

# PROGRAM BILL # 47

S. \_\_\_\_\_  
Senate  
\_\_\_\_\_

IN SENATE--Introduced by Sen

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

----- A.  
Assembly  
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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"; repealer)

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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- |
| s38 Carlucci    | s60 Grisanti  | s45 Little     | s48 Ritchie     | Cousins      |
| s50 DeFrancisco | s06 Hannon    | s05 Marcellino | s33 Rivera      | s27 Storobin |
| s32 Diaz        | s36 Hassell-  | s07 Martins    | s56 Robach      | s49 Valesky  |
| s17 Dilan       | Thompson      | s62 Maziarz    | s41 Saland      | s57 Young    |
| s29 Duane       | s10 Huntley   | s43 McDonald   | s19 Sampson     | s03 Zeldin   |
| 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 Lancman     | 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-   | a011 Sweeney     |
| a131 Bronson      | a090 Galef       | a072 Linares     | Stokes          | 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 Railyly    | a024 Weprin      |
| a138 Ceretto      | a130 Hanna       | a093 Mayer       | a178 Rivera, J. | a070 Wright      |
| a033 Clark        | a139 Hawley      | a019 McDonough   | a080 Rivera, N. | a094 Zebrowski   |
| a047 Colton       | a083 Heastie     | a104 McEmeny     | 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 amend chapter 606 of the laws of 2011, amending the mental hygiene law relating to creating an abuse prevention notification system, in relation 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)

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 abuse, neglect and  
27 significant incidents involving vulnerable persons being served in  
28 certain residential and non-residential facilities and programs. It will

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

5 Additionally, this legislation requires designation of an independent  
6 agency charged with fulfilling the federal protection and advocacy and  
7 client assistance programs to provide federal oversight of the state's  
8 system of care for individuals with disabilities. This agency will also  
9 conduct independent advocacy including but not limited to assistance in  
10 obtaining supports and services, legal assistance, and responding to the  
11 inquiries and complaints of individuals and their families relating to  
12 quality of care.

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

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

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

21 ARTICLE 20

22 PROTECTION OF PEOPLE WITH SPECIAL NEEDS

23 Section 550. Definitions.

24 551. The justice center for the protection of people with  
25 special needs.

26 552. Organization of the justice center.

27 553. Powers and duties of the justice center.

28 554. Codes of conduct.

1 555. Justice center medical review board; organization.

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

3 557. Reports to the justice center.

4 558. Access to records and facilities.

5 559. New York state interagency coordinating council for  
6 services to persons who are deaf, deaf-blind, or hard of  
7 hearing.

8 560. Annual report.

9 561. Advisory council.

10 562. Abuse and neglect notification.

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

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

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

21 3. "Reportable incident" shall have the same meaning as defined in  
22 subdivision one of section four hundred eighty-eight of the social  
23 services law.

24 4. "State oversight agency" shall mean the state agency that operates,  
25 licenses or certifies an applicable facility or provider agency as  
26 defined in subdivision four of section four hundred eighty-eight of the  
27 social services law; provided however that such term shall only include  
28 the following entities: the office of mental health, the office for

1 people with developmental disabilities, the office of alcoholism and  
2 substance abuse services, the office of children and family services,  
3 the department of health and the state education department. "State  
4 oversight agency" does not include agencies that are certification agen-  
5 cies pursuant to federal law or regulation. For purposes of this arti-  
6 cle, "state oversight agency" shall include the justice center for the  
7 protection of people with special needs.

8 5. "Vulnerable person" shall mean a person who, due to physical or  
9 cognitive disabilities, or the need for services or placement, is  
10 receiving services from a facility or provider agency as defined in  
11 subdivision four of section four hundred eighty-eight of the social  
12 services law.

13 6. "Individual with a disability," except as used in subdivision (b)  
14 of section five hundred fifty-eight of this article, shall mean a person  
15 with a disability as defined in subdivision twenty-one of section two  
16 hundred ninety-two of this chapter.

17 § 551. The justice center for the protection of people with special  
18 needs. 1. There is hereby created within the executive department a  
19 justice center for the protection of people with special needs ("justice  
20 center" or "center"). Such justice center shall be headed by an execu-  
21 tive director, who shall be appointed by the governor, by and with the  
22 advice and consent of the senate. The executive director may appoint  
23 staff and perform such other functions for the efficient operation of  
24 the justice center within the amounts made available therefor by appro-  
25 priation.

26 2. The executive director shall recommend policies and procedures to  
27 the state oversight agency for the protection of vulnerable persons,  
28 including but not limited to policies and procedures: (a) for the

1 protection of vulnerable persons who reside in or receive services from  
2 facilities or provider agencies as set forth in subdivision four of  
3 section four hundred eighty-eight of the social services law; (b) relat-  
4 ing to assuring, on behalf of the state, that vulnerable persons are  
5 afforded care that is of a uniformly high standard; (c) relating to  
6 assuring, on behalf of the state, that vulnerable persons are afforded  
7 the opportunity to exercise all of the rights and responsibilities  
8 accorded to residents of the state; and (d) to harmonize and improve the  
9 procedures for and quality of investigations of reportable incidents  
10 involving vulnerable persons within the different systems of care in the  
11 state.

12 3. The executive director may, in consultation with the advisory coun-  
13 cil, promulgate, adopt, amend or rescind rules and regulations necessary  
14 to carry out the provisions of this article; provided, however, that  
15 such rules and regulations shall be strictly limited in their applica-  
16 tion to the means and methods of compliance with the provisions of this  
17 article.

18 § 552. Organization of the justice center. 1. The justice center shall  
19 house the vulnerable persons' central register created in section four  
20 hundred ninety-two of the social services law and shall perform all of  
21 the necessary functions related to the receipt and acceptance of reports  
22 of allegations of reportable incidents involving vulnerable persons, the  
23 investigation of such accepted reports and the review of substantiated  
24 findings of abuse or neglect, as defined in subdivision eleven of  
25 section four hundred eighty-eight of the social services law, including  
26 conducting any disciplinary proceedings for state employees resulting  
27 from such substantiated findings (for state entities bound by collective  
28 bargaining, the disciplinary process established through collective

1 bargaining shall govern). The justice center shall contain two separate  
2 units, headed by two distinct deputies, one responsible for the prose-  
3 cution of criminal matters and one for the resolution of non-criminal  
4 matters. If, during an investigation, what appeared to be a non-criminal  
5 matter warrants consideration for criminal charges, the matter shall be  
6 promptly referred to the criminal unit. Information collected during  
7 such investigations may only be shared between such units in accordance  
8 with state and federal constitutional protections and laws and the  
9 secrecy provisions contained in article one hundred ninety of the crimi-  
10 nal procedure law, unless so ordered by a court in a pending proceeding.

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. Other  
14 state agencies shall be required to make facilities available for office  
15 space throughout the state and to assist when requested with respect to  
16 the duties of the office. Pursuant to the provisions of this section,  
17 such special prosecutor shall have the duty and power: (i) to investi-  
18 gate and prosecute offenses involving abuse or neglect, as defined in  
19 subdivision eleven of section four hundred eighty-eight of the social  
20 services law, committed against vulnerable persons by custodians as  
21 defined in subdivision two of section four hundred eighty-eight of the  
22 social services law; and (ii) to cooperate with and assist district  
23 attorneys and other local law enforcement officials in their efforts  
24 against such abuse or neglect of vulnerable persons. Provided that noth-  
25 ing herein shall interfere with the ability of district attorneys at any  
26 time to receive complaints, investigate and prosecute any suspected  
27 abuse or neglect or for any persons, whether a mandated reporter or not,  
28 to report a complaint to a district attorney or other appropriate law

1 enforcement official. The special prosecutor may request and shall  
2 receive, from any agency, department, division, board, bureau or commis-  
3 sion of the state, or any political subdivision thereof, cooperation and  
4 assistance in the performance of his or her duties, and may provide  
5 technical and other assistance to any district attorney or law enforce-  
6 ment official requesting assistance in the investigation or prosecution  
7 of abuse or neglect of vulnerable persons.

8 (b) The special prosecutor is empowered to apply for search warrants  
9 pursuant to article six hundred ninety of the criminal procedure law,  
10 and, except in exigent circumstances, shall give prior notice of the  
11 application to the district attorney of the county in which such a  
12 warrant is to be executed, and in such exigent circumstances shall give  
13 such notice as soon thereafter as is practicable; provided, however that  
14 the failure to give notice of a search warrant application to a district  
15 attorney shall not be a ground to suppress the evidence seized in  
16 executing the warrant. He or she may designate an assistant to exercise  
17 any of such powers.

18 (c) The special prosecutor or one of his or her assistants may, after  
19 consultation with the district attorney as to the time and place of such  
20 attendance or appearance, attend in person any term of the county court  
21 or supreme court having appropriate jurisdiction, including an extraor-  
22 dinary special or trial term of the supreme court when one is appointed  
23 pursuant to section one hundred forty-nine of the judiciary law, or  
24 appear before the grand jury thereof, for the purpose of managing and  
25 conducting in such court or before such jury a criminal action or  
26 proceeding concerned with an offense where any conduct constituting or  
27 requisite to the completion of or in any other manner related to such  
28 offense involved the abuse or neglect of a vulnerable person, as defined

1 in subdivision eleven of section four hundred eighty-eight of the social  
2 services law. In such case, such special prosecutor or his or her  
3 assistant so attending may exercise all the powers and perform all the  
4 duties in respect of such actions or proceedings which the district  
5 attorney would otherwise be authorized or required to exercise or  
6 perform.

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

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

12 (a) establishing procedures for the timely response to, and effective  
13 investigation of, allegations of reportable incidents that are accepted  
14 by the statewide vulnerable persons' central register;

15 (b) establishing procedures for the notification of appropriate  
16 persons and entities with respect to reports and findings of reportable  
17 incidents;

18 (c) representing the state in all administrative hearings and other  
19 administrative proceedings relating to discipline of state employees and  
20 adjudication of individuals charged with having committed or found to  
21 have committed abuse or neglect, as defined in subdivision eleven of  
22 section four hundred eighty-eight of the social services law (for state  
23 entities bound by collective bargaining, the disciplinary process estab-  
24 lished through collective bargaining shall govern);

25 (d) identifying a process for a coordinated approach to avoid dupli-  
26 cation and provide for timely responses to allegations of reportable  
27 incidents in dually licensed or co-located facilities and provider agen-  
28 cies, which shall include designation of a lead agency primarily respon-

1 sible for carrying out the responsibilities of a facility or provider  
2 agency pursuant to article eleven of the social services law, including  
3 but not limited to incident management and reporting, provided that in  
4 making any such designation or re-designation of such lead agency,  
5 consideration shall be given to the following factors: the proportion of  
6 services provided or recipients served in the dually licensed or co-lo-  
7 cated facilities and provider agencies pursuant to each license or  
8 certification granted by a state oversight agency, the recommendations  
9 of the respective state oversight agencies that granted such licensure  
10 or certification, and the designation or re-designation that would best  
11 protect the health, safety and welfare of vulnerable persons served by  
12 such facilities and provider agencies; provided, further that once  
13 designated, a lead agency shall only be re-designated as necessary to  
14 protect the health, safety and welfare of vulnerable persons served by  
15 such facilities and provider agencies;

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

23 (f) establishing training curricula for employers and employees who  
24 provide care and treatment to vulnerable persons, and those who are in  
25 supervisory positions with respect to such employees, regarding their  
26 obligations to report, investigate and prevent reportable incidents.  
27 Training and curricula shall address topics, including but not limited  
28 to: (i) how to identify and report reportable incidents; (ii) the

1 prevention of abuse and neglect; (iii) the duty to report reportable  
2 incidents; (iv) how to adhere to applicable codes of conduct; (v) the  
3 disciplinary process and employees' rights pursuant to this article; and  
4 (vi) how supervisory staff and management can promote compliance with  
5 this article by new and existing employees. Such training, which shall  
6 be given on a periodic basis, shall include, but not be limited to, live  
7 training and supplemental courses accessible via the internet. Prior to  
8 implementation of this article, the justice center shall provide  
9 adequate interactive training, which shall include live training to the  
10 extent practicable. Employees may call the hotline established pursuant  
11 to subdivision two of section four hundred ninety-two of the social  
12 services law, and upon inquiry, be given advice and assistance in  
13 complying with their obligations and duties pursuant to this article.

14 2. To maintain a central repository for data relating to the investi-  
15 gation of all reportable incidents;

16 3. To establish procedures for review of reportable incidents, to  
17 identify preventive and corrective actions and to develop and implement  
18 such actions and plans of improvement subject to the requirements of any  
19 federal oversight entity;

20 4. To develop standards and training curricula for investigators who  
21 will be assigned to investigate reportable incidents involving vulner-  
22 able persons, and to provide periodic training to such investigators.  
23 Such standards, curricula and training shall address topics including,  
24 but not limited to: (a) how to identify and investigate reportable inci-  
25 dents; (b) the duty to report reportable incidents; (c) the requirements  
26 of all codes of conduct; (d) all applicable disciplinary processes; and  
27 (e) employees' rights pursuant to this article;

1 5. To review and evaluate the criminal history information for any  
2 person applying to be an employee, volunteer or consultant for whom a  
3 criminal background check is required by law as a condition of employ-  
4 ment at any facilities or provider agencies as defined in subdivision  
5 four of section four hundred eighty-eight of the social services law  
6 that are operated, licensed or certified by the office of mental health,  
7 the office for people with developmental disabilities and the office of  
8 children and family services. Such review and evaluation shall include  
9 but not be limited to a requirement that the applicant sign a sworn  
10 statement whether, to the best of his or her knowledge, he or she has  
11 ever been convicted of a crime in this state or any other jurisdiction;

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

16 7. (a) To visit, inspect and appraise the management of facilities or  
17 provider agencies as defined in subdivision four of section four hundred  
18 eighty-eight of the social services law providing services to vulnerable  
19 persons with specific attention to the safety, security and quality of  
20 care provided to patients and residents;

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

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

26 (d) To place such members of its staff as it deems appropriate as  
27 monitors in any facility or provider agency as defined in subdivision  
28 four of section four hundred eighty-eight of the social services law

1 which, in the judgment of the executive director, presents an imminent  
2 danger to the health or safety of the patients, residents or employees  
3 of such facility;

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

10 9. To enter into contracts with any person, firm, corporation, municipi-  
11 ality or governmental agency for the performance of functions author-  
12 ized by law;

13 10. To administer an adult home and residence for adults resident  
14 advocacy program to assist residents, who have at any time received or  
15 are receiving services from a mental hygiene provider, of adult homes  
16 and residences for adults, as defined in section two of the social  
17 services law, where at least twenty-five percent or twenty-five resi-  
18 dents, whichever is less, have at any time received or are receiving  
19 services from a mental hygiene provider which is licensed, operated or  
20 funded by the office of mental health or office for people with develop-  
21 mental disabilities, in understanding their legal rights, and to promote  
22 and protect the rights of such residents.

23 11. To advise and assist vulnerable persons and individuals with disa-  
24 bilities, family members, advocates, service providers and community  
25 organizations in the formation of strategies to identify and meet the  
26 needs of vulnerable persons and individuals with disabilities for  
27 services, supports and advocacy;

1 12. To advise and assist the governor and public and private entities  
2 in the development and implementation of state policies which meet the  
3 needs of vulnerable persons and individuals with disabilities in a  
4 manner that is respectful of the rights and choices of vulnerable  
5 persons and individuals with disabilities;

6 13. To serve as a clearinghouse for information relating to services,  
7 supports and advocacy for vulnerable persons and individuals with disa-  
8 bilities and provide a statewide system of information and referral to  
9 link persons seeking information and assistance with public and private  
10 sector services, supports and advocacy which may be appropriate to meet  
11 their needs;

12 14. To advise and assist the governor, state agencies, vulnerable  
13 persons, individuals with disabilities and public and private sector  
14 entities in the design and implementation of initiatives to increase  
15 access to technology related assistance for vulnerable persons and indi-  
16 viduals with disabilities;

17 15. To administer the surrogate decision-making committee program, as  
18 authorized pursuant to article eighty of the mental hygiene law;

19 16. To stimulate community interest in the problems experienced by  
20 vulnerable persons and individuals with disabilities and promote public  
21 awareness of resources available to such persons and individuals;

22 17. To advise and assist political subdivisions of the state in the  
23 development of local programs for vulnerable persons and individuals  
24 with disabilities;

25 18. To advise and assist educational institutions in the state in the  
26 development of courses of study for persons engaged in public and  
27 private programs for vulnerable persons and individuals with disabili-  
28 ties;

1 19. To conduct or cause to be conducted such studies of the needs of  
2 vulnerable persons and individuals with disabilities as may be appropri-  
3 ate;

4 20. To do all other things necessary to carry out its functions,  
5 powers and duties set forth in this article;

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

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

23 23. To consult with the commissioner of education regarding the  
24 promulgation of rules and regulations requiring that every school bus  
25 driver and school bus attendant serving students with disabilities  
26 receive training and instruction relating to the understanding of and  
27 attention to the special needs of such students pursuant to subdivision  
28 one of section thirty-six hundred fifty of the education law and subdi-

1 vision four of section twelve hundred twenty-nine-d of the vehicle and  
2 traffic law;

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

12 25. (a) To make a preliminary determination whether matters referred  
13 to its attention, warrant investigation and, if so, conduct an investi-  
14 gation of such scope and duration as it deems necessary and proper;

15 (b) Make findings concerning such matters referred to its attention  
16 and, where it deems appropriate, make a report and recommendations,  
17 which shall be provided to the commissioner and to the director of the  
18 facility involved. Such commissioner and director shall each make a  
19 written response, within ninety days of receipt of such report, of  
20 action taken regarding each of the recommendations in the report;

21 26. To review the cost effectiveness of mental hygiene programs and  
22 procedures provided for by law with particular attention to efficiency,  
23 effectiveness and economy in the management, supervision and delivery of  
24 such programs. Such review may include but is not limited to: (a)  
25 determining reasons for rising costs and possible means of controlling  
26 them; (b) analyzing and comparing expenditures in mental hygiene to  
27 determine the factors associated with variations in costs; and (c)  
28 analyzing and comparing achievements in selected samples to determine

1 the factors associated with variations in program success and their  
2 relationship to mental hygiene costs; and

3 27. In its discretion, to review the policies and practices relating  
4 to the prevention of abuse or neglect in facilities or provider agen-  
5 cies, including staffing patterns of various service models and the  
6 supervision required to help ensure the safety of service recipients.

7 § 554. Codes of conduct. 1. The justice center shall adopt and amend,  
8 as appropriate, codes of conduct for all custodians as defined in subdi-  
9 vision two of section four hundred eighty-eight of the social services  
10 law who have or will have regular and direct contact with vulnerable  
11 persons who reside in or receive services from such facilities or  
12 provider agencies. Such codes shall govern the conduct of such custo-  
13 dians with respect to the safety, dignity and welfare of vulnerable  
14 persons to whom they provide care. The justice center shall establish a  
15 process by which each custodian is provided with a copy of the applica-  
16 ble code of conduct and is required, at the time of his or her initial  
17 employment, and at least annually thereafter, to acknowledge that he or  
18 she has read and understands such code of conduct. Such process shall  
19 also provide for the enforcement of such codes consistent with appropri-  
20 ate collective bargaining agreements.

21 2. Minimum requirements for codes of conduct. Such codes of conduct  
22 shall include, at a minimum: a. Provisions regarding the responsibility  
23 of such custodians to support the emotional, physical and personal well-  
24 being of the vulnerable persons they serve, including their protection  
25 from abuse and neglect, and to seek guidance and advice to resolve  
26 issues as needed when making decisions relating to the persons they  
27 serve.

1 b. Provisions regarding the responsibility of such custodians to  
2 assist the vulnerable persons they support to direct the course of their  
3 own lives, honoring, where appropriate, their right to assume risk in a  
4 safe manner and recognizing their potential for lifelong learning and  
5 growth.

6 c. Provisions regarding the responsibility of custodians to partic-  
7 ipate in available, appropriate training to maintain their competency  
8 and skill-level, and to model and shape the behavior of their co-work-  
9 ers.

10 d. Provisions regarding the responsibility of such custodians to  
11 promote and practice justice, fairness and equity for the vulnerable  
12 persons they support, uphold and respect their human and civil rights  
13 and respect their human dignity and uniqueness.

14 e. Provisions regarding the responsibility of such custodians to  
15 assist, where appropriate, the vulnerable persons they support in devel-  
16 oping and maintaining relationships with families, friends and the  
17 community-at-large.

18 f. Provisions regarding the responsibility of such custodians to  
19 advocate with and/or on behalf of the vulnerable persons they support  
20 for their needs, interest, justice, inclusion and full community partic-  
21 ipation.

22 g. Provisions requiring such custodians to report reportable incidents  
23 as required in section four hundred ninety-one of the social services  
24 law.

25 § 555. Justice center medical review board; organization. (a) There  
26 shall be within the justice center a medical review board. The board  
27 shall be composed of up to fifteen members, including specialists in  
28 forensic pathology, psychiatry, internal medicine and addiction medicine

1 to be appointed by the governor. The governor shall designate one of the  
2 members to serve as chair of the board. Members shall be appointed for  
3 terms of three years, provided, however, that one-third of the members  
4 first appointed shall be appointed for a one year term and one-third for  
5 two year terms. Vacancies shall be filled in the same manner as original  
6 appointments for the remainder of any unexpired term. Members shall  
7 continue in office after the expiration of their terms until their  
8 successors have been appointed and qualified. The governor may remove  
9 any member of the board whenever in his or her judgment the public  
10 interest may require such removal. In case of such removal, the governor  
11 shall file with the department of state a statement indicating the cause  
12 for such removal. Notwithstanding any provision of law to the contrary,  
13 the chair of the board may appoint committees of five or more members of  
14 the board and delegate in writing to any such committee the authority to  
15 perform the functions, powers and duties of the board pursuant to  
16 section five hundred fifty-six of this article.

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

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

23 (d) All records of the proceedings and the deliberations of the  
24 justice center medical review board shall not be subject to disclosure  
25 under article thirty-one of the civil practice law and rules.

26 (e) The board or any committee appointed by the chair of the board  
27 shall meet at the request of its chair or the executive director of the  
28 justice center. Any member of the board who fails to attend three

1 consecutive meetings of the board or the committee to which such member  
2 is assigned by the chair of the board, unless excused by the chair of  
3 the board, shall be considered to have vacated his or her office unless  
4 otherwise ordered by the governor. The term of any such person appointed  
5 by the governor to fill such vacancy shall be governed by the provisions  
6 of this section.

7 § 556. Functions, powers and duties of the board. The justice center  
8 medical review board shall have the following functions, powers and  
9 duties:

10 (a) make a preliminary determination whether the death of a patient or  
11 resident in a residential facility within the meaning of subdivision  
12 four of section four hundred eighty-eight of the social services law  
13 that is operated, licensed or certified by an office of the department  
14 of mental hygiene or the office of children and family services, which  
15 has been brought to its attention is unusual or whether such death  
16 reasonably appears to have resulted from other than natural causes and  
17 warrants investigation;

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

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

22 (d) cause the body of the deceased to undergo such examinations  
23 including an autopsy as in the opinion of the board are necessary to  
24 determine the cause of death, irrespective of whether such examination  
25 or autopsy shall have been previously performed;

26 (e) upon review of the cause of and circumstances surrounding the  
27 death of any patient or resident, submit its report thereon to the exec-  
28 utive director and, where appropriate, make recommendations to prevent

1 the recurrence of same to the appropriate commissioner of the department  
2 of mental hygiene or the commissioner of children and family services  
3 and to the director of the facility; and

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

7 § 557. Reports to the justice center. Every director or other person  
8 in charge of a residential facility within the meaning of subdivision  
9 four of section four hundred eighty-eight of the social services law  
10 operated, licensed or certified by an office of the department of mental  
11 hygiene or the office of children and family services, shall report  
12 immediately to the executive director and the justice center medical  
13 review board the death of a patient or resident of any such facility in  
14 such manner and such form as the justice center shall prescribe, togeth-  
15 er with an autopsy report, if any.

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

1 confidential information and such entities shall be required to provide  
2 such requested information. The executive director or any employee of  
3 the justice center designated by the executive director may require from  
4 any hospital, as defined under article twenty-eight of the public health  
5 law, any information, report or record necessary for the purpose of  
6 carrying out the functions, powers and duties of the justice center  
7 related to the investigation of deaths and complaints of abuse or  
8 neglect concerning vulnerable persons who have been treated at such  
9 hospitals, and from any adult care facility as defined in subdivision  
10 twenty-one of section two of the social services law, such information,  
11 report or record, including access to such facility necessary for the  
12 purpose of carrying out the functions, powers and duties of the justice  
13 center related to the investigation of deaths concerning patients of  
14 mental hygiene facilities who resided at such residential care facili-  
15 ties at the time of their death or were former residents of such resi-  
16 dential care facilities and the justice center determines that such  
17 information, report or record is necessary for the completion of its  
18 investigation. Such hospitals and adult care facilities shall be  
19 required to provide such requested information, reports, records and  
20 access. The results of investigations involving such residents of adult  
21 care facilities shall be provided promptly to the commissioner of the  
22 department of health and shall be treated as a record or personal infor-  
23 mation within the meaning of section ninety-six of the public officers  
24 law and shall not be disclosed except in accordance with such section  
25 ninety-six. Information, books, records or data which are confidential  
26 as provided by law shall be kept confidential by the justice center and  
27 any limitations on the release thereof imposed by law upon the party  
28 furnishing the information, books, records or data shall apply to the

1 justice center except as may otherwise be provided by article eleven of  
2 the social services law.

3 (b) (i) The governor shall designate an independent public or private  
4 agency, hereinafter "independent agency", to conduct and coordinate the  
5 protection and advocacy and client assistance programs, as established  
6 by federal law to provide federal oversight of the state's system of  
7 care for individuals with disabilities, as defined in federal laws and  
8 to assist such persons with accessing vocational rehabilitation  
9 services. For purposes of this subdivision, individuals with disabili-  
10 ties shall have the same meaning as provided by federal laws. The agen-  
11 cy designated must have professional experience in empowering, protect-  
12 ing and advocating on behalf of individuals with disabilities. Such  
13 agency shall be independent of any agency that provides treatment,  
14 services or rehabilitation to individuals covered by such protection and  
15 advocacy and client assistance programs. To the extent permitted by  
16 federal law, the independent agency shall be governed by a board, a  
17 majority of the members of which shall be individuals with disabilities,  
18 parents, family members, guardians, advocates, or authorized represen-  
19 tatives of individuals with disabilities.

20 (ii) The independent agency shall conduct and coordinate the  
21 protection and advocacy and client assistance programs, as established  
22 by federal law to provide oversight of the state's system of care for  
23 individuals with disabilities and to assist such individuals with  
24 accessing vocational and rehabilitation services, including but not  
25 limited to:

26 (A) Providing information, referrals and technical assistance to  
27 address the needs of individuals with disabilities;

1 (B) Pursuing legal, administrative and other appropriate remedies or  
2 approaches to ensure the protection of and advocacy for the rights of  
3 individuals with disabilities;

4 (C) Investigating incidents of abuse and neglect of individuals with  
5 disabilities if the incidents are reported to the independent agency or  
6 if there is probable cause to believe that the incidents occurred; and

7 (D) Establishing a grievance procedure for clients or prospective  
8 clients of the system to ensure that individuals with disabilities have  
9 full access to services of the system.

10 (iii) Pursuant to the requirements of federal law, upon receipt of a  
11 complaint of an incident of abuse or neglect of an individual with a  
12 disability, or if there is probable cause to believe that such an inci-  
13 dent occurred, the independent agency shall have prompt access, at  
14 reasonable times: to any facility or part thereof serving such individ-  
15 ual that is operated, certified or licensed by any office or agency of  
16 the state; to all books, records and data pertaining to such a facility;  
17 to such individual with a disability in a location in which services,  
18 supports and other assistance are provided to such individual; to  
19 records of a facility or provider agency concerning such individual; and  
20 to any other records that are relevant to conducting an investigation.  
21 The independent agency also shall have access to records of the justice  
22 center as set forth in paragraph (f) of subdivision one and paragraph  
23 (y) of subdivision two of section four hundred ninety-six of the social  
24 services law.

25 (iv) All records and documents received by the independent agency  
26 shall be received subject to any confidentiality requirements applicable  
27 pursuant to state and federal law.

1 (v) The governor shall be authorized to re-designate the agency imple-  
2 menting the protection and advocacy program and client assistance  
3 programs only if there is good cause for the re-designation and in  
4 accordance with federal requirements.

5 (vi) The independent agency may assist in the development of residen-  
6 tial councils at facilities and programs.

7 (vii) To the extent consistent with federal law, the independent agen-  
8 cy shall make copies of any of its reports available to the governor,  
9 the temporary president of the senate and the speaker of the assembly.

10 (viii) The independent agency shall take affirmative steps to assure  
11 that its programs and services are geographically representative of the  
12 state and, to the extent practicable, ensure regional access, and  
13 reflect the diversity of the state with respect to race and ethnicity.

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

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

26 § 559. New York State interagency coordinating council for services to  
27 persons who are deaf, deaf-blind, or hard of hearing. 1. Subject to an  
28 appropriation, the justice center shall have the central responsibility

1 for administering the provisions of this section and otherwise coordi-  
2 nating the activities of the state interagency coordinating council for  
3 services to persons who are deaf, deaf-blind, or hard of hearing with  
4 respect to serving residents of the state who are deaf, deaf-blind, or  
5 hard of hearing, in consultation with the office of children and family  
6 services, the office for the aging, the public service commission, the  
7 department of health, the department of labor, the department of educa-  
8 tion, and other state agencies as appropriate. The council shall meet a  
9 minimum of three times a year.

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

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

22 (b) Deaf-blind. An individual with a concomitant hearing and visual  
23 impairment, the combination of which causes such severe communication  
24 and other developmental and educational problems that the individual  
25 cannot be accommodated in programs for individuals who are solely deaf  
26 or blind.

27 (c) Hard of hearing. A hard of hearing person is someone with a meas-  
28 urable hearing loss and who self-identifies as being hard of hearing,

1 although audiologically he or she may have a profound hearing loss.  
2 Additionally, this person typically uses his or her residual hearing,  
3 speech and speech reading skills, and hearing aids to communicate; he or  
4 she may rely on assistive listening devices to augment his or her abili-  
5 ty to hear and speak.

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

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

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

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

22 (d) To disseminate general information on deafness and the unique  
23 communication needs of persons who are deaf, deaf-blind, and hard of  
24 hearing, and to inform the deaf, deaf-blind, and hard of hearing commu-  
25 nities about available services and how such services can be accessed.

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

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

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

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

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

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

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

22 (ii) six persons who are residents of New York state and who shall be  
23 persons who are deaf, deaf-blind, or hard of hearing, one of whom shall  
24 be appointed on the nomination of the temporary president of the senate,  
25 one of whom shall be appointed on the nomination of the speaker of the  
26 assembly, one of whom shall be appointed on the nomination of the minor-  
27 ity leader of the senate, and one of whom shall be appointed on the  
28 nomination of the minority leader of the assembly; and

1 (iii) two persons who are residents of New York state and who are  
2 representatives of the public and have a demonstrated expertise and  
3 interest in the needs of persons who are deaf, deaf-blind, or hard of  
4 hearing.

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

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

18 5. Subject to an appropriation, the state interagency coordinating  
19 council is charged with recommending long range strategic objectives,  
20 goals, and priorities for promoting the availability of a comprehensive  
21 statewide program of coordinated services for persons who are deaf,  
22 deaf-blind, or hard of hearing that is consistent with subdivision one  
23 of this section. It shall also provide advice on the planning, coordi-  
24 nation, and development of needed services and technology, including the  
25 manner in which such services shall be funded or otherwise supported.

26 § 560. Annual report. The justice center shall make an annual report  
27 to the governor and legislature concerning its work during the preceding  
28 year. Such report shall be posted on the justice center's website and

1 shall be provided to the independent agency designated pursuant to  
2 subdivision (b) of section five hundred fifty-eight of this article. It  
3 shall include, but not be limited to, data regarding the number of  
4 reports received by the vulnerable persons' central register, results of  
5 investigations by types of facilities and programs, types of corrective  
6 actions taken, results of its review of patterns and trends in the  
7 reporting of and response to reportable incidents and its recommenda-  
8 tions for appropriate preventive and corrective actions, and efforts  
9 undertaken by such justice center to provide training pursuant to subdi-  
10 vision four of section five hundred fifty-three of this article.

11 § 561. Advisory council. 1. There shall be within the justice center  
12 an advisory council consisting of no less than fifteen members to be  
13 appointed by the governor, with the advice and consent of the senate.  
14 Members shall be appointed on the basis of their professional and  
15 personal knowledge in the care and treatment of and in the provision of  
16 services, supports, and advocacy to and on behalf of service recipients,  
17 as defined in subdivision nine of section four hundred eighty-eight of  
18 the social services law, and individuals with disabilities, or their  
19 active interest in the system of services for such service recipients or  
20 individuals with disabilities. In making such appointments, the governor  
21 shall endeavor to ensure the overall membership of the council adequate-  
22 ly reflects the programs and services within the justice center's juris-  
23 isdiction and that at least one-half of the members are individuals or  
24 parents or relatives of individuals who are or have participated in or  
25 are or have been recipients of programs and services within the justice  
26 center's jurisdiction. The council shall include but shall not be limit-  
27 ed to:

1 (a) members of boards of visitors appointed pursuant to articles seven  
2 and thirteen of the mental hygiene law;

3 (b) consumer representatives, including current or former service  
4 recipients of an applicable facility or provider agency;

5 (c) parents, relatives or guardians of such service recipients;

6 (d) providers of services to vulnerable persons;

7 (e) directors of facilities, community services or members of communi-  
8 ty services boards;

9 (f) current and former consumers of services for individuals with  
10 physical disabilities;

11 (g) members of organizations that advocate on behalf of vulnerable  
12 persons and individuals with disabilities; and

13 (h) an employee of a facility or provider agency as defined in subdi-  
14 vision four of section four hundred eighty-eight of the social services  
15 law.

16 2. Members shall be appointed for terms of three years provided,  
17 however, that of the members first appointed, one-third shall be  
18 appointed for one-year terms and one-third shall be appointed for two-  
19 year terms. A member may be removed by the governor for good cause after  
20 notice and an opportunity to be heard on the charges. Vacancies shall be  
21 filled in the same manner as original appointments for the remainder of  
22 any unexpired term.

23 3. The governor shall designate one member of the council as its chair  
24 to serve as such at the pleasure of the governor.

25 4. Council members shall not receive compensation, but each member  
26 shall be entitled to receive his or her reasonable and necessary  
27 expenses incurred in connection with his or her services as a member  
28 within the amounts appropriated therefor.

1 5. The council shall have an executive secretary designated by the  
2 executive director of the justice center. The executive director may  
3 also assign such other employees of the justice center as the council  
4 may from time to time require to assist it in the performance of its  
5 duties.

6 6. The council shall advise and assist the justice center in develop-  
7 ing policies, proposed regulations, plans and programs to carry out its  
8 functions, powers and duties pursuant to this section. The council may  
9 consider any matter related to improving the quality of life of citizens  
10 of the state who have disabilities and shall advise the justice center  
11 on any such matter.

12 7. The council shall meet at least four times a year. The council  
13 shall meet at the request of its chair or the executive director of the  
14 justice center.

15 § 562. Abuse and neglect notification. 1. Upon receiving a request for  
16 criminal history information, pursuant to section eight hundred forty-  
17 five-b of this chapter, for a prospective employee or volunteer of a  
18 facility or provider licensed, operated, or certified by the office for  
19 people with developmental disabilities, the justice center shall furnish  
20 a summary of any substantiated reports in its possession regarding a  
21 finding of category two conduct pursuant to section four hundred nine-  
22 ty-three of the social services law, by a prospective employee or volun-  
23 teer, if all relevant hearings and appeals have been exhausted. The  
24 justice center shall provide such summary report to the authorized  
25 person as defined in paragraph (b) of subdivision one of section eight  
26 hundred forty-five-b of this chapter and at that same time furnish such  
27 documents to the prospective employee or volunteer at the address for  
28 such person listed on the request.

1 2. The summary report provided by the justice center to a provider of  
2 services pursuant to subdivision one of this section shall be received  
3 by the provider subject to the confidentiality provisions of subdivision  
4 seven of section eight hundred forty-five-b of this chapter.

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

8 32. "District attorney" means a district attorney, an assistant  
9 district attorney or a special district attorney, and, where appropri-  
10 ate, the attorney general, an assistant attorney general, a deputy  
11 attorney general [or], a special deputy attorney general, or the special  
12 prosecutor and inspector general for the protection of people with  
13 special needs or his or her assistants when acting pursuant to their  
14 duties in matters arising under article twenty of the executive law.

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

17 6. The department shall ensure that the curriculum for new correction  
18 officers, and other new department staff who will regularly work in  
19 programs providing mental health treatment for inmates, shall include at  
20 least eight hours of training about the types and symptoms of mental  
21 illnesses, the goals of mental health treatment, the prevention of  
22 suicide and training in how to effectively and safely manage inmates  
23 with mental illness. Such training may be provided by the office of  
24 mental health or the [New York state commission on quality of care and  
25 advocacy for persons with disabilities] justice center for the  
26 protection of people with special needs. All department staff who are  
27 transferring into a residential mental health treatment unit shall  
28 receive a minimum of eight additional hours of such training, and eight

1 hours of annual training as long as they work in such a unit. The  
2 department shall provide additional training on these topics on an ongo-  
3 ing basis as it deems appropriate.

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

6 § 401-a. Oversight responsibilities of the [New York state commission  
7 on quality of care and advocacy for persons with disabilities] justice  
8 center for the protection of people with special needs. 1. The [New York  
9 state commission on quality of care and advocacy for persons with disa-  
10 bilities ("commission")] justice center for the protection of people  
11 with special needs shall be responsible for monitoring the quality of  
12 mental health care provided to inmates pursuant to article forty-five of  
13 the mental hygiene law. The [commission] justice center shall have  
14 direct and immediate access to all areas where state prisoners are  
15 housed, and to clinical and department records relating to inmates'  
16 clinical conditions. The [commission] justice center shall maintain the  
17 confidentiality of all patient-specific information.

18 2. The [commission] justice center shall monitor the quality of care  
19 in residential mental health treatment programs and shall ensure compli-  
20 ance with paragraphs (d) and (e) of subdivision six of section one  
21 hundred thirty-seven of this chapter and section four hundred one of  
22 this article. The [commission] justice center may recommend to the  
23 department and the office of mental health that inmates in segregated  
24 confinement pursuant to subdivision six of section one hundred thirty-  
25 seven of this chapter be evaluated for placement in a residential mental  
26 health treatment unit. It may also recommend ways to further the goal  
27 of diverting and removing inmates with serious mental illness from  
28 segregated confinement to residential mental health treatment units. The

1 [commission] justice center shall include in its annual report to the  
2 governor and the legislature pursuant to [subdivision (g) of] section  
3 [45.07] five hundred sixty of the [mental hygiene] executive law, a  
4 description of the state's progress in complying with this article,  
5 which shall be publicly available.

6 3. The [commission] justice center shall appoint an advisory committee  
7 on psychiatric correctional care ("committee"), which shall be composed  
8 of independent mental health experts and mental health advocates, and  
9 may include family members of former inmates with serious mental  
10 illness. Such committee shall advise the [commission] justice center on  
11 its oversight responsibilities pursuant to this section [and article  
12 forty-five of the mental hygiene law]. The committee may also make  
13 recommendations to the [commission] justice center regarding improve-  
14 ments to prison-based mental health care. Nothing in this subdivision  
15 shall be deemed to authorize members of the committee to have access to  
16 a correctional or mental hygiene facility or any part of such a facili-  
17 ty. Provided, however, newly appointed members of the advisory committee  
18 shall be provided with a tour of a segregated confinement unit and a  
19 residential mental health treatment unit, as selected by the commission-  
20 er. Any such tour shall be arranged on a date and at a time selected by  
21 the commissioner and upon such terms and conditions as are within the  
22 sole discretion of the commissioner.

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

26 (c) Nothing in this subdivision shall prohibit the [state commission  
27 on quality of care and advocacy for persons with disabilities] justice  
28 center for the protection of people with special needs or any agency or

1 person within or under contract with the [commission] justice center  
2 which provides protection and advocacy services from requiring any  
3 information, report or record from a hospital in accordance with the  
4 provisions of section [45.09] five hundred fifty-eight of the [mental  
5 hygiene] executive law.

6 § 8. Transfer of employees. Notwithstanding any other provision of  
7 law, rule, or regulation to the contrary, upon the transfer of any func-  
8 tions from the state commission on quality of care and advocacy for  
9 persons with disabilities, the office of mental health, the office for  
10 people with developmental disabilities, the office of alcoholism and  
11 substance abuse services, the office of children and family services and  
12 the department of health to the justice center for the protection of  
13 people with special needs pursuant to this act, employees performing  
14 those functions shall be transferred to such justice center pursuant to  
15 subdivision two of section 70 of the civil service law. Employees  
16 transferred pursuant to this section shall be transferred without  
17 further examination or qualification and shall retain their respective  
18 civil service classifications, status and collective bargaining unit  
19 designations and collective bargaining agreements.

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

25 § 10. Continuity of authority. For the purpose of succession of all  
26 functions, powers, duties and obligations transferred and assigned to,  
27 devolved upon and assumed by it pursuant to this act, the justice center  
28 for the protection of people with special needs shall be deemed and held

1 to constitute the continuation of the state commission on quality of  
2 care and advocacy for persons with disabilities.

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

16 § 12. Continuation of rules and regulations. All rules, regulations,  
17 acts, orders, determinations, and decisions of the state commission on  
18 quality of care and advocacy for persons with disabilities pertaining to  
19 the functions and powers transferred and assigned pursuant to this act,  
20 in force at the time of such transfer and assumption, shall continue in  
21 full force and effect as rules, regulations, acts, orders, determi-  
22 nations and decisions of the justice center for the protection of people  
23 with special needs until duly modified or abrogated by the executive  
24 director of such justice center.

25 § 13. Terms occurring in laws, contracts and other documents. Whenever  
26 the state commission on quality of care and advocacy for persons with  
27 disabilities, or the chairman thereof, is referred to or designated in  
28 any law, contract or document pertaining to the functions, powers, obli-

1 gations and duties hereby transferred to and assigned to the justice  
2 center for the protection of people with special needs, such reference  
3 or designation shall be deemed to refer to such justice center, or the  
4 executive director thereof, as applicable.

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

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

17 § 16. Transfer of appropriations heretofore made. All appropriations  
18 or reappropriations heretofore made to the state commission on quality  
19 of care and advocacy for persons with disabilities to the extent of  
20 remaining unexpended or unencumbered balance thereof, whether allocated  
21 or unallocated and whether obligated or unobligated, are hereby trans-  
22 ferred to and made available for use and expenditure by the justice  
23 center for the protection of people with special needs subject to the  
24 approval of the director of the budget for the same purposes for which  
25 originally appropriated or reappropriated and shall be payable on vouch-  
26 ers certified or approved by the executive director of such justice  
27 center on audit and warrant of the comptroller. In addition to such  
28 authority otherwise granted pursuant to law to interchange, transfer and

1 suballocate amounts appropriated for the office for people with develop-  
2 mental disabilities, the office of mental health, the office of alcohol-  
3 ism and substance abuse services, the department of health and the  
4 office of children and family services, such amounts appropriated for  
5 state operations for such agencies may also be interchanged, transferred  
6 and suballocated for the purpose of planning, developing and/or imple-  
7 menting the alignment of the operations within and between such agencies  
8 sufficient to fulfill the purposes of this act for the state fiscal year  
9 beginning April 1, 2012.

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

14 § 18. This act shall take effect June 30, 2013; provided, however,  
15 that, effective immediately, any actions necessary for the implementa-  
16 tion of this act on its effective date, and the addition, amendment or  
17 repeal of any rule or regulation necessary for the implementation of  
18 this act on its effective date, are authorized to be taken or made on or  
19 before such date, and provided further that subdivision (b) of section  
20 five hundred fifty-eight of the executive law, providing for re-designa-  
21 tion of the protection and advocacy and client assistance programs, as  
22 added by section three of this act, shall become effective upon filing  
23 the governor's final notice of re-designation with the legislative bill  
24 drafting commission.

1 Section 1. Article 11 of the social services law is renumbered article  
2 12 and sections 484, 485 and 486 are renumbered sections 550, 551 and  
3 552 and a new article 11 is added to read as follows:

4 ARTICLE 11

5 PROTECTION OF PEOPLE WITH SPECIAL NEEDS

6 Section 488. Definitions.

7 489. Applicability.

8 490. Incident management programs.

9 491. Duty to report incidents.

10 492. Vulnerable persons' central register.

11 493. Abuse and neglect findings; consequences.

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

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

16 496. Confidentiality.

17 497. Immunity from liability.

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

20 1. "Reportable incident" shall mean the following conduct that a  
21 mandated reporter is required to report to the vulnerable persons'  
22 central register:

23 (a) "Physical abuse," which shall mean conduct by a custodian inten-  
24 tionally or recklessly causing, by physical contact, physical injury or  
25 serious or protracted impairment of the physical, mental or emotional  
26 condition of a service recipient or causing the likelihood of such inju-  
27 ry or impairment. Such conduct may include but shall not be limited to:  
28 slapping, hitting, kicking, biting, choking, smothering, shoving, drag-

1 ging, throwing, punching, shaking, burning, cutting or the use of corpo-  
2 ral punishment. Physical abuse shall not include reasonable emergency  
3 interventions necessary to protect the safety of any person.

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

15 (c) "Psychological abuse," which shall mean conduct by a custodian  
16 intentionally or recklessly causing, by verbal or non-verbal conduct, a  
17 substantial diminution of a service recipient's emotional, social or  
18 behavioral development or condition, supported by a clinical assessment  
19 performed by a physician, psychologist, psychiatric nurse practitioner,  
20 licensed clinical or master social worker or licensed mental health  
21 counselor, or causing the likelihood of such diminution. Such conduct  
22 may include but shall not be limited to intimidation, threats, the  
23 display of a weapon or other object that could reasonably be perceived  
24 by a service recipient as a means for infliction of pain or injury, in a  
25 manner that constitutes a threat of physical pain or injury, taunts,  
26 derogatory comments or ridicule.

27 (d) "Deliberate inappropriate use of restraints," which shall mean the  
28 use of a restraint when the technique that is used, the amount of force

1 that is used or the situation in which the restraint is used is delib-  
2 erately inconsistent with a service recipient's individual treatment  
3 plan or behavioral intervention plan, generally accepted treatment prac-  
4 tices and/or applicable federal or state laws, regulations or policies,  
5 except when the restraint is used as a reasonable emergency intervention  
6 to prevent imminent risk of harm to a person receiving services or to  
7 any other person. For purposes of this subdivision, a "restraint" shall  
8 include the use of any manual, pharmacological or mechanical measure or  
9 device to immobilize or limit the ability of a person receiving services  
10 to freely move his or her arms, legs or body.

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

21 (f) "Obstruction of reports of reportable incidents," which shall mean  
22 conduct by a custodian that impedes the discovery, reporting or investi-  
23 gation of the treatment of a service recipient by falsifying records  
24 related to the safety, treatment or supervision of a service recipient,  
25 actively persuading a mandated reporter from making a report of a  
26 reportable incident to the statewide vulnerable persons' central regis-  
27 ter with the intent to suppress the reporting of the investigation of  
28 such incident, intentionally making a false statement or intentionally

1 withholding material information during an investigation into such a  
2 report; intentional failure of a supervisor or manager to act upon such  
3 a report in accordance with governing state agency regulations, policies  
4 or procedures; or, for a mandated reporter who is a custodian as defined  
5 in subdivision two of this section, failing to report a reportable inci-  
6 dent upon discovery.

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

15 (h) "Neglect," which shall mean any action, inaction or lack of atten-  
16 tion that breaches a custodian's duty and that results in or is likely  
17 to result in physical injury or serious or protracted impairment of the  
18 physical, mental or emotional condition of a service recipient. Neglect  
19 shall include, but is not limited to: (i) failure to provide proper  
20 supervision, including a lack of proper supervision that results in  
21 conduct between persons receiving services that would constitute abuse  
22 as described in paragraphs (a) through (g) of this subdivision if  
23 committed by a custodian; (ii) failure to provide adequate food, cloth-  
24 ing, shelter, medical, dental, optometric or surgical care, consistent  
25 with the rules or regulations promulgated by the state agency operating,  
26 certifying or supervising the facility or provider agency, provided that  
27 the facility or provider agency has reasonable access to the provision  
28 of such services and that necessary consents to any such medical,

1 dental, optometric or surgical treatment have been sought and obtained  
2 from the appropriate individuals; or (iii) failure to provide access to  
3 educational instruction, by a custodian with a duty to ensure that an  
4 individual receives access to such instruction in accordance with the  
5 provisions of part one of article sixty-five of the education law and/or  
6 the individual's individualized education program.

7 (i) "Significant incident" shall mean an incident, other than an inci-  
8 dent of abuse or neglect, that because of its severity or the sensitiv-  
9 ity of the situation may result in, or has the reasonably foreseeable  
10 potential to result in, harm to the health, safety or welfare of a  
11 person receiving services and shall include but shall not be limited to:

12 (1) conduct between persons receiving services that would constitute  
13 abuse as described in paragraphs (a) through (g) of this subdivision if  
14 committed by a custodian; or

15 (2) conduct on the part of a custodian, which is inconsistent with a  
16 service recipient's individual treatment plan or individualized educa-  
17 tional program, generally accepted treatment practices and/or applicable  
18 federal or state laws, regulations or policies and which impairs or  
19 creates a reasonably foreseeable potential to impair the health, safety  
20 or welfare of a person receiving services, including but not limited to:

21 (A) unauthorized seclusion, which shall mean the placement of a person  
22 receiving services in a room or area from which he or she cannot, or  
23 perceives that he or she cannot, leave at will;

24 (B) unauthorized use of time-out, which shall mean the use of a proce-  
25 dure in which a person receiving services is removed from regular  
26 programming and isolated in a room or area for the convenience of a  
27 custodian, or as a substitute for programming but shall not include the

1 use of a time-out as an emergency intervention to protect the health or  
2 safety of the individual or other persons;

3 (C) except as provided for in paragraph (g) of subdivision one of this  
4 section, the administration of a prescribed or over-the-counter medica-  
5 tion, which is inconsistent with a prescription or order issued for a  
6 service recipient by a licensed, qualified health care practitioner, and  
7 which has an adverse effect on a service recipient. For purposes of  
8 this paragraph, "adverse effect" shall mean the unanticipated and unde-  
9 sirable side effect from the administration of a particular medication  
10 which unfavorably affects the well-being of a service recipient;

11 (D) inappropriate use of restraints, which shall mean the use of a  
12 restraint when the technique that is used, the amount of force that is  
13 used or the situation in which the restraint is used is inconsistent  
14 with a service recipient's individual plan, generally accepted treatment  
15 practices and/or applicable federal or state laws, regulations or poli-  
16 cies. For the purposes of this subdivision, a "restraint" shall include  
17 the use of any manual, pharmacological or mechanical measure or device  
18 to immobilize or limit the ability of a person receiving services to  
19 freely move his or her arms, legs or body; or

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

23 2. "Custodian" means a director, operator, employee or volunteer of a  
24 facility or provider agency; or a consultant or an employee or volunteer  
25 of a corporation, partnership, organization or governmental entity which  
26 provides goods or services to a facility or provider agency pursuant to  
27 contract or other arrangement that permits such person to have regular

1 and substantial contact with individuals who are cared for by the facil-  
2 ity or provider agency.

3 3. "Executive director" shall mean the executive director of the  
4 justice center for the protection of people with special needs as estab-  
5 lished by article twenty of the executive law.

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

7 (a) a facility or program in which services are provided and which is  
8 operated, licensed or certified by the office of mental health, the  
9 office for people with developmental disabilities or the office of alco-  
10 holism and substance abuse services, including but not limited to  
11 psychiatric centers, inpatient psychiatric units of a general hospital,  
12 developmental centers, intermediate care facilities, community resi-  
13 dences, group homes and family care homes, provided, however, that such  
14 term shall not include a secure treatment facility as defined in section  
15 10.03 of the mental hygiene law, or services provided in programs or  
16 facilities that are operated by the office of mental health and located  
17 in state correctional facilities under the jurisdiction of the depart-  
18 ment of corrections and community supervision;

19 (b) any program or facility that is operated by the office of children  
20 and family services for juvenile delinquents or juvenile offenders  
21 placed in the custody of the commissioner of such office and any resi-  
22 dential programs or facilities licensed or certified by the office of  
23 children and family services, excluding foster family homes and residen-  
24 tial programs for victims of domestic violence;

25 (c) adult care facilities, which shall mean adult homes or enriched  
26 housing programs licensed pursuant to article seven of this chapter: (i)  
27 (A) that have a licensed capacity of eighty or more beds; and (B) in  
28 which at least twenty-five percent of the residents are persons with