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

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I N A S S E M B L Y

May 20, 2014

Introduced by M. of A. GUNTHER -- (at request of the Justice Center for the Protection of People with Special Needs) -- read once and referred to the Committee on Mental Health

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

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

Section 1. Subdivision 1 of section 401-a of the correction law, as amended by section 6 of part A of chapter 501 of the laws of 2012, is amended to read as follows:

1. The justice center for the protection of people with special needs shall be responsible for monitoring the quality of mental health care provided to inmates pursuant to article [forty-five of the mental hygiene law] TWENTY OF THE EXECUTIVE LAW. The justice center shall have direct and immediate access to all areas where state prisoners are housed, and to clinical and department records relating to inmates' clinical conditions. The justice center shall maintain the confidentiality of all patient-specific information.

S 2. Subdivision (b) of section 4212 of the education law, as amended by section 1-a of part E of chapter 501 of the laws of 2012, is amended to read as follows:

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

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

LBD14151-03-4

[reportable incident] ALLEGATION exists and such [reportable incident] SUBSTANTIATED ALLEGATION may be attributed in whole or in part to noncompliance by the residential facility or program with provisions of this chapter or regulations of the department applicable to the operation of a residential facility or program. Any plan of prevention and remediation required to be developed by a facility supervised by the department shall be submitted to and approved by the department in accordance with time limits established by regulations of the department. Implementation of the plan shall be monitored by the department. In reviewing the continued qualifications of a residential facility or program for an operating certificate, the department shall evaluate such facility's compliance with plans of prevention and remediation developed and implemented pursuant to this subdivision.

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

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

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

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

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

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

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

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

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

report of an alleged reportable incident] AN ALLEGATION OF ABUSE OR NEGLECT determines that [some credible] A PREPONDERANCE OF THE evidence of such [reportable incident] ALLEGATION exists and such [reportable incident] SUBSTANTIATED ALLEGATION may be attributed in whole or in part to noncompliance by the residential facility or program with provisions of this chapter or regulations of the department applicable to the operation of such residential facility or program. Any plan of prevention and remediation required to be developed pursuant to this subdivision by a facility supervised by the department shall be submitted to and approved by the department in accordance with time limits established by regulations of the department. Implementation of the plan shall be monitored by the department. In reviewing the continued qualifications of a residential facility or program for an operating certificate, the department shall evaluate such facility's compliance with plans of prevention and remediation developed and implemented pursuant to this subdivision.

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

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

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

(a) A licensing agency shall inquire of the department and the department shall, subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether an applicant for a certificate, license or permit, assistants to group family day care providers, the director of a camp subject to the provisions of article [thirteen-A,] thirteen-B [or thirteen-C] of the public health law, and any person over the age of eighteen who resides in the home of a person who has applied to become an adoptive parent or a foster parent or to operate a family day care home or group family day care home has been or is currently the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

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

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

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

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

provisions of section three hundred ninety of this article, or the department of health and mental hygiene of the city of New York, when such department receives an application for a certificate of approval to provide child day care services in a child day care center pursuant to the provisions of the health code of the city of New York, or the office of mental health or the office for people with developmental disabilities when such office receives an application for an operating certificate pursuant to the provisions of the mental hygiene law to operate a family care home [which will serve children], or a state or local governmental official who receives an application for a permit to operate a camp which is subject to the provisions of article [thirteen-A or] thirteen-B of the public health law or the office of children and family services which has received an application for a certificate to receive, board or keep any child at a foster family home pursuant to articles nineteen-G and nineteen-H of the executive law or any other facility or provider agency, as defined in subdivision four of section four hundred eighty-eight of this chapter, in regard to any licensing or certification function carried out by such facility or agency.

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

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

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

(d) ANY overnight, summer day and traveling summer day camps for children with developmental disabilities as defined in regulations promulgated by the commissioner of health; or

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

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

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

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