

1750

2011-2012 Regular Sessions

I N A S S E M B L Y

January 11, 2011

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Children and Families

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

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

1 Section 1. Section 390 of the social services law, as added by chapter
2 750 of the laws of 1990, paragraphs (d) and (e) of subdivision 1, para-
3 graph (a) and clause (A) of subparagraph (ii) of paragraph (d) of subdivi-
4 sion 2, paragraph (b) of subdivision 3, paragraph (c) of subdivision
5 11 and paragraph (a) of subdivision 12 as amended, paragraph (e) of
6 subdivision 11 as added and paragraph (b) of subdivision 12 as relet-
7 tered by chapter 117 of the laws of 2010, subparagraphs (i) and (ii) of
8 paragraph (d) of subdivision 2, paragraphs (a), (c) and (d) of subdivi-
9 sion 3, paragraph (a) of subdivision 4, subdivision 10, paragraphs (a)
10 and (b) of subdivision 11 as amended, subdivision 2-a and paragraph (d)
11 of subdivision 11 as added and paragraphs (e) and (f) of subdivision 3
12 as relettered by chapter 416 of the laws of 2000, paragraph (a) of
13 subdivision 7 and subdivision 13 as amended by chapter 160 of the laws
14 of 2003, paragraph (c) of subdivision 12 as added by chapter 319 of the
15 laws of 2006 and subdivision 8-a, as added by chapter 354 of the laws of
16 2009, is amended to read as follows:

17 S 390. Child day care AND NURSERY SCHOOLS; license [or], registration
18 OR FILING required. 1. Definitions. (a) (i) "Child day care" shall mean
19 care for a child on a regular basis provided away from the child's resi-
20 dence for less than twenty-four hours per day by someone other than the
21 parent, step-parent, guardian, or relative within the third degree of
22 consanguinity of the parents or step-parents of such child.

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

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

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

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

(C) a facility:

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

(2) providing day treatment under an operating certificate issued by the office of mental health or office of mental retardation and developmental disabilities; or

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

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

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

(d) "Group family day care home" shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for seven to twelve children of all ages, except for those programs operating as a family day care home, as such term is defined in paragraph (e) of this subdivision, which care for seven or eight children. A group family day care provider may provide child day care services to four additional children if such additional children are of school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during those periods of the year in which school is not in session. There shall be one caregiver for every two children under two years of age in the group family home. A group family day care home must have at least one assistant to the operator present when child day care is being provided to seven or more children when none of the children are school age, or nine or more children when at least two of the children are school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during those periods of the year in which school is not in session. This assistant shall be selected by the group family day care operator and shall meet the qualifications established for such position by the regulations of the office of children and family services.

(e) "Family day care home" shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for three to six children. There shall be one caregiver for every two children under two years of age in the family

1 day care home. A family day care provider may, however, care for seven
2 or eight children at any one time if no more than six of the children
3 are less than school age and the school-aged children receive care
4 primarily before or after the period such children are ordinarily in
5 school, during school lunch periods, on school holidays, or during those
6 periods of the year in which school is not in session in accordance with
7 the regulations of the office of children and family services and the
8 office inspects such home to determine whether the provider can care
9 adequately for seven or eight children.

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

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

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

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

28 2. (a) Child day care centers caring for seven or more children and
29 group family day care programs, as defined in subdivision one of this
30 section, shall obtain a license from the office of children and family
31 services and shall operate in accordance with the terms of such license
32 and the regulations of such office. Initial licenses shall be valid for
33 a period of up to two years; subsequent licenses shall be valid for a
34 period of up to four years so long as the provider remains substantially
35 in compliance with applicable law and regulations during such period.

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

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

43 (c) Any child day care provider not required to obtain a license
44 pursuant to paragraph (a) of this subdivision or to register with the
45 [department] OFFICE pursuant to paragraph (b) of this subdivision may
46 register with the [department] OFFICE.

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

54 (ii) (A) Initial registrations shall be valid for a period of up to
55 two years, subsequent registrations shall be valid for a period of up to

1 four years so long as the provider remains substantially in compliance
2 with applicable law and regulations during such period.

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

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

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

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

12 (4) the office [of children and family services] has received no
13 complaints about the home, center, or program alleging statutory or
14 regulatory violations, or, having received such complaints, the office
15 [of children and family services] has determined, after inspection
16 pursuant to paragraph (a) of subdivision three of this section, that the
17 home, center, or program is operated in compliance with applicable stat-
18 utory and regulatory requirements.

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

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

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

46 2-a. (a) The office [of children and family services] shall promulgate
47 regulations which establish minimum quality program requirements for
48 licensed and registered child day care homes, programs and facilities.
49 Such requirements shall include but not be limited to (i) the need for
50 age appropriate activities, materials and equipment to promote cogni-
51 tive, educational, social, cultural, physical, emotional, language and
52 recreational development of children in care in a safe, healthy and
53 caring environment (ii) principles of childhood development (iii) appro-
54 priate staff/child ratios for family day care homes, group family day
55 care homes, school age day care programs and day care centers, provided
56 however that such staff/child ratios shall not be less stringent than

1 applicable staff/child ratios as set forth in part four hundred four-
2 teen, four hundred sixteen, four hundred seventeen or four hundred eigh-
3 teen of title eighteen of the New York code of rules and regulations as
4 of January first, two thousand (iv) appropriate levels of supervision of
5 children in care (v) minimum standards for sanitation, health, infection
6 control, nutrition, buildings and equipment, safety, security proce-
7 dures, first aid, fire prevention, fire safety, evacuation plans and
8 drills, prevention of child abuse and maltreatment, staff qualifications
9 and training, record keeping, and child behavior management.

10 (b) The use of electronic monitors as a sole means of supervision of
11 children in day care shall be prohibited, except that electronic moni-
12 tors may be used in family day care homes and group family day care
13 homes as an indirect means of supervision where the parents of any child
14 to be supervised have agreed in advance to the use of such monitors as
15 an indirect means of supervision and the use of such monitors is
16 restricted to situations where the children so supervised are sleeping.

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

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

39 (b) Where inspections have been made and violations of applicable
40 statutes or regulations have been found, the office [of children and
41 family services] shall within ten days advise the child day care provid-
42 er OR OPERATOR in writing of the violations and require the provider to
43 correct such violations. The office [of children and family services]
44 may also act pursuant to subdivisions ten and eleven of this section.

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

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

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

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

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

(A) the results of the most recent inspection for licensure or registration and any subsequent inspections by the office [of children and family services];

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

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

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

(d) Where investigation or inspection reveals that a child day care provider which must be licensed or registered is not, the office [of children and family services] shall advise the child day care provider in writing that the provider is in violation of the licensing or registration requirements and shall take such further action as is necessary to cause the provider to comply with the law, including directing an unlicensed or unregistered provider to cease operation. In addition, the office [of children and family services] shall require the provider to notify the parents or guardians of children receiving care from the provider that the provider is in violation of the licensing or registration requirements and shall require the provider to notify the office [of children and family services] that the provider has done so. Any provider who is directed to cease operations pursuant to this paragraph shall be entitled to a hearing before the office [of children and family services]. If the provider requests a hearing to contest the directive to cease operations, such hearing must be scheduled to commence as soon as possible but in no event later than thirty days after the receipt of the request by the office [of children and family services]. The provider may not operate the center, home or program after being directed to cease operations, regardless of whether a hearing is requested. If the provider does not cease operations, the office [of children and family services] may impose a civil penalty pursuant to subdivision eleven of this section, seek an injunction pursuant to section three hundred ninety-one of this title, or both.

(e) (i) Where an authorized agency is subsidizing child day care pursuant to any provision of this chapter, the authorized agency may

1 submit to the [department] OFFICE justification for a need to impose
2 additional requirements upon child day care providers and a plan to
3 monitor compliance with such additional requirements. No such additional
4 requirements or monitoring may be imposed without the written approval
5 of the [department] OFFICE.

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

23 (iii) Nothing contained in this paragraph shall diminish the authority
24 of the department to conduct inspections or provide for inspections
25 through purchase of services as otherwise provided for in this section.
26 Nothing contained in this paragraph shall obligate the [department]
27 OFFICE to take any action to enforce any additional requirements imposed
28 on child day care providers by an authorized agency.

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

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

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

50 4. (a) The office [of children and family services] on an annual basis
51 shall inspect at least twenty percent of all registered family day care
52 homes, registered child day care centers, NURSERY SCHOOLS FILED WITH THE
53 OFFICE and registered school age child care programs to determine wheth-
54 er such homes, centers and programs are operating in compliance with
55 applicable statutes and regulations. The office [of children and family
56 services] shall increase the percentage of family day care homes, child

1 day care centers and school age child care programs which are inspected
2 pursuant to this subdivision as follows: to at least thirty percent by
3 the thirty-first of December two thousand; and to at least fifty percent
4 by the thirty-first of December two thousand one. The office [of chil-
5 dren and family services] may provide for such inspections through
6 purchase of services. Priority shall be given to family day care homes
7 which have never been licensed or certified prior to initial registra-
8 tion.

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

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

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

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

39 (i) types of child day care programs;

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

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

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

46 (v) information concerning the availability of child day care subsi-
47 dies;

48 (vi) information about licensing [and], registration AND FILING
49 requirements;

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

52 (viii) tax information; and

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

(b) The [department] OFFICE shall implement a statewide campaign to educate the public as to the legal requirements for registration of family day care and school-age child care, THE FILING OF NURSERY SCHOOLS, and the benefits of such [registration] PROCEDURES. The [department] OFFICE may provide for such implementation through the purchase of services. The campaign shall:

- (i) use various types of media;
- (ii) include the development of public educational materials for families, [family day care providers,] employers and community agencies;
- (iii) explain the role and functions of child care resource and referral programs, as such term is used in title five-B of this article;
- (iv) explain the role and functions of the [department] OFFICE in regard to registered LICENSED AND FILED programs; and
- (v) publicize the [department's] OFFICE'S toll-free telephone number for making complaints of violations of [child day care] requirements related to programs which are required to be licensed [or], registered OR FILED.

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

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

9. The [department] OFFICE shall make available, directly or through purchase of services, to registered [child day care] providers information concerning:

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

10. Any home or facility providing child day care shall be operated in accordance with applicable statutes and regulations. Any violation of applicable statutes or regulations shall be a basis to deny, limit, suspend, revoke, or terminate a license or registration. Consistent with articles twenty-three and twenty-three-A of the correction law, and guidelines referenced in subdivision two of section four hundred twenty-five of this article, if the office [of children and family services] is made aware of the existence of a criminal conviction or pending criminal charge concerning an operator of a family day care home, group family day care home, school-age child care program, or child day care center or concerning any assistant, employee or volunteer in such homes, programs or centers, or any persons age eighteen or over who reside in such homes, such conviction or charge may be a basis to deny, limit, suspend, revoke, reject, or terminate a license or registration. Before

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

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

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

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

44 (iii) In addition to any other civil or criminal penalty provided by
45 law, the office [of children and family services] shall have the power
46 to assess civil penalties in accordance with its regulations adopted
47 pursuant to this subdivision after a hearing conducted in accordance
48 with procedures established by regulations of the office of children and
49 family services. Such procedures shall require that notice of the time
50 and place of the hearing, together with a statement of charges of
51 violations, shall be served in person or by certified mail addressed to
52 the school age child care program, group family day care home, family
53 day care home, NURSERY SCHOOL OPERATOR or child day care center at least
54 thirty days prior to the date of the hearing. The statement of charges
55 shall set forth the existence of the violation or violations, the amount
56 of penalty for which the program may become liable, the steps which must

1 be taken to rectify the violation, and where applicable, a statement
2 that a penalty may be imposed regardless of rectification. A written
3 answer to the charges of violations shall be filed with the office [of
4 children and family services] not less than ten days prior to the date
5 of hearing with respect to each of the charges and shall include all
6 material and relevant matters which, if not disclosed in the answer,
7 would not likely be known to the office [of children and family
8 services].

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

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

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

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

40 (c)(i) Except as provided for in this paragraph, a child day care
41 provider shall avoid payment of a penalty imposed pursuant to this
42 subdivision where the provider has rectified the condition which
43 resulted in the imposition of the penalty within thirty days of notifi-
44 cation of the existence of the violation of statute or regulation.

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

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

53 (B) the child day care provider has operated a family day care home,
54 school-age child care program or child day care center required to be
55 registered without being registered, has refused to seek registration
56 for the operation of such home, program or center or has continued to

operate such a home, program or center after denial of a registration application, revocation of an existing registration or suspension of an existing registration;

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

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

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

(F) the child day care provider or an assistant, employee, volunteer, NURSERY SCHOOL or, for a family day care home or group family day care home, a member of the provider's household, has injured a child in care, unreasonably failed to obtain medical attention for a child in care requiring such attention, used corporal punishment against a child in care or abused or maltreated a child in care;

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

(H) the child day care provider or an assistant, employee or volunteer OR NURSERY SCHOOL has failed to make a report of suspected child abuse or maltreatment when required to do so pursuant to section four hundred thirteen of this article; or

(I) the child day care provider or an assistant, employee or volunteer OR NURSERY SCHOOL has submitted to the office of children and family services a forged document as defined in section 170.00 of the penal law.

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

(e)(i) The office [of children and family services] shall deny a new application for licensure or registration made by a day care provider whose license or registration was previously revoked or terminated based on a violation of statute or regulation for a period of two years from the date that the revocation or termination of the license or registration became finally effective, unless such office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of children in the center, program or home. For the purposes of this paragraph, the date that the revocation or termination became finally effective shall be, as applicable:

(A) the date that the revocation or termination became effective based on the notice of revocation or termination;

(B) the date that the hearing decision was issued upholding the revocation or termination;

(C) the date of issuance of a final court order affirming the revocation or termination or affirming a hearing decision that upheld the revocation or termination; or

(D) another date mutually agreed upon by the office of children and family services and the provider.

(ii)(A) Such office shall deny a new application for licensure [or], registration OR FILING made by a day care provider OR NURSERY SCHOOL OPERATOR who is enjoined or otherwise prohibited by a court order from operation of a day care center, NURSERY SCHOOL, group family day care home, family day care home or school-age child care program without a

1 license or registration for a period of two years from the date of the
2 court order unless the court order specifically enjoins the provider
3 from providing day care for a period longer than two years, in which
4 case the office shall deny any new application made by the provider
5 while the provider is so enjoined.

6 (B) Such office shall deny a new application for licensure [or],
7 registration OR FILING made by a day care provider OR NURSERY SCHOOL
8 OPERATOR who is assessed a second civil penalty by such office for
9 having operated a day care center, NURSERY SCHOOL, group family day care
10 home, family day care home or school-age child care program without a
11 license or registration for a period of two years from the date of the
12 second fine. For the purposes of this paragraph, the date of the second
13 fine shall be either the date upon which the day care provider signs a
14 stipulation agreement to pay the second fine or the date upon which a
15 hearing decision is issued affirming the determination of such office to
16 impose the second fine, as applicable.

17 (iii) A day care provider OR NURSERY SCHOOL OPERATOR who surrenders
18 the provider's license [or], registration OR FILING while such office is
19 engaged in enforcement seeking suspension, revocation or termination of
20 such provider's license [or], registration OR FILING pursuant to the
21 regulations of such office, shall be deemed to have had their license
22 [or], registration OR FILING revoked or terminated and shall be subject
23 to the prohibitions against licensing [or], registration OR FILING
24 pursuant to subparagraph (i) of this paragraph for a period of two years
25 from the date of surrender of the license or registration.

26 12. (a) Notwithstanding any other provision of law, except as may be
27 required as a condition of licensure [or], registration OR FILING by
28 regulations promulgated pursuant to this section, no village, town
29 (outside the area of any incorporated village), city or county shall
30 adopt or enact any law, ordinance, rule or regulation which would
31 impose, mandate or otherwise enforce standards for sanitation, health,
32 fire safety or building construction on a one or two family dwelling or
33 multiple dwelling used to provide group family day care or family day
34 care than would be applicable were such child day care not provided on
35 the premises. No village, town (outside the area of any incorporated
36 village), city or county shall prohibit or restrict use of a one or two
37 family dwelling, or multiple dwelling for family or group family day
38 care where a license or registration for such use has been issued in
39 accordance with regulations issued pursuant to this section. Nothing in
40 this paragraph shall preclude local authorities with enforcement juris-
41 diction of the applicable sanitation, health, fire safety or building
42 construction code from making appropriate inspections to assure compli-
43 ance with such standards.

44 (b) Notwithstanding any other provision of law, but pursuant to
45 section five hundred eighty-one-b of the real property tax law, no
46 assessing unit, as defined in subdivision one of section one hundred two
47 of the real property tax law, in the assessment of the value of any
48 parcel used for residential purposes and registered as a family day care
49 home pursuant to this section, shall consider the use or registration of
50 such parcel as a family day care home.

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

1 S 2. The section heading and subdivisions 1 and 2 of section 390-a of
2 the social services law, the section heading as amended by chapter 750
3 of the laws of 1990, subdivisions 1 and 2 as amended by chapter 416 of
4 the laws of 2000 and paragraph (e) of subdivision 2 as added by chapter
5 230 of the laws of 2001, are amended to read as follows:

6 Standards and training for child day care AND NURSERY SCHOOLS. 1. All
7 office of children and family services and municipal staff employed to
8 accept registrations AND FILINGS, issue licenses or conduct inspections
9 of child day care homes, programs or facilities, subject to the amounts
10 appropriated therefor, shall receive training in at least the following:
11 regulations promulgated by the office of children and family services
12 pursuant to section three hundred ninety of this title; child abuse
13 prevention and identification; safety and security procedures in child
14 day care settings; the principles of childhood development, and the
15 laws, regulations and procedures governing the protection of children
16 from abuse or maltreatment.

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

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

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

44 (c) assure adequate and appropriate supervision of employees and
45 volunteers of group family day care homes, family day care homes, child
46 day care centers, NURSERY SCHOOLS and school-age child care programs;
47 [and]

48 (d) demonstrate, in the case of child day care centers, group family
49 day care homes, family day care homes, NURSERY SCHOOLS and school-age
50 child care programs the existence of specific procedures which will
51 assure the safety of a child who is reported to the state central regis-
52 ter of child abuse and maltreatment as well as other children provided
53 care by such homes, centers or programs, immediately upon notification
54 that a report has been made with respect to a child named in such report
55 while the child was in attendance at such homes, centers or programs[.];

56 AND

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

3 S 3. Section 390-b of the social services law, as added by chapter
4 416 of the laws of 2000, is amended to read as follows:

5 S 390-b. Criminal history review of child care providers, generally.

6 1. (a) Notwithstanding any other provision of law to the contrary, and
7 subject to rules and regulations of the division of criminal justice
8 services, the office of children and family services shall perform a
9 criminal history record check with the division of criminal justice
10 services regarding any operator, employee or volunteer of a child day
11 care center or school age child care provider, as defined in paragraphs
12 (c) and (f) of subdivision one of section three hundred ninety of this
13 title. Child day care center operators, school age child care operators
14 and any employees or volunteers, who previously did not have a criminal
15 history record check performed in accordance with this subdivision shall
16 have such a criminal history record check performed when the child day
17 care center or school age child care provider applies for license or
18 registration renewal. Child day care centers which are not subject to
19 the provisions of section three hundred ninety of this title, shall not
20 be subject to the provisions of this section. The provisions of this
21 section shall apply to a volunteer only where the volunteer has the
22 potential for regular and substantial contact with children enrolled in
23 the program.

24 (b) Notwithstanding any other provision of law to the contrary, and
25 subject to rules and regulations of the division of criminal justice
26 services, the office of children and family services shall perform a
27 criminal history record check with the division of criminal justice
28 services regarding the operator, any assistants, employees or volunteers
29 of a group family day care home [or], family day care home OR NURSERY
30 SCHOOL, as defined in paragraphs (d) [and], (e) AND (G) of subdivision
31 one of section three hundred ninety of this title, and any person age
32 eighteen or over residing on the premises of the group family day care
33 home [or], family day care home OR NURSERY SCHOOL which is to be
34 licensed [or], registered OR FOR WHICH A FILING MUST BE MADE in accord-
35 ance with section three hundred ninety of this title. Group family day
36 care home operators, family day care home operators, NURSERY SCHOOL
37 OPERATORS, any assistants, employees or volunteers, and persons who are
38 age eighteen or over residing on the premises of a licensed group family
39 day care home [or], registered family day care home OR NURSERY SCHOOL
40 who previously did not have a criminal history record check performed in
41 accordance with this subdivision shall have such a criminal history
42 record check performed when the group family day care home [or], family
43 day care home OR NURSERY SCHOOL applies for renewal of the home's
44 license [or], registration OR FILING. The provisions of this section
45 shall apply to a volunteer only where the volunteer has the potential
46 for regular and substantial contact with children enrolled in the
47 program.

48 2. (a) As part of the provider's application for, or renewal of, a
49 child day care center or school age child care license or registration,
50 the provider shall furnish the office of children and family services
51 with fingerprint cards of any operator of a child day care center or
52 school age child care program, and any employee or volunteer, who previ-
53 ously did not have a criminal history record check performed in accord-
54 ance with this section, together with such other information as is
55 required by the office of children and family services and the division
56 of criminal justice services.

1 (b) Every child day care center or school age child care provider
2 shall obtain a set of fingerprints for each prospective employee or
3 volunteer and such other information as is required by the office of
4 children and family services and the division of criminal justice
5 services. The child day care center or school age child care program
6 shall furnish to the applicant blank fingerprint cards and a description
7 of how the completed fingerprint cards will be used. The child day care
8 center or school age child care program shall promptly transmit such
9 fingerprint cards to the office of children and family services.

10 (c) As part of the provider's application for, or renewal of, a group
11 family day care home license or family day care home registration, the
12 provider shall furnish the office of children and family services with
13 fingerprint cards of any operator of a group family day care home or
14 family day care home, and any assistant, employee or volunteer, and any
15 person age eighteen or over residing on the premises of the group family
16 day care home or family day care home, who previously did not have a
17 criminal history record check performed in accordance with this section,
18 together with such other information as is required by the office of
19 children and family services and the division of criminal justice
20 services.

21 (d) Every group family day care home or family day care home provider
22 shall obtain a set of fingerprints for each prospective assistant,
23 employee, volunteer and any person age eighteen or over who will be
24 residing on the premises of the group family day care home or family day
25 care home, and such other information as is required by the office of
26 children and family services and the division of criminal justice
27 services. The group family day care home or family day care home provid-
28 er shall furnish to the applicant blank fingerprint cards and a
29 description of how the completed fingerprint cards will be used. The
30 group family day care home or family day care home provider shall
31 promptly transmit such fingerprint cards to the office of children and
32 family services.

33 (e) AS PART OF THE PROVIDER'S APPLICATION FOR, OR RENEWAL OF, A NURS-
34 ERY SCHOOL FILING, THE PROVIDER SHALL FURNISH THE OFFICE OF CHILDREN AND
35 FAMILY SERVICES WITH FINGERPRINT CARDS OF ANY OPERATOR OF A NURSERY
36 SCHOOL, AND ANY EMPLOYEE OR VOLUNTEER, WHO PREVIOUSLY DID NOT HAVE A
37 CRIMINAL HISTORY RECORD CHECK PERFORMED IN ACCORDANCE WITH THIS SECTION,
38 TOGETHER WITH SUCH OTHER INFORMATION AS IS REQUIRED BY THE OFFICE OF
39 CHILDREN AND FAMILY SERVICES AND THE DIVISION OF CRIMINAL JUSTICE
40 SERVICES.

41 (F) EVERY NURSERY SCHOOL PROVIDER SHALL OBTAIN A SET OF FINGERPRINTS
42 FOR EACH PROSPECTIVE EMPLOYEE OR VOLUNTEER AND SUCH OTHER INFORMATION AS
43 IS REQUIRED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE DIVI-
44 SION OF CRIMINAL JUSTICE SERVICES. THE NURSERY SCHOOL PROGRAM SHALL
45 FURNISH TO THE APPLICANT BLANK FINGERPRINT CARDS AND A DESCRIPTION OF
46 HOW THE COMPLETED FINGERPRINT CARDS WILL BE USED. THE NURSERY SCHOOL
47 PROGRAM SHALL PROMPTLY TRANSMIT SUCH FINGERPRINT CARDS TO THE OFFICE OF
48 CHILDREN AND FAMILY SERVICES.

49 (G) The office of children and family services shall pay the process-
50 ing fee imposed pursuant to subdivision eight-a of section eight hundred
51 thirty-seven of the executive law. The office of children and family
52 services shall promptly submit the fingerprint cards and the processing
53 fee to the division of criminal justice services for its full search and
54 retain processing.

55 [(f)] (H) A licensed or registered child day care center, school-age
56 child care program, group family day care home or family day care home

1 may temporarily approve an applicant to be an employee, assistant or
2 volunteer for such provider while the results of the criminal history
3 record check are pending, but shall not allow such person to have unsu-
4 pervised contact with children during such time.

5 3. Notwithstanding any other provision of law to the contrary, after
6 reviewing any criminal history record information provided by the divi-
7 sion of criminal justice services, of an individual who is subject to a
8 criminal history record check pursuant to this section, the office of
9 children and family services and the provider shall take the following
10 actions:

11 (a) (i) Where the criminal history record of an applicant to be an
12 operator of a child day care center, school age child care program,
13 group family day care home, family day care home, NURSERY SCHOOL, or any
14 person over the age of eighteen residing in such a home OR SCHOOL,
15 reveals a felony conviction at any time for a sex offense, crime against
16 a child, or a crime involving violence, or a felony conviction within
17 the past five years for a drug-related offense, the office of children
18 and family services shall deny the application OR FILING unless the
19 office determines, in its discretion, that approval of the application
20 OR FILING will not in any way jeopardize the health, safety or welfare
21 of the children in the center, program or home; or

22 (ii) Where the criminal history record of an applicant to be an opera-
23 tor of a child day care center, school age child care program, group
24 family day care home, family day care home, NURSERY SCHOOL, or any
25 person over the age of eighteen residing in such a home OR SCHOOL,
26 reveals a conviction for a crime other than one set forth in subpara-
27 graph (i) of this paragraph, the office of children and family services
28 may deny the application OR FILING, consistent with article twenty-
29 three-A of the correction law; or

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

37 (b) (i) Where the criminal history record of a current operator of a
38 child day care center, school age child care program, group family day
39 care home, family day care home, NURSERY SCHOOL, or any other person
40 over the age of eighteen residing in such a home OR SCHOOL, reveals a
41 conviction for a crime set forth in subparagraph (i) of paragraph (a) of
42 this subdivision, the office of children and family services shall
43 conduct a safety assessment of the program and take all appropriate
44 steps to protect the health and safety of the children in the program.
45 The office of children and family services shall deny, limit, suspend,
46 revoke, reject or terminate a license [or], registration OR FILING based
47 on such a conviction, unless the office determines, in its discretion,
48 that continued operation of the center, program [or], home OR SCHOOL
49 will not in any way jeopardize the health, safety or welfare of the
50 children in the center, program [or], home OR SCHOOL;

51 (ii) Where the criminal history record of a current operator of a
52 child day care center, school age child care program, group family day
53 care home, family day care home, NURSERY SCHOOL, or any other person
54 over the age of eighteen residing in such a home OR SCHOOL, reveals a
55 conviction for a crime other than one set forth in subparagraph (i) of
56 paragraph (a) of this subdivision, the office of children and family

services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office may deny, limit, suspend, revoke, reject or terminate a license [or], registration OR FILING based on such a conviction, consistent with article twenty-three-A of the correction law;

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

(c) (i) Where the criminal history record of an applicant to be an employee or volunteer at a child day care center [or], school age child care program OR NURSERY SCHOOL reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall direct the provider to deny the application unless the office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of the children in the center or program;

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

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

(d) (i) Where the criminal history record of a current employee or volunteer at a child day care center [or], school age child care program OR NURSERY SCHOOL reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office shall direct the provider to terminate the employee or volunteer based on such a conviction, unless the office determines, in its discretion, that the continued presence of the employee or volunteer in the center or program will not in any way jeopardize the health, safety or welfare of the children in the center or program;

(ii) Where the criminal history record of a current employee or volunteer at a child day care center [or], school age child care program OR NURSERY SCHOOL reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office may direct the provider to

1 terminate the employee or volunteer based on such a conviction, consist-
2 ent with article twenty-three-A of the correction law;

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

9 (e) (i) Where the criminal history record of an applicant to be an
10 employee, assistant or volunteer at a group family day care home or
11 family day care home reveals a conviction for a crime set forth in
12 subparagraph (i) of paragraph (a) of this subdivision, the office of
13 children and family services shall direct the provider to deny the
14 application unless the office determines, in its discretion, that
15 approval of the application will not in any way jeopardize the health,
16 safety or welfare of the children in the home;

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

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

29 (f) (i) Where the criminal history record of a current employee,
30 assistant or volunteer at a group family day care home or family day
31 care home reveals a conviction for a crime set forth in subparagraph (i)
32 of paragraph (a) of this subdivision, the office of children and family
33 services shall conduct a safety assessment of the program and take all
34 appropriate steps to protect the health and safety of the children in
35 the home. The office of children and family services shall direct the
36 provider to terminate the employee, assistant or volunteer based on such
37 a conviction, unless the office determines, in its discretion, that the
38 continued presence of the employee, assistant or volunteer in the home
39 will not in any way jeopardize the health, safety or welfare of the
40 children in the home;

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

50 (iii) Where the criminal history record of a current employee, assist-
51 ant or volunteer at a group family day care home or family day care home
52 reveals a charge for any crime, the office of children and family
53 services shall conduct a safety assessment of the home and take all
54 appropriate steps to protect the health and safety of the children in
55 the home.

1 (g) Advise the provider that the individual has no criminal history
2 record.

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

7 5. Notwithstanding any other provision of law to the contrary, the
8 office of children and family services, upon receipt of a criminal
9 history record from the division of criminal justice services, may
10 request, and is entitled to receive, information pertaining to any crime
11 contained in such criminal history record from any state or local law
12 enforcement agency, district attorney, parole officer, probation officer
13 or court for the purposes of determining whether any ground relating to
14 such criminal conviction or pending criminal charge exists for denying a
15 license, registration, FILING, application or employment.

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

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

24 8. Any safety assessment required pursuant to this section shall
25 include a review of the duties of the individual, the extent to which
26 such individual may have contact with children in the program or house-
27 hold and the status and nature of the criminal charge or conviction.
28 Where the office of children and family services performs the safety
29 assessment, it shall thereafter take all appropriate steps to protect
30 the health and safety of children receiving care in the child day care
31 center, school age child care program, family day care home [or], group
32 family day care home OR NURSERY SCHOOL.

33 9. Any criminal history record provided by the division of criminal
34 justice services, and any summary of the criminal history record
35 provided by the office of children and family services to a child day
36 care provider pursuant to this section, is confidential and shall not be
37 available for public inspection; provided, however, nothing herein shall
38 prevent a child day care provider or the office of children and family
39 services from disclosing criminal history information at any administra-
40 tive or judicial proceeding relating to the denial or revocation of an
41 application, employment, license [or], registration OR FILING. The
42 subject of a criminal history review conducted pursuant to this section
43 shall be entitled to receive, upon written request, a copy of the summa-
44 ry of the criminal history record provided by the office of children and
45 family services to the child day care provider. Unauthorized disclosure
46 of such records or reports shall subject the provider to civil penalties
47 in accordance with the provisions of subdivision eleven of section three
48 hundred ninety of this title.

49 10. A child day care provider shall advise the office of children and
50 family services when an individual who is subject to criminal history
51 record review in accordance with subdivision one or two of this section
52 is no longer subject to such review. The office of children and family
53 services shall inform the division of criminal justice services when an
54 individual who is subject to criminal history review is no longer
55 subject to such review so that the division of criminal justice services
56 may terminate its retain processing with regard to such person. At least

1 once a year, the office of children and family services will be required
2 to conduct a validation of the records maintained by the division of
3 criminal justice services.

4 S 4. Paragraph (a) of subdivision 1 of section 424-a of the social
5 services law, as amended by chapter 634 of the laws of 1988, is amended
6 to read as follows:

7 (a) A licensing agency shall inquire of the [department] OFFICE OF
8 CHILDREN AND FAMILY SERVICES and the [department] OFFICE OF CHILDREN AND
9 FAMILY SERVICES shall, subject to the provisions of paragraph (e) of
10 this subdivision, inform such agency and the subject of the inquiry
11 whether an applicant for a certificate, license or permit, assistants to
12 group family day care providers, the director of a camp subject to the
13 provisions of article thirteen-A[,] OR thirteen-B [or thirteen-C] of the
14 public health law, and any person over the age of eighteen who resides
15 in the home of a person who has applied to become an adoptive parent or
16 a foster parent or to operate a family day care home, NURSERY SCHOOL or
17 group family day care home has been or is currently the subject of an
18 indicated child abuse and maltreatment report on file with the statewide
19 central register of child abuse and maltreatment.

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