

1078

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

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 subdi-
4 vision 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 (b) 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

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

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parent, step-parent, guardian, or relative within the third degree of consanguinity of the parents or step-parents of such child.

(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] FOR PEOPLE WITH 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

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

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

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

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

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

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

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

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

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

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

1 (ii) (A) Initial registrations shall be valid for a period of up to
2 two years, subsequent registrations shall be valid for a period of up to
3 four years so long as the provider remains substantially in compliance
4 with applicable law and regulations during such period.

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

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

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

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

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

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

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

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

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

1 care homes, school age day care programs and day care centers, provided
2 however that such staff/child ratios shall not be less stringent than
3 applicable staff/child ratios as set forth in part four hundred four-
4 teen, four hundred sixteen, four hundred seventeen or four hundred eigh-
5 teen of title eighteen of the New York code of rules and regulations as
6 of January first, two thousand (iv) appropriate levels of supervision of
7 children in care (v) minimum standards for sanitation, health, infection
8 control, nutrition, buildings and equipment, safety, security proce-
9 dures, first aid, fire prevention, fire safety, evacuation plans and
10 drills, prevention of child abuse and maltreatment, staff qualifications
11 and training, record keeping, and child behavior management.

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

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

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

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

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

1 toll-free telephone number to the public for making inquiries or
2 complaints about child day care homes, programs or facilities.

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

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

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

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

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

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

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

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

33 (d) Where investigation or inspection reveals that a child day care
34 provider which must be licensed or registered is not, the office [of
35 children and family services] shall advise the child day care provider
36 in writing that the provider is in violation of the licensing or regis-
37 tration requirements and shall take such further action as is necessary
38 to cause the provider to comply with the law, including directing an
39 unlicensed or unregistered provider to cease operation. In addition, the
40 office [of children and family services] shall require the provider to
41 notify the parents or guardians of children receiving care from the
42 provider that the provider is in violation of the licensing or registra-
43 tion requirements and shall require the provider to notify the office
44 [of children and family services] that the provider has done so. Any
45 provider who is directed to cease operations pursuant to this paragraph
46 shall be entitled to a hearing before the office [of children and family
47 services]. If the provider requests a hearing to contest the directive
48 to cease operations, such hearing must be scheduled to commence as soon
49 as possible but in no event later than thirty days after the receipt of
50 the request by the office [of children and family services]. The provid-
51 er may not operate the center, home or program after being directed to
52 cease operations, regardless of whether a hearing is requested. If the
53 provider does not cease operations, the office [of children and family
54 services] may impose a civil penalty pursuant to subdivision eleven of
55 this section, seek an injunction pursuant to section three hundred nine-
56 ty-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 submit to the [department] OFFICE justification for a need to impose additional requirements upon child day care providers and a plan to monitor compliance with such additional requirements. No such additional requirements or monitoring may be imposed without the written approval of the [department] OFFICE.

(ii) An authorized agency may refuse to allow a child day care provider who is not in compliance with this section and regulations issued hereunder or any approved additional requirements of the authorized agency to provide child day care to the child. In accordance with the plan approved by the [department] OFFICE, an authorized agency shall have the right to make announced or unannounced inspections of the records and premises of any provider who provides care for such children, including the right to make inspections prior to subsidized children receiving care in a home where the inspection is for the purpose of determining whether the child day care provider is in compliance with applicable law and regulations and any additional requirements imposed upon such provider by the authorized agency. Where an authorized agency makes such inspections, the authorized agency shall notify the [department] OFFICE immediately of any violations of this section or regulations promulgated hereunder, and shall provide the [department] OFFICE with an inspection report whether or not violations were found, documenting the results of such inspection.

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

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

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

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

4. (a) The office [of children and family services] on an annual basis shall inspect at least twenty percent of all registered family day care homes, registered child day care centers, NURSERY SCHOOLS FILED WITH THE OFFICE and registered school age child care programs to determine whether such homes, centers and programs are operating in compliance with

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

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

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

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

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

41 (i) types of child day care programs;

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

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

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

48 (v) information concerning the availability of child day care subsi-
49 dies;

50 (vi) information about licensing [and], registration AND FILING
51 requirements;

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

54 (viii) tax information; and

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

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

10 (i) use various types of media;

11 (ii) include the development of public educational materials for fami-
12 lies, [family day care providers,] employers and community agencies;

13 (iii) explain the role and functions of child care resource and refer-
14 ral programs, as such term is used in title five-B of this article;

15 (iv) explain the role and functions of the [department] OFFICE in
16 regard to registered LICENSED AND FILED programs; and

17 (v) publicize the [department's] OFFICE'S toll-free telephone number
18 for making complaints of violations of [child day care] requirements
19 related to programs which are required to be licensed [or], registered
20 OR FILED.

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

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

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

38 (a) liability insurance;

39 (b) start-up grants;

40 (c) United States department of agriculture food programs;

41 (d) subsidies available for child day care;

42 (e) tax information; and

43 (f) support services required to be provided by child care resource
44 and referral programs as set forth in subdivision three of section four
45 hundred ten-r of this article.

46 10. Any home or facility providing child day care shall be operated in
47 accordance with applicable statutes and regulations. Any violation of
48 applicable statutes or regulations shall be a basis to deny, limit,
49 suspend, revoke, or terminate a license or registration. Consistent with
50 articles twenty-three and twenty-three-A of the correction law, and
51 guidelines referenced in subdivision two of section four hundred twen-
52 ty-five of this article, if the office [of children and family services]
53 is made aware of the existence of a criminal conviction or pending crim-
54 inal charge concerning an operator of a family day care home, group
55 family day care home, school-age child care program, or child day care
56 center or concerning any assistant, employee or volunteer in such homes,

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (B) the child day care provider has operated a family day care home,
2 school-age child care program or child day care center required to be
3 registered without being registered, has refused to seek registration
4 for the operation of such home, program or center or has continued to
5 operate such a home, program or center after denial of a registration
6 application, revocation of an existing registration or suspension of an
7 existing registration;

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

10 (D) the child day care provider or an assistant, employee or volunteer
11 OR NURSERY SCHOOL has failed to provide adequate and competent super-
12 vision;

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

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

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

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

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

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

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

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

49 (B) the date that the hearing decision was issued upholding the revo-
50 cation or termination;

51 (C) the date of issuance of a final court order affirming the revoca-
52 tion or termination or affirming a hearing decision that upheld the
53 revocation or termination; or

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

1 (ii)(A) Such office shall deny a new application for licensure [or],
2 registration OR FILING made by a day care provider OR NURSERY SCHOOL
3 OPERATOR who is enjoined or otherwise prohibited by a court order from
4 operation of a day care center, NURSERY SCHOOL, group family day care
5 home, family day care home or school-age child care program without a
6 license or registration for a period of two years from the date of the
7 court order unless the court order specifically enjoins the provider
8 from providing day care for a period longer than two years, in which
9 case the office shall deny any new application made by the provider
10 while the provider is so enjoined.

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

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

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

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

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

6 S 2. The section heading and subdivisions 1 and 2 of section 390-a of
7 the social services law, the section heading as amended by chapter 750
8 of the laws of 1990, subdivisions 1 and 2 as amended by chapter 416 of
9 the laws of 2000 and paragraph (e) of subdivision 2 as added by chapter
10 230 of the laws of 2001, are amended to read as follows:

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

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

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

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

49 (c) assure adequate and appropriate supervision of employees and
50 volunteers of group family day care homes, family day care homes, child
51 day care centers, NURSERY SCHOOLS and school-age child care programs;
52 [and]

53 (d) demonstrate, in the case of child day care centers, group family
54 day care homes, family day care homes, NURSERY SCHOOLS and school-age
55 child care programs the existence of specific procedures which will
56 assure the safety of a child who is reported to the state central regis-

1 ter of child abuse and maltreatment as well as other children provided
2 care by such homes, centers or programs, immediately upon notification
3 that a report has been made with respect to a child named in such report
4 while the child was in attendance at such homes, centers or programs[.];
5 AND

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

8 S 3. Section 390-b of the social services law, as added by chapter
9 416 of the laws of 2000, is amended to read as follows:

10 S 390-b. Criminal history review of child care providers, generally.
11 1. (a) Notwithstanding any other provision of law to the contrary, and
12 subject to rules and regulations of the division of criminal justice
13 services, the office of children and family services shall perform a
14 criminal history record check with the division of criminal justice
15 services regarding any operator, employee or volunteer of a child day
16 care center or school age child care provider, as defined in paragraphs
17 (c) and (f) of subdivision one of section three hundred ninety of this
18 title. Child day care center operators, school age child care operators
19 and any employees or volunteers, who previously did not have a criminal
20 history record check performed in accordance with this subdivision shall
21 have such a criminal history record check performed when the child day
22 care center or school age child care provider applies for license or
23 registration renewal. Child day care centers which are not subject to
24 the provisions of section three hundred ninety of this title, shall not
25 be subject to the provisions of this section. The provisions of this
26 section shall apply to a volunteer only where the volunteer has the
27 potential for regular and substantial contact with children enrolled in
28 the program.

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

53 2. (a) As part of the provider's application for, or renewal of, a
54 child day care center or school age child care license or registration,
55 the provider shall furnish the office of children and family services
56 with fingerprint cards of any operator of a child day care center or

1 school age child care program, and any employee or volunteer, who previ-
2 ously did not have a criminal history record check performed in accord-
3 ance with this section, together with such other information as is
4 required by the office of children and family services and the division
5 of criminal justice services.

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

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

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

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

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

54 (G) The office of children and family services shall pay the process-
55 ing fee imposed pursuant to subdivision eight-a of section eight hundred
56 thirty-seven of the executive law. The office of children and family

services shall promptly submit the fingerprint cards and the processing fee to the division of criminal justice services for its full search and retain processing.

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

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

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

(ii) Where the criminal history record of an applicant to be an 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 person over the age of eighteen residing in such a home OR SCHOOL, reveals a conviction for a crime other than one set forth in subparagraph (i) of this paragraph, the office of children and family services may deny the application OR FILING, consistent with article twenty-three-A of the correction law; or

(iii) Where the criminal history record of an applicant to be an 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, reveals a charge for any crime, the office of children and family services shall hold the application OR FILING in abeyance until the charge is finally resolved.

(b) (i) 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 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 of children and family services shall deny, limit, suspend, revoke, reject or terminate a license [or], registration OR FILING based on such a conviction, unless the office determines, in its discretion, that continued operation of the center, program [or], home OR SCHOOL will not in any way jeopardize the health, safety or welfare of the children in the center, program [or], home OR SCHOOL;

1 (ii) Where the criminal history record of a current operator of a
2 child day care center, school age child care program, group family day
3 care home, family day care home, NURSERY SCHOOL, or any other person
4 over the age of eighteen residing in such a home OR SCHOOL, reveals a
5 conviction for a crime other than one set forth in subparagraph (i) of
6 paragraph (a) of this subdivision, the office of children and family
7 services shall conduct a safety assessment of the program and take all
8 appropriate steps to protect the health and safety of the children in
9 the program. The office may deny, limit, suspend, revoke, reject or
10 terminate a license [or], registration OR FILING based on such a
11 conviction, consistent with article twenty-three-A of the correction
12 law;

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

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

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

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

43 (d) (i) Where the criminal history record of a current employee or
44 volunteer at a child day care center [or], school age child care program
45 OR NURSERY SCHOOL reveals a conviction for a crime set forth in subpara-
46 graph (i) of paragraph (a) of this subdivision, the office of children
47 and family services shall conduct a safety assessment of the program and
48 take all appropriate steps to protect the health and safety of the chil-
49 dren in the program. The office shall direct the provider to terminate
50 the employee or volunteer based on such a conviction, unless the office
51 determines, in its discretion, that the continued presence of the
52 employee or volunteer in the center or program will not in any way jeop-
53 ardize the health, safety or welfare of the children in the center or
54 program;

55 (ii) Where the criminal history record of a current employee or volun-
56 teer at a child day care center [or], school age child care program OR

1 NURSERY SCHOOL reveals a conviction for a crime other than one set forth
2 in subparagraph (i) of paragraph (a) of this subdivision, the office of
3 children and family services shall conduct a safety assessment of the
4 program and take all appropriate steps to protect the health and safety
5 of the children in the program. The office may direct the provider to
6 terminate the employee or volunteer based on such a conviction, consist-
7 ent with article twenty-three-A of the correction law;

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

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

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

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

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

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

55 (iii) Where the criminal history record of a current employee, assist-
56 ant or volunteer at a group family day care home or family day care home

1 reveals a charge for any crime, the office of children and family
2 services shall conduct a safety assessment of the home and take all
3 appropriate steps to protect the health and safety of the children in
4 the home.

5 (g) Advise the provider that the individual has no criminal history
6 record.

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

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

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

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

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

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

53 10. A child day care provider shall advise the office of children and
54 family services when an individual who is subject to criminal history
55 record review in accordance with subdivision one or two of this section
56 is no longer subject to such review. The office of children and family

1 services shall inform the division of criminal justice services when an
2 individual who is subject to criminal history review is no longer
3 subject to such review so that the division of criminal justice services
4 may terminate its retain processing with regard to such person. At least
5 once a year, the office of children and family services will be required
6 to conduct a validation of the records maintained by the division of
7 criminal justice services.

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

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

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