

# PROGRAM BILL # 35

## GOVERNOR'S PROGRAM BILL 2012

### MEMORANDUM

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 commission 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 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 sections 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)

**Purpose:**

This legislation would create uniform safeguards for people with special needs served in residential facilities and day programs by provider agencies that are operated, licensed or certified by state agencies to protect them against abuse, neglect and other conduct that would jeopardize their health, safety and welfare. The safeguards would be implemented by a newly created Justice Center for the Protection of People with Special Needs, which would contain a Special Prosecutor/Inspector General, who would have concurrent authority with district attorneys to prosecute abuse of neglect of people with special needs that rises to the level of a criminal offense.

**Summary of Provisions:**

Section 1 of the bill identifies the title of the act as the "Protection of People with Special Needs Act."

Section 2 of the bill sets forth the provisions contained in Parts A through H of the Act:

Part A would add a new Article 20 to the Executive Law to establish the Justice Center for the Protection of People with Special Needs ("the Center"), which would be responsible for ensuring that individuals served in residential facilities and day programs by provider agencies that are operated, licensed or certified by the Office for People with Developmental Disabilities (OPWDD), the Office of Mental Health (OMH), the Office of Alcoholism and Substance Abuse Services (OASAS), the Office of Children and Family Services (OCFS), the Department of Health (DOH) and the State Education Department (SED) are protected from harm. The Center would operate a statewide, toll-free hotline to which mandated reporters would be required to report allegations of abuse and neglect, and would be responsible for reporting such reports to law enforcement, where appropriate, and investigating those reports. The Center also would: (a) contain a Special Prosecutor and Inspector General with the authority to prosecute, concurrently with the district attorneys, offenses involving the abuse and neglect of people with special needs; (b) represent the State at employee disciplinary proceedings, and conduct such proceedings where such action is consistent with existing collective bargaining agreements; (c) establish a central register and database for reports of abuse and neglect of people with special needs, including the results of such investigations, to allow the Center to examine any patterns and trends in such reported incidents and in the reporting of such incidents, in order to ensure that corrective action plans are implemented to prevent future incidents; (d) develop a code of conduct to guide the behavior of those who have regular contact with vulnerable persons; (e) develop appropriate training standards for investigators and train investigators to meet those standards; and (f) develop

consistent policies and procedures for incident management by state agencies that oversee services to people with special needs. This Part also would repeal Article 45 of the Mental Hygiene Law, eliminating the Commission on the Quality of Care and Advocacy for Persons with Disabilities (CQC), and would assign its duties to the Justice Center.

Part B would add a new Article 11 of the Social Services Law to establish the Vulnerable Persons' Central Register within the Center, and the procedures that would be followed for the investigation of reports of abuse and neglect that are transmitted to the Register. It also would establish, where permitted by existing collective bargaining agreements, that employees found to have committed serious acts of abuse or neglect, as defined in the bill, would be subject to immediate termination and could not be hired in any future position in which they would have regular and substantial contact with people with special needs, and would require that remediation and corrective action plans be developed and implemented to prevent future incidents.

This Part also would create uniform definitions of abuse, neglect and related terms to ensure consistency and better protect people with special needs who are reliant on services provided by the agencies and providers operating within the State's mental hygiene and human services systems. It also would require all of the state agencies overseeing these systems to implement consistent incident management procedures, to be developed by the Center, including timely reporting, investigation and review of allegations of abuse, neglect and other significant incidents that could subject a person to harm.

In addition, providers not otherwise subject to Article 6 of the Public Officers Law (the Freedom of Information Law) would be subject to the same requirements for disclosure of records as the State agencies that operate, license or certify facilities or providers that provide those services.

Parts C, D and E would make conforming amendments to various sections of the law to reflect the new procedures and requirements created in Parts A and B.

Part F would amend the Mental Hygiene Law, the Social Services Law and the Executive Law to create new obligations for OASAS providers, their employees and individuals credentialed by that office, as well as foster care agencies, to undergo a criminal history background check.

Part G would amend Penal Law § 240.50 relating to falsely reporting abuse or neglect of a vulnerable person to include making false reports to the vulnerable persons' central register. It also would: (a) amend Penal Law § 130.05 to add a definition of a resident or inpatient of a Department of Mental Hygiene facility as a person incapable of consent; (b) create a new Penal Law § 260.24 to establish a class A misdemeanor for recklessly endangering the welfare of an incompetent or physically disabled person in the second degree; and (c) raise the level of the three existing penal law offenses involving

incompetent, physically disabled or vulnerable elderly persons (Penal Law §§ 260.25, 260.32 and 260.34) one penalty level, to E, D and C felonies, respectively.

Part H would repeal Chapter 606 of the Laws of 2011 and Chapter 6 of the Laws of 2012 to sunset the creation of an abuse prevention notification system for OPWDD, which would no longer be needed with the creation of the vulnerable persons' central register in this bill.

Section 3 of the bill is a severability clause.

Section 4 of the bill would establish the effective dates of the bill and its parts.

**Existing Law:**

The law governing the agencies impacted in this legislation is in the Mental Hygiene Law, Social Services Law and Education Law. Provisions of the Penal Law that proscribe certain conduct against incompetent, physically disabled and vulnerable people are also impacted.

**Statement in Support:**

This bill would reform, overhaul and strengthen the system of protections from abuse and neglect for the over one million State residents with special needs who are served in facilities and programs operated, licensed and certified by OPWDD, OMH, OASAS, OCFS, DOH and SED. More than 270,000 children and adults with special needs are served in residential facilities, and many more people are served by day programs provided by State and private operators. Because of their special needs and other circumstances, these individuals may be especially vulnerable to abuse and neglect. This bill would strengthen and standardize the safety net for these vulnerable children and adults who receive care from New York's human service agencies and programs.

In 2011, Governor Cuomo appointed a Special Advisor on Vulnerable Persons to make recommendations concerning the protection and safety of people served in such programs. The resulting report, *The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities Against Abuse & Neglect*, has identified numerous gaps and inconsistencies in State systems that expose individuals with special needs to an increased risk of harm. These variations across state agencies and within the programs they operate or authorize include:

- whether they require that provider agencies have an incident management program to identify and respond to unusual incidents;
- whether they require that providers investigate reported allegations of abuse or neglect;
- whether they establish time frames for the completion of such investigations;
- whether they require that persons conducting investigations be trained to do so;
- the standard of proof used in such investigations;

- what types of crimes must be reported to law enforcement agencies and under what circumstances; and
- whether they require providers to analyze patterns and trends in reported incidents.

The report recommends significant reforms of the systems for reporting and investigation of incidents of abuse and neglect in residential programs. The report also acknowledges that most of its recommendations would be equally applicable to non-residential programs.

This bill addresses and goes beyond that far-reaching report's recommendations. It creates a Justice Center for the Protection of People with Special Needs, a new entity that would cut across bureaucratic lines and have as its primary purpose and responsibility the protection of the health, safety and welfare of vulnerable persons. The Center would improve the State's response to allegations of abuse and neglect for individuals served in both residential and non-residential facilities, by:

- operating a statewide 24-hour hotline staffed by trained personnel to which mandated reporters will be required to report allegations of abuse and neglect against people with special needs who are being served in State and private residential and non-residential facilities and programs;
- ensuring that allegations of abuse and neglect are promptly, fully and effectively investigated, including ensuring that, where appropriate, these incidents are reported to law enforcement and the wrongdoers prosecuted;
- developing common standards for investigations and requirements to be used to train investigators;
- ensuring that individuals who are responsible for abuse and neglect of people with special needs are held accountable;
- prosecuting abuse and neglect crimes committed against people with special needs through concurrent authority with district attorneys;
- requiring providers to implement corrective action plans to prevent future incidents of abuse and neglect;
- representing the State at all disciplinary proceedings related to substantiated allegations of abuse and neglect;
- requiring, where permitted by existing collective bargaining agreements, that individuals found responsible for serious or repeated acts of abuse or neglect would be subject to termination, and imposing progressive discipline, including retraining, on employees responsible for less serious acts;
- developing a register that will contain the names of individuals found responsible for egregious or repeated acts of abuse or neglect, and bar such individuals from future employment in the care of people with special needs;
- conducting the criminal history background check function for any person applying to be an employee, volunteer or consultant for whom a criminal background check is required as a condition of employment at any facility or provider agencies operated, licensed or certified by OMH, OPWDD, OASAS or OCFS.

- providing oversight of the human services system, conducting death and abuse investigations, and identifying risks and best practices to promote improved quality of care for people with special needs; and
- developing codes of conduct to which all workers who have regular contact with people with special needs must subscribe.

This bill also creates other protections for people with special needs: it strengthens criminal statutes that make abuse of vulnerable or disabled persons a crime; and it promotes transparency by requiring non-state operated and provider agencies to disclose the same records relating to abuse and neglect as State agencies are required to do under the Freedom of Information Law.

These provisions, taken together, would address the gaps recognized in the Special Advisor's report, by creating a set of consistent and durable safeguards to protect people with special needs against abuse, neglect and other conduct that may jeopardize their health, safety and welfare.

**Budget Implications:**

The goals of this legislation, for this fiscal year, can be accomplished within existing appropriation authority.

**Effective Date:**

The Justice Center for the Protection of People with Special Needs will become fully operational as soon as the Executive Director has been confirmed by the Senate so that it can perform all of its functions on or before April 1, 2013, except for the newly-created registry which will be fully operational on April 1, 2013; the newly created crimes will become effective within 30 days of enactment.