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I N   A S S E M B L Y

May 20, 2014

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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:

1     Section 1. Subdivision 1 of section 401-a of the correction law, as  
2     amended by section 6 of part A of chapter 501 of the laws of 2012, is  
3     amended to read as follows:  
4     1. The justice center for the protection of people with special needs  
5     shall be responsible for monitoring the quality of mental health care  
6     provided to inmates pursuant to article [forty-five of the mental  
7     hygiene law] TWENTY OF THE EXECUTIVE LAW. The justice center shall have  
8     direct and immediate access to all areas where state prisoners are  
9     housed, and to clinical and department records relating to inmates'  
10    clinical conditions. The justice center shall maintain the confidential-  
11    ity of all patient-specific information.  
12    S 2. Subdivision (b) of section 4212 of the education law, as amended  
13    by section 1-a of part E of chapter 501 of the laws of 2012, is amended  
14    to read as follows:  
15    (b) Provide for the development and implementation of a plan of  
16    prevention and remediation with respect to a substantiated report of [a  
17    reportable incident] ABUSE OR NEGLECT. Such action shall include: (i)  
18    within ten days of receipt of such a SUBSTANTIATED report [of a report-  
19    able incident], development and implementation of a plan of prevention  
20    and remediation to be taken with respect to a custodian or the residen-  
21    tial facility in order to assure the continued health and safety of  
22    children and to provide for the prevention of future acts constituting  
23    reportable incidents; and (ii) development and implementation of a plan  
24    of prevention and remediation, in the event an investigation of a report  
25    of an [alleged reportable incident] ALLEGATION OF ABUSE OR NEGLECT  
26    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.

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1 [reportable incident] ALLEGATION exists and such [reportable incident]  
2 SUBSTANTIATED ALLEGATION may be attributed in whole or in part to  
3 noncompliance by the residential facility or program with provisions of  
4 this chapter or regulations of the department applicable to the opera-  
5 tion of a residential facility or program. Any plan of prevention and  
6 remediation required to be developed by a facility supervised by the  
7 department shall be submitted to and approved by the department in  
8 accordance with time limits established by regulations of the depart-  
9 ment. Implementation of the plan shall be monitored by the department.  
10 In reviewing the continued qualifications of a residential facility or  
11 program for an operating certificate, the department shall evaluate such  
12 facility's compliance with plans of prevention and remediation developed  
13 and implemented pursuant to this subdivision.

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

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

27 (b) Provide for the development and implementation of a plan of  
28 prevention and remediation with respect to a substantiated report of [a  
29 reportable incident] ABUSE OR NEGLECT. Such action shall include: (i)  
30 within ten days of receipt of such a SUBSTANTIATED report [of a report-  
31 able incident], development and implementation of a plan of prevention  
32 and remediation to be taken with respect to a custodian or the residen-  
33 tial facility in order to assure the continued health and safety of  
34 children and to provide for the prevention of future acts constituting  
35 reportable incidents; and (ii) development and implementation of a plan  
36 of prevention and remediation, in the event an investigation of a report  
37 of an [alleged reportable incident] ALLEGATION OF ABUSE OR NEGLECT  
38 determines that [some credible] A PREPONDERANCE OF THE evidence of such  
39 [reportable incident] ALLEGATION exists and such [reportable incident]  
40 SUBSTANTIATED ALLEGATION may be attributed in whole or in part to  
41 noncompliance by the residential facility or program with provisions of  
42 this chapter or regulations of the department applicable to the opera-  
43 tion of such residential facility or program. Any plan of prevention and  
44 remediation required to be developed pursuant to this subdivision by a  
45 facility supervised by the department shall be submitted to and approved  
46 by the department in accordance with time limits established by regu-  
47 lations of the department. Implementation of the plan shall be monitored  
48 by the department. In reviewing the continued qualifications of a resi-  
49 dential facility or program for an operating certificate, the department  
50 shall evaluate such facility's compliance with plans of prevention and  
51 remediation developed and implemented pursuant to this subdivision.

52 S 4. Subdivision (b) of section 4358 of the education law, as amended  
53 by section 3 of part E of chapter 501 of the laws of 2012, is amended  
54 and a new paragraph (vii) is added to subdivision (a) to read as  
55 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

1 report of an alleged reportable incident] AN ALLEGATION OF ABUSE OR  
2 NEGLECT determines that [some credible] A PREPONDERANCE OF THE evidence  
3 of such [reportable incident] ALLEGATION exists and such [reportable  
4 incident] SUBSTANTIATED ALLEGATION may be attributed in whole or in part  
5 to noncompliance by the residential facility or program with provisions  
6 of this chapter or regulations of the department applicable to the oper-  
7 ation of such residential facility or program. Any plan of prevention  
8 and remediation required to be developed pursuant to this subdivision by  
9 a facility supervised by the department shall be submitted to and  
10 approved by the department in accordance with time limits established by  
11 regulations of the department. Implementation of the plan shall be moni-  
12 tored by the department. In reviewing the continued qualifications of a  
13 residential facility or program for an operating certificate, the  
14 department shall evaluate such facility's compliance with plans of  
15 prevention and remediation developed and implemented pursuant to this  
16 subdivision.

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

20 (a) The following persons and officials are required to report or  
21 cause a report to be made in accordance with this title when they have  
22 reasonable cause to suspect that a child coming before them in their  
23 professional or official capacity is an abused or maltreated child, or  
24 when they have reasonable cause to suspect that a child is an abused or  
25 maltreated child where the parent, guardian, custodian or other person  
26 legally responsible for such child comes before them in their profes-  
27 sional or official capacity and states from personal knowledge facts,  
28 conditions or circumstances which, if correct, would render the child an  
29 abused or maltreated child: any physician; registered physician assist-  
30 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;  
31 osteopath; optometrist; chiropractor; podiatrist; resident; intern;  
32 psychologist; registered nurse; social worker; emergency medical techni-  
33 cian; licensed creative arts therapist; licensed marriage and family  
34 therapist; licensed mental health counselor; licensed psychoanalyst;  
35 licensed behavior analyst; certified behavior analyst assistant; hospi-  
36 tal personnel engaged in the admission, examination, care or treatment  
37 of persons; a Christian Science practitioner; school official, which  
38 includes but is not limited to school teacher, school guidance counse-  
39 lor, school psychologist, school social worker, school nurse, school  
40 administrator or other school personnel required to hold a teaching or  
41 administrative license or certificate; social services worker; director  
42 of a children's overnight camp, summer day camp or traveling summer day  
43 camp, as such camps are defined in section thirteen hundred ninety-two  
44 of the public health law; day care center worker; school-age child care  
45 worker; provider of family or group family day care; EMPLOYEE OR VOLUN-  
46 TEER IN A RESIDENTIAL CARE FACILITY FOR CHILDREN THAT IS LICENSED,  
47 CERTIFIED OR OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES; or  
48 any other child care or foster care worker; mental health professional;  
49 substance abuse counselor; alcoholism counselor; all persons creden-  
50 tialled by the office of alcoholism and substance abuse services; peace  
51 officer; police officer; district attorney or assistant district attor-  
52 ney; investigator employed in the office of a district attorney; or  
53 other law enforcement official.

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

1 (a) A licensing agency shall inquire of the department and the depart-  
2 ment shall, subject to the provisions of paragraph (e) of this subdivi-  
3 sion, inform such agency and the subject of the inquiry whether an  
4 applicant for a certificate, license or permit, assistants to group  
5 family day care providers, the director of a camp subject to the  
6 provisions of article [thirteen-A,] thirteen-B [or thirteen-C] of the  
7 public health law, and any person over the age of eighteen who resides  
8 in the home of a person who has applied to become an adoptive parent or  
9 a foster parent or to operate a family day care home or group family day  
10 care home has been or is currently the subject of an indicated child  
11 abuse and maltreatment report on file with the statewide central regis-  
12 ter of child abuse and maltreatment.

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

16 (a) Upon notification by the office or by a child care resource and  
17 referral program in accordance with subdivision six of this section that  
18 any person who has applied to a licensing agency for a license, certif-  
19 icate or permit or who seeks to become an employee of a provider agency,  
20 or to accept a child for adoptive placement or who will be hired as a  
21 consultant or used as a volunteer by a provider agency, or that any  
22 other person about whom an inquiry is made to the office pursuant to the  
23 provisions of this section is the subject of an indicated report, the  
24 licensing or provider agency shall determine on the basis of information  
25 it has available whether to approve such application or retain the  
26 employee or hire the consultant or use the volunteer or permit an  
27 employee of another person, corporation, partnership or association to  
28 have access to the individuals cared for by the provider agency,  
29 provided, however, that if such application is approved, or such employ-  
30 ee is retained or consultant hired or volunteer used or person permitted  
31 to have access to the children cared for by such agency the licensing or  
32 provider agency shall maintain a written record, as part of the applica-  
33 tion file or employment record, of the specific reasons why such person  
34 was determined to be appropriate to receive a foster care or adoption  
35 placement or to provide day care services, to be the director of a camp  
36 subject to the provisions of article [thirteen-A or] thirteen-B of the  
37 public health law, to be employed, to be retained as an employee, to be  
38 hired as a consultant, used as a volunteer or to have access to the  
39 individuals cared for by the agency.

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

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

1 provisions of section three hundred ninety of this article, or the  
2 department of health and mental hygiene of the city of New York, when  
3 such department receives an application for a certificate of approval to  
4 provide child day care services in a child day care center pursuant to  
5 the provisions of the health code of the city of New York, or the office  
6 of mental health or the office for people with developmental disabili-  
7 ties when such office receives an application for an operating certif-  
8 icate pursuant to the provisions of the mental hygiene law to operate a  
9 family care home [which will serve children], or a state or local  
10 governmental official who receives an application for a permit to oper-  
11 ate a camp which is subject to the provisions of article [thirteen-A or]  
12 thirteen-B of the public health law or the office of children and family  
13 services which has received an application for a certificate to receive,  
14 board or keep any child at a foster family home pursuant to articles  
15 nineteen-G and nineteen-H of the executive law or any other facility or  
16 provider agency, as defined in subdivision four of section four hundred  
17 eighty-eight of this chapter, in regard to any licensing or certif-  
18 ication function carried out by such facility or agency.

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

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

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

46 (d) ANY overnight, summer day and traveling summer day camps for chil-  
47 dren with developmental disabilities as defined in regulations promul-  
48 gated by the commissioner of health; or

49 S 12. Paragraph (a) of subdivision 3 and subdivision 4 of section 491  
50 of the social services law, as added by section 1 of part B of chapter  
51 501 of the laws of 2012, are amended to read as follows:

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

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

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