDUCT SUCH APPROPRIATE INVESTIGATION OR PROSECUTION AND SHALL REQUEST THAT THE COURT REDACT ANY COPIES OF SUCH REPORTS PRODUCED IN ANY COURT PROCEEDING TO REMOVE THE NAMES OF THOSE PERSONS IRRELEVANT TO THE PROCEEDING SUCH AS THE SOURCE OF THE REPORT, THE NAME OF THE SUBJECT, AND OTHER PERSONS NAMED IN THE REPORTS; OR THAT THE COURT ISSUE AN ORDER PROTECTING THE NAMES OF THE SUBJECTS AND OTHER PERSONS NAMED IN THE REPORTS FROM PUBLIC DISCLOSURE.

2. REPORTS MADE PURSUANT TO THIS ARTICLE AND FOUND TO BE SUBSTANTIATED AS WELL AS ANY OTHER INFORMATION OBTAINED, REPORTS WRITTEN OR PHOTOGRAPHS TAKEN CONCERNING SUCH REPORTS IN THE POSSESSION OF THE JUSTICE CENTER, A STATE OVERSIGHT AGENCY, A DELEGATE INVESTIGATORY ENTITY, FACILITY OR PROVIDER AGENCY COVERED BY THIS ARTICLE SHALL BE CONFIDENTIAL AND SHALL NOT BE DISCLOSED TO ANY OTHER PARTY UNLESS AUTHORIZED PURSUANT TO THIS SECTION OR ANY OTHER APPLICABLE STATE OR FEDERAL LAW. IN THE EVENT THAT OTHER APPLICABLE STATE OR FEDERAL LAW PROVISIONS ARE MORE RESTRICTIVE THAN THE PROVISIONS OF THIS SECTION, THE PROVISIONS OF SUCH OTHER STATE OR FEDERAL LAW SHALL APPLY. IN ACCORDANCE WITH THIS SECTION, SUCH INFORMATION SHALL BE MADE AVAILABLE ONLY TO:

(A) A PERSON WHO IS THE SUBJECT OF THE REPORT;

(B) OTHER PERSONS NAMED IN THE REPORT, WHICH INCLUDES, BUT IS NOT LIMITED TO, THE SERVICE RECIPIENT'S PARENT, GUARDIAN OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH PERSON. NOTWITHSTANDING THE PROHIBITIONS ON NON-REDISCLOSURE SET FORTH IN SUBDIVISION FOUR OF THIS SECTION, THE SERVICE RECIPIENT, AND SUCH SERVICE RECIPIENT'S PARENT, GUARDIAN OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH SERVICE RECIPIENT MAY DISCLOSE INFORMATION AND REPORTS MADE AVAILABLE PURSUANT TO THIS PARAGRAPH TO AN ATTORNEY, WHO SHALL NOT FURTHER DISCLOSE EXCEPT AS IS NECESSARY FOR USE BY SUCH ATTORNEY IN RENDERING ADVICE, ASSISTANCE AND REPRESENTATION;

(C) THE JUSTICE CENTER;

(D) THE APPLICABLE STATE OVERSIGHT AGENCY, THE DIRECTOR OR OPERATOR OF THE APPLICABLE FACILITY OR PROVIDER AGENCY AND, AS APPROPRIATE, THE LOCAL SOCIAL SERVICES COMMISSIONER, THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES, OR THE SCHOOL DISTRICT PLACING THE SERVICE RECIPIENT, OR AN AGENCY PROVIDING ADULT PROTECTIVE SERVICES TO THE SERVICE RECIPIENT;

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

(F) A COURT, UPON A FINDING THAT THE INFORMATION IN THE RECORD IS RELEVANT TO THE DETERMINATION OF AN ISSUE BEFORE THE COURT;

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

(H) ANY APPROPRIATE STATE LEGISLATIVE COMMITTEE RESPONSIBLE FOR LEGISLATION AFFECTING VULNERABLE PERSONS, PROVIDED, HOWEVER, THAT NO INFORMATION IDENTIFYING OR TENDING TO IDENTIFY THE SUBJECTS OF THE REPORT OR OTHER PERSONS NAMED IN THE REPORT SHALL BE MADE AVAILABLE;

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

(J) A FACILITY OR PROVIDER AGENCY, OTHER PROVIDERS OF SERVICES TO VULNERABLE PERSONS IN PROGRAMS LICENSED OR CERTIFIED BY ANY STATE OVERSIGHT AGENCY, OR ANY OTHER PROVIDER AGENCY AS DEFINED IN SUBDIVISION THREE OF SECTION FOUR HUNDRED TWENTY-FOUR-A OF THIS CHAPTER OR A LICENSING AGENCY AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED TWENTY-FOUR-A OF THIS CHAPTER, IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY-FIVE OF THIS ARTICLE;

(K) A PROBATION SERVICE REGARDING A PERSON ABOUT WHOM IT IS CONDUCTING AN INVESTIGATION PURSUANT TO ARTICLE THREE HUNDRED NINETY OF THE CRIMINAL PROCEDURE LAW, OR A PROBATION SERVICE OR THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION REGARDING A PERSON TO WHOM THE SERVICE OR DEPARTMENT IS PROVIDING SUPERVISION PURSUANT TO ARTICLE SIXTY OF THE PENAL LAW OR ARTICLE EIGHT OF THE CORRECTION LAW, WHERE THE SERVICE OR DEPARTMENT REQUESTS THE INFORMATION UPON A CERTIFICATION THAT SUCH INFORMATION IS NECESSARY TO CONDUCT ITS INVESTIGATION, THAT THERE IS REASONABLE CAUSE TO BELIEVE THAT THE SUBJECT OF AN INVESTIGATION IS THE SUBJECT OF A SUBSTANTIATED REPORT AND THAT THERE IS REASONABLE CAUSE TO BELIEVE THAT SUCH RECORDS ARE NECESSARY TO THE INVESTIGATION BY THE PROBATION SERVICE OR THE DEPARTMENT, PROVIDED, HOWEVER, THAT ONLY SUBSTANTIATED REPORTS SHALL BE FURNISHED PURSUANT TO THIS SUBDIVISION;

(L) A DISTRICT ATTORNEY, AN ASSISTANT DISTRICT ATTORNEY OR INVESTIGATOR EMPLOYED BY THE OFFICE OF A DISTRICT ATTORNEY, A SWORN OFFICER OF THE DIVISION OF STATE POLICE, OF THE REGIONAL STATE PARK POLICE, OF A

CITY POLICE DEPARTMENT, OR OF A COUNTY, TOWN OR VILLAGE POLICE DEPARTMENT OR COUNTY SHERIFF'S OFFICE OR DEPARTMENT UPON WRITTEN VERIFICATION THAT SUCH INFORMATION IS NECESSARY TO CONDUCT A CRIMINAL INVESTIGATION OR CRIMINAL PROSECUTION OF A PERSON, AND THAT THERE IS REASONABLE CAUSE TO BELIEVE THAT SUCH PERSON IS THE SUBJECT OF A REPORT; PROVIDED, HOWEVER, THAT ONLY SUBSTANTIATED REPORTS SHALL BE FURNISHED PURSUANT TO THIS SUBDIVISION;

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

(N) A PROVIDER OR COORDINATOR OF SERVICES TO WHICH A FACILITY OR PROVIDER AGENCY OR SOCIAL SERVICES DISTRICT HAS REFERRED A SERVICE RECIPIENT OR A SERVICE RECIPIENT'S FAMILY OR TO WHOM THE SERVICE RECIPIENT OR THE RECIPIENT'S FAMILY HAVE REFERRED THEMSELVES AT THE REQUEST OF SUCH AGENCY OR SOCIAL SERVICES DISTRICT, WHEN SAID SERVICE RECIPIENT IS REPORTED TO THE VULNERABLE PERSONS' CENTRAL REGISTER AS THE VULNERABLE PERSON AND WHEN THE RECORDS, REPORTS OR OTHER INFORMATION ARE NECESSARY TO ENABLE THE PROVIDER OR COORDINATOR TO ESTABLISH AND IMPLEMENT A PLAN OF SERVICE FOR THE SERVICE RECIPIENT OR THE SERVICE RECIPIENT'S FAMILY, OR TO MONITOR THE PROVISION AND COORDINATION OF SERVICES AND THE CIRCUMSTANCES OF THE SERVICE RECIPIENT AND THE SERVICE RECIPIENT'S FAMILY, OR TO DIRECTLY PROVIDE SERVICES IN ACCORDANCE WITH REQUIREMENTS ESTABLISHED BY THE APPLICABLE STATE OVERSIGHT AGENCY TO THE EXTENT THAT THE SHARING OF SUCH INFORMATION IS NOT OTHERWISE PROHIBITED BY FEDERAL LAW; PROVIDED, HOWEVER, A PROVIDER OR COORDINATOR OF SERVICES GIVEN ACCESS TO INFORMATION CONCERNING A SERVICE RECIPIENT PURSUANT TO THIS PARAGRAPH SHALL BE AUTHORIZED TO REDISCLOSE SUCH INFORMATION TO OTHER PERSONS OR AGENCIES WHICH ALSO PROVIDE SERVICES TO THE SERVICE RECIPIENT OR THE SERVICE RECIPIENT'S FAMILY ONLY IF AN AGREEMENT HAS BEEN OR WILL BE REACHED BETWEEN THE PROVIDER OR COORDINATOR OF SERVICE AND SUCH FACILITY OR PROVIDER AGENCY, OPERATING STATE AGENCY OR LOCAL DISTRICT. AN AGREEMENT ENTERED INTO PURSUANT TO THIS PARAGRAPH SHALL INCLUDE THE SPECIFIC AGENCIES AND CATEGORIES OF INDIVIDUALS TO WHOM REDISCLOSURE BY THE PROVIDER OR COORDINATOR OF SERVICES IS AUTHORIZED. PERSONS OR AGENCIES GIVEN ACCESS TO INFORMATION PURSUANT TO THIS PARAGRAPH MAY EXCHANGE SUCH INFORMATION IN ORDER TO FACILITATE THE PROVISION OR COORDINATION OF SERVICES TO THE SERVICE RECIPIENT OR THE SERVICE RECIPIENT'S FAMILY;

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

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

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

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

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

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

(T) OFFICERS AND EMPLOYEES OF THE STATE COMPTROLLER, FOR PURPOSES OF A DULY AUTHORIZED PERFORMANCE AUDIT, PROVIDED THAT SUCH COMPTROLLER SHALL HAVE CERTIFIED TO THE KEEPER OF SUCH RECORDS THAT HE OR SHE HAS INSTITUTED PROCEDURES DEVELOPED IN CONSULTATION WITH THE JUSTICE CENTER TO LIMIT ACCESS TO SERVICE RECIPIENT-IDENTIFIABLE INFORMATION TO PERSONS REQUIRING SUCH INFORMATION FOR PURPOSES OF THE AUDIT AND THAT APPROPRIATE CONTROLS AND PROHIBITIONS ARE IMPOSED ON THE DISSEMINATION OF SERVICE RECIPIENT-IDENTIFIABLE INFORMATION CONTAINED IN THE CONDUCT OF THE AUDIT.

(I) INFORMATION PERTAINING TO THE SUBSTANCE OR CONTENT OF ANY PSYCHOLOGICAL, PSYCHIATRIC, THERAPEUTIC, CLINICAL OR MEDICAL REPORTS, EVALUATIONS OR LIKE MATERIALS OR INFORMATION PERTAINING TO SUCH VULNERABLE PERSON OR SUCH PERSON'S FAMILY SHALL NOT BE MADE AVAILABLE TO SUCH OFFICERS AND EMPLOYEES UNLESS DISCLOSURE OF SUCH INFORMATION IS ABSOLUTELY ESSENTIAL TO THE SPECIFIC AUDIT ACTIVITY AND THE JUSTICE CENTER GIVES PRIOR WRITTEN APPROVAL.

(II) ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF SERVICE RECIPIENT-IDENTIFIABLE INFORMATION SHALL SUBJECT SUCH COMPTROLLER OR OFFICER TO DENIAL OF ANY FURTHER ACCESS TO RECORDS UNTIL SUCH TIME AS THE AUDIT AGENCY HAS REVIEWED ITS PROCEDURES CONCERNING CONTROLS AND PROHIBITIONS IMPOSED ON THE DISSEMINATION OF SUCH INFORMATION AND HAS TAKEN ALL REASONABLE AND APPROPRIATE STEPS TO ELIMINATE SUCH LAPSES IN MAINTAINING CONFIDENTIALITY TO THE SATISFACTION OF THE JUSTICE CENTER. SUCH JUSTICE CENTER SHALL ESTABLISH THE GROUNDS FOR DENIAL OF ACCESS TO RECORDS CONTAINED UNDER THIS SECTION AND SHALL RECOMMEND AS NECESSARY A PLAN OF REMEDIATION TO THE AUDIT AGENCY. EXCEPT AS PROVIDED IN THIS SECTION, NOTHING IN THIS SUBPARAGRAPH SHALL BE CONSTRUED AS LIMITING THE POWERS OF SUCH COMPTROLLER OR OFFICER TO ACCESS RECORDS WHICH HE OR SHE IS OTHERWISE AUTHORIZED TO AUDIT OR OBTAIN UNDER ANY OTHER APPLICABLE PROVISION OF LAW;

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

(V) A SOCIAL SERVICES OFFICIAL WHO IS INVESTIGATING WHETHER AN ADULT IS IN NEED OF PROTECTIVE SERVICES IN ACCORDANCE WITH THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-THREE OF THIS CHAPTER OR A CHILD IS IN NEED OF CHILD PROTECTIVE SERVICES PURSUANT TO THE PROVISIONS OF TITLE SIX OF

ARTICLE SIX OF THIS CHAPTER, WHEN SUCH OFFICIAL HAS REASONABLE CAUSE TO BELIEVE THAT SUCH REPORTS AND INFORMATION ARE NEEDED TO FURTHER THE PRESENT INVESTIGATION;

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

(X) OFFICERS AND EMPLOYEES OF THE EDUCATION DEPARTMENT AND, WHERE APPLICABLE, THE DEPARTMENT OF HEALTH, FOR THE PURPOSE OF INVESTIGATING CHARGES AND MAINTAINING PROFESSIONAL DISCIPLINE PROCEEDINGS AGAINST THE PROFESSIONAL LICENSE OF THE SUBJECT OF THE REPORT PURSUANT TO TITLE VIII OF THE EDUCATION LAW, AND TO EMPLOYEES OF THE EDUCATION DEPARTMENT FOR THE PURPOSE OF INVESTIGATING CHARGES AND MAINTAINING GOOD MORAL CHARACTER PROCEEDINGS AGAINST THE TEACHING, SCHOOL ADMINISTRATOR OR SCHOOL LEADER CERTIFICATE OR LICENSE OF THE SUBJECT OF THE REPORT; AND

(Y) THE INDEPENDENT AGENCY DESIGNATED PURSUANT TO SUBDIVISION (B) OF SECTION FIVE HUNDRED FIFTY-EIGHT OF THE EXECUTIVE LAW, PROVIDED THAT SUCH INFORMATION IS RELEVANT TO A MATTER WITHIN THE LEGAL AUTHORITY OF SUCH AGENCY.

3. (A) THE EXECUTIVE DIRECTOR, IN CONSULTATION WITH THE APPLICABLE STATE OVERSIGHT AGENCY MAY DISCLOSE INFORMATION REGARDING THE ABUSE OR NEGLECT OF A VULNERABLE PERSON AS SET FORTH IN THIS SUBDIVISION, AND THE INVESTIGATION THEREOF AND ANY SERVICES RELATED THERETO, TO PERSONS OTHER THAN THOSE AUTHORIZED TO RECEIVE RECORDS UNDER SUBDIVISION TWO OF THIS SECTION IF OTHERWISE PERMITTED BY APPLICABLE FEDERAL LAW AND IF HE OR SHE DETERMINES THAT SUCH DISCLOSURE SHALL NOT BE CONTRARY TO THE BEST INTERESTS OF THE VULNERABLE PERSON AND ANY ONE OF THE FOLLOWING FACTORS ARE PRESENT:

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

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

(III) THERE HAS BEEN A PRIOR KNOWING, VOLUNTARY, PUBLIC DISCLOSURE BY AN INDIVIDUAL CONCERNING A REPORT OF ABUSE OR NEGLECT IN WHICH SUCH INDIVIDUAL IS NAMED AS THE SUBJECT OF THE REPORT; OR

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

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

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

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

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

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

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

(VI) ANY EXTRAORDINARY OR PERTINENT INFORMATION CONCERNING THE CIRCUMSTANCES OF THE ABUSE OR NEGLECT OF THE VULNERABLE PERSON AND THE INVESTIGATION THEREOF, WHERE THE EXECUTIVE DIRECTOR, IN CONSULTATION WITH THE COMMISSIONER OF THE APPLICABLE STATE OVERSIGHT AGENCY DETERMINES SUCH DISCLOSURE IS CONSISTENT WITH THE PUBLIC INTEREST.

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

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

(II) WHEN THERE HAS BEEN A PRIOR DISCLOSURE PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, INFORMATION RELEASED IN A CASE IN WHICH THE INVESTIGATION OF THE REPORT HAS BEEN COMPLETED BUT NOT SUBSTANTIATED, INFORMATION SHALL BE LIMITED TO THE STATEMENT THAT "THE INVESTIGATION HAS BEEN COMPLETED AND THE REPORT HAS BEEN UNSUBSTANTIATED";

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

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

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

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

4. A PERSON GIVEN ACCESS TO THE NAMES OR OTHER INFORMATION IDENTIFYING THE SUBJECT OF THE REPORT OR OTHER PERSONS NAMED IN THE REPORT SHALL NOT DIVULGE OR MAKE PUBLIC SUCH IDENTIFYING INFORMATION UNLESS HE OR SHE IS A DISTRICT ATTORNEY OR OTHER LAW ENFORCEMENT OFFICIAL AND THE PURPOSE IS TO INITIATE COURT ACTION OR THE DISCLOSURE IS NECESSARY IN CONNECTION WITH THE INVESTIGATION OR PROSECUTION OF THE SUBJECT OF THE REPORT FOR A CRIME ALLEGED TO HAVE BEEN COMMITTED BY THE SUBJECT AGAINST ANOTHER PERSON NAMED IN THE REPORT. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PERMIT ANY RELEASE, DISCLOSURE OR IDENTIFICATION OF THE NAMES OR

IDENTIFYING DESCRIPTIONS OF PERSONS WHO HAVE REPORTED SUSPECTED ABUSE OR NEGLECT TO THE VULNERABLE PERSONS' CENTRAL REGISTER OR THE STATE OVERSIGHT AGENCY, FACILITY OR PROVIDER AGENCY OR OTHER ENTITY WHERE SUCH PERSONS ARE EMPLOYED OR WITH WHICH THEY ARE ASSOCIATED WITHOUT SUCH PERSONS' WRITTEN PERMISSION EXCEPT TO PERSONS, OFFICIALS, AND AGENCIES ENUMERATED IN PARAGRAPHS (F), (G), (L), (M) AND (V) OF SUBDIVISION TWO OF THIS SECTION. TO THE EXTENT THAT PERSONS OR AGENCIES ARE GIVEN ACCESS TO INFORMATION PURSUANT TO PARAGRAPHS (C), (D), (E), (K), (L), (M), (N) AND (P) OF SUBDIVISION TWO OF THIS SECTION, SUCH PERSONS OR AGENCIES MAY GIVE AND RECEIVE SUCH INFORMATION TO EACH OTHER IN ORDER TO FACILITATE AN INVESTIGATION CONDUCTED, OR THE PROVISION OF SERVICES, BY SUCH PERSONS OR AGENCIES.

5. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS SECTION, MENTAL HYGIENE LEGAL SERVICE SHALL HAVE ACCESS TO ALL INFORMATION, BOOKS, RECORDS AND DATA AS PROVIDED FOR IN SUBDIVISION (D) OF SECTION 47.03 OF THE MENTAL HYGIENE LAW.

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

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

PART C

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

6. The coroner, coroner's physician or medical examiner shall promptly provide the chairman of the correction medical review board and the commissioner of correctional services with copies of any autopsy report, toxicological report or any report of any examination or inquiry prepared with respect to any death occurring to an inmate of a correctional facility as defined by subdivision three of section forty of the correction law within his county; AND SHALL PROMPTLY PROVIDE THE EXECUTIVE DIRECTOR OF THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS WITH COPIES OF ANY AUTOPSY REPORT, TOXICOLOGY REPORT OR ANY REPORT OF ANY EXAMINATION OR INQUIRY PREPARED WITH RESPECT TO THE DEATH OF ANY SERVICE RECIPIENT OCCURRING WHILE HE OR SHE WAS A RESIDENT IN ANY FACILITY OPERATED, LICENSED OR CERTIFIED BY ANY AGENCY WITHIN THE DEPARTMENT OF MENTAL HYGIENE, THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE DEPARTMENT OF HEALTH OR THE STATE EDUCATION DEPARTMENT.

If the toxicological report is prepared pursuant to any agreement or contract with any person, partnership, corporation or governmental agency with the coroner or medical examiner, such report shall be promptly provided to the chairman of the correction medical review board [and to], the commissioner of correctional services OR THE EXECUTIVE DIRECTOR OF THE JUSTICE CENTER FOR PEOPLE WITH SPECIAL NEEDS, AS APPROPRIATE, by such person, partnership, corporation or governmental agency.

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

(b) Upon the written request of the commissioner of mental health, or commissioner of [mental retardation and] developmental disabilities, or a director of a departmental facility as defined in section 1.03 of the mental hygiene law, or the [chairman of the commission on quality of care for the mentally disabled] EXECUTIVE DIRECTOR OF THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, the coroner, coroner's physician or medical examiner shall transmit to the commissioner, or such director, [or chairman,] or any member of the [mental hygiene] JUSTICE CENTER medical review board [designated by the chairman of such commission], original autopsy slides, tissue materials and specimens taken from the body of a deceased patient or resident as defined in paragraph (a) of this section. Such original materials may be used and tested by such office of the department of mental hygiene, or such director, and [mental hygiene] JUSTICE CENTER medical review board pursuant to its authority under section [45.17] FIVE HUNDRED FIFTY-SIX of the [mental hygiene] EXECUTIVE law. Such slides, materials and specimens may be retained for a reasonable time, and shall be returned to the office of the coroner or medical examiner in good condition allowing for reasonable use for study and testing purposes.

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

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

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

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

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

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

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

(c) The commissioner and directors of office facilities may request and upon such request the coroner, coroner's physician or medical examiner shall provide to such persons access to original autopsy slides, tissue materials and specimens derived from any autopsy or inquiry with respect to the death of a patient or resident in a mental hygiene facility, as defined in [section 45.01 of this chapter] SUBDIVISION TWO OF

SECTION FIVE HUNDRED FIFTY OF THE EXECUTIVE LAW. Such original materials shall be preserved intact, except for unavoidable changes due to necessary scientific testing and shall be returned to the coroner, coroner's physician or medical examiner.

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

(b) Such directors shall have the responsibility of seeing that there is humane treatment of individuals with developmental disabilities receiving services in settings operated, licensed, certified, funded or approved by this office AND SHALL INVESTIGATE, OR CAUSE TO BE INVESTIGATED, EVERY REPORTABLE INCIDENT IN ACCORDANCE WITH ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW. ALSO IN ACCORDANCE WITH ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW, THE DIRECTOR SHALL REQUIRE ALLEGATIONS OF REPORTABLE INCIDENTS TO BE REPORTED TO THE VULNERABLE PERSONS' CENTRAL REGISTER, WHICH SHALL SCREEN AND IMMEDIATELY FORWARD REPORTS THAT APPEAR TO ALLEGE CRIMES TO THE APPROPRIATE LAW ENFORCEMENT AGENCY. [A director of a state operations office] THE VULNERABLE PERSONS' CENTRAL REGISTER shall notify immediately, and in any event within three working days, the board of visitors of the facility and the mental hygiene legal service located in the same judicial department as the state operations office of every complaint of patient abuse or mistreatment and shall inform the board and the mental hygiene legal service of the results of his or her investigation. [If it appears that a crime may have been committed, such state operations director shall give notice thereof to the district attorney or other appropriate law enforcement official as soon as possible, and in any event within three working days unless it appears that the crime includes an employee, intern, volunteer, consultant, contractor, or visitor and the alleged conduct caused physical injury or the patient was subject to unauthorized sexual contact, or if it appears the crime is endangering the welfare of an incompetent or physically disabled person pursuant to section 260.25 of the penal law, or if the crime was any felony under state or federal law, then the district attorney or other appropriate law enforcement official must be contacted immediately, and in any event no later than twenty-four hours.]

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

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

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

i. to advise and consult with INDIVIDUALS RECEIVING SERVICES, parents, guardians, correspondents and other interested persons with respect to

any complaints, or issues related to [the conditions of clients' residents] INDIVIDUALS RECEIVING SERVICES;

ii. to review and attempt to remedy specific complaints with responsible and appropriate staff;

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

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

v. to advise and consult with the board of visitors served by the ombudsman with respect to any complaints or issues relating to [conditions of client's residence] INDIVIDUALS RECEIVING SERVICES, treatment and care and to regularly attend the meetings of such board; and

vi. to meet with the commissioner, or a representative of the commissioner, on a quarterly basis regarding systemic issues in the ombudsman's jurisdiction.

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

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

(B) MAKING REPORTS OF ALLEGATIONS OF REPORTABLE INCIDENTS IN ACCORDANCE WITH ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW TO THE VULNERABLE PERSONS' CENTRAL REGISTER, WHICH SHALL SCREEN AND IMMEDIATELY FORWARD REPORTS THAT APPEAR TO ALLEGE CRIMES TO THE APPROPRIATE LAW ENFORCEMENT AGENCY.

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

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

(a) The commissioner, IN CONSULTATION WITH THE EXECUTIVE DIRECTOR OF THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, shall promulgate regulations establishing standards for the protection of [children in residential] SERVICE RECIPIENTS IN THE care OF FACILITIES AND PROVIDER AGENCIES OPERATED, LICENSED OR CERTIFIED BY THE OFFICE from [abuse and maltreatment] REPORTABLE INCIDENTS PURSUANT TO ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW, including procedures for:

(1) [reviewing and evaluating the backgrounds of and information supplied by any person applying to be an employee, a volunteer or consultant,] consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law[. Such review and evaluation shall include but not be limited to the following requirements: that the applicant set forth his or her employment history, provide personal and employment references and relevant experiential and educational information and, sign a sworn statement whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this state or any other jurisdiction], ASSISTING THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS WITH ITS REVIEW AND EVALUATION OF CRIMINAL BACKGROUND CHECKS OF PROSPECTIVE EMPLOYEES, AS SET FORTH IN SUBDIVISION FIVE OF SECTION FIVE HUNDRED FIFTY-THREE OF THE EXECUTIVE LAW;

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

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

(4) demonstrating that appropriate action is taken to assure the safety of [the child who is reported to the state central register] A SERVICE RECIPIENT as well as other [children] PERSONS in care, immediately upon notification that a [report of child abuse or maltreatment] REPORTABLE INCIDENT has been made [with respect to a child in a residential facility] IN ACCORDANCE WITH ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW;

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

(5) removing a [child] SERVICE RECIPIENT when it is determined that there is a risk to such [child] PERSON if he or she continues to remain in a [residential] facility; and

(6) taking appropriate preventive and remedial action, including legal action, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law. [Such] THE COMMISSIONER SHALL ADOPT standards [shall also establish as a priority] AS ESTABLISHED BY THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, that:

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

(ii) [children] SERVICE RECIPIENTS receive instruction consistent with their age, needs and circumstances as well as the needs and circumstances within the facility or program, in techniques and procedures which will enable [such children] THEM to ADVOCATE AND protect themselves from [abuse and maltreatment] REPORTABLE INCIDENTS.

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

(b) The commissioner shall provide necessary assistance to the [state commission on quality of care and advocacy for persons with disabilities] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS in the conduct of investigations pursuant to [section 45.07 of this chapter] ARTICLE ELEVEN OF THE EXECUTIVE LAW, shall consider its recommendations for appropriate preventive and remedial action including legal actions, and shall provide or direct a residential facility licensed or operated by the office for people with developmental disabilities to provide written reports thereon to the [commission] JUSTICE CENTER as to the implementation of plans of prevention and remediation approved by such office.

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

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

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

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

S 31.30 [Child abuse and maltreatment in residential care] ABUSE, NEGLECT, AND SIGNIFICANT INCIDENTS INVOLVING VULNERABLE PERSONS.

(a) The commissioner IN CONSULTATION WITH THE EXECUTIVE DIRECTOR OF THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, shall promulgate regulations establishing standards for the protection of [children in residential] SERVICE RECIPIENTS IN THE care [and maltreatment] OF FACILITIES AND PROVIDER AGENCIES OPERATED, LICENSED OR CERTIFIED BY THE OFFICE FROM REPORTABLE INCIDENTS PURSUANT TO ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW, including procedures for:

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

ry, provide personal and employment references and relevant experiential and educational information and, sign a sworn statement whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this state or any other jurisdiction], ASSISTING THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS WITH ITS REVIEW AND EVALUATION OF CRIMINAL BACKGROUND CHECKS OF PROSPECTIVE EMPLOYEES, AS SET FORTH IN SUBDIVISION FIVE OF SECTION FIVE HUNDRED FIFTY-THREE OF THE EXECUTIVE LAW;

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

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

4. demonstrating that appropriate action is taken to assure the safety of the [child who is reported to the state central register] SERVICE RECIPIENT as well as other [children] PERSONS in care, immediately upon notification that a [report of child abuse or maltreatment] REPORTABLE INCIDENT has been made [with respect to a child's custodian in a residential facility] IN ACCORDANCE WITH ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW;

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

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

6. taking appropriate preventive and remedial actions, including legal action, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law. [Such] THE COMMISSIONER SHALL ADOPT standards [shall also establish] AS ESTABLISHED BY THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, that:

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

(ii) [children] SERVICE RECIPIENTS receive instruction consistent with their age, needs and circumstances as well as the needs and circumstances within the facility or program, in techniques and procedures that will enable [such children] THEM to ADVOCATE AND protect themselves from [abuse and maltreatment] REPORTABLE INCIDENTS.

The commissioner, IN CONSULTATION WITH THE EXECUTIVE DIRECTOR OF THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, shall take all reasonable and necessary actions to assure that employees, volunteers or consultants in [residential care] facilities OPERATED OR

OVERSEEN BY THE OFFICE are kept apprised on a current basis of all policies and procedures [of the office] relating to the protection of [children from abuse and maltreatment,] VULNERABLE PERSONS and shall monitor and supervise the provision of training to such administrators, employees, volunteers, children and consultants. Standards developed pursuant to this subdivision shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes.

(b) The commissioner shall provide necessary assistance to the [state commission on quality of care and advocacy for persons with disabilities] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS in the conduct of investigations pursuant to [section 45.07 of this chapter] ARTICLE ELEVEN OF THE EXECUTIVE LAW, shall consider its recommendations for appropriate preventive and remedial action including legal actions, and shall provide or direct a residential facility licensed or operated by the office of mental health to provide written reports thereon to such [commission] JUSTICE CENTER as to the implementation of plans of prevention and remediation.

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

1. within ten days of receipt of [an indicated] A SUBSTANTIATED report of [child abuse or maltreatment] A REPORTABLE INCIDENT, development and implementation of a plan of prevention and remediation to be taken [with respect to a custodian or residential facility in order] to assure the continued health, SAFETY, and [safety] WELFARE of [children] SERVICE RECIPIENTS and to provide for the prevention of future acts of [abuse or maltreatment] REPORTABLE INCIDENTS; and

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

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

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

limitation on any right, or at the individual's request. The notice shall include the address and telephone numbers of the office of the facility director or such person's designee responsible for receiving questions or complaints, the board of visitors if applicable, the mental hygiene legal service, THE VULNERABLE PERSONS' CENTRAL REGISTER and the [commission on quality of care and advocacy for persons with disabilities] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS.

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

S 33.06 Reports of abuse [or mistreatment], NEGLECT, AND SIGNIFICANT INCIDENTS.

The EXECUTIVE DIRECTOR OF THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, IN CONSULTATION WITH THE commissioner of the office of mental health, THE COMMISSIONER OF THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES and the commissioner of the office for people with developmental disabilities shall establish procedures or mechanisms PURSUANT TO ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW to receive allegations or complaints of [abuse or mistreatment of] REPORTABLE INCIDENTS INVOLVING individuals served by agencies and providers licensed or operated by the offices, including receipt of anonymous allegations or complaints. [Such mechanisms shall include the operation of a toll-free number. Allegations or complaints received shall be evaluated and, if necessary, referred for appropriate corrective action, consistent with laws, regulations and procedures established for the investigation, resolution and response to incident reports to ensure the care and safety of all patients. The inability of the person reporting the abuse to identify the alleged perpetrator shall, in no circumstance, constitute the sole cause to reject such allegation for investigation or fail to refer such allegation for corrective action. When an allegation of abuse or maltreatment of a child is made, the allegation shall be referred to the statewide central register of child abuse and maltreatment, established pursuant to section four hundred twenty-two of the social services law.]

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

(a) Records and documents pertaining to allegations and investigations into [patient abuse or mistreatment] REPORTABLE INCIDENTS at a facility, as defined in subdivision six of section 1.03 of this chapter, including but not limited to all complaints and reports made pursuant to [subdivision (c) of section 45.07 and section 45.17 of this title] ARTICLE ELEVEN OF THE SOCIAL SERVICES LAW, shall be released to a qualified person, as defined in paragraph six of subdivision (a) of section 33.16 of this article, upon a written request by such qualified person. Such records and documents shall be made available by the appropriate office within twenty-one days of the conclusion of its investigation, provided that the names and other personally identifying information of other patients and employees shall not be included unless such patients and employees authorize disclosure.

S 14. This act shall take effect June 30, 2013.

PART D

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

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

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

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

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

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

1. An "abused child" means[:

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

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

2. A "maltreated child" includes[:

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

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

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

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

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

by an authorized agency, the office of children and family services, [or an office of the department of mental hygiene] or in a family day-care home, a day-care center, a group family day care home, a school-age child care program or a day-services program who is allegedly responsible for causing injury, abuse or maltreatment to a child who is reported to the statewide central register of child abuse or maltreatment or who allegedly allows such injury, abuse or maltreatment to be inflicted on such child; [or

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

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

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

(a) The following persons and officials are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child: any physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; hospital personnel engaged in the admission, examination, care or treatment of persons; a Christian Science practitioner; school official, which includes but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate; social services worker; director of a children's overnight camp, summer day camp or traveling summer day camp, as such camps are defined in section thirteen hundred ninety-two of the public health law; day care center worker; school-age child care worker; provider of family or group family day care; [employee or volunteer in a residential care facility defined in subdivision four of section four hundred twelve-a of this title] or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; all persons credentialed by the office of alcoholism and substance abuse services; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

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

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

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

S 415. Reporting procedure. Reports of suspected child abuse or maltreatment made pursuant to this title shall be made immediately by telephone or by telephone facsimile machine on a form supplied by the commissioner of the office of children and family services. Oral reports shall be followed by a report in writing within forty-eight hours after such oral report. Oral reports shall be made to the statewide central register of child abuse and maltreatment unless the appropriate local plan for the provision of child protective services provides that oral reports should be made to the local child protective service. In those localities in which oral reports are made initially to the local child protective service, the child protective service shall immediately make an oral or electronic report to the statewide central register. Written reports shall be made to the appropriate local child protective service except that written reports involving children [in residential care, as defined in subdivision four of section four hundred twelve-a of this title, or] being cared for in a home operated or supervised by an authorized agency[,] OR THE office of children and family services[, or an office of the department of mental hygiene,] shall be made to the statewide central register of child abuse and maltreatment which shall transmit the reports to the agency responsible for investigating the report, in accordance with [paragraph (a) or (c) of subdivision eleven of section four hundred twenty-two or] section four hundred twenty-four-b of this title[, as applicable]. Written reports shall be made in a manner prescribed and on forms supplied by the commissioner of the office of children and family services and shall include the following information: the names and addresses of the child and his or her parents or other person responsible for his or her care, if known, and, as the case may be, the name and address of the [residential care facility or] program in which the child [resides or] is receiving care; the child's age, sex and race; the nature and extent of the child's injuries, abuse or maltreatment, including any evidence of prior injuries, abuse or maltreatment to the child or, as the case may be, his or her siblings; the name of the person or persons alleged to be responsible for causing the injury, abuse or maltreatment, if known; family composition, where appropriate; the source of the report; the person making the report and where he or she can be reached; the actions taken by the reporting source, including the taking of photographs and x-rays, removal or keeping of the child or notifying the medical examiner or coroner; and any other information which the commissioner of the office of children and family services may, by regulation, require, or the person making the report believes might be helpful, in the furtherance of the purposes of this title. Notwithstanding the privileges set forth in article forty-five of the civil practice law and rules, and any other provision of law to the contrary, mandated reporters who make a report which initiates an investigation of an allegation of child abuse or

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

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

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

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

Responsibility of the [department] OFFICE. The [department] OFFICE shall: 1. in conjunction with local departments, both jointly and individually, within the appropriation available, conduct a continuing publicity and education program for local department staff, persons and officials required to report including district attorneys, assistant district attorneys, police officers, peace officers, investigators employed in the office of a district attorney, and any other appropriate persons to encourage the fullest degree of reporting of suspected child abuse or maltreatment. Such program shall be developed and implemented in coordination with those established pursuant to section 31.06 of the mental hygiene law, section twenty-eight hundred five-n of the public health law, section thirty-two hundred nine-a of the education law [and], sections two hundred fourteen-a and eight hundred forty of the executive law AND ARTICLE ELEVEN OF THIS CHAPTER. The program shall include but not be limited to responsibilities, obligations and powers under this title and chapter as well as the diagnosis of child abuse and maltreatment, the procedures of the child protective service, the family court and other duly authorized agencies and the prevention, treatment and remediation of abuse and maltreatment of children in residential care.

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

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

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

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

S 7. The opening paragraph, subparagraph (iii) of paragraph (a) and paragraph (b) of subdivision 5 and subdivision 6 of section 422 of the social services law, the opening paragraph, subparagraph (iii) of paragraph (a) and paragraph (b) of subdivision 5 as amended by chapter 555

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

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

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

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

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

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

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

9. Written notice of any expungement or amendment of any record, made pursuant to the provisions of this title, shall be served forthwith upon each subject of such record, other persons named in the report, the commissioner, and, as appropriate, the applicable local child protective service, the [commission on quality of care for the mentally disabled, the division for youth] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, department of education, office of mental health, office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, the local social services commissioner or school district placing the child, any [law guardian] ATTORNEY FOR THE CHILD appointed to represent the child whose appointment has been continued by a family court judge during the term of a child's placement, and the director or operator of a residential care facility or program. The local child protective service or the state agency which investigated the report, upon receipt of such notice, shall take the appropriate similar action in regard to its child abuse and maltreatment register and records and inform, for the same purpose, any other agency which received such record.

14. The [department] OFFICE shall refer suspected cases of falsely reporting child abuse and maltreatment in violation of subdivision [three] FOUR of section [240.55] 240.50 of the penal law to the appropriate law enforcement agency or district attorney.

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

1. A fatality review team may be established at a local or regional level, with the approval of the office of children and family services, for the purpose of investigating the death of any child whose care and custody or custody and guardianship has been transferred to an authorized agency, OTHER THAN A VULNERABLE CHILD AS DEFINED IN ARTICLE ELEVEN OF THIS CHAPTER, any child for whom child protective services has an open case, any child for whom the local department of social services has an open preventive services case, and in the case of a report made to the STATEWIDE central register OF CHILD ABUSE AND MALTREATMENT involving the death of a child. A fatality review team may also investigate any unexplained or unexpected death of any child under the age of eighteen.

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

8. refer suspected cases of falsely reporting child abuse and maltreatment in violation of subdivision [three] FOUR of section [240.55] 240.50 of the penal law to the appropriate law enforcement agency or district attorney;

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

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

3. For purposes of this [chapter] SECTION, the term "provider" or "provider agency" shall mean an authorized agency, the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, juvenile detention facilities subject to the certification of such [division] OFFICE, programs established pursuant to article nineteen-H of the executive law, non-residential or residential programs or facilities licensed or operated by the office of mental health or the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities except family care homes, licensed child day care centers, including head start programs which are funded pursuant to title V of the federal economic opportunity act of nineteen hundred sixty-four, as amended, early intervention service established pursuant to section twenty-five hundred forty of the public health law, preschool services established pursuant to section forty-four hundred ten of the education law, school-age child care programs, special act school districts as enumerated in chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, as amended, programs and facilities licensed by the office of alcoholism and substance abuse services [and], residential schools which are operated, supervised or approved by the education department, AND ANY OTHER FACILITY OR PROVIDER AGENCY, AS DEFINED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED EIGHTY-EIGHT OF THIS CHAPTER, IN REGARD TO THE EMPLOYMENT OF STAFF, OR USE OF PROVIDERS OF GOODS AND SERVICES AND STAFF OF SUCH PROVIDERS, CONSULTANTS, INTERNS AND VOLUNTEERS.

4. For purposes of this [chapter] SECTION, the term "licensing agency" shall mean an authorized agency which has received an application to become an adoptive parent or an authorized agency which has received an application for a certificate or license to receive, board or keep any child pursuant to the provisions of section three hundred seventy-six or three hundred seventy-seven of this article or an authorized agency which has received an application from a relative within the second degree or third degree of CONSANGUINITY OF the parent of a child or a relative within the second degree or third degree of CONSANGUINITY OF the step-parent of a child or children, or the child's legal guardian for approval to receive, board or keep such child or a state or local governmental agency which receives an application to provide child day care services in a child day care center, school-age child care program, family day care home or group family day care home pursuant to the provisions of section three hundred ninety of this article, or the department of health AND MENTAL HYGIENE of the city of New York, when such department receives an application for a certificate of approval to provide [family] CHILD day care SERVICES IN A CHILD DAY CARE CENTER pursuant to the provisions of the health code of the city of New York, or the office of mental health or the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities when such office receives an application for an operating certificate pursuant to the provisions of the mental hygiene law to operate a family care home which will serve children, or a state or local governmental official who receives an application for a permit to operate a camp which is subject to the provisions of article thirteen-A[,] OR thirteen-B [or thirteen-C] of the public health law or the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES which has received an application for a certificate to receive, board or keep any child at a foster family home pursuant to articles nineteen-G and nineteen-H of the executive law OR ANY OTHER FACILITY OR PROVIDER AGENCY, AS DEFINED IN SUBDIVISION FOUR OF SECTION

FOUR HUNDRED EIGHTY-EIGHT OF THIS CHAPTER, IN REGARD TO ANY LICENSING OR CERTIFICATION FUNCTION CARRIED OUT BY SUCH FACILITY OR AGENCY.

5. (a) The [department] OFFICE OF CHILDREN AND FAMILY SERVICES, after consultation with the [division for youth, the department of mental hygiene, the commission on quality of care for the mentally disabled] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, THE OFFICE OF MENTAL HEALTH, THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, THE DEPARTMENT OF HEALTH, and the state education department shall develop [quidelines] GUIDELINES to be utilized by a provider agency, as defined by subdivision three of this section, and a licensing agency, as defined by subdivision four of this section, in evaluating persons about whom inquiries are made to the [department] OFFICE pursuant to this section who are the subjects of indicated reports of child abuse and maltreatment, as defined by subdivision four of section four hundred twelve of this chapter.

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

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

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

S 8-a. Paragraph (b) and subparagraph (iv) of paragraph (e) of subdivision 1 and paragraph (a) of subdivision 2 of section 424-a of the social services law, paragraph (b) of subdivision 1 as amended by chapter 677 of the laws of 1985, subparagraph (i) of paragraph (b) of subdivision 1 as amended by chapter 260 of the laws of 1991, subparagraph (iv) of paragraph (e) of subdivision 1 as amended by chapter 323 of the laws of 2008, and paragraph (a) of subdivision 2 as amended by chapter 441 of the laws of 1993, are amended to read as follows:

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

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

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

(iv) The [department] OFFICE shall promulgate regulations which effectuate the provisions of this paragraph.

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

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

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

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

of children and family services [or the appropriate office of the department of mental hygiene,] where the child is in the care of such agency; and where the child is in a home operated or supervised by an authorized agency, to the social services district wherein such home is located. The [agency] OFFICE or social services district receiving such referral shall undertake an appropriate investigation of the report, in accordance with the terms and conditions set forth in [subdivisions one through eight of section four hundred twenty-four-c of] this title. Any person who is alleged to have abused or maltreated a child in a report accepted and referred pursuant to this section shall be accorded the procedural rights set forth in section four hundred twenty-two and in subdivision six of section four hundred twenty-four of this title. Nothing in this section shall impose any duty or responsibility on any child protective service pursuant to section four hundred twenty-two, four hundred twenty-four or any other provision of this article.

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

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

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

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

S 426. Annual reports. The commissioner shall prepare for inclusion in the annual report required by subdivision (d) of section seventeen of this chapter to be filed with the governor and the legislature prior to December fifteenth of each year, a report on the operations of the state central register of child abuse and maltreatment and the various local child protective services. The report shall include a full statistical analysis of the reports made to the central register together with a report on the implementation of this title, his OR HER evaluation of services offered under this chapter and his OR HER recommendations for additional legislation to fulfill the purposes of this title. Such report shall indicate the number of child abuse and maltreatment reports and cases received by the statewide central register of child abuse and maltreatment by each district in the preceding year, the number of such cases determined to have been indicated and the number of such cases determined to be unfounded by each district in the preceding year, the

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

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

S 426. Annual reports. The commissioner shall prepare for inclusion in the annual report required by subdivision (d) of section seventeen of this chapter to be filed with the governor and the legislature prior to December fifteenth of each year, a report on the operations of the state central register of child abuse and maltreatment and the various local child protective services. The report shall include a full statistical analysis of the reports made to the central register together with a report on the implementation of this title, his OR HER evaluation of services offered under this chapter and his OR HER recommendations for additional legislation to fulfill the purposes of this title. Such report shall indicate the number of child abuse and maltreatment reports and cases received by the statewide central register of child abuse and maltreatment by each district in the preceding year, the number of such cases determined to have been indicated and the number of such cases determined to be unfounded by each district in the preceding year, the number of such cases which have not been indicated or unfounded within the time period required by subdivision seven of section four hundred twenty-four of this [chapter] ARTICLE by each district in the preceding year and the number of workers assigned to the child protective service in each district in the preceding year. Such report shall include, among other information, available demographic information and available information concerning the racial and ethnic characteristics of the family members and persons served by the differential response program pursuant to section four hundred twenty-seven-a of the social services law, as well as available information concerning the racial and ethnic characteristics of the family members and persons serviced under the traditional child protective services program, in each local social services district in the state. [The report shall also contain data on the protection of children in residential care from abuse and maltreatment, including reports received, results of investigations by types of facilities and programs, types of corrective action taken, as well as efforts undertaken by the department, the division for youth and the state education department to provide training pursuant to standards established by section four hundred sixty-two of this chapter, section five hundred one of the executive law and sections forty-four hundred three, forty-three hundred fourteen, forty-three hundred fifty-eight and forty-two hundred twelve of the education law.]

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

S 460. Declaration of policy and statement of purpose. Residential care programs for adults and children of the highest quality, efficiently produced and properly utilized at a reasonable cost, are a matter of vital concern to the people of this state. In order to more effectively protect and assure the life, health, safety and comfort of adults and children who must be cared for away from their own homes, the department of social services acting directly or through social services districts, and with the cooperation of other state agencies, shall have the comprehensive responsibility for the development and administration of programs, standards and methods of operation, and all other matters of state policy, with respect to residential care programs for children and adults and all facilities and agencies, whether public or private, which are subject to the provisions of this article. FOR THE PURPOSES OF THIS ARTICLE, WITH RESPECT TO RESIDENTIAL CARE PROGRAMS FOR CHILDREN, THE TERM "DEPARTMENT" SHALL MEAN THE OFFICE OF CHILDREN AND FAMILY SERVICES AND WITH RESPECT TO RESIDENTIAL CARE PROGRAMS FOR ADULTS, THE TERM SHALL MEAN THE OFFICE OF CHILDREN AND FAMILY SERVICES IN RELATION TO FAMILY TYPE HOMES FOR ADULTS AND RESIDENTIAL PROGRAMS FOR VICTIMS OF DOMESTIC VIOLENCE, THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE IN RELATION TO SHELTERS FOR ADULTS AND SHELTERS FOR FAMILIES; AND THE DEPARTMENT OF HEALTH IN RELATION TO ALL OTHER RESIDENTIAL CARE PROGRAMS FOR ADULTS.

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

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

(b) In the event an investigation of a report of alleged [child] abuse or [maltreatment] NEGLECT determines that [some credible] A PREPONDERANCE OF evidence of abuse or [maltreatment] NEGLECT exists and such abuse or [maltreatment] NEGLECT may be attributed in whole or in part to noncompliance by the facility or program[, including a program described in paragraph (j) of subdivision four of section four hundred twelve-a of this chapter,] with provisions of this chapter or regulations of the [office of children and family services] DEPARTMENT applicable to the operation of such residential facility or program, the director or operator of such facility or program shall, in consultation with officials of the department responsible for the approval of operating certificates and for monitoring the provision of protective services to [children] SERVICE RECIPIENTS, develop a plan of prevention and remediation which shall be submitted to and approved by the [office of children and family

services] DEPARTMENT in accordance with time limits established by regulations of the [office of children and family services] DEPARTMENT. Implementation of such plan shall be jointly monitored by officials of the [office of children and family services] DEPARTMENT responsible for the approval of operating certificates and for monitoring the provision of protective services to [children] SERVICE RECIPIENTS. In reviewing the continuing qualification of a residential [child care] facility or program for an operating certificate, the [office of children and family services] DEPARTMENT shall evaluate such facility's or program's compliance with plans of prevention and remediation developed and implemented pursuant to this section.

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

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

S 461-m. Death and felony crime reporting. The operator of an adult home or residence for adults shall have an affirmative duty to report any death, or attempted suicide of a resident to the department within twenty-four hours of its occurrence, and shall also have an affirmative duty to report to an appropriate law enforcement authority if it is believed that a felony crime may have been committed against a resident of such facility as soon as possible, or in any event within forty-eight hours. In addition, the operator shall send any reports involving a resident who had at any time received services from a mental hygiene service provider to the [state commission on quality of care for the mentally disabled] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS.

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

S 461-o. Complaint investigation procedures. The department shall establish procedures governing the receipt and investigation of complaints regarding the care afforded to residents of adult care facilities CONSISTENT WITH ARTICLE ELEVEN OF THIS CHAPTER, AS APPLICABLE. Such procedures shall assure the confidentiality of the complainant. Such procedures shall include but not be limited to the procedures for reporting complaints, either in writing or orally to the department, and the time frames governing the investigation of any such complaints submitted to the department. Provided however, if any complaint alleges the abuse or neglect of a resident or involves an incident that exposes a resident to cruel or unsafe care or otherwise represents a serious resident care issue, the department shall ensure that an investigation of any such complaint is initiated immediately and in no event commenced less than seventy-two hours from the time such complaint is received by the department. Upon the conclusion of the investigation by the department the operator and the complainant shall be notified in writing of the results of such investigation OR, AS APPLICABLE, PURSUANT TO ARTICLE ELEVEN OF THIS CHAPTER.

S 16. Section 462 of the social services law, as added by chapter 669 of the laws of 1977, subdivision 1 as amended by chapter 677 of the laws of 1985, paragraphs (b) and (c) of subdivision 1 as amended by chapter 32 of the laws of 1992, paragraph (f) of subdivision 1 as added by chapter 472 of the laws of 2004, paragraph (a) of subdivision 2 as amended by chapter 800 of the laws of 1985 and paragraph (b) of subdivision 2 as amended by chapter 558 of the laws of 1999, is amended to read as follows:

S 462. Responsibility for standards. 1. (a) The [department of social services] OFFICE OF CHILDREN AND FAMILY SERVICES shall promulgate regulations concerning standards of care and treatment and fiscal, administrative, nutritional, architectural and safety standards, consistent with the provisions of section three hundred ninety-eight-a of this chapter, which shall apply to all facilities exercising care or custody of children or providing care or shelter to unmarried mothers.

(b) With respect to facilities exercising care or custody of children, no license or operating certificate shall be provided or renewed unless it can be demonstrated that such facilities comply with regulations for the prevention and remediation of [abuse and maltreatment of] REPORTABLE INCIDENTS INVOLVING children in such facilities, including procedures for:

(i) consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law, [the review and evaluation of the backgrounds of and the information supplied by any person applying to be an employee, a volunteer or consultant, which shall include but not be limited to the following requirements: that the applicant set forth his or her employment history, provide personal and employment references, relevant experiential and educational information and sign a sworn statement indicating whether the applicant to the best of his or her knowledge, has ever been convicted of a crime in this state or any other jurisdiction] ASSISTING THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS WITH ITS REVIEW AND EVALUATION OF CRIMINAL BACKGROUND CHECKS OF PROSPECTIVE EMPLOYEES, AS SET FORTH IN SUBDIVISION FIVE OF SECTION FIVE HUNDRED FIFTY-THREE OF THE EXECUTIVE LAW;

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

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

(iv) demonstrating by a residential facility or program that appropriate action is taken to assure the safety of the child who is reported PURSUANT TO ARTICLE ELEVEN OF THIS CHAPTER to the [state] VULNERABLE PERSONS' central register [of child abuse and maltreatment] as well as other children in care, immediately upon notification that a report of [child abuse or maltreatment] A REPORTABLE INCIDENT has been made with respect to a child in such facility or program;

(v) CONSISTENT WITH APPLICABLE COLLECTIVE BARGAINING AGREEMENTS, ASSURING THAT AN INDIVIDUAL WHO HAS COMMITTED A CATEGORY ONE OFFENSE, AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION FOUR HUNDRED NINETY-THREE OF THIS CHAPTER, THAT IS INCLUDED ON THE VULNERABLE PERSONS' CENTRAL REGISTER IS NOT HIRED OR OTHERWISE USED IN ANY POSITION IN WHICH SUCH INDIVIDUAL WOULD HAVE REGULAR AND SUBSTANTIAL CONTACT WITH A SERVICE RECIPIENT IN ANY PROGRAM OPERATED, LICENSED OR CERTIFIED BY THE OFFICE;

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

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

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

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

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

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

(d) Such regulations shall be developed in consultation with other state departments and agencies responsible for human services programs including, but not limited to, the department of education, the department of health, [the department of mental hygiene, the division for youth and the board of social welfare,] THE OFFICE OF MENTAL HEALTH, THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES AND THE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS and shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes.

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

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

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

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

replaced, reconstructed, rehabilitated, improved, renovated, or otherwise provided for, furnished or equipped.

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

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

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

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

S 462-a. Responsibility for inspection and supervision. 1. The [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES shall inspect and supervise secure and non-secure detention facilities and those [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES residential facilities authorized by article nineteen-G of the executive law and those residential facilities operated as approved runaway programs or transitional independent living support programs pursuant to article nineteen-H of the executive law.

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

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

4. The [department of social services] OFFICE OF CHILDREN AND FAMILY SERVICES shall inspect and supervise all other child care facilities subject to its regulation.

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

S 462-b. Responsibility for enforcement. 1. The [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES shall exercise the enforcement powers enumerated in section four hundred sixty-d of this article which may apply to secure and non-secure detention facilities and to those [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES residential facilities authorized by article nineteen-G of the executive law and

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

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

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

4. The [department of social services] OFFICE OF CHILDREN AND FAMILY SERVICES shall exercise the enforcement powers enumerated in section four hundred sixty-d of this article with respect to all other child caring facilities subject to its regulation either independently or at the request of the department of mental hygiene [or the division for youth].

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

PART E

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

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

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

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

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

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

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

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

(iv) demonstrating by a residential facility or program that appropriate action is taken to assure the safety of the child who is [reported] ALLEGED TO HAVE BEEN SUBJECTED TO A REPORTABLE INCIDENT IN A REPORT to the [state] VULNERABLE PERSONS' central register IN ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-TWO OF THE SOCIAL SERVICES LAW as well as other children in care, immediately upon notification that SUCH a report of [child abuse or maltreatment] AN ALLEGATION OF A REPORTABLE INCIDENT has been made with respect to a child in such residential facility or program;

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

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

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

Such standards shall also establish as a priority requirements that:

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

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

The department shall take all reasonable and necessary actions to assure that employees, volunteers and consultants in residential facilities and programs are kept apprised on a current basis of all department

policies and procedures relating to the protection of children from [abuse and maltreatment] REPORTABLE INCIDENTS, and shall monitor and supervise the provision of training to such employees, volunteers and consultants. Regulations and standards developed pursuant to this subdivision shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes.

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

(c)] Provide for the development and implementation of a plan of prevention and remediation with respect to [an indicated] A SUBSTANTIATED report of [child abuse or maltreatment] A REPORTABLE INCIDENT. Such action shall include: (i) within ten days of receipt of [an indicated] SUCH A report of [child abuse or maltreatment] A REPORTABLE INCIDENT, development and implementation of a plan of prevention and remediation to be taken with respect to a custodian or the residential facility in order to assure the continued health and safety of children and to provide for the prevention of future acts [of abuse or maltreatment] CONSTITUTING REPORTABLE INCIDENTS; and (ii) development and implementation of a plan of prevention and remediation, in the event an investigation of a report of AN alleged [child abuse or maltreatment] REPORTABLE INCIDENT determines that some credible evidence of [abuse or maltreatment] SUCH REPORTABLE INCIDENT exists and such [abuse or maltreatment] REPORTABLE INCIDENT may be attributed in whole or in part to noncompliance by the residential facility or program with provisions of this chapter or regulations of the department applicable to the operation of a residential facility or program. Any plan of prevention and remediation required to be developed [pursuant to paragraph (ii) of this subdivision] by a facility supervised by the department shall be 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 2. Section 4314 of the education law, as added by chapter 677 of the laws of 1985, subdivisions (a), (b) and (c) as amended by chapter 32 of the laws of 1992, is amended to read as follows:

S 4314. Protection of pupils. The department shall:

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

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

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

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

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

(iv) demonstrating by a residential facility or program that appropriate action is taken to assure the safety of the child who is [reported] ALLEGED TO HAVE BEEN SUBJECTED TO A REPORTABLE INCIDENT IN A REPORT to the [state] VULNERABLE PERSONS' central register IN ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-TWO OF THE SOCIAL SERVICES LAW as well as other children in care, immediately upon notification that SUCH a report of [child abuse or maltreatment] AN ALLEGATION OF A REPORTABLE INCIDENT has been made [with respect to a child in such residential facility or program];

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

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

Such standards shall also establish as a priority requirements that: (1) subject to the amounts appropriated therefor, administrators, employees, volunteers and consultants receive training in at least the following: child abuse prevention and identification, safety and security procedures, the principles of child development, the characteristics of children in care and techniques of group and child management including crisis intervention, the laws, regulations and procedures governing the protection of children from [abuse and maltreatment] REPORTABLE INCIDENTS, and other appropriate topics, provided however, that the department may exempt administrators and consultants from such requirements upon demonstration of substantially equivalent knowledge or experience; and

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

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

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

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

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

S 4358. Protection of pupils. The department shall:

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

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

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

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

(iv) demonstrating by a residential facility or program that appropriate action is taken to assure the safety of the child who is [reported] ALLEGED TO HAVE BEEN SUBJECTED TO A REPORTABLE INCIDENT IN A REPORT to the [state] VULNERABLE PERSONS' central register IN ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-TWO OF THE SOCIAL SERVICES LAW as well as other children in care, immediately upon notification that SUCH a report of [child abuse or maltreatment] AN ALLEGATION OF A REPORTABLE INCIDENT has been made [with respect to a child in such facility or program];

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

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

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

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

The department shall take all reasonable and necessary actions to assure that employees, volunteers and consultants in residential facilities and programs are kept apprised on a current basis of all department policies and procedures relating to the protection of children from [abuse and maltreatment] REPORTABLE INCIDENTS and shall monitor and supervise the provision of training to such administrators, employees, volunteers, children and consultants. Regulations and standards developed pursuant to this section shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes;

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

(c)] Provide for the development and implementation of a plan of prevention and remediation with respect to [an indicated] A SUBSTANTIATED report of [child abuse or maltreatment] A REPORTABLE INCIDENT. Such action shall include: (i) within ten days of receipt of [an indicated] SUCH A report [of child abuse or maltreatment] 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 [of abuse or maltreatment] CONSTITUTING REPORTABLE INCIDENTS; and (ii) development and implementation of a plan of prevention and remediation, in the event an investigation of a report of AN alleged [child abuse or maltreatment] REPORTABLE INCIDENT determines that some credible evidence of [abuse or maltreatment] SUCH REPORTABLE INCIDENT exists and such [abuse or maltreatment] REPORTABLE INCIDENT may be attributed in whole or in part to noncompliance by the residential facility or program with provisions of this chapter or regulations of the department applicable to the operation of such residential facility or program. Any plan of prevention and remediation required to be developed pursuant to [paragraph (ii) of] this subdivision by a facility supervised by the department shall be submitted to and approved by the department in accordance with time limits established by regulations of the department. Implementation of the plan shall be monitored by the department. In reviewing the continued qualifications of a residential facility or program for an operating certificate, the department shall evaluate such facility's compliance with plans of prevention and remediation developed and implemented pursuant to this subdivision.

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

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

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

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

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

(d) demonstrating by a residential facility or program that appropriate action is taken to assure the safety of the child who is [reported] ALLEGED TO HAVE BEEN SUBJECTED TO A REPORTABLE INCIDENT IN A REPORT to the [state] VULNERABLE PERSONS' central register IN ACCORDANCE WITH SECTION FOUR HUNDRED NINETY-TWO OF THE SOCIAL SERVICES LAW as well as other children in care, immediately upon notification that SUCH a report of [child abuse or maltreatment] AN ALLEGATION OF A REPORTABLE INCIDENT has been made with respect to a child in such residential facility or program;

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

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

Such standards shall also establish as a priority requirements that:

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

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

The department shall take all reasonable and necessary actions to assure that employees, volunteers and consultants in residential facilities and programs are kept apprised on a current basis of all department policies and procedures relating to the protection of children from [abuse and maltreatment] REPORTABLE INCIDENTS and shall monitor and supervise the provision of training to such administrators, employees, volunteers, children and consultants. Regulations and standards developed pursuant to this subdivision shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes.

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

13.] To provide for the development and implementation of a plan of prevention and remediation with respect to [an indicated] A SUBSTANTI-

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

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

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

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

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

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

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

and other persons in parental relationship concerning the availability of community support services to meet the needs of the family. The guidelines shall be developed by the department after consultation with the office of mental health, the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, the office of alcoholism and substance abuse services, the department of health, the department of social services and the division for youth.

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

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

2. The commissioner, in consultation with the [state commission on quality care and advocacy for persons with disabilities] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, shall promulgate rules and regulations requiring every school bus driver operating a school bus which has or will have one or more students with a disability as passengers to receive training and instruction relating to the understanding of, and attention to, the special needs of such students. Such training and instruction may be included with the training and instruction required pursuant to paragraph a of subdivision one of this section and shall be provided at least once per year or more frequently as determined by the commissioner in consultation with the state comprehensive school bus driver safety training council. For the purposes of this subdivision, the term "student with a disability" shall have the same meaning as such term is defined in subdivision one of section forty-four hundred one of this chapter. Any person employed as a school bus driver on January first, two thousand nine who is subject to the provisions of this subdivision shall comply with the requirements of this subdivision by July first, two thousand nine. Any school bus driver hired after January first, two thousand nine who is subject to the requirements of this subdivision shall complete such training and instruction prior to assuming his or her duties.

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

(4) The commissioner of education, in consultation with the [state commission on quality care and advocacy for persons with disabilities] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS, shall promulgate rules and regulations requiring that every school bus attendant serving a student or students with a disability receive training and instruction relating to the understanding of and attention to the special needs of such students. Such training and instruction may be included with the training and instruction required pursuant to subdivision three of this section and shall be provided at least once per year or more frequently as determined by the commissioner of education in consultation with the state comprehensive school bus driver safety training council. For the purposes of this subdivision, the term "student with a disability" shall have the same meaning as such term is defined in subdivision one of section forty-four hundred one of the

education law. Any person employed as a school bus attendant serving a student or students with a disability on January first, two thousand nine shall comply with the requirements of this subdivision by July first, two thousand nine. Any person hired after January first, two thousand nine shall complete such training, instruction and testing prior to assuming his or her duties as a school bus attendant serving a student or students with a disability.

S 7. This act shall take effect June 30, 2013; provided, however, that the amendments to subdivision 18 of section 4403 of the education law made by section four of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith; provided further that the amendments to subdivision 19-a of section 4403 of the education law made by section four of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith.

PART F

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

(a) Every provider of services who contracts with or is approved or otherwise authorized by the office to provide services, except (1) a department facility, (2) a hospital as defined in article twenty-eight of the public health law, or (3) a licensed professional under title eight of the education law who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, and every applicant to be such a provider of services except (i) a department facility, (ii) a hospital as defined in article twenty-eight of the public health law, or (iii) a licensed professional under title eight of the education law and who does not have employees or volunteers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, shall request that the [office] JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS check, and upon such request [the office] SUCH JUSTICE CENTER shall request and shall be authorized to receive from the division of criminal justice services criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, concerning each (A) prospective operator, employee or volunteer of such provider who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider, or (B) other person over the age of eighteen who is to reside in a family care home, except any person receiving family care services, who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such provider. For purposes of this section, "operator" shall include any natural person with an ownership interest in the provider of services.

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

S 19.20 REVIEW OF CRIMINAL HISTORY INFORMATION CONCERNING CERTAIN PROSPECTIVE EMPLOYEES AND VOLUNTEERS.

EVERY PROVIDER OF SERVICES WHO CONTRACTS WITH OR IS APPROVED OR OTHERWISE AUTHORIZED BY THE OFFICE TO PROVIDE SERVICES, EXCEPT (1) A DEPARTMENT FACILITY, (2) A HOSPITAL AS DEFINED IN ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, OR (3) A LICENSED PROFESSIONAL UNDER TITLE EIGHT OF THE EDUCATION LAW WHO DOES NOT HAVE EMPLOYEES OR VOLUNTEERS WHO WILL

HAVE REGULAR AND SUBSTANTIAL UNSUPERVISED OR UNRESTRICTED PHYSICAL CONTACT WITH THE CLIENTS OF SUCH PROVIDER, SHALL REQUEST THAT THE OFFICE REQUEST AND RECEIVE FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES CRIMINAL HISTORY INFORMATION, AS SUCH PHRASE IS DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW, CONCERNING EACH PROSPECTIVE EMPLOYEE OR VOLUNTEER OF SUCH PROVIDER WHO WILL HAVE REGULAR AND SUBSTANTIAL UNSUPERVISED OR UNRESTRICTED PHYSICAL CONTACT WITH THE CLIENTS OF SUCH PROVIDER.

(A) PRIOR TO REQUESTING THE OFFICE TO OBTAIN A CRIMINAL HISTORY INFORMATION CONCERNING ANY PROSPECTIVE EMPLOYEE OR VOLUNTEER, A PROVIDER SHALL:

(1) INFORM THE PROSPECTIVE EMPLOYEE OR VOLUNTEER IN WRITING THAT THE PROVIDER IS REQUIRED TO REQUEST HIS OR HER CRIMINAL HISTORY INFORMATION AND REVIEW SUCH INFORMATION PURSUANT TO THIS SECTION; AND

(2) OBTAIN THE SIGNED INFORMED CONSENT OF THE PROSPECTIVE EMPLOYEE OR VOLUNTEER ON A FORM SUPPLIED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES WHICH INDICATES THAT SUCH PERSON HAS:

(I) BEEN INFORMED OF THE RIGHT AND PROCEDURES NECESSARY TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFORMATION;

(II) BEEN INFORMED OF THE REASON FOR THE REQUEST FOR HIS OR HER CRIMINAL HISTORY INFORMATION;

(III) CONSENTED TO SUCH REQUEST; AND

(IV) SUPPLIED ON THE FORM A CURRENT MAILING OR HOME ADDRESS.

UPON RECEIVING SUCH WRITTEN CONSENT, THE PROVIDER SHALL OBTAIN TWO SETS OF FINGERPRINTS OF SUCH PROSPECTIVE EMPLOYEE OR VOLUNTEER AND PROVIDE SUCH FINGERPRINTS TO THE OFFICE PURSUANT TO REGULATIONS ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

(B) A PROVIDER REQUESTING CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION SHALL ALSO COMPLETE A FORM DEVELOPED FOR SUCH PURPOSE BY THE DIVISION OF CRIMINAL JUSTICE SERVICES. SUCH FORM SHALL INCLUDE A SWORN STATEMENT OF THE PERSON DESIGNATED BY SUCH PROVIDER TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (G) OF THIS SECTION CERTIFYING THAT:

(1) SUCH CRIMINAL HISTORY INFORMATION WILL BE USED BY THE PROVIDER SOLELY FOR PURPOSES AUTHORIZED BY THIS SECTION;

(2) THE PROVIDER AND ITS STAFF ARE AWARE OF AND WILL ABIDE BY THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS SECTION; AND

(3) THE PERSONS DESIGNATED BY THE PROVIDER TO RECEIVE CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (G) OF THIS SECTION SHALL UPON RECEIPT IMMEDIATELY MARK SUCH CRIMINAL HISTORY INFORMATION "CONFIDENTIAL," AND SHALL AT ALL TIMES MAINTAIN SUCH CRIMINAL HISTORY INFORMATION IN A SECURE PLACE.

(C) UPON RECEIPT OF THE FINGERPRINTS AND SWORN STATEMENT REQUIRED BY SUBDIVISIONS (A) AND (B) OF THIS SECTION, THE OFFICE SHALL PROMPTLY SUBMIT THE FINGERPRINTS TO THE DIVISION OF CRIMINAL JUSTICE SERVICES. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROMPTLY FORWARD A SET OF THE APPLICANT'S FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION FOR THE PURPOSE OF A NATIONWIDE CRIMINAL HISTORY RECORD CHECK TO DETERMINE WHETHER SUCH APPLICANT HAS BEEN CONVICTED OF A CRIMINAL OFFENSE IN ANY STATE OTHER THAN NEW YORK OR IN A FEDERAL JURISDICTION.

(D) THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROMPTLY PROVIDE THE REQUESTED CRIMINAL HISTORY INFORMATION, IF ANY, TO THE OFFICE. CRIMINAL HISTORY INFORMATION PROVIDED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO THIS SECTION SHALL BE FURNISHED ONLY BY MAIL OR OTHER METHOD OF SECURE AND CONFIDENTIAL DELIVERY, ADDRESSED TO THE

OFFICE. SUCH INFORMATION AND THE ENVELOPE IN WHICH IT IS ENCLOSED, IF ANY, SHALL BE PROMINENTLY MARKED "CONFIDENTIAL," AND SHALL AT ALL TIMES BE MAINTAINED BY THE OFFICE IN A SECURE PLACE.

(E) AFTER RECEIVING ANY CRIMINAL HISTORY INFORMATION PROVIDED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES CONCERNING A PROSPECTIVE EMPLOYEE OR VOLUNTEER, THE OFFICE SHALL REVIEW THE INFORMATION TO DETERMINE WHETHER SUCH PROSPECTIVE EMPLOYEE OR VOLUNTEER HAS BEEN CONVICTED OF A CRIMINAL OFFENSE IN ANY STATE OTHER THAN NEW YORK OR IN A FEDERAL JURISDICTION. IF THE RECORD DOES NOT INCLUDE SUCH INFORMATION, THE OFFICE SHALL FORWARD A SUMMARY OF THE NEW YORK CRIMINAL HISTORY INFORMATION TO THE PROVIDER WHO SHALL PROCEED PURSUANT TO SUBDIVISION (G) OF THIS SECTION. FOR THE PURPOSES OF THIS SECTION, "SUMMARY OF THE CRIMINAL HISTORY INFORMATION" SHALL MEAN A COMPREHENSIVE SYNOPSIS OF CRIMINAL HISTORY INFORMATION WHICH SHALL INCLUDE AN INDIVIDUALIZED STATEMENT FOR EACH PENDING CHARGE AND EACH CRIMINAL CONVICTION WHICH HAS NOT BEEN VACATED, REVERSED OR SEALED.

(F) WHERE THE CRIMINAL HISTORY INFORMATION RECEIVED BY THE OFFICE INCLUDES A CRIMINAL OFFENSE IN ANY STATE OTHER THAN NEW YORK OR IN A FEDERAL JURISDICTION, THE OFFICE SHALL CONSIDER WHETHER TO APPROVE OR DISAPPROVE THE PROSPECTIVE EMPLOYEE BASED ON THE CRIMINAL HISTORY INFORMATION IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW AND SUBDIVISIONS FIFTEEN AND SIXTEEN OF SECTION TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW AND NOTIFY THE PROVIDER OF ITS DETERMINATION, PROVIDED, HOWEVER, THAT A REASONABLE TIME BEFORE MAKING A DETERMINATION PURSUANT TO THIS SUBDIVISION, THE OFFICE SHALL PROVIDE THE PROSPECTIVE EMPLOYEE OR VOLUNTEER WITH A COPY OF THE CRIMINAL HISTORY INFORMATION AND A COPY OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW, AND INFORM SUCH PROSPECTIVE EMPLOYEE OR VOLUNTEER OF HIS OR HER RIGHT TO SEEK CORRECTION OF ANY INCORRECT INFORMATION CONTAINED IN SUCH CRIMINAL HISTORY INFORMATION PURSUANT TO THE REGULATIONS AND PROCEDURES ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

(G) WHERE THE PROVIDER RECEIVES A SUMMARY OF THE CRIMINAL HISTORY INFORMATION FROM THE OFFICE PURSUANT TO SUBDIVISION (E) OF THIS SECTION, THE PROVIDER SHALL CONSIDER THE INFORMATION IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW AND SUBDIVISIONS FIFTEEN AND SIXTEEN OF SECTION TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW.

(1) A PROVIDER SHALL DESIGNATE ONE OR TWO PERSONS IN ITS EMPLOY WHO SHALL BE AUTHORIZED TO REQUEST, RECEIVE AND REVIEW THE SUMMARY OF THE CRIMINAL HISTORY INFORMATION, AND ONLY SUCH PERSONS AND THE PROSPECTIVE EMPLOYEE OR VOLUNTEER TO WHICH THE CRIMINAL HISTORY INFORMATION RELATES SHALL HAVE ACCESS TO SUCH INFORMATION; PROVIDED, HOWEVER, THAT THE SUMMARY OF THE CRIMINAL HISTORY INFORMATION MAY BE DISCLOSED TO OTHER PERSONNEL AUTHORIZED BY THE PROVIDER WHO ARE EMPOWERED TO MAKE DECISIONS CONCERNING PROSPECTIVE EMPLOYEES OR VOLUNTEERS AND PROVIDED FURTHER THAT SUCH OTHER PERSONNEL SHALL ALSO BE SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS SECTION. A PROVIDER SHALL NOTIFY THE OFFICE OF EACH PERSON AUTHORIZED TO HAVE ACCESS TO CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION.

(2) UPON RECEIPT OF THE SUMMARY OF CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION, A PROVIDER SHALL PROVIDE THE PROSPECTIVE EMPLOYEE OR VOLUNTEER WITH A COPY OF SUCH SUMMARY OF THE CRIMINAL HISTORY INFORMATION AND A COPY OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW, AND INFORM SUCH PROSPECTIVE EMPLOYEE OR VOLUNTEER OF HIS OR HER RIGHT TO SEEK CORRECTION OF ANY INCORRECT INFORMATION CONTAINED IN SUCH CRIMINAL

HISTORY INFORMATION PURSUANT TO THE REGULATIONS AND PROCEDURES ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

(H) A PROSPECTIVE EMPLOYEE OR VOLUNTEER MAY WITHDRAW FROM THE APPLICATION PROCESS, WITHOUT PREJUDICE, AT ANY TIME REGARDLESS OF WHETHER HE OR SHE, THE OFFICE OR THE PROVIDER HAS REVIEWED HIS OR HER CRIMINAL HISTORY INFORMATION. WHERE A PROSPECTIVE EMPLOYEE OR VOLUNTEER WITHDRAWS FROM THE APPLICATION PROCESS, ANY FINGERPRINTS AND CRIMINAL HISTORY INFORMATION CONCERNING SUCH PROSPECTIVE EMPLOYEE OR VOLUNTEER RECEIVED BY THE OFFICE OR THE PROVIDER SHALL, WITHIN NINETY DAYS, BE RETURNED TO SUCH PROSPECTIVE EMPLOYEE OR VOLUNTEER.

(I) THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROMULGATE ALL RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION, WHICH SHALL INCLUDE CONVENIENT PROCEDURES FOR PROSPECTIVE EMPLOYEES AND VOLUNTEERS TO PROMPTLY VERIFY THE ACCURACY OF THEIR CRIMINAL HISTORY INFORMATION AND, TO THE EXTENT AUTHORIZED BY LAW, TO HAVE ACCESS TO RELEVANT DOCUMENTS RELATED THERETO.

(J) ANY PERSON WHO WILLFULLY PERMITS THE RELEASE OF ANY CONFIDENTIAL CRIMINAL HISTORY INFORMATION CONTAINED IN THE REPORT TO PERSONS NOT PERMITTED BY THIS SECTION TO RECEIVE SUCH INFORMATION SHALL BE GUILTY OF A MISDEMEANOR.

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

S 19.20-A REVIEW OF CRIMINAL HISTORY INFORMATION CONCERNING PROSPECTIVE PROVIDERS, OPERATORS AND INDIVIDUALS SEEKING TO BE CREDENTIALED BY THE OFFICE.

THE OFFICE SHALL BE AUTHORIZED TO RECEIVE FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES CRIMINAL HISTORY INFORMATION, AS SUCH PHRASE IS DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW, CONCERNING EACH APPLICANT TO BE A PROVIDER OF SERVICES OR OPERATOR OF SUCH PROVIDER EXCEPT: (1) A DEPARTMENT FACILITY; (2) A HOSPITAL AS DEFINED IN ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW; OR (3) A LICENSED PROFESSIONAL UNDER TITLE EIGHT OF THE EDUCATION LAW WHO DOES NOT HAVE EMPLOYEES OR VOLUNTEERS WHO WILL HAVE REGULAR AND SUBSTANTIAL UNSUPERVISED OR UNRESTRICTED PHYSICAL CONTACT WITH THE CLIENTS OF SUCH PROVIDER, AND FOR EVERY INDIVIDUAL SEEKING TO BE CREDENTIALED BY THE OFFICE TO PROVIDE SUBSTANCE USE DISORDER SERVICES PURSUANT TO SECTION 19.07 OF THIS ARTICLE. FOR PURPOSES OF THIS SECTION, "OPERATOR" SHALL INCLUDE ANY NATURAL PERSON WITH AN OWNERSHIP INTEREST IN THE PROVIDER OF SERVICES.

(A) PRIOR TO REQUESTING CRIMINAL HISTORY INFORMATION CONCERNING ANY PROSPECTIVE PROVIDER, OPERATOR OR INDIVIDUAL SEEKING TO BE CREDENTIALED, THE OFFICE SHALL:

(1) INFORM THE PROSPECTIVE PROVIDER, OPERATOR OR INDIVIDUAL SEEKING TO BE CREDENTIALED IN WRITING THAT THE OFFICE IS REQUIRED TO REQUEST HIS OR HER CRIMINAL HISTORY INFORMATION FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES AND REVIEW SUCH INFORMATION PURSUANT TO THIS SECTION; AND

(2) OBTAIN THE SIGNED INFORMED CONSENT OF THE PROSPECTIVE PROVIDER, OPERATOR OR INDIVIDUAL SEEKING TO BE CREDENTIALED ON A FORM SUPPLIED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES WHICH INDICATES THAT SUCH PERSON HAS:

(I) BEEN INFORMED OF THE RIGHT AND PROCEDURES NECESSARY TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFORMATION;

(II) BEEN INFORMED OF THE REASON FOR THE REQUEST FOR HIS OR HER CRIMINAL HISTORY INFORMATION;

(III) CONSENTED TO SUCH REQUEST; AND

(IV) SUPPLIED ON THE FORM A CURRENT MAILING OR HOME ADDRESS.

UPON RECEIVING SUCH WRITTEN CONSENT, THE OFFICE MAY OBTAIN TWO SETS OF FINGERPRINTS OF SUCH PROSPECTIVE PROVIDER, OPERATOR OR INDIVIDUAL SEEKING TO BE CREDENTIALED PURSUANT TO REGULATIONS ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

(B) THE OFFICE SHALL DESIGNATE ONE OR TWO PERSONS IN ITS EMPLOY WHO SHALL BE AUTHORIZED TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY INFORMATION, AND ONLY SUCH PERSONS AND THE PROSPECTIVE PROVIDER, OPERATOR OR INDIVIDUAL SEEKING TO BE CREDENTIALED TO WHICH THE CRIMINAL HISTORY INFORMATION RELATES SHALL HAVE ACCESS TO SUCH INFORMATION; PROVIDED, HOWEVER, THAT CRIMINAL HISTORY INFORMATION MAY BE DISCLOSED TO OTHER PERSONNEL AUTHORIZED BY THE OFFICE WHO ARE EMPOWERED TO MAKE DECISIONS CONCERNING PROSPECTIVE PROVIDERS, OPERATORS OR INDIVIDUALS SEEKING TO BE CREDENTIALED AND PROVIDED FURTHER THAT SUCH OTHER PERSONNEL SHALL ALSO BE SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS SECTION. THE OFFICE SHALL NOTIFY THE DIVISION OF CRIMINAL JUSTICE SERVICES OF EACH PERSON AUTHORIZED TO HAVE ACCESS TO CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION.

(C) THE OFFICE SHALL REQUEST CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION BY COMPLETING A FORM DEVELOPED FOR SUCH PURPOSE BY THE DIVISION OF CRIMINAL JUSTICE SERVICES. SUCH FORM SHALL INCLUDE A SWORN STATEMENT OF THE PERSONS DESIGNATED BY THE OFFICE TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY INFORMATION PURSUANT TO SUBDIVISION (B) OF THIS SECTION CERTIFYING THAT:

(1) SUCH CRIMINAL HISTORY INFORMATION WILL BE USED BY THE OFFICE SOLELY FOR PURPOSES AUTHORIZED BY THIS SECTION;

(2) THE OFFICE AND ITS STAFF ARE AWARE OF AND WILL ABIDE BY THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS SECTION; AND

(3) THE PERSON DESIGNATED BY THE OFFICE TO RECEIVE CRIMINAL HISTORY INFORMATION PURSUANT TO SUBDIVISION (B) OF THIS SECTION SHALL UPON RECEIPT IMMEDIATELY MARK SUCH CRIMINAL HISTORY INFORMATION "CONFIDENTIAL," AND SHALL AT ALL TIMES MAINTAIN SUCH CRIMINAL HISTORY INFORMATION IN A SECURE PLACE.

(D) UPON RECEIPT OF THE FINGERPRINTS AND SWORN STATEMENT REQUIRED BY SUBDIVISIONS (A) AND (C) OF THIS SECTION, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROMPTLY FORWARD A SET OF THE INDIVIDUAL'S FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION FOR THE PURPOSE OF A NATIONWIDE CRIMINAL HISTORY RECORD CHECK TO DETERMINE WHETHER SUCH INDIVIDUAL HAS BEEN CONVICTED OF A CRIMINAL OFFENSE IN ANY STATE OTHER THAN NEW YORK OR IN A FEDERAL JURISDICTION.

(E) THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROMPTLY PROVIDE THE REQUESTED CRIMINAL HISTORY INFORMATION TO THE OFFICE. CRIMINAL HISTORY INFORMATION PROVIDED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO THIS SECTION SHALL BE FURNISHED ONLY BY MAIL OR OTHER METHOD OF SECURE AND CONFIDENTIAL DELIVERY, ADDRESSED TO THE OFFICE. SUCH INFORMATION AND THE ENVELOPE IN WHICH IT IS ENCLOSED, IF ANY, SHALL BE PROMINENTLY MARKED "CONFIDENTIAL," AND SHALL AT ALL TIMES BE MAINTAINED BY THE OFFICE IN A SECURE PLACE.

(F) UPON RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION AND BEFORE MAKING A DETERMINATION, THE OFFICE SHALL PROVIDE THE PROSPECTIVE PROVIDER, OPERATOR OR INDIVIDUAL SEEKING TO BE CREDENTIALED WITH A COPY OF SUCH CRIMINAL HISTORY INFORMATION AND A COPY OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW AND INFORM SUCH PROSPECTIVE PROVIDER, OPERATOR OR INDIVIDUAL SEEKING TO BE CREDENTIALED OF HIS OR HER RIGHT TO SEEK CORRECTION OF ANY INCORRECT INFORMATION CONTAINED IN SUCH CRIMINAL HISTORY INFORMATION PURSUANT TO THE REGULATIONS AND PROCEDURES ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

(G) CRIMINAL HISTORY INFORMATION OBTAINED PURSUANT TO THIS SECTION SHALL BE CONSIDERED BY THE OFFICE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW AND SUBDIVISIONS FIFTEEN AND SIXTEEN OF SECTION TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW.

(H) A PROSPECTIVE PROVIDER, OPERATOR OR INDIVIDUAL SEEKING TO BE CREDENTIALED MAY WITHDRAW FROM THE APPLICATION PROCESS, WITHOUT PREJUDICE, AT ANY TIME REGARDLESS OF WHETHER OR NOT HE OR SHE OR THE OFFICE HAS REVIEWED HIS OR HER CRIMINAL HISTORY INFORMATION. WHERE A PROSPECTIVE PROVIDER, OPERATOR OR INDIVIDUAL SEEKING TO BE CREDENTIALED WITHDRAWS FROM THE APPLICATION PROCESS, ANY FINGERPRINTS AND CRIMINAL HISTORY INFORMATION CONCERNING SUCH PROSPECTIVE PROVIDER, OPERATOR OR INDIVIDUAL SEEKING TO BE CREDENTIALED RECEIVED BY THE OFFICE SHALL, WITHIN NINETY DAYS, BE RETURNED TO SUCH PROSPECTIVE PROVIDER, OPERATOR OR INDIVIDUAL SEEKING TO BE CREDENTIALED BY THE PERSON DESIGNATED FOR RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO SUBDIVISION (B) OF THIS SECTION.

(I) THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROMULGATE ALL RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION, WHICH SHALL INCLUDE CONVENIENT PROCEDURES FOR PROSPECTIVE PROVIDERS, OPERATORS OR INDIVIDUALS SEEKING TO BE CREDENTIALED TO PROMPTLY VERIFY THE ACCURACY OF THEIR CRIMINAL HISTORY INFORMATION AND, TO THE EXTENT AUTHORIZED BY LAW, TO HAVE ACCESS TO RELEVANT DOCUMENTS RELATED THERETO.

(J) ANY PERSON WHO WILLFULLY PERMITS THE RELEASE OF ANY CONFIDENTIAL CRIMINAL HISTORY INFORMATION CONTAINED IN THE REPORT TO PERSONS NOT PERMITTED BY THIS SECTION TO RECEIVE SUCH INFORMATION SHALL BE GUILTY OF A MISDEMEANOR.

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

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

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

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

the public health law OR SUBDIVISION ONE OF SECTION THREE HUNDRED SEVENTY-EIGHT-A OF THE SOCIAL SERVICES LAW, such provider shall proceed pursuant to the provisions of this section and in a manner consistent with the provisions of article twenty-three-A of the correction law, subdivisions fifteen and sixteen of section two hundred ninety-six of this chapter and all other applicable laws.

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

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

PART G

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

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

4. Reports, by word or action, an alleged occurrence or condition of child abuse or maltreatment OR ABUSE OR NEGLECT OF A VULNERABLE PERSON which did not in fact occur or exist to:

(a) the statewide central register of child abuse and maltreatment, as defined in title six of article six of the social services law OR THE VULNERABLE PERSONS' CENTRAL REGISTER AS DEFINED IN ARTICLE ELEVEN OF SUCH LAW, or

(b) any person required to report cases of suspected child abuse or maltreatment pursuant to subdivision one of section four hundred thirteen of the social services law OR TO REPORT CASES OF SUSPECTED ABUSE OR NEGLECT OF A VULNERABLE PERSON PURSUANT TO SECTION FOUR HUNDRED NINETY-ONE OF SUCH LAW, knowing that the person is required to report such cases, and with the intent that such an alleged occurrence be reported

to the statewide central register OR VULNERABLE PERSONS' CENTRAL REGISTER.

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

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

(I) A RESIDENT OR INPATIENT OF A RESIDENTIAL FACILITY OPERATED, LICENSED OR CERTIFIED BY (I) THE OFFICE OF MENTAL HEALTH; (II) THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES; OR (III) THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, AND THE ACTOR IS AN EMPLOYEE OF THE FACILITY NOT MARRIED TO SUCH RESIDENT OR INPATIENT. FOR PURPOSES OF THIS PARAGRAPH, "EMPLOYEE" MEANS EITHER: AN EMPLOYEE OF THE AGENCY OPERATING THE RESIDENTIAL FACILITY, WHO KNOWS OR REASONABLY SHOULD KNOW THAT SUCH PERSON IS A RESIDENT OR INPATIENT OF SUCH FACILITY AND WHO PROVIDES DIRECT CARE SERVICES, CASE MANAGEMENT SERVICES, MEDICAL OR OTHER CLINICAL SERVICES, HABILITATIVE SERVICES OR DIRECT SUPERVISION OF THE RESIDENTS IN THE FACILITY IN WHICH THE RESIDENT RESIDES; OR AN OFFICER OR OTHER EMPLOYEE, CONSULTANT, CONTRACTOR OR VOLUNTEER OF THE RESIDENTIAL FACILITY, WHO KNOWS OR REASONABLY SHOULD KNOW THAT THE PERSON IS A RESIDENT OF SUCH FACILITY AND WHO IS IN DIRECT CONTACT WITH RESIDENTS OR INPATIENTS; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS PARAGRAPH SHALL ONLY APPLY TO A CONSULTANT, CONTRACTOR OR VOLUNTEER PROVIDING SERVICES PURSUANT TO A CONTRACTUAL ARRANGEMENT WITH THE AGENCY OPERATING THE RESIDENTIAL FACILITY OR, IN THE CASE OF A VOLUNTEER, A WRITTEN AGREEMENT WITH SUCH FACILITY, PROVIDED THAT THE PERSON RECEIVED WRITTEN NOTICE CONCERNING THE PROVISIONS OF THIS PARAGRAPH; PROVIDED FURTHER, HOWEVER, "EMPLOYEE" SHALL NOT INCLUDE A PERSON WITH A DEVELOPMENTAL DISABILITY WHO IS OR WAS RECEIVING SERVICES AND IS ALSO AN EMPLOYEE OF A SERVICE PROVIDER AND WHO HAS SEXUAL CONTACT WITH ANOTHER SERVICE RECIPIENT WHO IS A CONSENTING ADULT WHO HAS CONSENTED TO SUCH CONTACT.

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

S 260.24 ENDANGERING THE WELFARE OF AN INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE SECOND DEGREE.

A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF AN INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE SECOND DEGREE WHEN HE OR SHE RECKLESSLY ENGAGES IN CONDUCT WHICH IS LIKELY TO BE INJURIOUS TO THE PHYSICAL, MENTAL OR MORAL WELFARE OF A PERSON WHO IS UNABLE TO CARE FOR HIMSELF OR HERSELF BECAUSE OF PHYSICAL DISABILITY, MENTAL DISEASE OR DEFECT.

ENDANGERING THE WELFARE OF AN INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

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

S 260.25 Endangering the welfare of an incompetent or physically disabled person IN THE FIRST DEGREE.

A person is guilty of endangering the welfare of an incompetent or physically disabled person IN THE FIRST DEGREE when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself or herself because of physical disability, mental disease or defect.

Endangering the welfare of an incompetent or physically disabled person IN THE FIRST DEGREE is a class [A misdemeanor] E FELONY.

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

PART H

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

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

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

(a) [If the office receives a request] UPON A REQUEST TO THE JUSTICE CENTER for criminal history information for a prospective employee or volunteer pursuant to section eight hundred forty-five-b of the executive law, THE JUSTICE CENTER SHALL NOTIFY THE OFFICE, and IF the office has [on file] AVAILABLE, AFTER A REASONABLY DILIGENT SEARCH a substantiated report that the prospective employee or volunteer engaged in behavior that constituted abuse or serious neglect of a patient or consumer in a program licensed, operated, or certified by the office, the office shall [furnish] CAUSE TO BE FURNISHED a summary of such report or reports [together with any written response from the employee or volunteer referred to in subdivision (c) of this section,] to the provider that requested the criminal history information FROM THE JUSTICE CENTER with respect to such prospective employee or volunteer[. The office shall provide such] ; PROVIDED, HOWEVER, SUMMARY REPORTS PROVIDED SHALL BE LIMITED TO SUBSTANTIATED REPORTS BASED ON INVESTIGATIONS THAT COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION. SUCH summary report [and response, if any,] SHALL BE PROVIDED to the authorized person as defined in paragraph (b) of subdivision one of section eight hundred forty-five-b of the executive law and at that same time THE OFFICE SHALL furnish such documents to the prospective employee or volunteer at the address for such person listed on the request.

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

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

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

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

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

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

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

3. "substantiated report" shall mean that, after investigation, the commission on quality care and advocacy for persons with disabilities or the office has determined, in writing, that a report filed by such commission, by the office, or by a provider certified by the office, meets the criteria of abuse or serious neglect, as defined in this section, of a patient or consumer in a program licensed, operated, or certified by the office and that the report and credible information submitted support the relevant allegations in the report OR SHALL MEAN THAT THE PROSPECTIVE EMPLOYEE OR VOLUNTEER WAS EITHER FOUND GUILTY IN A DISCIPLINARY PROCEEDING, OR THERE WAS A SETTLEMENT AGREEMENT IN WHICH THE PROSPECTIVE EMPLOYEE OR VOLUNTEER ADMITTED GUILT.

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

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

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

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

1. Establish procedures to assure effective investigation of complaints of patients and their parents or legal guardians and employees of mental hygiene facilities affecting such patients including allegations of patient abuse or mistreatment, including all reports of abuse or neglect of children in residential care as defined in paragraphs (g), (h) and (i) of subdivision four of section four hundred twelve-a of the social services law, except such facilities or programs enumerated in paragraph (j) of subdivision four of such section, and made pursuant to title six of article six of such law. Such procedures shall include but not be limited to receipt of written complaints, interviews of persons, patients and employees and on-site monitoring of conditions. In addition, the commission shall establish procedures for the speedy and impartial review of patient abuse and mistreatment allegations called to its attention. No complaint, report or allegation shall be declined by the commission solely because the complaint, report or allegation is made anonymously. [When conducting an investigation pursuant to this

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

S 4. This act shall take effect [on the first of January next succeeding the date on which it shall have become a law] JUNE 30, 2013; provided, however, that effective immediately the commissioner of developmental disabilities and the commissioner of mental health may adopt, amend, suspend or repeal rules or regulations and take other actions prior to and in preparation for the timely implementation of this act on its effective date.

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

S 3. This act shall take effect immediately.

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

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