

PROGRAM BILL # 35

S. Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

EXECLA
(Enacts the "protection of people
with special needs act")

Exec. protect ppl spec ned

AN ACT

to amend the executive law, the
criminal procedure law, the
correction law and the public health
law, in relation to establishing the
justice center for the protection of
people with special needs; to repeal
article 45 of the mental hygiene
law, relating to the state commis-
sion on quality of care and advocacy
for persons with disabilities; and
establishing the justice center
medical review board (Part A); to
amend the social services law, in
relation to the protection of

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s20 Adams	s44 Farley	s58 Kennedy	s54 Nozzolio	s28 Serrano
s15 Addabbo	s02 Flanagan	s34 Klein	s53 O'Mara	s51 Seward
s55 Alesi	s08 Fuschillo	s26 Krueger	s37 Oppenheimer	s09 Skelos
s11 Avella	s59 Gallivan	s24 Lanza	s21 Parker	s14 Smith
s40 Ball	s12 Gianaris	s39 Larkin	s13 Peralta	s25 Squadron
s42 Bonacic	s22 Golden	s01 LaValle	s30 Perkins	s16 Stavisky
s46 Breslin	s47 Griffo	s52 Libous	s61 Ranzenhofer	s35 Stewart- Cousins
s38 Carlucci	s60 Grisanti	s45 Little	s48 Ritchie	s49 Valesky
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s33 Rivera	s57 Young
s32 Diaz	s36 Hassell- Thompson	s07 Martins	s56 Robach	s03 Zeldin
s17 Dilan		s62 Maziarz	s41 Saland	s27
s29 Duane	s10 Huntley	s43 McDonald	s19 Sampson	
s31 Espallat	s04 Johnson	s18 Montgomery	s23 Savino	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a085 Crespo	a042 Jacobs	a121 Miller, D.	a067 Rosenthal
a092 Abinanti	a107 Crouch	a095 Jaffee	a102 Miller, J.	a118 Russell
a105 Amedore	a014 Curran	a057 Jeffries	a038 Miller, M.	a144 Ryan
a084 Arroyo	a063 Cusick	a135 Johns	a052 Millman	a012 Saladino
a035 Aubry	a045 Cymbrowitz	a112 Jordan	a015 Montesano	a113 Sayward
a124 Barclay	a034 DenDekker	a099 Katz	a132 Morelle	a029 Scarborough
a103 Barrett	a081 Dinowitz	a074 Kavanagh	a039 Moya	a016 Schimel
a040 Barron	a114 Duprey	a145 Kearns	a003 Murray	a140 Schimminger
a082 Benedetto	a004 Englebright	a065 Kellner	a037 Nolan	a064 Silver
a122 Blankenbush	a054 Espinal	a129 Kolb	a128 Oaks	a027 Simanowitz
a055 Boyland	a071 Farrell	a025 Laneman	a069 O'Donnell	a036 Simotas
a008 Boyle	a123 Finch	a091 Latimer	a051 Ortiz	a100 Skartados
a026 Braunstein	a007 Fitzpatrick	a013 Lavine	a136 Palmesano	a146 Smardz
a044 Brennan	a137 Friend	a050 Lentol	a088 Paulin	a079 Stevenson
a116 Brindisi	a143 Gabryszak	a125 Lifton	a141 Peoples- Stokes	a011 Sweeney
a131 Bronson	a090 Galef	a072 Linares		a110 Tedisco
a046 Brook-Krasny	a133 Gantt	a127 Lopez, P.	a058 Perry	a115 Tenney
a147 Burling	a077 Gibson	a053 Lopez, V.	a087 Pretlow	a002 Thiele
a117 Butler	a149 Giglio	a001 Losquadro	a073 Quart	a061 Titone
a101 Cahill	a066 Glick	a126 Lupardo	a021 Ra	a031 Titus
a096 Calhoun	a023 Goldfeder	a111 Magee	a097 Rabbitt	a062 Tobacco
a043 Camara	a150 Goodell	a120 Magnarelli	a009 Raia	a148 Walter
a106 Canestrari	a075 Gottfried	a059 Maisel	a006 Ramos	a041 Weinstein
a089 Castelli	a005 Graf	a060 Malliotakis	a134 Reilich	a020 Weisenberg
a086 Castro	a098 Gunther	a030 Markey	a109 Reilly	a024 Weprin
a138 Ceretto	a130 Hanna	a093 Mayer	a078 Rivera, J.	a070 Wright
a033 Clark	a139 Hawley	a019 McDonough	a080 Rivera, N.	a094 Zebrowski
a047 Colton	a083 Heastie	a104 McEneriy	a076 Rivera, P.	
a010 Conte	a028 Hevesi	a017 McKeivitt	a119 Roberts	
a032 Cook	a048 Hikind	a108 McLaughlin	a056 Robinson	
a142 Corwin	a018 Hooper	a022 Meng	a068 Rodriguez	

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and 4 copies of memorandum in support (single house);
or 4 signed copies of bill and 8 copies of memorandum
in support (uni-bill).

vulnerable persons (Part B); to amend the county law and the mental hygiene law, in relation to reports of abuse or neglect of individuals in certain facilities and programs and repealing certain provisions of the mental hygiene law relating thereto; and to amend the mental hygiene law, in relation to reports of abuse and mistreatment of vulnerable persons in residential care and repealing certain provisions of such law relating thereto (Part C); to amend the social services law, in relation to the definition of abused and maltreated child; in relation to mandatory reporting; in relation to the statewide central register of child abuse and maltreatment and access to such register; in relation to making technical corrections relating thereto; and repealing section 412-a, and other provisions of such law relating thereto (Part D); to amend the education law and the vehicle and traffic law, in relation to the protection of pupils in residential care from abuse, neglect and maltreatment (Part E); to amend the mental hygiene law, the executive law and the social services law, in relation to review of criminal history information concerning certain prospective providers, employees, and individuals credentialed by the office of alcoholism and substance abuse services (Part F); to amend the penal law, in relation to certain crimes of abuse, neglect or endangering the welfare of certain incompetent, physically disabled, or vulnerable persons (Part G); and to repeal chapter 606 of the laws of 2011, amending the mental hygiene law relating to creating an abuse prevention notification system; and to repeal chapter 6 of the laws of 2012, amending chapter 606 of the laws of 2011, amending the mental hygiene law relating to an abuse prevention notification system (Part H)

05/07/12

3

12127-03-2

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "protection
2 of people with special needs act".

3 § 2. This act enacts into law major components of legislation which
4 are necessary for the protection of persons who are vulnerable because
5 of their reliance on professional caregivers to help them overcome phys-
6 ical, cognitive and other challenges. Each component is wholly
7 contained within a Part identified as Parts A through H. The effective
8 date for each particular provision contained within each Part is set
9 forth in the last section of such Part. Any provision in any section
10 contained within a Part, including the effective date of the Part, which
11 makes reference to a section "of this act", when used in connection with
12 that particular component, shall be deemed to mean and refer to the
13 corresponding section of the Part in which it is found. Section four of
14 this act sets forth the general effective date of this act.

15

PART A

16 Section 1. Legislative findings and purpose. There is a recognized
17 need to strengthen and standardize the safety net for vulnerable
18 persons, adults and children alike, who are receiving care from New
19 York's human service agencies and programs. There are over 270,000 chil-
20 dren and adults with disabilities or other life circumstances that make
21 them vulnerable in residential facilities under the auspices of six
22 state agencies that operate, license or certify such programs. In addi-
23 tion, a significant number of persons rely on day programs operated,
24 licensed or certified by the state. Although all of these programs
25 share a common obligation to protect such persons, and keep them safe
26 from abuse and neglect, there are fundamental differences in how the

1 state agencies meet their obligations, as well as major gaps in over-
2 sight that may expose vulnerable persons to harm.

3 This legislation creates a set of uniform safeguards, to be imple-
4 mented by a justice center whose primary focus will be on the protection
5 of vulnerable persons. To bolster the ability of the state to respond
6 more effectively to abuse and neglect of vulnerable persons, without
7 creating additional burdens on local law enforcement, the justice center
8 will have concurrent authority with district attorneys to prosecute
9 abuse and neglect crimes committed against such persons.

10 The justice center also will develop a register that will contain the
11 names of individuals found responsible for egregious or repeated acts of
12 abuse or neglect. Before being placed on the register, such individuals
13 will have a right to challenge that finding, but once on the register
14 they will be barred from future employment in the care of vulnerable
15 persons. Employees found responsible for less serious acts shall be
16 subjected to progressive discipline, including retraining and other
17 actions necessary to facilitate their safe return to the workplace.

18 To ensure that individuals who work with vulnerable persons are aware
19 of their obligations to assist such persons to lead safe, vital and
20 productive lives, the legislation requires the justice center to develop
21 a code of conduct for workers who have regular contact with vulnerable
22 persons. This code of conduct will serve as a guide to such workers by
23 containing the basic ethical standards to which all direct support work-
24 ers should subscribe and be held accountable.

25 The justice center will also operate a statewide hotline to which
26 certain mandated reporters will be required to report allegations of
27 abuse and neglect against vulnerable persons being served in certain
28 residential and non-residential facilities and programs. It will ensure

1 that allegations of abuse and neglect are promptly reported, that they
2 are fully and effectively investigated, that those individuals who are
3 responsible are held accountable and that providers implement corrective
4 action plans to prevent future incidents.

5 Accordingly, the purpose of this legislation is to create a durable
6 set of consistent safeguards for all vulnerable persons that will
7 protect them against abuse, neglect and other conduct that may jeopard-
8 ize their health, safety and welfare, and to provide fair treatment to
9 the employees upon whom they depend.

10 § 2. Article 45 of the mental hygiene law is REPEALED.

11 § 3. The executive law is amended by adding a new article 20 to read
12 as follows:

13 ARTICLE 20

14 PROTECTION OF PEOPLE WITH SPECIAL NEEDS

15 Section 550. Definitions.

16 551. The justice center for the protection of people with
17 special needs.

18 552. Organization of the justice center.

19 553. Powers and duties of the justice center.

20 554. Codes of conduct.

21 555. Justice center medical review board; organization.

22 556. Functions, powers and duties of the board.

23 557. Reports to the justice center.

24 558. Access to records and facilities.

25 559. New York state interagency coordinating council for
26 services to persons who are deaf, deaf-blind, or hard of
27 hearing.

28 560. Annual report.

1 § 550. Definitions. As used in this article, the following terms shall
2 have the following meanings:

3 1. "Executive director" shall mean the executive director of the
4 justice center for the protection of people with special needs.

5 2. "Mental hygiene facility" shall mean a facility as defined in
6 subdivision six of section 1.03 of the mental hygiene law and facilities
7 for the operation of which an operating certificate is required pursuant
8 to article sixteen or thirty-one of the mental hygiene law and including
9 family care homes. "Mental hygiene facility" also means a secure treat-
10 ment facility as defined by article ten of the mental hygiene law.

11 3. "Abuse or neglect" shall have the same meaning as defined in
12 subdivision one of section four hundred eighty-eight of the social
13 services law.

14 4. "State oversight agency" shall mean the state agency that operates,
15 licenses or certifies an applicable facility or provider agency;
16 provided however that such term shall only include the following enti-
17 ties: the office of mental health, the office for people with develop-
18 mental disabilities, the office of alcoholism and substance abuse
19 services, the office of children and family services, the department of
20 health and the state education department. "State oversight agency" does
21 not include agencies that are certification agencies pursuant to federal
22 law or regulation.

23 5. "Vulnerable person" shall mean a person who, due to physical or
24 cognitive disabilities, or the need for specialized services or place-
25 ment, is receiving services from a facility or provider agency as
26 defined in subdivision four of section four hundred eighty-eight of the
27 social services law.

1 § 551. The justice center for the protection of people with special
2 needs. 1. There is hereby created within the executive department a
3 justice center for the protection of people with special needs ("justice
4 center" or "center"). Such justice center shall be headed by an execu-
5 tive director, who shall be appointed by the governor, by and with the
6 advice and consent of the senate. The executive director may appoint
7 staff and perform such other functions for the efficient operation of
8 the justice center within the amounts made available therefor by appro-
9 priation.

10 2. The executive director shall recommend policies and procedures to
11 the state oversight agency for the protection of vulnerable persons,
12 including but not limited to policies and procedures: (a) for the
13 protection of vulnerable persons who reside in or receive services from
14 facilities or provider agencies as set forth in subdivision four of
15 section four hundred eighty-eight of the social services law; (b) relat-
16 ing to assuring, on behalf of the state, that vulnerable persons are
17 afforded care that is of a uniformly high standard; (c) relating to
18 assuring, on behalf of the state, that vulnerable persons are afforded
19 the opportunity to exercise all of the rights and responsibilities
20 accorded to residents of the state; and (d) to harmonize and improve the
21 procedures for and quality of investigations of abuse or neglect and
22 significant incidents related to vulnerable persons within the different
23 systems of care in the state.

24 3. The executive director may promulgate, adopt, amend or rescind
25 rules and regulations necessary to carry out the provisions of this
26 article; provided, however, that such rules and regulations shall be
27 strictly limited in their application to the means and methods of
28 compliance with the provisions of this article.

1 § 552. Organization of the justice center. 1. The justice center
2 shall house the vulnerable persons' central register created in section
3 four hundred ninety-two of the social services law and shall perform all
4 of the necessary functions related to the receipt and acceptance of
5 reports of allegations of abuse or neglect of vulnerable persons, the
6 investigation of such accepted reports and the review of substantiated
7 findings of abuse or neglect, including conducting any disciplinary
8 proceedings resulting from such substantiated findings (for state enti-
9 ties bound by collective bargaining, the disciplinary process estab-
10 lished through collective bargaining shall govern).

11 2. (a) The justice center also shall employ a special prosecutor and
12 inspector general for the protection of people with special needs
13 ("special prosecutor"), who shall be appointed by the governor. Pursuant
14 to the provisions of this section, such special prosecutor shall have
15 the duty and power: (i) to investigate and prosecute offenses involving
16 abuse or neglect committed against vulnerable persons; and (ii) to coop-
17 erate with and assist district attorneys and other local law enforcement
18 officials in their efforts against the abuse or neglect of vulnerable
19 persons. The special prosecutor may request and shall receive, from any
20 agency, department, division, board, bureau or commission of the state,
21 or any political subdivision thereof, cooperation and assistance in the
22 performance of his or her duties, and may provide technical and other
23 assistance to any district attorney or law enforcement official request-
24 ing assistance in the investigation or prosecution of abuse or neglect
25 of vulnerable persons.

26 (b) The special prosecutor is empowered to apply for search warrants
27 pursuant to article six hundred ninety of the criminal procedure law,
28 and, except in exigent circumstances, shall give prior notice of the

1 application to the district attorney of the county in which such a
2 warrant is to be executed, and in such exigent circumstances shall give
3 such notice as soon thereafter as is practicable; provided, however that
4 the failure to give notice of a search warrant application to a district
5 attorney shall not be a ground to suppress the evidence seized in
6 executing the warrant. He or she may designate an assistant to exercise
7 any of such powers.

8 (c) The special prosecutor or one of his or her assistants, may attend
9 in person any term of the county court or supreme court having appropri-
10 ate jurisdiction, including an extraordinary special or trial term of
11 the supreme court when one is appointed pursuant to section one hundred
12 forty-nine of the judiciary law, or appear before the grand jury there-
13 of, for the purpose of managing and conducting in such court or before
14 such jury a criminal action or proceeding concerned with an offense
15 where any conduct constituting or requisite to the completion of or in
16 any other manner related to such offense involved the abuse or neglect
17 of a vulnerable person, as those terms are defined in this article. In
18 such case, such special prosecutor or his or her assistant so attending
19 may exercise all the powers and perform all the duties in respect of
20 such actions or proceedings which the district attorney would otherwise
21 be authorized or required to exercise or perform.

22 § 553. Powers and duties of the justice center. The justice center
23 shall have the following powers and duties:

24 1. To create and establish the statewide vulnerable persons' central
25 register, as set forth in section four hundred ninety-two of the social
26 services law, which shall include, but not be limited to:

1 (a) establishing procedures for the timely response to, and effective
2 investigation of, allegations of abuse or neglect that are accepted by
3 the statewide vulnerable persons' central register;

4 (b) establishing procedures for the notification of appropriate
5 persons and entities with respect to reports and findings of abuse or
6 neglect of vulnerable persons and significant incidents, as applicable;

7 (c) representing the state in all hearings and other proceedings
8 relating to discipline of employees charged with having committed abuse
9 or neglect;

10 (d) consistent with appropriate collective bargaining agreements,
11 conducting all hearings and other proceedings relating to discipline of
12 employees found to have committed abuse or neglect (for state entities
13 bound by collective bargaining, the disciplinary process established
14 through collective bargaining shall govern);

15 (e) identifying a process for timely responses to allegations of
16 reportable incidents in dually licensed or co-located facilities and
17 provider agencies; and

18 (f) where applicable, establishing uniform procedures for character
19 and competence reviews of provider agencies initially, and upon renewal
20 of licenses and operating certificates requiring a review of performance
21 records regarding incident management, the role of the board of direc-
22 tors in maintaining oversight over agency performance in this area, and
23 the management of incidents affecting resident safety, including cases
24 of systemic problems.

25 2. To maintain a central repository for data relating to the investi-
26 gation of all reports of alleged abuse or neglect and significant inci-
27 dents, as defined in subdivisions one and twelve of section four hundred
28 eighty-eight of the social services law;

1 3. To establish procedures for review of instances of abuse, neglect
2 and significant incidents, as defined in subdivisions one and twelve of
3 section four hundred eighty-eight of the social services law, to identi-
4 fy preventive and corrective actions and to develop and implement such
5 actions and plans of improvement subject to the requirements of any
6 federal oversight entity;

7 4. To develop standards and training curricula for investigators who
8 will be assigned to investigate reported allegations of abuse or neglect
9 and significant incidents involving vulnerable persons, and to provide
10 training to such investigators;

11 5. To review and evaluate the criminal history information for any
12 person applying to be an employee, volunteer or consultant for whom a
13 criminal background check is required as a condition of employment at
14 any facilities or provider agencies as defined in subdivision four of
15 section four hundred eighty-eight of the social services law, which are
16 operated, licensed or certified by the office of mental health, the
17 office for people with developmental disabilities, the office of alco-
18 holism and substance abuse services and the office of children and fami-
19 ly services. Such review and evaluation shall include but not be limit-
20 ed to a requirement that the applicant sign a sworn statement whether,
21 to the best of his or her knowledge, he or she has ever been convicted
22 of a crime in this state or any other jurisdiction;

23 6. To conduct periodic orientation, training and informational
24 programs upon appointment or reappointment, and as otherwise needed, to
25 assist the members of the boards of visitors of mental hygiene facili-
26 ties to fulfill their responsibilities pursuant to law;

27 7. (a) To visit, inspect and appraise the management of facilities or
28 provider agencies as defined in subdivision four of section four hundred

1 eighty-eight of the social services law providing services to vulnerable
2 persons with specific attention to the safety, security and quality of
3 care provided to patients and residents;

4 (b) To provide staff and other necessary assistance upon request to
5 boards of visitors of department of mental hygiene facilities in
6 performing their duties pursuant to law;

7 (c) To receive and review periodic and annual reports of the boards of
8 visitors of each department of mental hygiene facility;

9 (d) To place such members of its staff as it deems appropriate as
10 monitors in any mental hygiene facility which, in the judgment of the
11 executive director, presents an imminent danger to the health or safety
12 of the patients, residents or employees of such facility;

13 8. To accept, as agent of the state, any grant, including federal
14 grants, or any gift for any of the purposes of this article. Any moneys
15 so received may be expended by the justice center to effectuate any
16 purpose of this article, subject to the same limitations as to approval
17 of expenditures and audit as are prescribed for state moneys appropri-
18 ated for the purposes of this article;

19 9. To enter into contracts with any person, firm, corporation, municipi-
20 pality or governmental agency for the performance of functions author-
21 ized by law;

22 10. To administer an adult home and residence for adults resident
23 advocacy program to assist residents, who have at any time received or
24 are receiving services from a mental hygiene provider, of adult homes
25 and residences for adults, as defined in section two of the social
26 services law, where at least twenty-five percent or twenty-five resi-
27 dents, whichever is less, have at any time received or are receiving
28 services from a mental hygiene provider which is licensed, operated or

1 funded by the office of mental health or office for people with develop-
2 mental disabilities, in understanding their legal rights, and to promote
3 and protect the rights of such residents.

4 11. To advise and assist vulnerable persons, family members, advo-
5 cates, service providers and community organizations in the formation of
6 strategies to identify and meet the needs of vulnerable persons for
7 services, supports and advocacy;

8 12. To advise and assist the governor and public and private entities
9 in the development and implementation of state policies which meet the
10 needs of vulnerable persons in a manner that is respectful of the rights
11 and choices of vulnerable persons;

12 13. To serve as a clearinghouse for information relating to services,
13 supports and advocacy for vulnerable persons and provide a statewide
14 system of information and referral to link persons seeking information
15 and assistance with public and private sector services, supports and
16 advocacy which may be appropriate to meet their needs;

17 14. To advise and assist the governor, state agencies, vulnerable
18 persons and public and private sector entities in the design and imple-
19 mentation of initiatives to increase access to technology related
20 assistance for vulnerable persons;

21 15. To administer such protection and advocacy and client assistance
22 programs as may be established by federal law, pursuant to such authori-
23 zation or designation as may be required;

24 16. To administer the surrogate decision-making committee program, as
25 authorized pursuant to article eight of the mental hygiene law;

26 17. To stimulate community interest in the problems experienced by
27 vulnerable persons and promote public awareness of resources available
28 to such persons;

1 18. To advise and assist political subdivisions of the state in the
2 development of local programs for vulnerable persons;

3 19. To advise and assist educational institutions in the state in the
4 development of courses of study for persons engaged in public and
5 private programs for vulnerable persons;

6 20. To conduct or cause to be conducted such studies of the needs of
7 vulnerable persons as may be appropriate;

8 21. To do all other things necessary or convenient to carry out its
9 functions, powers and duties set forth in this article;

10 22. To receive and review reports required pursuant to section 16.19
11 of the mental hygiene law and take any action as required by law. The
12 justice center also shall assist the commissioner of the office for
13 people with developmental disabilities in developing and preparing
14 recommendations required by paragraph three of subdivision (d) of
15 section 16.19 of the mental hygiene law for submission to the governor,
16 temporary president of the senate and speaker of the assembly;

17 23. To prepare and disseminate an educational pamphlet, and serve as
18 an information clearinghouse, on the rights of parents and legal repre-
19 sentatives and advocates to access records and reports relating to
20 patient care and treatment and all other relevant documents from
21 programs and facilities that are licensed, certified or operated by the
22 offices of mental health, people with developmental disabilities or
23 alcoholism and substance abuse services. Such pamphlet shall include a
24 discussion of how to appeal a decision denying a requested record or
25 report;

26 24. To consult with the commissioner of education regarding the
27 promulgation of rules and regulations requiring that every school bus
28 driver and school bus attendant serving students with disabilities

1 receive training and instruction relating to the understanding of and
2 attention to the special needs of such students pursuant to subdivision
3 one of section thirty-six hundred fifty of the education law and subdi-
4 vision four of section twelve hundred twenty-nine-d of the vehicle and
5 traffic law; and

6 25. To monitor and make recommendations regarding the quality of care
7 provided to inmates with serious mental illness, including those who are
8 in a residential mental health treatment unit or segregated confinement
9 in facilities operated by the department of corrections and community
10 supervision, and oversee compliance with paragraphs (d) and (e) of
11 subdivision six of section one hundred thirty-seven, and section four
12 hundred one of the correction law. Such responsibilities shall be
13 carried out in accordance with section four hundred one-a of the
14 correction law.

15 § 554. Codes of conduct. 1. The justice center shall adopt and amend,
16 as appropriate, codes of conduct for all employees who have or will have
17 regular and direct contact with vulnerable persons who reside in or
18 receive services from facilities or provider agencies as set forth in
19 subdivision four of section four hundred eighty-eight of the social
20 services law. Such codes shall govern the conduct of such employees with
21 respect to the safety, dignity and welfare of vulnerable persons to whom
22 they provide care. The justice center shall establish a process by which
23 all such employees are provided with a copy of such codes of conduct and
24 are required, at the time of their initial employment, and at least
25 annually thereafter, to acknowledge that they have read and understand
26 such codes of conduct. Such process shall also provide for the enforce-
27 ment of such codes consistent with appropriate collective bargaining
28 agreements.

1 2. Minimum requirements for codes of conduct. Such codes of conduct
2 shall include, at a minimum: a. Provisions regarding the responsibil-
3 ity of such employees to support the emotional, physical and personal
4 well-being of the vulnerable persons they serve, including their
5 protection from abuse and neglect.

6 b. Provisions regarding the responsibility of such employees to
7 assist the vulnerable persons they support to direct the course of their
8 own lives, honoring, where appropriate, their right to assume risk in a
9 safe manner and recognizing their potential for lifelong learning and
10 growth.

11 c. Provisions regarding the responsibility of such employees to
12 participate in available, appropriate training to maintain their compe-
13 tency and skill-level, and to model and shape the behavior of their
14 co-workers, and to seek guidance and advice to resolve issues as needed
15 when making decisions relating to the persons they serve.

16 d. Provisions regarding the responsibility of such employees to
17 promote and practice justice, fairness and equity for the vulnerable
18 persons they support, uphold and respect their human and civil rights
19 and respect their human dignity and uniqueness.

20 e. Provisions regarding the responsibility of such employees to
21 assist, where appropriate, the vulnerable persons they support in devel-
22 oping and maintaining relationships with families, friends and the
23 community-at-large.

24 f. Provisions regarding the responsibility of such employees to advo-
25 cate with and/or on behalf of the vulnerable persons they support for
26 their needs, interest, justice, inclusion and full community partic-
27 ipation.

1 § 555. Justice center medical review board; organization. (a) There
2 shall be within the justice center a justice center medical review
3 board. The board shall be composed of up to fifteen members, including
4 specialists in forensic pathology, psychiatry, internal medicine and
5 addiction medicine to be appointed by the governor. The governor shall
6 designate one of the members to serve as chair of the board. Members
7 shall be appointed for terms of three years, provided, however, that
8 one-third of the members first appointed shall be appointed for a one
9 year term and one-third for two year terms. Vacancies shall be filled in
10 the same manner as original appointments for the remainder of any unex-
11 pired term. Members shall continue in office after the expiration of
12 their terms until their successors have been appointed and qualified.
13 The governor may remove any member of the board whenever in his or her
14 judgment the public interest may require such removal. In case of such
15 removal, the governor shall file with the department of state a state-
16 ment indicating the cause for such removal. Notwithstanding any
17 provision of law to the contrary, the chair of the board may appoint
18 committees of five or more members of the board and delegate in writing
19 to any such committee the authority to perform the functions, powers and
20 duties of the board pursuant to section five hundred fifty-six of this
21 article.

22 (b) The members of the board shall receive no compensation for their
23 services but shall be reimbursed for their actual and necessary expenses
24 incurred in the performance of their duties.

25 (c) The board shall have an executive secretary and such officers and
26 employees as the executive director shall assign upon request of the
27 chair of the board, to assist it in the performance of its duties.

1 (d) All records of the proceedings, the deliberations of the justice
2 center medical review board and any testimony given before the board
3 shall not be subject to disclosure under article thirty-one of the civil
4 practice law and rules.

5 (e) The board or any committee appointed by the chair of the board
6 shall meet at the request of its chair or the executive director of the
7 justice center. Any member of the board who fails to attend three
8 consecutive meetings of the board or the committee to which such member
9 is assigned by the chair of the board, unless excused by the chair of
10 the board, shall be considered to have vacated his or her office unless
11 otherwise ordered by the governor. The term of any such person appointed
12 by the governor to fill such vacancy shall be governed by the provisions
13 of this section.

14 § 556. Functions, powers and duties of the board. The justice center
15 medical review board shall have the following functions, powers and
16 duties:

17 (a) make a preliminary determination whether the death of a patient or
18 resident in a residential facility within the meaning of subdivision
19 four of section four hundred eighty-eight of the social services law,
20 which has been brought to its attention is unusual or whether such death
21 reasonably appears to have resulted from other than natural causes and
22 warrants investigation;

23 (b) investigate the causes of and circumstances surrounding such
24 unusual death or deaths from other than natural causes of patients or
25 residents in such facilities;

26 (c) visit and inspect any facility in which such a death has occurred;

27 (d) cause the body of the deceased to undergo such examinations
28 including an autopsy as in the opinion of the board are necessary to

1 determine the cause of death, irrespective of whether such examination
2 or autopsy shall have been previously performed;

3 (e) upon review of the cause of and circumstances surrounding the
4 death of any patient or resident, submit its report thereon to the exec-
5 utive director and, where appropriate, make recommendations to prevent
6 the recurrence of same to the appropriate commissioner of the department
7 of mental hygiene or the commissioner of children and family services
8 and to the director of the facility; and

9 (f) advise the executive director on medical issues relevant to the
10 functions, powers, and duties of the justice center including allega-
11 tions of abuse or neglect of a patient or resident referred to it.

12 § 557. Reports to the justice center. Every director or other person
13 in charge of a residential facility within the meaning of subdivision
14 four of section four hundred eighty-eight of the social services law,
15 shall report immediately to the executive director and the justice
16 center medical review board the death of a patient or resident of any
17 such facility in such manner and such form as the justice center shall
18 prescribe, together with an autopsy report, if any.

19 § 558. Access to records and facilities. (a) The justice center must
20 be granted access at any and all times to any facility or provider agen-
21 cy as defined in subdivision four of section four hundred eighty-eight
22 of the social services law, and, consistent with federal law, to all
23 books, records, and data pertaining to any such facility or provider
24 agency deemed necessary for carrying out the justice center's functions,
25 powers and duties. The justice center or any employee of the justice
26 center may require from the officers or employees of such facility or
27 provider agency or from the commissioners of the state oversight agen-
28 cies as defined in subdivision four-a of such section four hundred

1 eighty-eight, any information deemed necessary for the purpose of carry-
2 ing out the justice center's functions, powers and duties, including
3 otherwise confidential information. The executive director or any
4 employee of the justice center may require from any hospital, as defined
5 under article twenty-eight of the public health law, any information,
6 report or record necessary for the purpose of carrying out the func-
7 tions, powers and duties of the justice center related to the investi-
8 gation of deaths and complaints of abuse or neglect concerning vulner-
9 able persons who have been treated at such hospitals, and from any adult
10 care facility as defined in paragraph twenty-one of section two of the
11 social services law, such information, report or record, including
12 access to such facility necessary for the purpose of carrying out the
13 functions, powers and duties of the justice center related to the inves-
14 tigation of deaths concerning patients of mental hygiene facilities who
15 resided at such residential care facilities at the time of their death
16 or were former residents of such residential care facilities and the
17 justice center determines that such information, report or record is
18 necessary for the completion of its investigation. The results of inves-
19 tigations involving such residents of adult care facilities shall be
20 provided promptly to the commissioner of the department of health and
21 shall be treated as a record or personal information within the meaning
22 of section ninety-six of the public officers law and shall not be
23 disclosed except in accordance with such section ninety-six. Informa-
24 tion, books, records or data which are confidential as provided by law
25 shall be kept confidential by the justice center and by non-profit
26 organizations receiving contracts pursuant to section five hundred
27 fifty-three of this article and any limitations on the release thereof
28 imposed by law upon the party furnishing the information, books, records

1 or data shall apply to the justice center and such non-profit organiza-
2 tions receiving contracts pursuant to such subdivision except as may
3 otherwise be provided by article eleven of the social services law.

4 (b) Pursuant to the authorization of the justice center to administer
5 the protection and advocacy system as provided for by federal law, any
6 agency or person within or under contract which provides protection and
7 advocacy services must be granted access at any and all times to any
8 facility, or part thereof, serving a vulnerable person operated, certi-
9 fied or licensed by any office or agency of the state, and to all books,
10 records, and data pertaining to any such facility upon receipt of a
11 complaint by or on behalf of a person with a disability. Information,
12 books, records or data which are confidential as provided by law shall
13 be kept confidential by the person or agency within the protection and
14 advocacy system and any limitations on the release thereof imposed by
15 law upon the party furnishing the information, books, records or data
16 shall apply to the person or agency within the protection and advocacy
17 system.

18 (c) In the exercise of its functions, powers and duties, the executive
19 director and any employee designated by him or her is authorized to
20 issue and enforce a subpoena and a subpoena duces tecum, conduct hear-
21 ings, administer oaths and examine persons under oath, in accordance
22 with and pursuant to civil practice law and rules.

23 (d) In any case where a person in charge or control of such facility
24 or an officer or employee thereof shall fail to comply with the
25 provisions of subdivision (a) of this section, the justice center may
26 apply to the supreme court for an order directed to such person requir-
27 ing compliance therewith. Upon such application the court may issue such

1 order as may be just and a failure to comply with the order of the court
2 shall be a contempt of court and punishable as such.

3 § 559. New York State interagency coordinating council for services to
4 persons who are deaf, deaf-blind, or hard of hearing. 1. Subject to an
5 appropriation, the justice center shall have the central responsibility
6 for administering the provisions of this section and otherwise coordi-
7 nating the activities of the state interagency coordinating council for
8 services to persons who are deaf, deaf-blind, or hard of hearing with
9 respect to serving residents of the state who are deaf, deaf-blind, or
10 hard of hearing, in consultation with the office of children and family
11 services, the office for the aging, the public service commission, the
12 department of health, the department of labor, the department of educa-
13 tion, and other state agencies as appropriate. The council shall meet a
14 minimum of three times a year.

15 2. The following definitions describe the functional characteristics
16 of persons who are deaf, deaf-blind, or hard of hearing, as used in this
17 section.

18 (a) Deaf. Describes persons who have a profound hearing loss and who
19 primarily rely on visual communication, such as sign language, writing,
20 lip reading, and gestures, which may be used exclusively or in combina-
21 tion. Such persons generally use a form of American sign language as
22 their primary mode of communication. In addition, there is a group of
23 profoundly deaf individuals who communicate orally and may use sign
24 language to support their understanding of the spoken language. Hearing
25 aids and other assistive technology may also be used to aid in communi-
26 cation.

27 (b) Deaf-blind. An individual with a concomitant hearing and visual
28 impairment, the combination of which causes such severe communication

1 and other developmental and educational problems that the individual
2 cannot be accommodated in programs for individuals who are solely deaf
3 or blind.

4 (c) Hard of hearing. A hard of hearing person is someone with a meas-
5 urable hearing loss and who self-identifies as being hard of hearing,
6 although audiologically he or she may have a profound hearing loss.
7 Additionally, this person typically uses his or her residual hearing,
8 speech and speech reading skills, and hearing aids to communicate; he or
9 she may rely on assistive listening devices to augment his or her abili-
10 ty to hear and speak.

11 3. Subject to an appropriation, the justice center shall have the
12 following powers and duties:

13 (a) To coordinate the activities of the state interagency coordinating
14 council and to promote, in cooperation with the appropriate state agen-
15 cies, the implementation of a comprehensive statewide program of coordi-
16 nated services for persons who are deaf, deaf-blind, or hard of hearing
17 that includes educational, medical, housing, transportation, technology
18 supports, personal care, family supports, day program services, and
19 other essential services that maximize existing resources and adminis-
20 trative mechanisms to address issues and legal obligations.

21 (b) To maintain data on the incidence of deafness, deaf-blindness, and
22 other hearing loss.

23 (c) To serve as a clearinghouse for information on services available
24 to persons who are deaf, deaf-blind, or hard of hearing, including, but
25 not limited to, resources that support the development and implementa-
26 tion of community-based services and rehabilitation.

27 (d) To disseminate general information on deafness and the unique
28 communication needs of persons who are deaf, deaf-blind, and hard of

1 hearing, and to inform the deaf, deaf-blind, and hard of hearing commu-
2 nities about available services and how such services can be accessed.

3 (e) To receive complaints in matters affecting the deaf, deaf-blind,
4 or hard of hearing communities and to refer such complaints to the
5 appropriate regulatory agencies where it deems necessary or appropriate.

6 (f) To conduct an ongoing evaluation of the needs of the deaf, deaf-
7 blind, and hard of hearing communities, including technology needs.

8 (g) To report to the governor and the legislature, on or before Novem-
9 ber first of each year, on matters which shall include, but not be
10 limited to:

11 (i) the status of current efforts to achieve the purposes of this
12 section, which will be updated in subsequent reports; and

13 (ii) recommendations for standards, policies, procedures, and strate-
14 gies necessary to assure communication accessibility and community-based
15 services, including needed statutory revisions.

16 4. (a) Subject to an appropriation, the state interagency coordinating
17 council for services to persons who are deaf, deaf-blind, or hard of
18 hearing is hereby established and shall consist of the following persons
19 to be appointed by the governor:

20 (i) seven agency heads or their designees, acting in an ex-officio
21 capacity: the executive director of the justice center, who shall serve
22 as the chair of the state interagency coordinating council, the commis-
23 sioner of the office of children and family services, the director of
24 the office for aging, the chair of the public service commission, the
25 commissioner of health, the commissioner of labor, and the commissioner
26 of education;

27 (ii) six persons who are residents of New York state and who shall be
28 persons who are deaf, deaf-blind, or hard of hearing, one of whom shall

1 be appointed on the nomination of the temporary president of the senate,
2 one of whom shall be appointed on the nomination of the speaker of the
3 assembly, one of whom shall be appointed on the nomination of the minor-
4 ity leader of the senate, and one of whom shall be appointed on the
5 nomination of the minority leader of the assembly; and

6 (iii) two persons who are residents of New York state and who are
7 representatives of the public and have a demonstrated expertise and
8 interest in the needs of persons who are deaf, deaf-blind, or hard of
9 hearing.

10 (b) Of the eight persons appointed pursuant to subparagraphs (ii) and
11 (iii) of paragraph (a) of this subdivision, two shall serve for a term
12 of one year, two shall serve for a term of two years, and two shall
13 serve for a term of three years, as determined by the governor. Subse-
14 quent appointments upon the expiration of term shall be for a term of
15 three years and shall be filled in the same manner as the original
16 appointment.

17 (c) The eight members of the state interagency coordinating council
18 described in subparagraphs (ii) and (iii) of paragraph (a) of this
19 subdivision shall receive no compensation for their services, but shall
20 be allowed their actual and necessary expenses incurred in the perform-
21 ance of their duties pursuant to this section, subject to the approval
22 of the justice center.

23 5. Subject to an appropriation, the state interagency coordinating
24 council is charged with recommending long range strategic objectives,
25 goals, and priorities for promoting the availability of a comprehensive
26 statewide program of coordinated services for persons who are deaf,
27 deaf-blind, or hard of hearing that is consistent with subdivision one
28 of this section. It shall also provide advice on the planning, coordi-

1 nation, and development of needed services and technology, including the
2 manner in which such services shall be funded or otherwise supported.

3 § 560. Annual report. The justice center shall make an annual report
4 to the governor and legislature concerning its work during the preceding
5 year. Such report shall include, but not be limited to, data regarding
6 the number of reports received by the vulnerable persons' central regis-
7 ter, results of investigations by types of facilities and programs,
8 types of corrective actions taken, results of its review of patterns and
9 trends in the reporting of and response to incidents of abuse and
10 neglect, and other serious incidents and its recommendations for appro-
11 priate preventive and corrective actions, and efforts undertaken by such
12 justice center to provide training pursuant to subdivision four of
13 section five hundred fifty-three of this article.

14 § 4. Subdivision 32 of section 1.20 of the criminal procedure law, as
15 amended by chapter 250 of the laws of 1974, is amended to read as
16 follows:

17 32. "District attorney" means a district attorney, an assistant
18 district attorney or a special district attorney, and, where appropri-
19 ate, the attorney general, an assistant attorney general, a deputy
20 attorney general [or], a special deputy attorney general, or the special
21 prosecutor and inspector general for the protection of people with
22 special needs or his or her assistants when acting pursuant to their
23 duties in matters arising under article twenty of the executive law.

24 § 5. Subdivision 6 of section 401 of the correction law, as added by
25 chapter 1 of the laws of 2008, is amended to read as follows:

26 6. The department shall ensure that the curriculum for new correction
27 officers, and other new department staff who will regularly work in
28 programs providing mental health treatment for inmates, shall include at

1 least eight hours of training about the types and symptoms of mental
2 illnesses, the goals of mental health treatment, the prevention of
3 suicide and training in how to effectively and safely manage inmates
4 with mental illness. Such training may be provided by the office of
5 mental health or the [New York state commission on quality of care and
6 advocacy for persons with disabilities] justice center for the
7 protection of people with special needs. All department staff who are
8 transferring into a residential mental health treatment unit shall
9 receive a minimum of eight additional hours of such training, and eight
10 hours of annual training as long as they work in such a unit. The
11 department shall provide additional training on these topics on an ongo-
12 ing basis as it deems appropriate.

13 § 6. Section 401-a of the correction law, as added by chapter 1 of the
14 laws of 2008, is amended to read as follows:

15 § 401-a. Oversight responsibilities of the [New York state commission
16 on quality of care and advocacy for persons with disabilities] justice
17 center for the protection of people with special needs. 1. The [New York
18 state commission on quality of care and advocacy for persons with disa-
19 bilities ("commission")] justice center for the protection of people
20 with special needs shall be responsible for monitoring the quality of
21 mental health care provided to inmates pursuant to article forty-five of
22 the mental hygiene law. The [commission] justice center shall have
23 direct and immediate access to all areas where state prisoners are
24 housed, and to clinical and department records relating to inmates'
25 clinical conditions. The [commission] justice center shall maintain the
26 confidentiality of all patient-specific information.

27 2. The [commission] justice center shall monitor the quality of care
28 in residential mental health treatment programs and shall ensure compli-

1 ance with paragraphs (d) and (e) of subdivision six of section one
2 hundred thirty-seven of this chapter and section four hundred one of
3 this article. The [commission] justice center may recommend to the
4 department and the office of mental health that inmates in segregated
5 confinement pursuant to subdivision six of section one hundred thirty-
6 seven of this chapter be evaluated for placement in a residential mental
7 health treatment unit. It may also recommend ways to further the goal
8 of diverting and removing inmates with serious mental illness from
9 segregated confinement to residential mental health treatment units. The
10 [commission] justice center shall include in its annual report to the
11 governor and the legislature pursuant to [subdivision (g) of] section
12 [45.07] five hundred sixty of the [mental hygiene] executive law, a
13 description of the state's progress in complying with this article,
14 which shall be publicly available.

15 3. The [commission] justice center shall appoint an advisory committee
16 on psychiatric correctional care ("committee"), which shall be composed
17 of independent mental health experts and mental health advocates, and
18 may include family members of former inmates with serious mental
19 illness. Such committee shall advise the [commission] justice center on
20 its oversight responsibilities pursuant to this section [and article
21 forty-five of the mental hygiene law]. The committee may also make
22 recommendations to the [commission] justice center regarding improve-
23 ments to prison-based mental health care. Nothing in this subdivision
24 shall be deemed to authorize members of the committee to have access to
25 a correctional or mental hygiene facility or any part of such a facili-
26 ty. Provided, however, newly appointed members of the advisory committee
27 shall be provided with a tour of a segregated confinement unit and a
28 residential mental health treatment unit, as selected by the commission-

1 er. Any such tour shall be arranged on a date and at a time selected by
2 the commissioner and upon such terms and conditions as are within the
3 sole discretion of the commissioner.

4 § 7. Paragraph (c) of subdivision 6 of section 2994-m of the public
5 health law, as added by chapter 8 of the laws of 2010, is amended to
6 read as follows:

7 (c) Nothing in this subdivision shall prohibit the [state commission
8 on quality of care and advocacy for persons with disabilities] justice
9 center for the protection of people with special needs or any agency or
10 person within or under contract with the [commission] justice center
11 which provides protection and advocacy services from requiring any
12 information, report or record from a hospital in accordance with the
13 provisions of section [45.09] five hundred fifty-eight of the [mental
14 hygiene] executive law.

15 § 8. Transfer of employees. Notwithstanding any other provision of
16 law, rule, or regulation to the contrary, upon the transfer of any func-
17 tions from the state commission on quality of care and advocacy for
18 persons with disabilities, the office of mental health, the office for
19 people with developmental disabilities, the office of alcoholism and
20 substance abuse services, the office of children and family services and
21 the department of health and to the justice center for the protection of
22 people with special needs pursuant to this act, employees performing
23 those functions shall be transferred to such justice center. Employees
24 transferred pursuant to this section shall be transferred without
25 further examination or qualification and shall retain their respective
26 civil service classifications, status and collective bargaining unit
27 designations and collective bargaining agreements.

1 § 9. Transfer of records. All books, papers, and property of the state
2 commission on quality of care and advocacy for persons with disabilities
3 shall be deemed to be in the possession of the executive director of the
4 justice center for the protection of people with special needs, and
5 shall continue to be maintained by such justice center.

6 § 10. Continuity of authority. For the purpose of succession of all
7 functions, powers, duties and obligations transferred and assigned to,
8 devolved upon and assumed by it pursuant to this act, the justice center
9 for the protection of people with special needs shall be deemed and held
10 to constitute the continuation of the state commission on quality of
11 care and advocacy for persons with disabilities.

12 § 11. Completion of unfinished business. Any business or other matter
13 undertaken or commenced by the state commission on quality of care and
14 advocacy for persons with disabilities, the office of mental health, the
15 office for people with developmental disabilities, the office of alco-
16 holism and substance abuse services, the office of children and family
17 services, the department of health and the state education department
18 pertaining to or connected with the functions, powers, obligations and
19 duties hereby transferred and assigned to the justice center for the
20 protection of people with special needs and pending on the effective
21 date of this act, may be conducted and completed by such justice center
22 in the same manner and under the same terms and conditions and with the
23 same effect as if conducted and completed by the state commission on
24 quality of care and advocacy for persons with disabilities.

25 § 12. Continuation of rules and regulations. All rules, regulations,
26 acts, orders, determinations, and decisions of the state commission on
27 quality of care and advocacy for persons with disabilities pertaining to
28 the functions and powers transferred and assigned pursuant to this act,

1 in force at the time of such transfer and assumption, shall continue in
2 full force and effect as rules, regulations, acts, orders, determi-
3 nations and decisions of the justice center for the protection of people
4 with special needs until duly modified or abrogated by the executive
5 director of such justice center.

6 § 13. Terms occurring in laws, contracts and other documents. Whenever
7 the state commission on quality of care and advocacy for persons with
8 disabilities, or the chairman thereof, is referred to or designated in
9 any law, contract or document pertaining to the functions, powers, obli-
10 gations and duties hereby transferred to and assigned to the justice
11 center for the protection of people with special needs, such reference
12 or designation shall be deemed to refer to such justice center, or the
13 executive director thereof, as applicable.

14 § 14. Existing rights and remedies preserved. No existing right or
15 remedy of any character shall be lost, impaired or affected by any
16 provisions of this act.

17 § 15. Pending actions and proceedings. No action or proceeding pending
18 at the time when this act shall take effect, brought by or against the
19 state commission on quality of care and advocacy for persons with disa-
20 bilities, or the chairman thereof, shall be affected by any provision of
21 this act, but the same may be prosecuted or defended in the name of the
22 executive director of the justice center for the protection of people
23 with special needs. In all such actions and proceedings, the executive
24 director of such justice center, upon application to the court, shall be
25 substituted as a party.

26 § 16. Transfer of appropriations heretofore made. All appropriations
27 or reappropriations heretofore made to the state commission on quality
28 of care and advocacy for persons with disabilities to the extent of

1 remaining unexpended or unencumbered balance thereof, whether allocated
2 or unallocated and whether obligated or unobligated, are hereby trans-
3 ferred to and made available for use and expenditure by the justice
4 center for the protection of people with special needs subject to the
5 approval of the director of the budget for the same purposes for which
6 originally appropriated or reappropriated and shall be payable on vouch-
7 ers certified or approved by the executive director of such justice
8 center on audit and warrant of the comptroller. In addition to such
9 authority otherwise granted pursuant to law to interchange, transfer and
10 suballocate amounts appropriated for the office for people with develop-
11 mental disabilities, the office of alcoholism and substance abuse
12 services, the department of health and the office of children and family
13 services, such amounts appropriated for state operations for such agen-
14 cies may also be interchanged, transferred and suballocated for the
15 purpose of planning, developing and/or implementing the alignment of the
16 operations within and between such agencies sufficient to fulfill the
17 purposes of this act for the state fiscal year beginning April 1, 2012.

18 § 17. Transfer of assets and liabilities. All assets and liabilities
19 of the state commission on quality of care and advocacy for persons with
20 disabilities are hereby transferred to and assumed by the justice center
21 for the protection of people with special needs.

22 § 18. This act shall take effect upon the confirmation by the senate
23 of the appointment by the governor of the executive director of the
24 justice center for the protection of people with special needs, proof of
25 such confirmation to be promptly transmitted by the governor to the
26 legislative bill drafting commission, provided that should confirmation
27 not take place on or before April 1, 2013, then this part shall take
28 effect on April 1, 2013.

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PART B

Section 1. Article 11 of the social services law is renumbered article 12 and sections 484, 485 and 486 are renumbered sections 550, 551 and 552 and a new article 11 is added to read as follows:

ARTICLE 11

PROTECTION OF PEOPLE WITH SPECIAL NEEDS

Section 488. Definitions.

489. Applicability.

490. Incident management programs.

491. Duty to report incidents.

492. Vulnerable persons' central register.

493. Abuse and neglect findings; consequences.

494. Amendments to and appeals of substantiated reports of abuse or neglect.

495. Register of substantiated category one cases of abuse or neglect.

496. Confidentiality.

497. Immunity from liability.

§ 488. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Abuse or neglect" shall include the conduct described in paragraph (a) of subdivision four of section four hundred ninety-three of this article, as well as:

(a) "Physical abuse," which shall mean physical contact that is not accidental, is committed by an agent of a facility or provider agency and that results in or has the reasonably foreseeable potential to result in physical injury or serious or protracted impairment of the

1 physical, mental or emotional condition of a service recipient. Physical
2 abuse shall include, but shall not be limited to, slapping, hitting,
3 kicking, biting, choking, smothering, shoving, dragging, throwing,
4 punching, shaking, burning, cutting or the use of corporal punishment.
5 Physical abuse shall not include reasonable emergency interventions
6 necessary to protect the safety of any person.

7 (b) "Sexual abuse," which shall mean any conduct by an agent of a
8 facility or provider agency that subjects a person receiving services to
9 any offense defined in article one hundred thirty or section 255.25,
10 255.26 or 255.27 of the penal law; or any conduct or communication by
11 such an agent that allows, permits, uses or encourages a service recipi-
12 ent to engage in any act described in articles two hundred thirty or two
13 hundred sixty-three of the penal law. For purposes of this paragraph
14 only, a person with a developmental disability who is or was receiving
15 services and is also an employee or volunteer of a service provider
16 shall not be considered an agent of a facility or provider agency if he
17 or she has sexual contact with another service recipient who is a
18 consenting adult who has consented to such contact.

19 (c) "Psychological abuse," which shall mean verbal or non-verbal
20 conduct by an agent of a facility or provider agency that results in or
21 has the reasonably foreseeable potential to result in a substantial
22 diminution of a service recipient's emotional, social or behavioral
23 development or condition, which is determined by a physician, psychol-
24 ogist, psychiatric nurse practitioner, licensed clinical or master
25 social worker or licensed mental health counselor. Such conduct may
26 include but shall not be limited to intimidation, threats, the display
27 of a weapon or other object that could reasonably be perceived by a
28 service recipient as a means for infliction of pain or injury, in a

1 manner that constitutes a threat of physical pain or injury, taunts,
2 derogatory comments or ridicule.

3 (d) "Inappropriate use of restraints," which shall mean the use of a
4 restraint when the technique that is used, the amount of force that is
5 used or the situation in which the restraint is used is inconsistent
6 with a service recipient's individual treatment plan, generally accepted
7 treatment practices and/or applicable federal or state laws, regulations
8 or policies, except when the restraint is used as a reasonable emergency
9 intervention to prevent imminent risk of harm to a person receiving
10 services or to any other person. For purposes of this subdivision, a
11 "restraint" shall include the use of any manual, pharmacological or
12 mechanical measure or device to immobilize or limit the ability of a
13 person receiving services to freely move his or her arms, legs or body.

14 (e) "Use of aversive conditioning," which shall mean the application
15 of a physical stimulus that is intended to induce pain or discomfort in
16 order to modify or change the behavior of a person receiving services in
17 the absence of a person-specific authorization by the operating, licens-
18 ing or certifying state agency pursuant to governing state agency regu-
19 lations. Aversive conditioning may include but is not limited to, the
20 use of physical stimuli such as noxious odors, noxious tastes, blind-
21 folds, the withholding of meals and the provision of substitute foods in
22 an unpalatable form.

23 (f) "Obstruction of reports of abuse or neglect," which shall mean
24 conduct by an agent of a facility or provider agency that impedes the
25 discovery, reporting or investigation of the treatment of a service
26 recipient by falsifying records related to the safety, treatment or
27 supervision of a service recipient who may have been abused or
28 neglected, actively persuading a mandated reporter from making a report

1 of abuse or neglect to the statewide vulnerable persons' central regis-
2 ter with the intent to suppress the reporting of the investigation of an
3 incident of abuse or neglect, intentionally making a false statement or
4 intentionally withholding material information during an investigation
5 into a report of abuse or neglect; intentional failure of a supervisor
6 or manager to act upon a report of abuse or neglect in accordance with
7 governing state agency regulations, policies or procedures; or, for a
8 mandated reporter who is an agent of a facility or provider agency,
9 failing to report abuse or neglect upon discovery.

10 (g) "Unlawful use or administration of a controlled substance," which
11 shall mean any administration to a service recipient of: a controlled
12 substance as defined by article thirty-three of the public health law,
13 without a prescription; or other medication not approved for any use by
14 the federal food and drug administration. It also shall include an agent
15 using or distributing an unlawful controlled substance as defined by
16 article thirty-three of the public health law, at the workplace or while
17 on duty.

18 (h) "Neglect," which shall mean any inaction or lack of attention by
19 an agent of a facility or provider agency that results in or has the
20 reasonably foreseeable potential to result in physical injury or serious
21 or protracted impairment of the physical, mental or emotional condition
22 of a service recipient. Neglect shall include, but is not limited to:

23 (i) failure to provide proper supervision, including a lack of proper
24 supervision that results in conduct between persons receiving services
25 that would constitute abuse if committed by an agent or agents of a
26 facility or provider agency; (ii) failure to provide adequate food,
27 clothing, shelter, medical, dental, optometric or surgical care,
28 consistent with the rules or regulations promulgated by the state agency

1 operating, certifying or supervising the facility or provider agency,
2 provided that the facility or provider agency has reasonable access to
3 the provision of such services and that necessary consents to any such
4 medical, dental, optometric or surgical treatment have been sought and
5 obtained from the appropriate individuals; or (iii) failure to provide
6 access to educational instruction, by an agent with a duty to ensure
7 that an individual receives access to such instruction in accordance
8 with the provisions of part one of article sixty-five of the education
9 law.

10 2. "Agent of a facility or provider agency" shall mean a person
11 authorized to act for a provider of services in a facility or provider
12 agency, including but not limited to an employee, manager, administra-
13 tor, consultant, intern or volunteer, or a contractor who has regular
14 and substantial contact with service recipients.

15 3. "Executive director" shall mean the executive director of the
16 justice center for the protection of people with special needs.

17 4. "Facility" or "provider agency" shall mean:

18 (a) a facility or program in which services are provided and which is
19 operated, licensed or certified by the office of mental health, the
20 office for people with developmental disabilities or the office of alco-
21 holism and substance abuse services, including but not limited to
22 psychiatric centers, inpatient psychiatric units of a general hospital,
23 developmental centers, intermediate care facilities, community resi-
24 dences, group homes and family care homes, provided, however, that such
25 term shall not include a secure treatment facility as defined in section
26 10.03 of the mental hygiene law, or services provided in programs or
27 facilities that are operated by the office of mental health and located

1 in state correctional facilities under the jurisdiction of the depart-
2 ment of corrections and community supervision.

3 (b) any program or facility that is operated by the office of children
4 and family services for juvenile delinquents or juvenile offenders
5 placed in the custody of the commissioner of such office and any resi-
6 dential programs or facilities licensed or certified by the office of
7 children and family services, excluding foster family homes and residen-
8 tial programs for victims of domestic violence;

9 (c) adult care facilities, which shall mean: (i) an adult home or
10 enriched housing program licensed pursuant to article seven of this
11 chapter; (ii) an adult home or enriched housing program authorized to
12 operate an assisted living program pursuant to section four hundred
13 sixty-one-1 of this chapter; (iii) such an adult home or enriched hous-
14 ing program with assisted living residence licensure pursuant to article
15 forty-six-B of the public health law; or (iv) overnight summer day and
16 traveling summer day camps for children with developmental disabilities
17 as defined in regulations promulgated by the commissioner of health; or

18 (d) the New York state school for the blind and the New York state
19 school for the deaf, which operate pursuant to articles eighty-seven and
20 eighty-eight of the education law; an institution for the instruction of
21 the deaf and the blind which has a residential component and is subject
22 to the visitation of the commissioner of education pursuant to article
23 eighty-five of the education law with respect to its day and residential
24 components; special act school districts serving students with disabili-
25 ties; or in-state private schools which have been approved by the
26 commissioner of education for special education services or programs,
27 and which have a residential program, including a school approved on a
28 child-specific basis for emergency interim placements pursuant to

1 governing state regulations, with respect to its day and residential
2 components.

3 4-a. "State oversight agency" shall mean the state agency that oper-
4 ates, licenses or certifies an applicable facility or provider agency;
5 provided however that such term shall only include the following enti-
6 ties: the office of mental health, the office for people with develop-
7 mental disabilities, the office of alcoholism and substance abuse
8 services, the office of children and family services, the department of
9 health and the state education department. "State oversight agency" does
10 not include agencies that are certification agencies pursuant to federal
11 law or regulation.

12 5. "Mandated reporter" shall mean an agent of a facility or provider
13 agency and any: physician; registered physician assistant; surgeon;
14 medical examiner; coroner; dentist; dental hygienist; osteopath; optome-
15 trist; chiropractor; podiatrist; resident; intern; psychologist; regis-
16 tered nurse; licensed practical nurse; nurse practitioner; social work-
17 er; emergency medical technician; licensed creative arts therapist;
18 licensed marriage and family therapist; licensed mental health counse-
19 lor; licensed psychoanalyst; hospital personnel engaged in the admis-
20 sion, examination, care or treatment of persons; Christian Science prac-
21 titioner; school official, which includes but is not limited to school
22 teacher, school guidance counselor, school psychologist, school social
23 worker, school nurse, school administrator or other school personnel
24 required to hold a teaching or administrative license or certificate;
25 social services worker; any other child care or foster care worker;
26 mental health professional; person credentialed by the office of alco-
27 holism and substance abuse services; peace officer; police officer;

1 district attorney or assistant district attorney; investigator employed
2 in the office of a district attorney; or other law enforcement official.

3 6. "Physical injury" and "impairment of physical condition" shall mean
4 any confirmed harm, hurt or damage resulting in a significant worsening
5 or diminution of an individual's physical condition.

6 7. "Delegate investigatory entity" shall mean a facility or provider
7 agency, or any other entity authorized by the regulations of a state
8 oversight agency or the justice center for persons with disabilities or
9 special needs to conduct an investigation of an allegation of abuse or
10 neglect or a significant incident.

11 8. "Justice center" shall mean the justice center for the protection
12 of people with special needs.

13 9. "Person receiving services," or "service recipient" shall mean an
14 individual who resides or is an inpatient in a residential facility or
15 who receives services from a facility or provider agency as defined in
16 subdivision four of this section.

17 10. "Personal representative" shall mean a person authorized under
18 state, tribal, military or other applicable law to act on behalf of a
19 vulnerable person in making health care decisions or, for programs that
20 serve children under the jurisdiction of the state education department
21 or the office of children and family services, the service recipient's
22 parent, guardian or other person legally responsible for such person.

23 11. "Reportable incident" shall mean an allegation of abuse, neglect,
24 or a significant incident, as these terms are defined in this section or
25 any other conduct or occurrence that the state oversight agency identi-
26 fies as warranting monitoring.

27 12. "Significant incident" shall mean an incident, other than an inci-
28 dent of abuse or neglect, that because of its severity or the sensitiv-

1 ity of the situation may result in or has the reasonably foreseeable
2 potential to result in harm to the health, safety or welfare of a person
3 receiving services and shall include but shall not be limited to:

4 (a) conduct between persons receiving services that would constitute
5 abuse if committed by an agent or agents of a facility or provider agen-
6 cy; or

7 (b) conduct on the part of an agent of a facility or provider agency,
8 which is inconsistent with a service recipient's individual treatment
9 plan, generally accepted treatment practices and/or applicable federal
10 or state laws, regulations or policies and which impairs or creates a
11 reasonably foreseeable potential to impair the health, safety or welfare
12 of a person receiving services, including but not limited to:

13 (i) unauthorized seclusion, which shall mean the placement of a person
14 receiving services in a room or area from which he or she cannot, or
15 perceives that he or she cannot, leave at will;

16 (ii) unauthorized use of time-out, which shall mean the use of a
17 procedure in which a person receiving services is removed from regular
18 programming and isolated in a room or area for the convenience of agents
19 of a facility, or as a substitute for programming;

20 (iii) except as provided for in paragraph (g) of subdivision one of
21 this section, the administration of a prescribed or over-the-counter
22 medication, which is inconsistent with a prescription or order issued
23 for a service recipient by a licensed, qualified health care practition-
24 er, and which has an adverse effect on a service recipient. For
25 purposes of this paragraph, "adverse effect" shall mean the unantic-
26 ipated and undesirable side effect from the administration of a partic-
27 ular medication which unfavorably affects the well-being of a service
28 recipient; or

1 (c) any other conduct identified in regulations of the state oversight
2 agency, pursuant to guidelines or standards established by the executive
3 director.

4 13. "Subject of the report" shall mean an agent of a facility or
5 provider agency, as defined in subdivision four of this section, who is
6 reported to the vulnerable persons' central register for the alleged
7 abuse or neglect of a vulnerable person.

8 14. "Other persons named in the report" shall mean and be limited to
9 the following persons who are named in a report of abuse or neglect
10 other than the subject of the report: the service recipient whose care
11 and treatment is the concern of a report to the vulnerable persons'
12 central register, and the personal representative, if any, as defined in
13 subdivision ten of this section.

14 15. "Vulnerable persons' central register" shall mean the statewide
15 central register of abuse and neglect of vulnerable persons, which shall
16 operate in accordance with section four hundred ninety-two of this arti-
17 cle.

18 16. "Vulnerable person" shall mean a person who, due to physical or
19 cognitive disabilities, or the need for specialized services or place-
20 ment, is receiving services from a facility or provider agency.

21 § 489. Applicability. The provisions of this article shall apply to
22 facilities and provider agencies provided, however, nothing in this
23 article shall be deemed to relieve any facility or provider agency or
24 agent thereof covered by this article of its or their obligations to
25 comply with the requirements of federal laws or regulations to which
26 that facility, provider agency or agent thereof is subject, including
27 any requirements that are a condition of federal financial participation
28 in medical assistance payments. To the extent that federal requirements

1 conflict with any of the provisions in this article, the federal
2 requirements shall supersede the conflicting provisions in this article
3 with respect to any such facility or provider agency.

4 § 490. Incident management programs. 1. Each state oversight agency,
5 as defined in this article, shall promulgate regulations approved by the
6 justice center, that contain procedures and requirements consistent with
7 guidelines and standards developed by the justice center, addressing the
8 following issues relating to an incident management program:

9 (a) all reportable incidents are identified and reported in a timely
10 manner in accordance with this article;

11 (b) all reportable incidents are investigated in a timely manner;

12 (c) individual incidents of abuse or neglect and significant inci-
13 dents, and incident patterns and trends, are reviewed to identify and
14 implement preventive and corrective actions, which may include, but
15 shall not be limited to, staff retraining or any appropriate discipli-
16 nary action allowed by law or contract, as well as opportunities for
17 improvement;

18 (d) patterns and trends in the reporting and response to allegations
19 of abuse and neglect and other reportable incidents are reviewed and
20 plans of improvement are timely developed based on such reviews;

21 (e) information regarding individual reportable incidents, incident
22 patterns and trends, and patterns and trends in the reporting and
23 response to allegations of abuse and neglect and other reportable inci-
24 dents is shared, consistent with applicable law, with the justice
25 center, in the form and manner required by the justice center and, for
26 facilities or provider agencies that are not state operated, with the
27 applicable state oversight agency which shall provide such information
28 to the justice center; and

1 (f) incident review committees are established; provided, however,
2 that the regulations may authorize an exemption from this requirement,
3 when appropriate, based on the size of the facility or provider agency
4 or other relevant factors. Such committees shall be composed of members
5 of the governing body of the facility or provider agency and other
6 persons identified by the director of the facility or provider agency,
7 including some members of the following: direct support staff, licensed
8 health care practitioners, service recipients and representatives of
9 family, consumer and other advocacy organizations, but not the director
10 of the facility or provider agency. Such committee shall meet regularly
11 to: (i) review the timeliness, thoroughness and appropriateness of the
12 facility or provider agency's responses to reportable incidents; (ii)
13 recommend additional opportunities for improvement to the director of
14 the facility or provider agency, if appropriate; (iii) review incident
15 trends and patterns concerning reportable incidents; and (iv) make
16 recommendations to the director of the facility or provider agency to
17 assist in reducing reportable incidents. Members of the committee shall
18 be trained in confidentiality laws and regulations, and shall comply
19 with section seventy-four of the public officers law.

20 2. Notwithstanding any other provision of law, except as may be
21 provided by section 33.25 of the mental hygiene law, records, reports or
22 other information maintained by the justice center, state oversight
23 agencies, delegate investigatory entities and facilities and provider
24 agencies regarding the deliberations of an incident review committee
25 shall be confidential and shall not be disclosed to any party unless
26 otherwise required by law and, provided, further, that nothing in this
27 article shall be deemed to diminish or otherwise derogate the legal
28 privilege afforded to proceedings, records, reports or other information

1 relating to a quality assurance function, including the investigation of
2 an incident reported pursuant to section 29.29 of the mental hygiene
3 law, as provided in section sixty-five hundred twenty-seven of the
4 education law. For purposes of this section, a quality assurance func-
5 tion is a process for systematically monitoring and evaluating various
6 aspects of a program, service or facility to ensure that standards of
7 care are being met.

8 3. No member of an incident review committee performing a quality
9 assurance function shall be permitted or required to testify in a judi-
10 cial or administrative proceeding with respect to quality assurance
11 records or any finding, recommendation, evaluation, opinion or action
12 taken, except that this provision is not intended to relieve any state
13 oversight agency, delegate investigatory entity, facility or provider
14 agency, or an agent thereof, from liability arising from treatment of a
15 service recipient.

16 4. There shall be no monetary liability on the part of, and no cause
17 of action for damages shall arise against, any person on account of
18 participating in good faith and with reasonable care in the communi-
19 cation of information in the possession of such person to an incident
20 management committee, or on account of any recommendation or evaluation
21 regarding the conduct or practices of any agent of a facility or provid-
22 er agency.

23 5. With respect to the implementation of incident management plans in
24 residential schools or facilities located outside of New York state, the
25 local social services district or local education agency contracting or
26 placing an individual with such facility or school or the state agency
27 funding such individual's placement shall require that: (a) the placing
28 entity or funding agency be notified immediately of any allegation of

1 abuse or neglect, or other significant incident involving an individual
2 from New York state; (b) an investigation be conducted by the out-of-
3 state facility or school or other entity authorized to conduct such
4 investigation, or by the placing entity or funding agency, where practi-
5 cable; and (c) the findings of such investigation by the out-of-state
6 facility or entity be forwarded to the placing entity or funding agency
7 in New York state within ninety days. Such entities or agencies shall
8 forward such reports to the justice center, and its executive director,
9 in his or her discretion may terminate funding for such for any failure
10 to comply with this section.

11 6. All facilities or provider agencies not otherwise subject to arti-
12 cle six of the public officers law shall make available for public
13 inspection and copying records relating to abuse and neglect of vulner-
14 able persons as would be available from a state agency, as defined in
15 article six of the public officers law upon written request for such
16 records, provided that such entities may deny access to records or
17 portions thereof that such entity determines would be exempt from
18 disclosure by a state agency pursuant to such article. The requesting
19 party may appeal a denial of access to such records to the executive
20 director of the justice center. A requesting party denied access to a
21 record in such appeal determination, may bring a proceeding for review
22 of such denial pursuant to article seventy-eight of the civil practice
23 law and rules. The executive director of the justice center shall
24 promulgate regulations, consistent with the provisions of article six of
25 the public officers law providing for the prompt response to such
26 requests.

27 § 491. Duty to report incidents. 1. (a) Mandated reporters shall
28 report allegations of abuse or neglect to the vulnerable persons'

1 central register as established by section four hundred ninety-two of
2 this article and in accordance with the requirements set forth therein.

3 (b) Allegations of abuse or neglect shall be reported immediately to
4 the vulnerable persons' central register upon discovery. For purposes
5 of this article, "discovery" occurs when the mandated reporter witnesses
6 an incident of suspected abuse or neglect or when another person,
7 including the vulnerable person, comes before the mandated reporter in
8 the mandated reporter's professional or official capacity and provides
9 the mandated reporter with reasonable cause to suspect that the vulner-
10 able person has been abused or neglected; provided, however, such
11 mandated reporters shall not be required to report to the vulnerable
12 persons' central register any incident that the mandated reporter actu-
13 ally knows has already been reported to such register. Whenever a
14 mandated reporter who is an agent of a facility or provider agency is
15 required to report to the vulnerable persons' central register, such
16 mandated reporter shall make the report as required and shall then also
17 report such incident to the administrator or a designated person in his
18 or her facility or provider agency in accordance with agency regu-
19 lations, policies and procedures. The administrator or designated person
20 shall be responsible for all subsequent administration necessitated by
21 the report. A report to the register shall include the name, title and
22 contact information of every person known to the mandated reporter to
23 have the same information as the mandated reporter concerning the
24 alleged abuse or neglect. Nothing in this article shall be construed to
25 require more than one report to the vulnerable persons' central register
26 concerning a particular incident or allegation of abuse or neglect.

27 (c) Notwithstanding the privileges set forth in article forty-five of
28 the civil practice law and rules, and any other provision of law to the

1 contrary, mandated reporters who make a report which initiates an inves-
2 tigation of an allegation of abuse or neglect of a vulnerable person are
3 required to comply with all requests for records made by the justice
4 center for persons with disabilities or special needs or a delegate
5 investigatory entity relating to such report, including records relating
6 to diagnosis, prognosis or treatment, and clinical records, of any
7 patient or client that are essential for a full investigation of allega-
8 tions of abuse or neglect pursuant to this article; provided, however,
9 that disclosure of substance abuse treatment and educational records
10 shall be made pursuant to the standards and procedures for disclosure of
11 such records delineated in federal law. Written reports from persons or
12 officials required by this title to report shall be admissible in
13 evidence in any proceedings relating to abuse or neglect.

14 2. (a) Agents of a facility or provider agency shall promptly report
15 any significant incident to the director of the facility or provider
16 agency and the applicable state oversight agency in accordance with the
17 regulations of such state oversight agency; provided, however, any
18 person who has reasonable cause to suspect that a person receiving
19 services has been subject to a significant incident also may make such a
20 report. The applicable state oversight agency shall notify the justice
21 center of any such incident, in the form and manner provided by the
22 rules, regulations, guidelines or standards established by the justice
23 center.

24 (b) In accordance with regulations of the applicable state oversight
25 agency, reports of significant incidents shall be investigated, either
26 by the state oversight agency, the justice center or by a delegate
27 investigatory entity, and the results of the investigation shall be
28 reviewed and the incident resolved pursuant to the procedures estab-

1 lished as part of the incident management program described in section
2 four hundred ninety of this article.

3 3. Any person or official required to report cases of suspected abuse
4 or neglect or a significant incident pursuant to this section may take
5 or cause to be taken color photographs of visible trauma and the face of
6 the vulnerable person named in the report and upon the consent of a
7 person authorized to consent to medical care for the vulnerable person,
8 shall, if medically indicated, cause to be performed a radiological
9 examination of the vulnerable person. Any photographs or radiological
10 examinations taken shall be provided to the justice center for use only
11 for the purposes of an investigation of abuse, neglect or a significant
12 incident.

13 4. (a) Any person or official required by this article to report a
14 case of suspected abuse or neglect to the vulnerable persons' central
15 register who willfully fails to do so shall be guilty of a class A
16 misdemeanor.

17 (b) Any person or official required by this article to report a case
18 of suspected abuse or neglect to the vulnerable persons' central regis-
19 ter who knowingly and willfully fails to do so shall be civilly liable
20 for the damages proximately caused by such failure.

21 5. A medical or other public or private institution, state agency,
22 school, facility or provider agency shall not take any retaliatory
23 personnel action, as such term is defined in paragraph (e) of subdivi-
24 sion one of section seven hundred forty of the labor law, against an
25 employee or agent because such employee or agent believes that he or she
26 has reasonable cause to suspect that a vulnerable person has been
27 neglected or has been subjected to a significant incident and that
28 employee or agent therefore makes a report in accordance with this

1 section. A court of competent jurisdiction may grant injunctive relief
2 to any person determined to have been subjected to such retaliation.

3 § 492. Vulnerable persons' central register. 1. There shall be estab-
4 lished in the justice center a statewide vulnerable persons' central
5 register. The register shall: (a) receive reports of allegations of
6 abuse or neglect of persons receiving services in facilities or provider
7 agencies subject to the requirements of this article; (b) as warranted,
8 refer reports alleging crimes to appropriate law enforcement authori-
9 ties; (c) notify appropriate persons and officials of received and
10 accepted reports; and (d) maintain an electronic database of each report
11 and the finding associated with each report. In accordance with this
12 section, the executive director shall establish standards and procedures
13 for the operation of the vulnerable persons' central register.

14 2. (a) The vulnerable persons' central register shall be staffed by
15 persons with at least a baccalaureate or equivalent college degree in a
16 relevant field of study or at least two years of experience in the
17 direct provision of services, adult or child protective services, or any
18 other qualifications identified by the executive director. Direct
19 service provision shall include the care, investigation, assessment,
20 treatment, or case planning for persons in facilities or programs
21 covered by this article or equivalent facilities or programs. Vulner-
22 able persons' central register staff also shall have access to appropri-
23 ate law enforcement officers or others with law enforcement experience
24 who shall assist in screening reports that appear to allege criminal
25 offenses and help refer reports, as warranted, to appropriate law
26 enforcement authorities.

27 (b) The vulnerable persons' central register shall receive reports of
28 allegations of abuse or neglect twenty-four hours per day, seven days a

1 week. Mandated reporters shall make such reports in accordance with
2 section four hundred ninety-one of this article; provided, however, any
3 person who has reasonable cause to suspect that a person receiving
4 services is abused or neglected may make such a report. In no event
5 shall a report by a mandated reporter to the vulnerable persons' central
6 register eliminate the obligation of a mandated reporter to report inci-
7 dents in accordance with the applicable laws, regulations and policy of
8 the applicable state oversight agency.

9 (c) Reports of allegations of abuse or neglect shall be submitted, by
10 a statewide, toll-free telephone number (a "hotline") or by electronic
11 transmission, in a manner and on forms prescribed by the executive
12 director. The information required on the reporting form shall include
13 but is not limited to: the name and contact information of the person or
14 persons making the report, if available, and, if the report is made by
15 an agent of a facility or provider agency, any other staff who have the
16 same information; the name and address of the facility or provider agen-
17 cy; the date, time, specific location and description of the incident;
18 the name and contact information of the subject of the report of abuse
19 or neglect, if known; the name of the vulnerable person alleged to have
20 been abused or neglected; the names of personal representatives for the
21 vulnerable person who is alleged to have been abused or neglected, if
22 known; and any other information or documentation that the executive
23 director believes may be helpful. The inability of a person making a
24 report to identify a subject shall, in no circumstance, constitute cause
25 to reject such allegation for investigation or to fail to refer such
26 allegation for corrective action.

27 3. (a) When any allegation that could reasonably constitute abuse or
28 neglect is received by the register, the register shall accept and imme-

1 diately transmit notice of the report orally or electronically to the
2 appropriate state oversight agency and, as appropriate, to the director
3 or operator of that facility or provider agency.

4 (b) Whenever a telephone call or electronic transmission to the
5 vulnerable persons' central register alleges an act or circumstances
6 that may constitute a criminal offense or an immediate threat to a
7 vulnerable person's health, safety or welfare, the register shall
8 convey, by the most expedient means available, the information contained
9 in such call or transmission to the appropriate law enforcement agency,
10 district attorney or other public official empowered to provide neces-
11 sary aid or assistance, and state oversight agency.

12 (c) The justice center is responsible for commencing an investigation
13 of all allegations of abuse or neglect that are accepted by the vulner-
14 able persons' central register. With respect to such an investigation,
15 the justice center shall:

16 (i) upon acceptance of a report of abuse or neglect by the vulnerable
17 persons' central register, promptly commence an appropriate investi-
18 gation;

19 (ii) take all appropriate measures to protect the life and health of
20 the person who is the alleged victim of abuse or neglect, which may
21 include working with the state oversight agency to take immediate steps
22 to remove the vulnerable person from his or her current facility or
23 program, if the justice center has reasonable cause to believe that the
24 circumstances or condition of the vulnerable person are such that
25 continuing in his or her place of residence presents an imminent danger
26 to his or her life or health;

1 (iii) determine whether the subject of the report is currently the
2 subject of an open or substantiated report in the vulnerable persons'
3 central register;

4 (iv) contact the statewide central register of child abuse and
5 maltreatment to determine whether the subject of the report has been or
6 is currently the subject of an indicated child abuse and maltreatment
7 report on file with the statewide central register of child abuse and
8 maltreatment;

9 (v) if it is discovered that the subject of a report has one or more
10 substantiated reports of abuse or neglect or indicated reports of child
11 abuse or maltreatment in the statewide central register of child abuse
12 and maltreatment and an investigation was or investigations were
13 conducted by a different state agency, or a local child protective
14 service, contact all known agencies or services who investigated such
15 previous report or reports to obtain information on such reports in
16 accordance with section four hundred ninety-six of this article;

17 (vi) notify the personal representative of the person alleged to have
18 been abused or neglected, and, if warranted, notify the subject or
19 subjects of the report and any other persons named in the report in
20 writing of the existence of the report; provided, however, that such
21 notification may be limited in accordance with subdivision (c) of
22 section 33.16 of the mental hygiene law;

23 (vii) if a report of abuse or neglect to the vulnerable persons'
24 central register involves the death of a person, the justice center
25 shall give telephone notice and immediately send a copy of the report to
26 the appropriate district attorney and to the medical examiner or coron-
27 er. The medical examiner or coroner shall conduct a prompt investigation
28 and shall forward a preliminary written report of his or her findings

1 within sixty days of the date of death, absent extraordinary circum-
2 stances, and his or her final written report promptly, absent extraor-
3 dinary circumstances, to the appropriate district attorney, the appro-
4 priate law enforcement official, the state agency responsible for
5 overseeing the investigation, the justice center medical review board
6 and, if the death occurred in a hospital, the hospital;

7 (viii) submit abuse and neglect findings to the vulnerable persons'
8 central register in accordance with section four hundred ninety-three of
9 this article;

10 (ix) notify the applicable state oversight agency and the director or
11 operator, where appropriate, to develop a plan of prevention or remedi-
12 ation that the facility or program must implement in response to the
13 report's findings which must be approved and monitored of its implemen-
14 tation by the justice center or the state oversight agency, as appropri-
15 ate; and

16 (x) refer suspected cases of falsely reporting abuse or neglect in
17 violation of subdivision four of section 240.50 of the penal law to the
18 appropriate law enforcement agency or district attorney for investi-
19 gation and prosecution.

20 (d) Whenever a telephone call or electronic transmission to the
21 vulnerable persons' central register cannot be accepted as a report, but
22 the information provided alleges a significant incident or other poten-
23 tial wrongdoing at a facility or provider agency, the register shall
24 forward the report to the applicable state oversight agency for investi-
25 gation and protective actions, as needed, pursuant to section four
26 hundred ninety-one of this article.

27 4. The justice center shall maintain and keep up-to-date abuse and
28 neglect records of all cases reported, together with any additional

1 information obtained during an investigation of such a report and a
2 record of the final disposition of the report.

3 5. The vulnerable persons' central register shall maintain an elec-
4 tronic database of all accepted reports of abuse and neglect and signif-
5 icant incidents. State oversight agencies shall have access to informa-
6 tion in the database, limited to cases involving facilities or provider
7 agencies under their jurisdiction.

8 (a) A unique identifier shall be assigned to each report by the
9 vulnerable persons' central register.

10 (b) The register shall include the following information for each
11 report: a record of the final disposition of the report; the names and
12 identifying data; dates and circumstances of any person requesting or
13 receiving information from the register; whether the person making the
14 report authorized the disclosure of his or her name and personally iden-
15 tifiable information; and any other information that the executive
16 director, in consultation with the commissioners of the state oversight
17 agencies covered by this article, identifies as furthering the purposes
18 of this article and complying with state and federal regulations regard-
19 ing the security and confidentiality of individually identifying health
20 information.

21 6. The justice center shall review such electronic database to identi-
22 fy incident patterns and trends, and implement preventive and corrective
23 actions, and to identify patterns and trends in the reporting and
24 response to allegations of abuse and neglect and other reportable inci-
25 dents and develop plans of improvement based on such reviews.

26 7. (a) General information about the existence and purposes of the
27 vulnerable persons' central register and how to make a report to the
28 register shall be made available on the website of the justice center,

1 with links to such information provided on the websites of each of the
2 state oversight agencies covered by this article.

3 (b) The justice center, in collaboration with the state oversight
4 agencies covered by this article, shall develop and widely distribute
5 written information explaining the reporting requirements and processes
6 consistent with this article. In addition, upon a vulnerable person's
7 commencement of the receipt of services by a facility or a provider
8 agency, personal representatives shall be provided with such informa-
9 tion, and such information shall be made available upon request to any
10 person.

11 (c) The justice center, in collaboration with the state agencies oper-
12 ating, licensing or certifying facilities or the provider agencies
13 covered by this article, shall provide mandated reporters with written
14 information explaining the reporting requirements in accordance with
15 this article.

16 (d) The justice center shall develop and implement programs to public-
17 ly recognize and value the contributions of reporters of abuse or
18 neglect, or significant incidents, whose actions prompt corrections and
19 improvements in the service system; provided, however, that the name and
20 other personally identifiable information of such reporter shall not be
21 shared unless such person authorizes disclosure.

22 8. In a case where a subject of a report of alleged abuse or neglect
23 resigns from his or her position or is terminated while under investi-
24 gation, the state operating agency or the applicable facility or provid-
25 er agency shall promptly report such resignation or termination to the
26 justice center. The investigation of the report shall continue despite
27 the resignation or termination of such subject.

1 § 493. Abuse and neglect findings; consequences. 1. Within sixty days
2 of the vulnerable persons' central register accepting a report of an
3 allegation of abuse or neglect, the justice center shall cause the find-
4 ings of the investigation to be entered into the vulnerable persons'
5 central register. The justice center may take additional time to enter
6 such findings into the vulnerable persons' central register; provided,
7 however, that the reasons for any delay must be documented and such
8 findings submitted as soon thereafter as practicably possible.

9 2. For substantiated reports of abuse or neglect in facilities or
10 provider agencies in receipt of medical assistance, such information
11 shall also be forwarded by the justice center to the office of the Medi-
12 caid inspector general.

13 3. (a) A finding shall be based on a preponderance of the evidence and
14 shall indicate whether: (i) the alleged abuse or neglect is substanti-
15 ated because it is determined that the incident occurred and the subject
16 of the report was responsible or, if no subject can be identified and an
17 incident occurred, that, the facility or provider agency was responsi-
18 ble; (ii) the alleged abuse or neglect is disconfirmed because it is
19 determined not to have occurred or the subject of the report was not
20 responsible; or (iii) the report is inconclusive because it cannot be
21 determined that the incident occurred or that the subject of the report
22 was responsible. A report shall not be determined to be inconclusive
23 solely because the subject of a report resigns during an investigation.
24 The justice center shall consider a resignation of a subject of a report
25 during an investigation as a negative inference regarding the actions or
26 lack of action by such subject.

1 (b) In conjunction with the possible findings identified in paragraph
2 (a) of this subdivision, a concurrent finding may be made that a system-
3 ic problem caused or contributed to the occurrence of the incident.

4 (c) The justice center shall notify the subject of the report, the
5 facility or provider agency where the abuse or neglect was alleged to
6 have occurred, the applicable state oversight agency and other persons
7 named in the report of the findings of the investigation and, as appli-
8 cable, the local social services commissioner or school district that
9 placed the individual in the facility or provider agency, the office of
10 children and family services and any attorney for the individual whose
11 appointment has been continued by a family court judge during the term
12 of an individual's placement, in accordance with applicable state and
13 federal laws and regulations governing the use and disclosure of
14 records. If the report is substantiated, the justice center shall also
15 notify the subject of the report of his or her rights to request that
16 the report be amended in accordance with section four hundred ninety-
17 four of this article.

18 (d) A report that is found to be disconfirmed or inconclusive shall be
19 sealed immediately.

20 4. Substantiated reports of abuse or neglect shall be categorized into
21 one or more of the following three categories, as applicable:

22 (a) Category one conduct is serious physical abuse, sexual abuse or
23 other serious conduct by agents of a facility or provider agency, which
24 includes:

25 (i) intentional conduct that causes physical injury as defined in
26 subdivision nine of section 10.00 of the penal law, or that causes death
27 or serious disfigurement, impairment of health or loss or impairment of

1 the function of any bodily organ or part or creates a reasonably fore-
2 seeable risk of such physical injury;

3 (ii) failure to perform a duty that results in physical injury that
4 creates a risk of death or that causes death or serious disfigurement,
5 impairment of health or loss or impairment of the function of any bodily
6 organ or part, a substantial diminution of a service recipient's psycho-
7 logical or intellectual functioning, as determined by a physician,
8 psychologist, psychiatric nurse practitioner, licensed clinical or
9 master social worker or licensed mental health counselor, or creates a
10 reasonably foreseeable risk of either;

11 (iii) threats, taunts, derogatory comments or ridicule that results in
12 or has the potential to result in a substantial diminution of a service
13 recipient's psychological or intellectual functioning, as determined by
14 a physician, psychologist, psychiatric nurse practitioner, licensed
15 clinical or master social worker or licensed mental health counselor;

16 (iv) encouraging others to engage in cruel or degrading treatment of a
17 service recipient that results in or has the potential to result in a
18 substantial diminution of a service recipient's psychological or intel-
19 lectual functioning, as determined by a physician, psychologist, psychi-
20 atric nurse practitioner, licensed clinical or master social worker or
21 licensed mental health counselor;

22 (v) engaging in any conduct intended to promote or produce sexual
23 contact between persons receiving services and agents of a facility or
24 provider agency or between persons receiving services when one person is
25 not capable of consent. Sexual contact shall include but not be limited
26 to sexual intercourse, deviate sexual intercourse, aggravated sexual
27 contact or sexual touching;

- 1 (vi) any conduct encouraging, facilitating or permitting another to
2 engage in sexual conduct with a service recipient;
- 3 (vii) any conduct encouraging or permitting another to promote a sexu-
4 al performance by a service recipient or permitting or using a service
5 recipient in any prostitution-related offense;
- 6 (viii) using or distributing an unlawful controlled substance, as
7 defined by article thirty-three of the public health law, at the work
8 place or while on duty;
- 9 (ix) administering an unlawful controlled substance, as defined by
10 article thirty-three of the public health law to a service recipient;
- 11 (x) intentionally falsifying records related to the safety, treatment
12 or supervision of a service recipient, including but not limited to
13 medical records, fire safety inspections and drills and supervision
14 checks;
- 15 (xi) failing to report any of the conduct in subparagraphs (i) through
16 (ix) of this paragraph upon discovery;
- 17 (xii) for supervisors, failing to act upon a report of conduct in
18 subparagraphs (i) through (x) of this paragraph as directed by regu-
19 lation, procedure or policy;
- 20 (xiii) intentionally making a materially false statement or inten-
21 tionally withholding material information during an investigation into a
22 report of conduct described in subparagraphs (i) through (x) of this
23 paragraph or otherwise obstructing an investigation; and
- 24 (xiv) intimidating a mandated reporter with the intention of prevent-
25 ing him or her from reporting conduct described in subparagraphs (i)
26 through (x) of this paragraph or retaliating against any agent making
27 such a report in good faith.

1 (b) Category two conduct is abuse or neglect by agents of a facility
2 or provider agency that does not meet the conduct described in category
3 one. Conduct in this category that occurs more than once within a three-
4 year period shall elevate a finding from category two to category one.
5 Reports that result in a category two finding not elevated to a category
6 one finding shall be sealed after five years.

7 (c) Category three shall be conditions at a facility or provider agen-
8 cy that expose service recipients to harm or risk of harm where staff
9 culpability is mitigated by systemic problems such as inadequate manage-
10 ment, staffing, training or supervision. Category three also shall
11 include instances in which it has been substantiated that a service
12 recipient has been abused or neglected, but the perpetrator of such
13 abuse or neglect cannot be identified.

14 5. (a) Category one findings shall result in permanent placement of
15 the subject of the report on the vulnerable persons' central register in
16 accordance with section four hundred ninety-five of this article.

17 (b) When an employee has a second substantiated category two finding
18 occurring within a three-year period, an employee with a category two
19 finding shall be subject to progressive discipline. (For state entities
20 bound by collective bargaining, such discipline established by collec-
21 tive bargaining shall govern.) In conjunction with disciplinary action,
22 the employer shall develop a plan for training and any other actions to
23 reduce the risk of recurrence of such conduct. Such plan must be
24 approved by and its implementation monitored by the justice center or
25 the state oversight agency, as appropriate.

26 (c) With respect to a category three finding, the justice center shall
27 require the facility or provider agency to develop and implement a plan
28 of prevention and remediation of the deficient conditions. Such plan

1 must be approved by and its implementation monitored by the justice
2 center or the state oversight agency, as appropriate. In reviewing the
3 continued qualifications of a facility or provider agency for an operat-
4 ing certificate, the state oversight agency shall evaluate such facility
5 or provider agency's compliance with any plans of prevention and remedi-
6 ation resulting from category three reports and take appropriate
7 enforcement action, which may include, but not be limited to, closing
8 intake to the facility or provider agency or terminating operating
9 certificates for prolonged or repeated failure to correct identified
10 problems in accordance with applicable state law or regulation.

11 § 494. Amendments to and appeals of substantiated reports of abuse or
12 neglect. 1.(a) At any time subsequent to the completion of an investi-
13 gation of an allegation of abuse or neglect, but in no event later than
14 thirty days after the subject of the report is notified that the report
15 is substantiated, the subject may request that the vulnerable persons'
16 central register amend the findings of the report. If the register does
17 not amend the findings of the report in accordance with such request,
18 the subject shall have the right to be heard to determine whether the
19 findings of the report should be amended on the grounds that they are
20 inaccurate or inconsistent with the provisions in this article.

21 (b) If it is determined that the justice center failed to prove by a
22 preponderance of the evidence the finding that the subject committed the
23 act or acts of abuse or neglect, the justice center shall amend the
24 record to reflect that such a finding was made, and shall promptly noti-
25 fy the subject of the report and any other persons or entities previous-
26 ly notified of the existence of the report of the amended finding. Such
27 report shall be sealed in accordance with the standards set forth in
28 subdivision four of section four hundred ninety-six of this article.

1 2. The justice center is authorized to make any appropriate order
2 respecting the amendment of the findings of a report to make it accurate
3 or consistent with the requirements of this article.

4 § 495. Register of substantiated category one cases of abuse or
5 neglect. 1. The justice center shall develop and maintain a register of
6 subjects of reports who have been found to have a substantiated category
7 one case of abuse or neglect, in accordance with paragraph (a) of subdivi-
8 vision four of section four hundred ninety-three of this article, and
9 who have: (a) not requested an amendment of the findings of the report
10 in the time specified in subdivision one of section four hundred nine-
11 ty-four of this article; or (b) been heard pursuant to such subdivision
12 and all the findings of the report were not amended to be disconfirmed
13 or inconclusive.

14 2. All facility and provider agencies as defined in subdivision four
15 of section four hundred eighty-eight of this article, other providers of
16 services to vulnerable persons in programs licensed, certified or funded
17 by any state oversight agency and other provider and licensing agencies
18 as defined in subdivision three or four of section four hundred twenty-
19 four-a of this chapter shall check the register of substantiated catego-
20 ry one cases of abuse or neglect before determining whether to hire or
21 otherwise allow any person as an employee, administrator, consultant,
22 intern, volunteer or contractor who will have the potential for regular
23 and substantial contact with a service recipient or before approving an
24 applicant for a license, certificate, permit or other approval to
25 provide care to a service recipient. (For state entities bound by
26 collective bargaining, such action established by collective bargaining
27 shall govern.)

1 3. If a person is listed on the register of substantiated category one
2 cases of abuse or neglect, a facility or provider agency, as defined in
3 subdivision four of section four hundred eighty-eight of this article,
4 and all other providers of services to vulnerable persons in programs
5 licensed or certified by any state oversight agency shall not hire such
6 a person to have regular and substantial contact with a service recipi-
7 ent in any such facility or program. Other providers or licensing agen-
8 cies as defined in subdivision three or four of section four hundred
9 twenty-four-a of this chapter shall determine whether to hire or allow
10 such a person to have regular or substantial contact with a service
11 recipient in accordance with the provisions of subdivision five of
12 section four hundred twenty-four-a of this chapter.

13 4. An agent of a facility or provider agency shall be subject to imme-
14 diate termination if he or she is convicted of any offense as defined in
15 subdivision one of section 10.00 of the penal law that relates directly
16 to the abuse or neglect of a vulnerable person, or is placed on the
17 register of substantiated category one cases of abuse or neglect. (For
18 state entities bound by collective bargaining, such action established
19 by collective bargaining shall govern.)

20 5. Placement on the register shall be permanent, unless the office is
21 officially notified of the individual's death.

22 6. Nothing in this article shall diminish the rights or remedies
23 otherwise available under law, regulation or appropriate collective
24 bargaining agreements of any facility or provider agency with respect to
25 the termination or discipline of employees.

26 § 496. Confidentiality. 1. Reports made pursuant to this article as
27 well as any other information obtained, reports written or photographs
28 taken concerning such reports in the possession of the justice center, a

1 state oversight agency, a delegate investigatory entity, facility or
2 provider agency covered by this article shall be confidential and shall
3 not be disclosed to any other party unless authorized pursuant to both
4 this section and any other applicable state or federal law. In the
5 event that other applicable state or federal law provisions are more
6 restrictive than the provisions of this section, the provisions of such
7 other state or federal law shall apply. In accordance with this section,
8 such information shall be made available only to:

9 (a) a person who is the subject of the report, as defined in subdivi-
10 sion thirteen of section four hundred eighty-eight of this article;

11 (b) other persons named in the report, as defined in subdivision four-
12 teen of section four hundred eighty-eight of this article;

13 (c) the justice center;

14 (d) the applicable state operating agency, the applicable state over-
15 sight agency, the director or operator of the applicable facility or
16 provider agency and, as appropriate, the local social services commis-
17 sioner, the commissioner of the office of children and family services,
18 or the school district placing the service recipient, or an agency
19 providing adult protective services to the service recipient;

20 (e) a physician who has before him or her a service recipient whom he
21 or she reasonably suspects may be abused or neglected;

22 (f) a court, upon a finding that the information in the record is
23 necessary for the determination of an issue before the court;

24 (g) a grand jury, upon a finding that the information in the record is
25 necessary for the determination of charges before the grand jury;

26 (h) any appropriate state legislative committee responsible for legis-
27 lation affecting vulnerable persons, provided, however, that no informa-

1 tion identifying or tending to identify the subjects of the report or
2 other persons named in the report shall be made available;

3 (i) any person engaged in a bona fide research purpose; provided,
4 however, that no information identifying or tending to identify the
5 subjects of the report or other persons named in the report shall be
6 made available to the researcher unless it is absolutely essential to
7 the research purpose and the justice center, after consultation with the
8 commissioner of the applicable state oversight agency, gives prior
9 approval;

10 (j) a facility or provider agency as defined in subdivision four of
11 section four hundred eighty-eight of the article, all other providers of
12 services to vulnerable persons in programs licensed or certified by any
13 state oversight agency, any other provider agency as defined in subdivi-
14 sion three of section four hundred twenty-four-a of this chapter or a
15 licensing agency as defined in subdivision four of section four hundred
16 twenty-four-a of this chapter, in accordance with the provisions of
17 subdivision two of section four hundred ninety-five of this article;

18 (k) a probation service regarding a person about whom it is conducting
19 an investigation pursuant to article three hundred ninety of the crimi-
20 nal procedure law, or a probation service or the department of
21 corrections and community supervision regarding a person to whom the
22 service or department is providing supervision pursuant to article sixty
23 of the penal law or article eight of the correction law, where the
24 service or department requests the information upon a certification that
25 such information is necessary to conduct its investigation, that there
26 is reasonable cause to believe that the subject of an investigation is
27 the subject of a substantiated report and that there is reasonable cause
28 to believe that such records are necessary to the investigation by the

1 probation service or the department, provided, however, that only
2 substantiated reports shall be furnished pursuant to this subdivision;

3 (l) a district attorney, an assistant district attorney or investi-
4 gator employed by the office of a district attorney, a sworn officer of
5 the division of state police, of the regional state park police, of a
6 city police department, or of a county, town or village police depart-
7 ment or county sheriff's office or department upon written verification
8 that such information is necessary to conduct a criminal investigation
9 or criminal prosecution of a person, and that there is reasonable cause
10 to believe that such person is the subject of a report; provided, howev-
11 er, that only substantiated reports shall be furnished pursuant to this
12 subdivision;

13 (m) the New York city department of investigation; provided, however,
14 that no information identifying the subjects of the report or other
15 persons named in the report shall be made available to the department of
16 investigation unless such information is essential to an investigation
17 within the legal authority of the department of investigation and the
18 justice center or the applicable state oversight agency gives prior
19 approval;

20 (n) a provider or coordinator of services to which a facility or
21 provider agency, operating state agency, or social services district has
22 referred a service recipient or a service recipient's family or to whom
23 the service recipient or the recipient's family have referred themselves
24 at the request of such agency or social services district, when said
25 service recipient is reported to the vulnerable persons' central regis-
26 ter as the vulnerable person and when the records, reports or other
27 information are necessary to enable the provider or coordinator to
28 establish and implement a plan of service for the service recipient or

1 the service recipient's family, or to monitor the provision and coordi-
2 nation of services and the circumstances of the service recipient and
3 the service recipient's family, or to directly provide services in
4 accordance with requirements established by the applicable state over-
5 sight agency to the extent that the sharing of such information is not
6 otherwise prohibited by federal law; provided, however, a provider or
7 coordinator of services given access to information concerning a service
8 recipient pursuant to this paragraph shall be authorized to redisclose
9 such information to other persons or agencies which also provide
10 services to the service recipient or the service recipient's family only
11 if an agreement has been or will be reached between the provider or
12 coordinator of service and such facility or provider agency, operating
13 state agency or local district. An agreement entered into pursuant to
14 this paragraph shall include the specific agencies and categories of
15 individuals to whom redisclosure by the provider or coordinator of
16 services is authorized. Persons or agencies given access to information
17 pursuant to this paragraph may exchange such information in order to
18 facilitate the provision or coordination of services to the service
19 recipient or the service recipient's family;

20 (o) a disinterested person making an investigation pursuant to section
21 one hundred sixteen of the domestic relations law, provided that such
22 disinterested person shall only make this information available to the
23 judge before whom the adoption proceeding is pending;

24 (p) a criminal justice agency conducting an investigation of a missing
25 child or vulnerable adult where there is reason to suspect information
26 in a substantiated report under this article is needed to further such
27 investigation;

1 (g) the director or operator of the facility or provider agency and,
2 as appropriate, the local social services commissioner, commissioner of
3 the office of children and family services, or school district placing a
4 child in that program, the applicable executive agency, and, for any
5 report involving abuse or neglect of a child, any attorney appointed to
6 represent the child whose appointment has been continued by a family
7 court judge during the term of the placement and subject to the limita-
8 tions contained in section four hundred ninety-five of this article;

9 (r) for any report alleging abuse or neglect of a child, a child
10 protective service of another state when such service certifies that the
11 records and reports are necessary in order to conduct a child abuse or
12 maltreatment investigation within its jurisdiction of the subject of the
13 report and shall only be used for purposes of conducting such investi-
14 gation and will not be redisclosed to any other person or agency;

15 (s) an attorney for a child, appointed pursuant to section one thou-
16 sand sixteen of the family court act, at any time such appointment is in
17 effect, in relation to any report in which the respondent in the
18 proceeding in which the attorney for the child is appointed is the
19 subject or another person named in the report, pursuant to sections one
20 thousand thirty-nine-a and one thousand fifty-two-a of the family court
21 act;

22 (t) officers and employees of the state comptroller, for purposes of a
23 duly authorized performance audit, provided that such comptroller shall
24 have certified to the keeper of such records that he or she has insti-
25 tuted procedures developed in consultation with the justice center to
26 limit access to service recipient-identifiable information to persons
27 requiring such information for purposes of the audit and that appropri-
28 ate controls and prohibitions are imposed on the dissemination of