§ 398. Additional powers and duties of commissioners of public welfare and certain city public welfare officers in relation to children. Commissioners of public welfare and city public welfare officers responsible under the provisions of a special or local law for the children hereinafter specified shall have powers and perform duties as follows:

1. As to destitute children:

(a) offer preventive services in accordance with section four hundred nine-a of this article when necessary to avert an impairment or disruption of a family which could result in the placement of the child in foster care;

(b) report to the local criminal justice agency and to the statewide central register for missing children as described in section eight hundred thirty-seven-e of the executive law such relevant information as required on a form prescribed by the commissioner of the division of criminal justice services, in appropriate instances; and

(c) assume charge of and provide care and support for any child who is a destitute child pursuant to paragraph (a) of subdivision three of section three hundred seventy-one of this article who cannot be properly cared for in his or her home, and if required, petition the family court to obtain custody of the child in accordance with article ten-C of the family court act.

2. As to neglected, abused or abandoned children:

(a) Investigate the alleged neglect, abuse or abandonment of a child, offer protective social services to prevent injury to the child, to safeguard his welfare, and to preserve and stabilize family life wherever possible and, if necessary, bring the case before the family court for adjudication and care for the child until the court acts in the matter and, in the case of an abandoned child, shall promptly petition the family court to obtain custody of such child.

(b) Receive and care for any child alleged to be neglected, abused or abandoned who is temporarily placed in his care by the family court pending adjudication by such court of the alleged neglect, abuse or abandonment including the authority to establish, operate, maintain and approve facilities for such purpose in accordance with the regulations

of the department; and receive and care for any neglected, abused or abandoned child placed or discharged to his care by the family court.

(c) Any facility designated as of the effective date of this act shall not be disapproved except after consultation with the designating appellate division.

(d) The local social services department shall list all facilities approved under this article for the temporary custody and care of children remanded by the family court and shall file a copy of that list periodically with the clerk of the family court in each county in the judicial district in which the facility is located.

(e) Report to the local registrar of vital statistics of the district in which the child was found the sex, color, approximate date of birth, place of finding, and the name assigned to any child who may be found whose parents are unknown, within ten days whenever possible after the child is found, on a form prescribed therefor by the state commissioner of health, and report the subsequent identification of any such child to the state commissioner of health; provided, however, that in the city of New York such form shall be prescribed by, and such report shall be made to, the department of health.

(f) Report to the local criminal justice agency and to the statewide central register for missing children as described in section eight hundred thirty-seven-e of the executive law such information as required on a form prescribed by the commissioner of the division of criminal justice services within forty-eight hours after an abandoned child is found.

3. As to delinquent children and persons in need of supervision:

(a) Investigate complaints as to alleged delinquency of a child.

(b) Bring such case of alleged delinquency when necessary before the family court.

(c) Receive within fifteen days from the order of placement as a public charge any delinquent child committed or placed or person in need of supervision placed in his or her care by the family court provided, however, that the commissioner of the social services district with whom the child is placed may apply to the state commissioner or his or her designee for approval of an additional fifteen days, upon written documentation to the office of children and family services that the

youth is in need of specialized treatment or placement and the diligent efforts by the commissioner of social services to locate an appropriate placement.

* 3-a. As to delinquent children:

(a)(1) Conditionally release any juvenile delinquent placed with the district to aftercare whenever the district determines conditional release to be consistent with the needs and best interests of such juvenile delinquent, that suitable care and supervision can be provided, and that there is a reasonable probability that such juvenile delinquent can be conditionally released without endangering public safety; provided, however, that such conditional release shall be made in accordance with the regulations of the office of children and family services, and provided further that no juvenile delinquent while absent from a facility or program without the consent of the director of such facility or program shall be conditionally released by the district solely by reason of the absence.

(2) It shall be a condition of such release that a juvenile delinquent so released shall continue to be the responsibility of the social services district for the period provided in the order of placement.

(3) The social services district may provide clothing, services and other necessities for any conditionally released juvenile delinquent, as may be required, including medical care and services not provided to such juvenile delinquent as medical assistance for needy persons pursuant to title eleven of article five of this chapter.

(4) The social services district, pursuant to the regulations of the office of children and family services, may cause a juvenile delinquent to be returned to a facility operated and maintained by the district, or an authorized agency under contract with the district, at any time within the period of placement, where there is a violation of the conditions of release or a change of circumstances.

(5) Juvenile delinquents conditionally released by a social services district may be provided for as follows:

(i) If, in the opinion of the social services district, there is no suitable parent, relative or guardian to whom a juvenile delinquent can be conditionally released, and suitable care cannot otherwise be secured, the district may conditionally release such juvenile delinquent to the care of any other suitable person; provided that where such

suitable person has no legal relationship with the juvenile, the district shall advise such person of the procedures for obtaining custody or guardianship of the juvenile.

(ii) If a conditionally released juvenile delinquent is subject to article sixty-five of the education law or elects to participate in an educational program leading to a high school diploma, he or she shall be enrolled in a school or educational program leading to a high school diploma following release, or, if such release occurs during the summer recess, upon the commencement of the next school term. If a conditionally released juvenile delinquent is not subject to article sixty-five of the education law, and does not elect to participate in an educational program leading to a high school diploma, steps shall be taken, to the extent possible, to facilitate his or her gainful employment or enrollment in a vocational program following release.

(b) When a juvenile delinquent placed with the social services district is absent from placement without consent, such absence shall interrupt the calculation of time for his or her placement. Such interruption shall continue until such juvenile delinquent returns to the facility or authorized agency in which he or she was placed. Provided, however, that any time spent by a juvenile delinquent in custody from the date of absence to the date placement resumes shall be credited against the time of such placement provided that such custody:

(1) was due to an arrest or surrender based upon the absence; or

(2) arose from an arrest or surrender on another charge which did not culminate in a conviction, adjudication or adjustment.

(c) In addition to the other requirements of this section, no juvenile delinquent placed with a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of this chapter pursuant to a restrictive placement under the family court act shall be released except pursuant to section 353.5 of the family court act.

* NB Repealed March 31, 2028

4. As to mentally disabled and physically handicapped children:

(a) Obtain admission to state and other suitable schools, hospitals, other institutions, or care in their own homes or in family free or boarding homes or in agency boarding homes or group homes for such

children in accordance with the provisions of the mental hygiene law, education law and acts relating to the family court.

(b) Maintain supervision over such disabled or physically handicapped children as are not in institutions, hospitals or schools or under the jurisdiction of the family court.

5. As to children born out of wedlock:

(a) Provide care in a family free or boarding home, in an agency boarding home or group home or in an institution for any child born out of wedlock and for his mother as for any other person in need of public assistance and care during pregnancy and during and after delivery, when in the judgment of such social services official needed care cannot be provided in the mother's own home. However, nothing in this section or elsewhere in this chapter contained shall be construed to make any such child or his mother ineligible for such care away from home, regardless of ability or liability to pay therefor; provided, however, that except as hereinafter provided, it shall rest in the discretion of the social services official, in view of all the facts and circumstances present in each case, to determine whether or not to require such mother, or any other person or persons liable by law to contribute to the support thereof, to pay all or any part of such cost, pursuant to the provisions of this section or any other section of this chapter. Any inconsistent provision of law notwithstanding, the acceptance by a private authorized adoption agency of an absolute surrender of a child born out of wedlock from the mother of such child shall relieve her from any and all liability for the support of such child. When in the judgment of a social services official needed care cannot be provided in the home of a minor pregnant with an out of wedlock child, and he has made a determination pursuant to subdivision one of section one hundred thirty-two of this chapter not to make an investigation of the circumstances of such minor and not to require support from persons liable therefor, the authorization of such social services official of necessary medical care for such minor shall have the same force and effect as a consent executed by a parent or guardian of such minor.

(b) Institute proceedings to establish paternity and secure the support and education of any child born out of wedlock or make a compromise with the father of such child, in accordance with the

provisions of law, relating to children born out of wedlock.

(c) Hold and disburse the money received from such a compromise or pay it to the mother if she gives security for the support of the child.

(d) When practicable, require the mother to contribute to the support of the child.

6. As to all foregoing classes of children:

(a) Investigate the family circumstances of each child reported to him as destitute, neglected, abused, delinquent, disabled or physically handicapped in order to determine what assistance and care, supervision or treatment, if any, such child requires.

(b) Provide for expert mental and physical examination of any child whom he has reason to suspect of mental or physical disability or disease and pay for such examination from public funds, if necessary.

(c) Provide necessary medical or surgical care in a suitable hospital, sanatorium, preventorium or other institution or in his own home for any child needing such care and pay for such care from public funds, if necessary. However, in the case of a child or minor who is eligible to receive care as medical assistance for needy persons pursuant to title eleven of article five of this chapter, such care shall be provided pursuant to the provisions of that title.

(d) Ascertain the financial ability of the parents of children who become public charges and collect toward the expense of such child's care such sum as the parents are able to pay.

(e) Collect from parents whose children have been discharged to his care by the family court such sums as they are ordered to pay for the maintenance of such children and report any failure to comply with such order to such court.

(f) When in his judgment it is advisable for the welfare of the child, accept the surrender of a child by an instrument in writing in accordance with the provisions of this chapter. Any inconsistent provision of law notwithstanding, the acceptance by the social services official of a surrender of a child born out of wedlock from the mother or father of such child shall relieve the parent executing such surrender from any and all liability for the support of such child.

(g) (1) Place children in its care and custody or its custody and guardianship, in suitable instances, in supervised settings, family

homes, agency boarding homes, group homes or institutions under the proper safeguards. Such placements can be made either directly, or through an authorized agency, except that, direct placements in agency boarding homes or group homes may be made by the social services district only if the office of children and family services has authorized the district to operate such homes in accordance with the provisions of section three hundred seventy-four-b of this article and only if suitable care is not otherwise available through an authorized agency under the control of persons of the same religious faith as the child. Where such district places a child in a supervised setting, agency boarding home, group home or institution, either directly, or through an authorized agency, the district shall certify in writing to the office of children and family services, that such placement was made because it offers the most appropriate and least restrictive level of care for the child, and, is more appropriate than a family foster home placement, or, that such placement is necessary because there are no qualified foster families available within the district who can care for the child. If placements in agency boarding homes, group homes or institutions are the result of a lack of foster parents within a particular district, the office of children and family services shall assist such district to recruit and train foster parents. Placements shall be made only in institutions visited, inspected and supervised in accordance with title three of article seven of this chapter and conducted in conformity with the applicable regulations of the supervising state agency in accordance with title three of article seven of this chapter. With the approval of the office of children and family services, a social services district may place a child in its care and custody or its custody and guardianship in a federally funded job corps program and may receive reimbursement for the approved costs of appropriate program administration and supervision pursuant to a plan developed by the department and approved by the director of the budget.

(2) A social services district may place a child in its care and custody or its custody and guardianship in a home or facility operated or licensed by any office of the department of mental hygiene, subject to the relevant provisions of the mental hygiene law and the admission criteria of the facility. The director of the budget may authorize such transfers of appropriations under the provisions of section fifty of the

state finance law as may be necessary to secure federal reimbursement for such placements.

(3) (i) Effective sixty days after the enactment of this subparagraph, there is hereby established within a social services district with a population in excess of two million a two-year demonstration project which affords authorized agencies with which foster children are placed enhanced administrative flexibility. Pursuant to such demonstration project, an authorized agency with which the social services district has placed a child shall have the authority to:

(A) give all necessary consents to the discharge of the child from foster care when such authorized agency has submitted a written request for approval of such discharge to the social services official and the social services official has not disapproved such discharge within thirty days of receiving such request;

(B) change a goal for the child when such authorized agency has submitted a written request for approval of such change of goal to the social services official and the social services official has not disapproved such goal within thirty days of receiving such request;

(C) commence a proceeding to free the child for adoption when such authorized agency has submitted a written request for approval of the commencement of such proceeding to the social services official, if the social services official has not disapproved such commencement within thirty days of receiving such request, in which case such a request shall be deemed approved; and

(D) consent to the adoption of a child whose custody and guardianship, or of a child where such child's parents are both deceased, or where one parent is deceased and the other parent is not entitled to notice pursuant to sections one hundred eleven and one hundred eleven-a of the domestic relations law, and whose care and custody, has been transferred to a social services district and who has been placed by the social services official with the authorized agency when the authorized agency has submitted a written request for approval to consent to the adoption, if the social services district has not disapproved the request to consent to adoption within sixty days after its submission, in which case such request shall be deemed approved and the authorized agency may give all necessary consent to the adoption of the child.

(ii) Nothing herein shall result in the transfer of care and custody

or custody and guardianship of a child from the social services official to the authorized agency.

(iii) Within three months of the conclusion of the demonstration project, such social services district shall issue a report to the department regarding the effectiveness of the demonstration project. Such report shall include recommendations for possible statutory and regulatory amendments in relation to the administration of foster care.

(4) A social services district may place a child in its care and custody or its custody and guardianship in a family home certified by the division for youth, which shall not include a group home. Such placements shall be subject to the relevant provisions of this chapter, the executive law and the admission criteria of the home.

(h) Supervise children who have been cared for away from their families until such children become twenty-one years of age or until they are discharged to their own parents, relatives within the third degree or guardians, or adopted, provided, however, that in the case of a child who is developmentally disabled as such term is defined in section 1.03 of the mental hygiene law, emotionally disturbed or physically handicapped, and who is receiving care in a group home, agency boarding home or any child care facility operated by an authorized agency with a capacity of thirteen or more children, and who is in receipt of educational services and under the care and custody of a local department of social services, the commissioner of the office of children and family services shall allow such child who reaches the age of twenty-one during the period commencing on the first day of September and ending on the thirtieth day of June to be entitled to continue in such program until the thirtieth day of June or until the termination of the school year, whichever shall first occur.

(j) Permit children and minors who are being cared for away from their own homes as public charges to retain the maximum amount of their monthly earned income for future identifiable needs in accordance with the regulations of the department and consistent with the federal law applicable to the treatment of income and resources under the aid to families with dependent children program.

(k) In accordance with regulations of the department, provide suitable vocational training through any institution licensed or approved by the state education department, for any minor in his care who demonstrates

to his satisfaction the possession of talent, aptitude and ability necessary to benefit therefrom, provided such minor could not otherwise obtain such training. Expenditures may be made for tuition, books, supplies, and all other necessary items to enable such minor to obtain such training.

(l) In accordance with regulations of the department, provide maintenance in a summer camp for children and minors who are being cared for away from their own homes as public charges, when in his judgment it is advisable for the welfare of such children and minors.

(n) When it is in the best interest of the child, place a child who is being returned to foster care, following an interruption in care, or a child who is being returned to a family boarding home following placement in a foster care facility with the foster care parents with whom that child was last placed, notwithstanding the provisions of subdivisions three and four of section three hundred seventy-eight of this chapter. When it is in the best interests of the minor parent and the minor parent's child or children, place the minor parent who is being returned to foster care following an interruption in care, and the minor parent's child or children or the minor parent who is being returned to a family boarding home following placement in a foster care facility and the minor parent's child or children with the foster care parents with whom the minor parent was last placed, notwithstanding the provisions of subdivisions three and four of section three hundred seventy-eight of this chapter.

(o) Compliance with a court order enforcing visitation rights of a non-custodial parent or grandparent pursuant to part eight of article ten of the family court act, subdivision ten of section three hundred fifty-eight-a or paragraph (d) of subdivision two of section three hundred eighty-four-a of this chapter, and responsibility for the return of such child after visitation so ordered.

* (p) Provide respite care for children who have special needs as described in subdivision fifteen of this section including, but not limited to, those children who are diagnosed as having AIDS or HIV related disease. For the purposes of this paragraph, respite care shall mean the provision of temporary care and supervision of children on behalf of a foster parent of a child with such special needs. Such care may be provided by a foster family boarding home, an agency operated

boarding home, a group home, an institution or by an authorized staff member of such programs or other provider approved by the local district based on the individual circumstances of the caregiver and the needs of the child, for up to three consecutive weeks but no more than seven weeks in a calendar year. The department shall, by regulation, establish standards for respite care and training for the providers of such care.

* NB There are 2 par (p)'s

* (p) Consistent with the provisions of this chapter, provide necessary care, services and supervision including medical care, to a child placed in foster care pursuant to subparagraph (ii) of paragraph (a) of subdivision two of section ten hundred seventeen of the family court act, and reimbursement therefor to relatives of such child as approved foster parents with whom such child is residing.

* NB There are 2 par. (p)'s

7. Notwithstanding any inconsistent provisions of law, no city forming part of a county public welfare district may hereafter assume any of the powers, duties and responsibilties mentioned in this section. However, this subdivision shall not be deemed or construed to prohibit a public welfare officer of a city forming part of a county public welfare district from exercising and performing on behalf of the county commissioner of public welfare, pursuant to the provisions of title three-a of article three, any of the powers and duties mentioned in this section. A city forming part of a county public welfare district which heretofore assumed or upon which was heretofore imposed the responsibility for providing any or all of the assistance, care and service mentioned in this section, shall hereafter continue to have such responsibility, provided, however, that the continuance of such responsibility shall be consistent with the powers, duties and responsibilities of such city under and pursuant to the provisions of title three-a of article three.

8. A public welfare official who is authorized to place children or minors in homes or institutions pursuant to provisions of this section shall have the power to place children or minors in a public institution for children.

9. A social services official shall have the same authority as a peace officer to remove a child from his home without an order of the family court and without the consent of the parent or person responsible for such child's care if the child is in such condition that his continuing in the home presents an imminent danger to the child's life or health. When a child is removed from his home pursuant to the provisions of this subdivision, the social services official shall promptly inform the parent or person responsible for such child's care and the family court of his action.

10. Any provision of this chapter or any other law notwithstanding, where a foster child for whom a social services official has been making foster care payments is in attendance at a college or university away from his or her foster family boarding home, group home, agency boarding home or institution, and residing in a supervised setting or other approved location, a social services official may make foster payments, at a rate to be developed by the office of children and family services, to such college or university, provider of room and board, or youth, as appropriate, in lieu of payment to the foster parents or authorized agency, for the purpose of room and board, if not otherwise provided. Such rate shall be no lower than the rate paid for a child's care in a foster family boarding home.

11. In the case of a child who is adjudicated a person in need of supervision or a juvenile delinquent and is placed by the family court with the division for youth and who is placed by the division for youth with an authorized agency pursuant to court order, the social services official shall make expenditures in accordance with the regulations of the department for the care and maintenance of such child during the term of such placement subject to state reimbursement pursuant to this title, or article nineteen-G of the executive law in applicable cases.

12. A social services official shall be permitted to place persons adjudicated in need of supervision or delinquent, and alleged persons to be in need of supervision in detention pending transfer to a placement, in the same foster care facilities as are providing care to destitute, neglected, abused or abandoned children. Such foster care facilities

shall not provide care to a youth in the care of a social services official as a convicted juvenile offender.

13. (a) In the case of a child with a handicapping condition who is placed, pursuant to this chapter, in a foster care agency or institution located outside the state, and who attains the age of eighteen, the social services official shall:

(i) determine whether such child will need services after the age of twenty-one, and, if such need exists;

(ii) assess the nature of the services required;

(iii) notify the parent or guardian of such child's need for services; and

(iv) upon the written consent of the parent or guardian, and notwithstanding section three hundred seventy-two of this article, submit a report on the child's need for services after age twenty-one to the department for planning purposes.

(b) Upon the written consent of the parent or guardian, the department shall submit the report received pursuant to paragraph (a) of this subdivision to the council on children and families.

(c) When a child's report is submitted to the council on children and families pursuant to this subdivision, the council shall cooperate with adult service providers, such as the department of social services, the office for people with and developmental disabilities, the office of mental health and the office of vocational rehabilitation of the education department in planning and coordinating such child's return to New York state for adult services. The council shall arrange with the appropriate state agency for the development of a recommendation of all appropriate in-state programs operated, licensed, certified or authorized by such agency and which may be available when such child attains the age of twenty-one. Such recommendation of all programs shall be made available to the parent or guardian of such child at least six months before such child attains the age of twenty-one. All records, reports and information received, compiled or maintained by the council pursuant to this subdivision shall be subject to the confidentiality requirements of the department.

14. (a) In the case of a child who is developmentally disabled as such

term is defined in section 1.03 of the mental hygiene law, emotionally disturbed or physically handicapped and who is receiving care in a group home, agency boarding home, or any child care facility operated by an authorized agency with a capacity of thirteen or more children, who attains the age of eighteen and who will continue in such care after the age of eighteen, or who is placed in such care after the age of eighteen, the social services official shall notify the parent or guardian of such child that such care will terminate when such child attains the age of twenty-one provided, however, that any such child in receipt of educational services and under the care and custody of a local department of social services who reaches the age of twenty-one during the period commencing on the first day of September and ending on the thirtieth day of June shall be entitled to continue in such program until the thirtieth day of June or until the termination of the school year, whichever shall first occur. Such notice shall be in writing and shall describe in detail the parent's or guardian's opportunity to consent to having such child's name and other information forwarded in a report to the commissioner of mental health, commissioner of the office for people with developmental disabilities, commissioner of education or commissioner of the office of children and family services or their designees for the purpose of determining whether such child will likely need services after the age of twenty-one and, if so, recommending possible adult services.

(b) Upon the written consent of the parent or guardian, and notwithstanding section three hundred seventy-two of this article, the social services official shall submit a report on such child's possible need for services after age twenty-one to the commissioner of mental health, commissioner of the office for people with developmental disabilities, commissioner of social services or commissioner of education or their designees for the development of a recommendation pursuant to section 7.37 or 13.37 of the mental hygiene law, section three hundred ninety-eight-c of this title or subdivision ten of section four thousand four hundred three of the education law. The social services official shall determine which commissioner shall receive the report by considering the child's handicapping condition. If the social services official determines that the child will need adult services from the department and such social services official is the

commissioner's designee pursuant to this subdivision and section three hundred ninety-eight-c of this title, such social services official shall perform the services described in section three hundred ninety-eight-c of this title.

(c) A copy of such report shall also be submitted to the department at the same time that such report is submitted to the commissioner of mental health, commissioner of the office for people with developmental disabilities or commissioner of education or their designees.

(d) When the social services official is notified by the commissioner who received the report that such state agency is not responsible for determining and recommending adult services for the child, the social services official shall forward the report to another commissioner; or, if the social services official determines that there exists a dispute between state agencies as to which state agency has the responsibility for determining and recommending adult services, the social services official may forward the report to the council on children and families for a resolution of such dispute.

(e) The social services official shall prepare and submit an annual report to the department on October first, nineteen hundred eighty-four and thereafter on or before October first of each year. Such annual report shall contain the number of cases submitted to each commissioner pursuant to paragraph (b) of this subdivision, the type and severity of the handicapping condition of each such case, the number of notices received which deny responsibility for determining and recommending adult services, and other information necessary for the department and the council on children and families to monitor the need for adult services, but shall not contain personally identifying information. The department shall forward copies of such annual reports to the council on children and families. All information received by the council on children and families pursuant to this paragraph shall be subject to the confidentiality requirements of the department.

15. (a) In the case of a child who has special needs due to a high level of disturbed behavior, emotional disturbance or physical or health needs as determined by the district in accordance with the rules and regulations of the department and who has been placed with a therapeutic foster parent, the social services official shall make available

periodic respite care services for such parent, necessary consultation services between the therapeutic foster care parent and professionals familiar with the special needs of the child and such other support services as are reasonably necessary to prevent placement of the child in a group home, an agency operated boarding home or an institution.

(b) Prior to placement of a child who has been determined to have special needs with a therapeutic foster parent, the social services official shall require such foster parent to complete an approved training program. The department shall not provide enhanced reimbursement for such placement unless the social services official certifies that the foster parent has successfully completed an approved training program.

(c) A social services official shall require that the family services plan developed pursuant to section four hundred nine-e of this article for a child placed with a therapeutic foster parent include a treatment plan prepared in consultation with the therapeutic foster parent and approved by the social services official.

16. Notwithstanding any provision of law to the contrary, with regard to the placement of all categories of foster children, the social services official or the voluntary authorized agency under contract with such official must consider giving preference to placement of a child with an adult relative over a non-related caregiver, provided that the relative caregiver meets relevant child welfare standards.