

1 serious mental illness as defined by subdivision fifty-two of section  
2 1.03 of the mental hygiene law; (ii) but not including an adult home or  
3 enriched housing program which is authorized to operate fifty-five  
4 percent or more of its total licensed capacity of beds as assisted  
5 living program beds pursuant to section four hundred sixty-one-1 of this  
6 chapter;

7 (d) overnight summer day and traveling summer day camps for children  
8 with developmental disabilities as defined in regulations promulgated by  
9 the commissioner of health; or

10 (e) the New York state school for the blind and the New York state  
11 school for the deaf, which operate pursuant to articles eighty-seven and  
12 eighty-eight of the education law; an institution for the instruction of  
13 the deaf and the blind which has a residential component and is subject  
14 to the visitation of the commissioner of education pursuant to article  
15 eighty-five of the education law with respect to its day and residential  
16 components; special act school districts serving students with disabili-  
17 ties; or in-state private schools which have been approved by the  
18 commissioner of education for special education services or programs,  
19 and which have a residential program, including a school approved on a  
20 child-specific basis for emergency interim placements pursuant to  
21 governing state regulations, with respect to its day and residential  
22 components.

23 4-a. "State oversight agency" shall mean the state agency that oper-  
24 ates, licenses or certifies an applicable facility or provider agency;  
25 provided however that such term shall only include the following enti-  
26 ties: the office of mental health, the office for people with develop-  
27 mental disabilities, the office of alcoholism and substance abuse  
28 services, the office of children and family services, the department of

1 health and the state education department. "State oversight agency" does  
2 not include agencies that are certification agencies pursuant to federal  
3 law or regulation.

4 5. "Mandated reporter" shall mean a custodian or a human services  
5 professional, but shall not include a service recipient.

6 5-a. "Human services professional" shall mean any: physician; regis-  
7 tered physician assistant; surgeon; medical examiner; coroner; dentist;  
8 dental hygienist; osteopath; optometrist; chiropractor; podiatrist;  
9 resident; intern; psychologist; registered nurse; licensed practical  
10 nurse; nurse practitioner; social worker; emergency medical technician;  
11 licensed creative arts therapist; licensed marriage and family thera-  
12 pist; licensed mental health counselor; licensed psychoanalyst; licensed  
13 speech/language pathologist or audiologist; licensed physical therapist;  
14 licensed occupational therapist; hospital personnel engaged in the  
15 admission, examination, care or treatment of persons; Christian Science  
16 practitioner; school official, which includes but is not limited to  
17 school teacher, school guidance counselor, school psychologist, school  
18 social worker, school nurse, school administrator or other school  
19 personnel required to hold a teaching or administrative license or  
20 certificate; social services worker; any other child care or foster care  
21 worker; mental health professional; person credentialed by the office of  
22 alcoholism and substance abuse services; peace officer; police officer;  
23 district attorney or assistant district attorney; investigator employed  
24 in the office of a district attorney; or other law enforcement official.

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

1 7. "Delegate investigatory entity" shall mean a facility or provider  
2 agency, or any other entity authorized by the regulations of a state  
3 oversight agency or the justice center for the protection of people with  
4 special needs to conduct an investigation of a reportable incident.

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

7 9. "Person receiving services," or "service recipient" shall mean an  
8 individual who resides or is an inpatient in a residential facility or  
9 who receives services from a facility or provider agency.

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

16 11. "Abuse or neglect" shall mean the conduct described in paragraphs  
17 (a) through (h) of subdivision one of this section.

18 12. "Subject of the report" shall mean a custodian, as defined in  
19 subdivision two of this section, who is reported to the vulnerable  
20 persons' central register for the alleged abuse or neglect of a vulner-  
21 able person as defined in subdivision eleven of this section.

22 13. "Other persons named in the report" shall mean and be limited to  
23 the following persons who are named in a report to the vulnerable  
24 persons' central register other than the subject of the report: the  
25 service recipient whose care and treatment is the concern of a report to  
26 the vulnerable persons' central register, and the personal represen-  
27 tative, if any, as defined in subdivision ten of this section.

1 14. "Vulnerable persons' central register" shall mean the statewide  
2 central register of reportable incidents involving vulnerable persons,  
3 which shall operate in accordance with section four hundred ninety-two  
4 of this article.

5 15. "Vulnerable person" shall mean a person who, due to physical or  
6 cognitive disabilities, or the need for services or placement, is  
7 receiving services from a facility or provider agency.

8 16. "Intentionally" and "recklessly" shall have the same meanings as  
9 provided in subdivisions one and three of section 15.05 of the penal  
10 law.

11 § 489. Applicability. The provisions of this article shall apply to  
12 facilities and provider agencies provided, however, nothing in this  
13 article shall be deemed to relieve any facility or provider agency or  
14 custodian thereof covered by this article of its or their obligations to  
15 comply with the requirements of federal laws or regulations to which  
16 that facility, provider agency or custodian thereof is subject, includ-  
17 ing any requirements that are a condition of federal financial partic-  
18 ipation in medical assistance payments. To the extent that federal  
19 requirements conflict with any of the provisions in this article, the  
20 federal requirements shall supersede the conflicting provisions in this  
21 article with respect to any such facility or provider agency.

22 § 490. Incident management programs. 1. Each state oversight agency,  
23 as defined in this article, shall promulgate regulations approved by the  
24 justice center, that contain procedures and requirements consistent with  
25 guidelines and standards developed by the justice center, addressing the  
26 following issues relating to an incident management program; provided,  
27 however, that regulations of the state education department need not be

1 approved by the justice center, but shall be developed in consultation  
2 with the justice center:

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

5 (b) all reportable incidents are promptly investigated;

6 (c) individual reportable incidents, and incident patterns and trends,  
7 are reviewed to identify and implement preventive and corrective  
8 actions, which may include, but shall not be limited to, staff retrain-  
9 ing or any appropriate disciplinary action allowed by law or contract,  
10 as well as opportunities for improvement;

11 (d) patterns and trends in the reporting and response to allegations  
12 of reportable incidents are reviewed and plans of improvement are timely  
13 developed based on such reviews;

14 (e) information regarding individual reportable incidents, incident  
15 patterns and trends, and patterns and trends in the reporting and  
16 response to reportable incidents is shared, consistent with applicable  
17 law, with the justice center, in the form and manner required by the  
18 justice center and, for facilities or provider agencies that are not  
19 state operated, with the applicable state oversight agency which shall  
20 provide such information to the justice center; and

21 (f) incident review committees are established; provided, however,  
22 that the regulations may authorize an exemption from this requirement,  
23 when appropriate, based on the size of the facility or provider agency  
24 or other relevant factors. Such committees shall be composed of members  
25 of the governing body of the facility or provider agency and other  
26 persons identified by the director of the facility or provider agency,  
27 including some members of the following: direct support staff, licensed  
28 health care practitioners, service recipients and representatives of

1 family, consumer and other advocacy organizations, but not the director  
2 of the facility or provider agency. Such committee shall meet regularly  
3 to: (i) review the timeliness, thoroughness and appropriateness of the  
4 facility or provider agency's responses to reportable incidents; (ii)  
5 recommend additional opportunities for improvement to the director of  
6 the facility or provider agency, if appropriate; (iii) review incident  
7 trends and patterns concerning reportable incidents; and (iv) make  
8 recommendations to the director of the facility or provider agency to  
9 assist in reducing reportable incidents. Members of the committee shall  
10 be trained in confidentiality laws and regulations, and shall comply  
11 with section seventy-four of the public officers law.

12 2. Notwithstanding any other provision of law, except as may be  
13 provided by section 33.25 of the mental hygiene law, records, reports or  
14 other information maintained by the justice center, state oversight  
15 agencies, delegate investigatory entities, and facilities and provider  
16 agencies regarding the deliberations of an incident review committee  
17 shall be confidential, provided that nothing in this article shall be  
18 deemed to diminish or otherwise derogate the legal privilege afforded to  
19 proceedings, records, reports or other information relating to a quality  
20 assurance function, including the investigation of an incident reported  
21 pursuant to section 29.29 of the mental hygiene law, as provided in  
22 section sixty-five hundred twenty-seven of the education law. For  
23 purposes of this section, a quality assurance function is a process for  
24 systematically monitoring and evaluating various aspects of a program,  
25 service or facility to ensure that standards of care are being met.

26 3. No member of an incident review committee performing a quality  
27 assurance function shall be permitted or required to testify in a judi-  
28 cial or administrative proceeding with respect to quality assurance

1 findings, recommendations, evaluations, opinions or actions taken,  
2 except that this provision is not intended to relieve any state over-  
3 sight agency, delegate investigatory entity, facility or provider agen-  
4 cy, or an agent thereof, from liability arising from treatment of a  
5 service recipient.

6 4. There shall be no monetary liability on the part of, and no cause  
7 of action for damages shall arise against, any person on account of  
8 participating in good faith and with reasonable care in the communi-  
9 cation of information in the possession of such person to an incident  
10 review committee, or on account of any recommendation or evaluation  
11 regarding the conduct or practices of any custodian that is made in good  
12 faith and with reasonable care.

13 5. With respect to the implementation of incident management plans in  
14 residential schools or facilities located outside of New York state,  
15 each state oversight agency shall require that: (a) the justice center,  
16 the applicable state oversight agency and any local social services  
17 district and/or local educational agency placing an individual with such  
18 facility or school or state agency funding the placement of an individ-  
19 ual or student be notified immediately of any allegation of abuse or  
20 neglect involving that individual or student; (b) an investigation be  
21 conducted by the justice center, or where that is not practicable, by a  
22 state agency or other entity authorized or required to investigate  
23 complaints of abuse or neglect under the laws of the state in which the  
24 facility or school is located; and (c) the findings of such investi-  
25 gation be forwarded to the justice center and each placing entity or  
26 funding agency in New York state within ninety days. Failure to comply  
27 with the requirements of this section shall be grounds for revocation or

1 suspension of the license or approval of the out of state facility or  
2 school.

3 6. Records of facilities or provider agencies not otherwise subject to  
4 article six of the public officers law shall be made available for  
5 public inspection and copying, when such records relate to abuse and  
6 neglect of vulnerable persons, to the same extent that those records  
7 would be available from a state agency, as defined in such article.  
8 Requests for such records shall be made in writing to the justice  
9 center. The justice center may deny access to records of such facilities  
10 or provider agencies, or portions thereof, that the justice center  
11 determines would be exempt from disclosure by a state agency pursuant to  
12 such article. The requesting party may appeal a denial of access to such  
13 records to the executive director of the justice center. A requesting  
14 party denied access to a record in such appeal determination may bring a  
15 proceeding for review of such denial pursuant to article seventy-eight  
16 of the civil practice law and rules. The executive director of the  
17 justice center shall promulgate regulations, consistent with the  
18 provisions of article six of the public officers law providing for the  
19 prompt response to such requests. Facilities or provider agencies  
20 covered by this subdivision shall cooperate with the justice center and  
21 provide any records that the justice center deems subject to disclosure.

22 § 491. Duty to report incidents. 1. (a) Mandated reporters shall  
23 report allegations of reportable incidents to the vulnerable persons'  
24 central register as established by section four hundred ninety-two of  
25 this article and in accordance with the requirements set forth therein.

26 (b) Allegations of reportable incidents shall be reported immediately  
27 to the vulnerable persons' central register upon discovery. For purposes  
28 of this article, "discovery" occurs when the mandated reporter witnesses

1 a suspected reportable incident or when another person, including the  
2 vulnerable person, comes before the mandated reporter in the mandated  
3 reporter's professional or official capacity and provides the mandated  
4 reporter with reasonable cause to suspect that the vulnerable person has  
5 been subjected to a reportable incident. A report to the register shall  
6 include the name, title and contact information of every person known to  
7 the mandated reporter to have the same information as the mandated  
8 reporter concerning the reportable incident. Nothing in this subdivi-  
9 sion shall be construed to prohibit a mandated reporter from contacting  
10 or reporting to law enforcement or emergency services before or after  
11 reporting to the vulnerable persons' central register.

12 (c) The substance or content of any psychological, psychiatric, thera-  
13 peutic, clinical or medical reports, evaluations or like materials or  
14 information pertaining to the treatment of a patient or client of a  
15 mandatory reporter who reports a reportable incident of such patient or  
16 client pursuant to this article, must be provided by such mandatory  
17 reporter upon request of the justice center for the protection of people  
18 with special needs if such records are essential for a full investi-  
19 gation of such allegation, notwithstanding any applicable privilege  
20 which would otherwise bar the disclosure of such materials and records  
21 pursuant to article forty-five of the civil practice law and rules or  
22 other provision of law except applicable federal law governing the  
23 disclosure of patient and related medical records.

24 2. Any person or official required to report allegations of reportable  
25 incidents pursuant to this section may take or cause to be taken color  
26 photographs of visible trauma and the face of the vulnerable person  
27 named in the report and upon the consent of a person authorized to  
28 consent to medical care for the vulnerable person, shall, if medically

1 indicated, cause to be performed a radiological examination of the  
2 vulnerable person. Any photographs or radiological examinations taken  
3 shall be provided to the justice center for use only for the purposes of  
4 an investigation of a reportable incident.

5 3. (a) Any human services professional required by this article to  
6 report a case of suspected abuse or neglect to the vulnerable persons'  
7 central register who knowingly and willfully fails to do so shall be  
8 guilty of a class A misdemeanor.

9 (b) A mandated reporter who knowingly and willfully fails to report a  
10 case of suspected abuse or neglect to the vulnerable persons' central  
11 register may be subject to termination, subject to any applicable  
12 collective bargaining agreement. Any person or official required by  
13 this article to report a case of suspected abuse or neglect to the  
14 vulnerable persons' central register who knowingly and willfully fails  
15 to do so shall be civilly liable for the damages proximately caused by  
16 such failure.

17 4. A medical or other public or private institution, state agency,  
18 school, facility or provider agency shall not take any retaliatory  
19 personnel action, as such term is defined in paragraph (e) of subdivi-  
20 sion one of section seven hundred forty of the labor law, against an  
21 employee or agent because such employee or agent believes that he or she  
22 has reasonable cause to suspect that a vulnerable person has been  
23 subjected to a reportable incident and that employee or agent therefore  
24 makes a report in accordance with this section. A court of competent  
25 jurisdiction may grant injunctive relief to any person determined to  
26 have been subjected to such retaliation.

27 § 492. Vulnerable persons' central register. 1. There shall be estab-  
28 lished in the justice center a statewide vulnerable persons' central

1 register. The register shall: (a) receive reports of allegations of  
2 reportable incidents involving persons receiving services in facilities  
3 or provider agencies subject to the requirements of this article; (b) as  
4 warranted, refer reports alleging crimes to appropriate law enforcement  
5 authorities; (c) notify appropriate persons and officials of received  
6 and accepted reports; and (d) maintain an electronic database of each  
7 report and the finding associated with each report. In accordance with  
8 this section, the executive director shall establish standards and  
9 procedures for the operation of the vulnerable persons' central regis-  
10 ter.

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

24 (b) The vulnerable persons' central register shall receive reports of  
25 allegations of reportable incidents twenty-four hours per day, seven  
26 days a week. Mandated reporters shall make such reports in accordance  
27 with section four hundred ninety-one of this article; provided, however,  
28 any person who has reasonable cause to suspect that a person receiving

1 services has been subjected to a reportable incident may make such a  
2 report. In no event shall a report by a mandated reporter to the vulner-  
3 able persons' central register eliminate the obligation of a mandated  
4 reporter to report incidents in accordance with the applicable laws,  
5 regulations and policy of the applicable state oversight agency.

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

25 3. (a) When any allegation that could reasonably constitute a report-  
26 able incident is received by the register, the register shall accept and  
27 immediately transmit notice of the report orally or electronically to

1 the appropriate state oversight agency and, as appropriate, to the  
2 director or operator of that facility or provider agency.

3 (b) Whenever a telephone call or electronic transmission to the  
4 vulnerable persons' central register alleges an act or circumstances  
5 that may constitute a criminal offense or an immediate threat to a  
6 vulnerable person's health, safety or welfare, the register shall  
7 convey, by the most expedient means available, the information contained  
8 in such call or transmission to the appropriate law enforcement agency  
9 or district attorney and, to the extent necessary, the appropriate emer-  
10 gency responder, and the state oversight agency.

11 (c) The justice center is responsible for commencing an investigation  
12 of all allegations of reportable incidents that are accepted by the  
13 vulnerable persons' central register. With respect to such an investi-  
14 gation, the justice center shall:

15 (i) upon acceptance of a report of a reportable incident by the  
16 vulnerable persons' central register, promptly commence an appropriate  
17 investigation;

18 (ii) take all appropriate measures to protect the life and health of  
19 the person who is the alleged victim of a reportable incident, which may  
20 include working with the state oversight agency to take immediate steps  
21 to remove the vulnerable person from his or her current facility or  
22 program or to remove or suspend a subject from a facility or program,  
23 subject to any applicable collective bargaining agreement, if the  
24 justice center has reasonable cause to believe that the circumstances or  
25 condition of the vulnerable person are such that continuing the vulner-  
26 able person in his or her place of residence or program, or that contin-  
27 uing such subject in his or her current facility or program, presents an  
28 imminent danger to the vulnerable person's life or health;

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

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

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

17 (vi) notify the personal representative of the person alleged to have  
18 been abused or neglected and, except in the case of a criminal investi-  
19 gation, or if the executive director or his or her designee determines  
20 that doing so would interfere with any ongoing investigation, notify the  
21 subject or subjects of the report and any other persons named in the  
22 report in writing of the existence of the report; provided, however,  
23 that such notification may be limited in accordance with subdivision (c)  
24 of section 33.16 of the mental hygiene law;

25 (vii) if a report of a reportable incident to the vulnerable persons'  
26 central register involves the death of a person, the justice center  
27 shall give telephone notice and immediately send a copy of the report to  
28 the appropriate district attorney and to the medical examiner or coron-

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

9 (viii) submit reportable incident findings to the vulnerable persons'  
10 central register in accordance with section four hundred ninety-three of  
11 this article;

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

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

22 (d) Whenever a telephone call or electronic transmission to the  
23 vulnerable persons' central register cannot be accepted as a report, but  
24 the information provided alleges other potential wrongdoing at a facili-  
25 ty or provider agency, the register shall forward the report to the  
26 applicable state oversight agency for investigation and protective  
27 actions, as needed, pursuant to section four hundred ninety-one of this  
28 article.

1 4. The justice center shall maintain and keep up-to-date records of  
2 all incidents reported, together with any additional information  
3 obtained during an investigation of such a report and a record of the  
4 final disposition of the report.

5 5. The vulnerable persons' central register shall maintain an elec-  
6 tronic database of all accepted reports of reportable incidents. State  
7 oversight agencies shall have access to information in the database,  
8 limited to cases involving facilities or provider agencies under their  
9 jurisdiction.

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

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

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

1 7. (a) General information about the existence and purposes of the  
2 vulnerable persons' central register and how to make a report to the  
3 register shall be made available on the website of the justice center,  
4 with links to such information provided on the websites of each of the  
5 state oversight agencies covered by this article.

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

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

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

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

1 justice center. The investigation of the report shall continue despite  
2 the resignation or termination of such subject.

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

11 2. For substantiated reports of abuse or neglect in facilities or  
12 provider agencies in receipt of medical assistance, such information  
13 shall also be forwarded by the justice center to the office of the Medi-  
14 caid inspector general when such abuse or neglect may be relevant to an  
15 investigation of unacceptable practices as such practices are defined in  
16 regulations of the office of the Medicaid inspector general.

17 3. (a) A finding shall be based on a preponderance of the evidence and  
18 shall indicate whether: (i) the alleged abuse or neglect is substanti-  
19 ated because it is determined that the incident occurred and the subject  
20 of the report was responsible or, if no subject can be identified and an  
21 incident occurred, that, the facility or provider agency was responsi-  
22 ble; or (ii) the alleged abuse or neglect is unsubstantiated because it  
23 is determined not to have occurred or the subject of the report was not  
24 responsible, or because it cannot be determined that the incident  
25 occurred or that the subject of the report was responsible. A report  
26 shall not be determined to be substantiated or unsubstantiated solely  
27 because the subject of a report resigns during an investigation.

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

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

20 (d) A report that is found to be unsubstantiated shall be sealed imme-  
21 diately.

22 4. Substantiated reports of abuse or neglect shall be categorized into  
23 one or more of the following four categories, as applicable:

24 (a) Category one conduct is serious physical abuse, sexual abuse or  
25 other serious conduct by custodians, which includes and shall be limited  
26 to:

27 (i) intentionally or recklessly causing physical injury as defined in  
28 subdivision nine of section 10.00 of the penal law, or death, serious

1 disfigurement, serious impairment of health or loss or impairment of the  
2 function of any bodily organ or part, or consciously disregarding a  
3 substantial and unjustifiable risk that such physical injury, death,  
4 impairment or loss will occur;

5 (ii) a knowing, reckless or criminally negligent failure to perform a  
6 duty that: results in physical injury that creates a substantial risk of  
7 death; causes death or serious disfigurement, serious impairment of  
8 health or loss or impairment of the function of any bodily organ or  
9 part, a substantial and protracted diminution of a service recipient's  
10 psychological or intellectual functioning, supported by a clinical  
11 assessment performed by a physician, psychologist, psychiatric nurse  
12 practitioner, licensed clinical or master social worker or licensed  
13 mental health counselor; or is likely to result in either;

14 (iii) threats, taunts or ridicule that is likely to result in a  
15 substantial and protracted diminution of a service recipient's psycho-  
16 logical or intellectual functioning, supported by a clinical assessment  
17 performed by a physician, psychologist, psychiatric nurse practitioner,  
18 licensed clinical or master social worker or licensed mental health  
19 counselor;

20 (iv) engaging in or encouraging others to engage in cruel or degrading  
21 treatment, which may include a pattern of cruel and degrading physical  
22 contact, of a service recipient, that results in a substantial and  
23 protracted diminution of a service recipient's psychological or intel-  
24 lectual functioning, supported by a clinical assessment performed by a  
25 physician, psychologist, psychiatric nurse practitioner, licensed clin-  
26 ical or master social worker or licensed mental health counselor;

1 (v) engaging in or encouraging others to engage in any conduct in  
2 violation of article one hundred thirty of the penal law with a service  
3 recipient;

4 (vi) any conduct that is inconsistent with a service recipient's indi-  
5 vidual treatment plan or applicable federal or state laws, regulations  
6 or policies, that encourages, facilitates or permits another to engage  
7 in any conduct in violation of article one hundred thirty of the penal  
8 law, with a service recipient;

9 (vii) any conduct encouraging or permitting another to promote a sexu-  
10 al performance, as defined in subdivision one of section 263.00 of the  
11 penal law, by a service recipient, or permitting or using a service  
12 recipient in any prostitution-related offense;

13 (viii) using or distributing a schedule I controlled substance, as  
14 defined by article thirty-three of the public health law, at the work  
15 place or while on duty;

16 (ix) unlawfully administering a controlled substance, as defined by  
17 article thirty-three of the public health law to a service recipient;

18 (x) intentionally falsifying records related to the safety, treatment  
19 or supervision of a service recipient, including but not limited to  
20 medical records, fire safety inspections and drills and supervision  
21 checks when the false statement contained therein is made with the  
22 intent to mislead a person investigating a reportable incident and it is  
23 reasonably foreseeable that such false statement may endanger the  
24 health, safety or welfare of a service recipient;

25 (xi) knowingly and willfully failing to report, as required by para-  
26 graph (a) of subdivision one of section four hundred ninety-one of this  
27 article, any of the conduct in subparagraphs (i) through (ix) of this  
28 paragraph upon discovery;

1 (xii) for supervisors, failing to act upon a report of conduct in  
2 subparagraphs (i) through (x) of this paragraph as directed by regu-  
3 lation, procedure or policy;

4 (xiii) intentionally making a materially false statement during an  
5 investigation into a report of conduct described in subparagraphs (i)  
6 through (x) of this paragraph with the intent to obstruct such investi-  
7 gation; and

8 (xiv) intimidating a mandated reporter with the intention of prevent-  
9 ing him or her from reporting conduct described in subparagraphs (i)  
10 through (x) of this paragraph or retaliating against any custodian  
11 making such a report in good faith.

12 (b) Category two is substantiated conduct by custodians that is not  
13 otherwise described in category one, but conduct in which the custodian  
14 seriously endangers the health, safety or welfare of a service recipient  
15 by committing an act of abuse or neglect. Category two conduct under  
16 this paragraph shall be elevated to category one conduct when such  
17 conduct occurs within three years of a previous finding that such custo-  
18 dian engaged in category two conduct. Reports that result in a category  
19 two finding not elevated to a category one finding shall be sealed after  
20 five years.

21 (c) Category three is abuse or neglect by custodians that is not  
22 otherwise described in categories one and two. Reports that result in a  
23 category three finding shall be sealed after five years.

24 (d) Category four shall be conditions at a facility or provider agency  
25 that expose service recipients to harm or risk of harm where staff  
26 culpability is mitigated by systemic problems such as inadequate manage-  
27 ment, staffing, training or supervision. Category four also shall  
28 include instances in which it has been substantiated that a service

1 recipient has been abused or neglected, but the perpetrator of such  
2 abuse or neglect cannot be identified.

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

6 (b) Except when a custodian has a category two finding elevated to a  
7 category one finding pursuant to this section, a custodian with a cate-  
8 gory two finding shall be subject to progressive discipline. (For state  
9 entities bound by collective bargaining, such discipline established by  
10 collective bargaining shall govern.) In conjunction with such discipli-  
11 nary action, the facility or provider agency shall develop a plan for  
12 training and any other actions to reduce the risk of recurrence of such  
13 conduct. Such plan must be approved by and its implementation monitored  
14 by the justice center or the state oversight agency, as appropriate.

15 (c) With respect to a category three or four finding, the justice  
16 center shall require the facility or provider agency to develop and  
17 implement a plan of prevention and remediation of the deficient condi-  
18 tions. Such plan shall identify any systemic problem that led to the  
19 determination of a category three or four finding and include suggested  
20 corrective measures. Such plan must be approved by and its implementa-  
21 tion monitored by the justice center or the state oversight agency, as  
22 appropriate. In reviewing the continued qualifications of a facility or  
23 provider agency for an operating certificate, the state oversight agency  
24 shall evaluate such facility or provider agency's compliance with any  
25 plans of prevention and remediation resulting from category three or  
26 four reports and take appropriate enforcement action, which may include,  
27 but not be limited to, closing intake to the facility or provider agency  
28 or terminating operating certificates for prolonged or repeated failure

1 to correct identified problems in accordance with applicable state law  
2 or regulation.

3 § 494. Amendments to and appeals of substantiated reports of abuse or  
4 neglect. 1. (a) At any time subsequent to the completion of an investi-  
5 gation of an allegation of abuse or neglect, but in no event later than  
6 thirty days after the subject of the report is notified that the report  
7 is substantiated, the subject may request that the vulnerable persons'  
8 central register amend the findings of the report. If the register does  
9 not amend the findings of the report in accordance with such request,  
10 the subject shall have the right to be heard before an administrative  
11 law judge, to determine whether the findings of the report should be  
12 amended on the grounds that they are inaccurate or inconsistent with the  
13 provisions in this article. The office shall establish an appeals proc-  
14 ess by which the subject of the report is notified of the right to  
15 appeal and the procedure by which he or she may challenge the determi-  
16 nation that a report is substantiated, with a de novo standard of  
17 review.

18 (b) If the administrative law judge determines that the justice center  
19 failed to prove by a preponderance of the evidence the finding that the  
20 subject committed the act or acts of abuse or neglect, the justice  
21 center shall amend the record to reflect that such a finding was made,  
22 and shall promptly notify the subject of the report and any other  
23 persons or entities previously notified of the existence of the report  
24 of the amended finding. Such report shall be sealed in accordance with  
25 the standards set forth in section four hundred ninety-six of this arti-  
26 cle.

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

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

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

27 3. If a person is listed on the register of substantiated category one  
28 cases of abuse or neglect, a facility or provider agency and all other

1 providers of services to vulnerable persons in programs licensed or  
2 certified by any state oversight agency shall not hire such a person to  
3 have regular and substantial contact with a service recipient in any  
4 such facility or program. Other providers or licensing agencies as  
5 defined in subdivision three or four of section four hundred twenty-  
6 four-a of this chapter shall determine whether to hire or allow such a  
7 person to have regular or substantial contact with a service recipient  
8 in accordance with the provisions of subdivision five of section four  
9 hundred twenty-four-a of this chapter.

10 4. A custodian shall be subject to immediate termination if he or she  
11 is convicted of any crime as defined in subdivision six of section 10.00  
12 of the penal law that relates directly to the abuse or neglect of a  
13 vulnerable person, or is placed on the register of substantiated catego-  
14 ry one cases of abuse or neglect. (For state entities bound by collec-  
15 tive bargaining, such action established by collective bargaining shall  
16 govern.)

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

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

23 § 496. Confidentiality. 1. Unless an investigation of a report  
24 conducted pursuant to this article has been substantiated, all informa-  
25 tion, including information identifying the subject of the report and  
26 other persons named in the report, shall be sealed forthwith by the  
27 vulnerable persons' central register, the state oversight agency and the  
28 facility or provider agency. Such reports may only be unsealed and made

1 available, consistent with any other applicable state or federal law,  
2 to:

3 (a) the state agency operating, licensing or certifying a facility or  
4 program for the purpose of monitoring or licensing such facility or  
5 program;

6 (b) any state agency operating, licensing, or certifying a facility or  
7 provider agency when investigating a report of suspected abuse or  
8 neglect involving the subject of a previously sealed report accepted by  
9 the vulnerable persons' central register;

10 (c) the subject of the report;

11 (d) a court of relevant jurisdiction or a law enforcement official  
12 when such court or official verifies that the report is necessary to  
13 conduct an active investigation or prosecution of a violation of subdi-  
14 vision four of section 240.50 of the penal law;

15 (e) the justice center medical review board, for the purposes of  
16 preparing a fatality report pursuant to section five hundred fifty-six  
17 of the executive law;

18 (f) the independent agency designated pursuant to subdivision (b) of  
19 section five hundred fifty-eight of the executive law, provided that  
20 such information is relevant to a matter within the legal authority of  
21 such agency; or

22 (g) other persons named in the report, as defined in subdivision thir-  
23 teen of section four hundred eighty-eight of this article which  
24 includes, but is not limited to, the service recipient's parent, guardi-  
25 an or other person legally responsible for such person; provided, howev-  
26 er, that the names and other personally identifying information of  
27 custodians and other service recipients shall not be included unless  
28 such custodians and service recipients authorize disclosure. Notwith-

1 standing the prohibitions on non-redisclosure set forth in the closing  
2 sentence of this subdivision, the service recipient, and such service  
3 recipient's parent, guardian or other person legally responsible for  
4 such service recipient may disclose information and reports made avail-  
5 able pursuant to this paragraph to an attorney, who shall not further  
6 disclose except as is necessary for use by such attorney in rendering  
7 advice, assistance and representation.

8 When a report is unsealed, persons given access to it shall not redis-  
9 close such reports except as necessary to conduct such appropriate  
10 investigation or prosecution and shall request that the court redact any  
11 copies of such reports produced in any court proceeding to remove the  
12 names of those persons irrelevant to the proceeding such as the source  
13 of the report, the name of the subject, and other persons named in the  
14 reports; or that the court issue an order protecting the names of the  
15 subjects and other persons named in the reports from public disclosure.

16 2. Reports made pursuant to this article and found to be substantiated  
17 as well as any other information obtained, reports written or photo-  
18 graphs taken concerning such reports in the possession of the justice  
19 center, a state oversight agency, a delegate investigatory entity,  
20 facility or provider agency covered by this article shall be confiden-  
21 tial and shall not be disclosed to any other party unless authorized  
22 pursuant to this section or any other applicable state or federal law.  
23 In the event that other applicable state or federal law provisions are  
24 more restrictive than the provisions of this section, the provisions of  
25 such other state or federal law shall apply. In accordance with this  
26 section, such information shall be made available only to:

27 (a) a person who is the subject of the report;

1 (b) other persons named in the report, which includes, but is not  
2 limited to, the service recipient's parent, guardian or other person  
3 legally responsible for such person. Notwithstanding the prohibitions  
4 on non-redisclosure set forth in subdivision four of this section, the  
5 service recipient, and such service recipient's parent, guardian or  
6 other person legally responsible for such service recipient may disclose  
7 information and reports made available pursuant to this paragraph to an  
8 attorney, who shall not further disclose except as is necessary for use  
9 by such attorney in rendering advice, assistance and representation;

10 (c) the justice center;

11 (d) the applicable state oversight agency, the director or operator of  
12 the applicable facility or provider agency and, as appropriate, the  
13 local social services commissioner, the commissioner of the office of  
14 children and family services, or the school district placing the service  
15 recipient, or an agency providing adult protective services to the  
16 service recipient;

17 (e) a physician who has before him or her a service recipient whom he  
18 or she reasonably suspects may be or may have been abused or neglected;

19 (f) a court, upon a finding that the information in the record is  
20 relevant to the determination of an issue before the court;

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

23 (h) any appropriate state legislative committee responsible for legis-  
24 lation affecting vulnerable persons, provided, however, that no informa-  
25 tion identifying or tending to identify the subjects of the report or  
26 other persons named in the report shall be made available;

27 (i) any person engaged in a bona fide research purpose; provided,  
28 however, that no information identifying or tending to identify the

1 subjects of the report or other persons named in the report shall be  
2 made available to the researcher unless it is absolutely essential to  
3 the research purpose and the justice center, after consultation with the  
4 commissioner of the applicable state oversight agency, gives prior  
5 approval;

6 (j) a facility or provider agency, other providers of services to  
7 vulnerable persons in programs licensed or certified by any state over-  
8 sight agency, or any other provider agency as defined in subdivision  
9 three of section four hundred twenty-four-a of this chapter or a licens-  
10 ing agency as defined in subdivision four of section four hundred twen-  
11 ty-four-a of this chapter, in accordance with the provisions of subdivi-  
12 sion two of section four hundred ninety-five of this article;

13 (k) a probation service regarding a person about whom it is conducting  
14 an investigation pursuant to article three hundred ninety of the crimi-  
15 nal procedure law, or a probation service or the department of  
16 corrections and community supervision regarding a person to whom the  
17 service or department is providing supervision pursuant to article sixty  
18 of the penal law or article eight of the correction law, where the  
19 service or department requests the information upon a certification that  
20 such information is necessary to conduct its investigation, that there  
21 is reasonable cause to believe that the subject of an investigation is  
22 the subject of a substantiated report and that there is reasonable cause  
23 to believe that such records are necessary to the investigation by the  
24 probation service or the department, provided, however, that only  
25 substantiated reports shall be furnished pursuant to this subdivision;

26 (l) a district attorney, an assistant district attorney or investi-  
27 gator employed by the office of a district attorney, a sworn officer of  
28 the division of state police, of the regional state park police, of a

1 city police department, or of a county, town or village police depart-  
2 ment or county sheriff's office or department upon written verification  
3 that such information is necessary to conduct a criminal investigation  
4 or criminal prosecution of a person, and that there is reasonable cause  
5 to believe that such person is the subject of a report; provided, howev-  
6 er, that only substantiated reports shall be furnished pursuant to this  
7 subdivision;

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

15 (n) a provider or coordinator of services to which a facility or  
16 provider agency or social services district has referred a service  
17 recipient or a service recipient's family or to whom the service recipi-  
18 ent or the recipient's family have referred themselves at the request of  
19 such agency or social services district, when said service recipient is  
20 reported to the vulnerable persons' central register as the vulnerable  
21 person and when the records, reports or other information are necessary  
22 to enable the provider or coordinator to establish and implement a plan  
23 of service for the service recipient or the service recipient's family,  
24 or to monitor the provision and coordination of services and the circum-  
25 stances of the service recipient and the service recipient's family, or  
26 to directly provide services in accordance with requirements established  
27 by the applicable state oversight agency to the extent that the sharing  
28 of such information is not otherwise prohibited by federal law;

1 provided, however, a provider or coordinator of services given access to  
2 information concerning a service recipient pursuant to this paragraph  
3 shall be authorized to redisclose such information to other persons or  
4 agencies which also provide services to the service recipient or the  
5 service recipient's family only if an agreement has been or will be  
6 reached between the provider or coordinator of service and such facility  
7 or provider agency, operating state agency or local district. An agree-  
8 ment entered into pursuant to this paragraph shall include the specific  
9 agencies and categories of individuals to whom redisclosure by the  
10 provider or coordinator of services is authorized. Persons or agencies  
11 given access to information pursuant to this paragraph may exchange such  
12 information in order to facilitate the provision or coordination of  
13 services to the service recipient or the service recipient's family;

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

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

22 (q) the director or operator of the facility or provider agency and,  
23 as appropriate, the local social services commissioner, commissioner of  
24 the office of children and family services, or school district placing a  
25 child in that program, the applicable executive agency, and, for any  
26 report involving abuse or neglect of a child, any attorney appointed to  
27 represent the child whose appointment has been continued by a family

1 court judge during the term of the placement and subject to the limita-  
2 tions contained in section four hundred ninety-five of this article;

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

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

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

25 (i) Information pertaining to the substance or content of any psycho-  
26 logical, psychiatric, therapeutic, clinical or medical reports, evalu-  
27 ations or like materials or information pertaining to such vulnerable  
28 person or such person's family shall not be made available to such offi-

1 cers and employees unless disclosure of such information is absolutely  
2 essential to the specific audit activity and the justice center gives  
3 prior written approval.

4 (ii) Any failure to maintain the confidentiality of service reci-  
5 pient-identifiable information shall subject such comptroller or officer  
6 to denial of any further access to records until such time as the audit  
7 agency has reviewed its procedures concerning controls and prohibitions  
8 imposed on the dissemination of such information and has taken all  
9 reasonable and appropriate steps to eliminate such lapses in maintaining  
10 confidentiality to the satisfaction of the justice center. Such justice  
11 center shall establish the grounds for denial of access to records  
12 contained under this section and shall recommend as necessary a plan of  
13 remediation to the audit agency. Except as provided in this section,  
14 nothing in this subparagraph shall be construed as limiting the powers  
15 of such comptroller or officer to access records which he or she is  
16 otherwise authorized to audit or obtain under any other applicable  
17 provision of law;

18 (u) an entity with appropriate legal authority in another state to  
19 license, certify or otherwise approve prospective foster and adoptive  
20 parents where disclosure of information regarding the prospective foster  
21 or adoptive parents and other persons over the age of eighteen residing  
22 in the home of such prospective parents is required by paragraph twenty  
23 of subdivision (a) of section six hundred seventy-one of title forty-two  
24 of the United States Code;

25 (v) a social services official who is investigating whether an adult  
26 is in need of protective services in accordance with the provisions of  
27 section four hundred seventy-three of this chapter or a child is in need  
28 of child protective services pursuant to the provisions of title six of

1 article six of this chapter, when such official has reasonable cause to  
2 believe that such reports and information are needed to further the  
3 present investigation;

4 (w) for reports alleging abuse or neglect of children, members of a  
5 citizen review panel as established pursuant to section three hundred  
6 seventy-one-b of this chapter; provided, however, such members shall not  
7 disclose to any person or governmental official any identifying informa-  
8 tion which the panel has been provided and shall not make public other  
9 information unless otherwise authorized by statute;

10 (x) officers and employees of the education department and, where  
11 applicable, the department of health, for the purpose of investigating  
12 charges and maintaining professional discipline proceedings against the  
13 professional license of the subject of the report pursuant to Title VIII  
14 of the education law, and to employees of the education department for  
15 the purpose of investigating charges and maintaining good moral charac-  
16 ter proceedings against the teaching, school administrator or school  
17 leader certificate or license of the subject of the report; and

18 (y) the independent agency designated pursuant to subdivision (b) of  
19 section five hundred fifty-eight of the executive law, provided that  
20 such information is relevant to a matter within the legal authority of  
21 such agency.

22 3. (a) The executive director, in consultation with the applicable  
23 state oversight agency may disclose information regarding the abuse or  
24 neglect of a vulnerable person as set forth in this subdivision, and the  
25 investigation thereof and any services related thereto, to persons other  
26 than those authorized to receive records under subdivision two of this  
27 section if otherwise permitted by applicable federal law and if he or  
28 she determines that such disclosure shall not be contrary to the best

1 interests of the vulnerable person and any one of the following factors  
2 are present:

3 (i) the subject of the report has been charged in an accusatory  
4 instrument with committing a crime related to a report maintained in the  
5 vulnerable persons' central register; or

6 (ii) the investigation of the abuse or neglect of the vulnerable  
7 person or the provision of services by the facility or provider agency  
8 has been publicly disclosed in a report required to be disclosed in the  
9 course of their official duties, by a law enforcement agency or offi-  
10 cial, a district attorney, any other state or local investigative agency  
11 or official, or by judge of the unified court system; or

12 (iii) there has been a prior knowing, voluntary, public disclosure by  
13 an individual concerning a report of abuse or neglect in which such  
14 individual is named as the subject of the report; or

15 (iv) the vulnerable person named in the report has died or the report  
16 involves the near fatality of a vulnerable person. For the purposes of  
17 this section, "near fatality" means an act that results in the vulner-  
18 able person being placed, as certified by a physician, in serious or  
19 critical condition.

20 (b) For the purposes of this subdivision, only the following informa-  
21 tion may be disclosed:

22 (i) the name of the abused or neglected vulnerable person;

23 (ii) the determination by the justice center and the findings upon  
24 which such determination was based;

25 (iii) identification of services provided or actions, if any, taken  
26 regarding the vulnerable person named in the report and his or her fami-  
27 ly as a result of any such report or reports;

1 (iv) whether any report of abuse or neglect regarding such vulnerable  
2 person has been "substantiated" as maintained by the vulnerable persons'  
3 central register;

4 (v) any actions taken by the state oversight agency or the facility or  
5 provider agency in response to reports of abuse or neglect of the  
6 vulnerable person to the vulnerable persons' central register, including  
7 but not limited to actions taken after each and every report of abuse or  
8 neglect of such person and the dates of such reports; and

9 (vi) any extraordinary or pertinent information concerning the circum-  
10 stances of the abuse or neglect of the vulnerable person and the inves-  
11 tigation thereof, where the executive director, in consultation with the  
12 commissioner of the applicable state oversight agency determines such  
13 disclosure is consistent with the public interest.

14 (c) Information may be disclosed pursuant to this subdivision as  
15 follows:

16 (i) information released prior to the completion of the investigation  
17 of a report shall be limited to a statement that a report is "under  
18 investigation";

19 (ii) when there has been a prior disclosure pursuant to paragraph (a)  
20 of this subdivision, information released in a case in which the inves-  
21 tigation of the report has been completed but not substantiated, infor-  
22 mation shall be limited to the statement that "the investigation has  
23 been completed and the report has been unsubstantiated";

24 (iii) if the report has been "substantiated" then information may be  
25 released pursuant to paragraph (a) of this subdivision.

26 (d) Any disclosure of information pursuant to this subdivision shall  
27 be consistent with the provisions of paragraph (b) of this subdivision.

28 Such disclosure shall not identify or provide an identifying description

1 of the source of the report, and shall not identify the name of the  
2 abused or neglected vulnerable person's siblings or children, the parent  
3 or other person legally responsible for such person or any other members  
4 of such person's household.

5 (e) In determining, pursuant to paragraph (a) of this subdivision,  
6 whether disclosure will be contrary to the best interests of the vulner-  
7 able person, the executive director shall consider the interest in  
8 privacy of the vulnerable person and such person's siblings or children,  
9 the parent or other person legally responsible for such person or any  
10 other members of such person's household.

11 (f) Except as it applies directly to the cause of the abuse or neglect  
12 of the vulnerable person, nothing in this subdivision shall be deemed to  
13 authorize the release or disclosure of the substance or content of any  
14 psychological, psychiatric, therapeutic, clinical or medical reports,  
15 evaluations or like materials or information pertaining to such person  
16 or such person's family. Any such information that applies directly to  
17 the cause of the abuse or neglect of the vulnerable person may be  
18 disclosed only if disclosure is not otherwise restricted by applicable  
19 federal or state laws.

20 4. A person given access to the names or other information identifying  
21 the subject of the report or other persons named in the report shall not  
22 divulge or make public such identifying information unless he or she is  
23 a district attorney or other law enforcement official and the purpose is  
24 to initiate court action or the disclosure is necessary in connection  
25 with the investigation or prosecution of the subject of the report for a  
26 crime alleged to have been committed by the subject against another  
27 person named in the report. Nothing in this section shall be construed  
28 to permit any release, disclosure or identification of the names or

1 identifying descriptions of persons who have reported suspected abuse or  
2 neglect to the vulnerable persons' central register or the state over-  
3 sight agency, facility or provider agency or other entity where such  
4 persons are employed or with which they are associated without such  
5 persons' written permission except to persons, officials, and agencies  
6 enumerated in paragraphs (f), (g), (l), (m) and (v) of subdivision two  
7 of this section. To the extent that persons or agencies are given  
8 access to information pursuant to paragraphs (c), (d), (e), (k), (l),  
9 (m), (n) and (p) of subdivision two of this section, such persons or  
10 agencies may give and receive such information to each other in order to  
11 facilitate an investigation conducted, or the provision of services, by  
12 such persons or agencies.

13 5. Notwithstanding any contrary provision of this section, mental  
14 hygiene legal service shall have access to all information, books,  
15 records and data as provided for in subdivision (d) of section 47.03 of  
16 the mental hygiene law.

17 § 497. Immunity from liability. Any person participating reasonably  
18 and in good faith in making a report, taking photographs, conducting or  
19 overseeing an investigation, operating the vulnerable persons' central  
20 register or disclosing information in compliance with this article shall  
21 have immunity from any liability, civil or criminal, that might other-  
22 wise result by reason of such actions. For the purpose of any proceed-  
23 ing, civil or criminal, the good faith of any such person required to  
24 perform any of such functions in accordance with this article shall be  
25 presumed, provided such person, was acting in discharge of his or her  
26 duties and within the scope of his or her employment or responsibil-  
27 ities, and that such liability did not result from the willful miscon-  
28 duct or gross negligence of such person.

1 § 2. This act shall take effect June 30, 2013; provided, however,  
2 that, effective immediately, any actions necessary for the implementa-  
3 tion of this act on its effective date, and the addition, amendment or  
4 repeal of any rule or regulation necessary for the implementation of  
5 this act on its effective date, are authorized to be taken or made on or  
6 before such date.

7 PART C

8 Section 1. Subdivisions 6 and 7 of section 677 of the county law,  
9 subdivision 6 as amended by chapter 491 of the laws of 1987, subdivision  
10 7 as added by chapter 477 of the laws of 1979 and paragraph (a) of  
11 subdivision 7 as amended by chapter 330 of the laws of 1993, are amended  
12 to read as follows:

13 6. The coroner, coroner's physician or medical examiner shall promptly  
14 provide the chairman of the correction medical review board and the  
15 commissioner of correctional services with copies of any autopsy report,  
16 toxicological report or any report of any examination or inquiry  
17 prepared with respect to any death occurring to an inmate of a correc-  
18 tional facility as defined by subdivision three of section forty of the  
19 correction law within his county; and shall promptly provide the execu-  
20 tive director of the justice center for the protection of people with  
21 special needs with copies of any autopsy report, toxicology report or  
22 any report of any examination or inquiry prepared with respect to the  
23 death of any service recipient occurring while he or she was a resident  
24 in any facility operated, licensed or certified by any agency within the  
25 department of mental hygiene, the office of children and family  
26 services, the department of health or the state education department.

1 If the toxicological report is prepared pursuant to any agreement or  
2 contract with any person, partnership, corporation or governmental agen-  
3 cy with the coroner or medical examiner, such report shall be promptly  
4 provided to the chairman of the correction medical review board [and  
5 to], the commissioner of correctional services or the executive director  
6 of the justice center for people with special needs, as appropriate, by  
7 such person, partnership, corporation or governmental agency.

8 7. (a) Upon the written request of the commissioner of mental health,  
9 the commissioner of [mental retardation and] the office for persons with  
10 developmental disabilities, the director of the mental hygiene legal  
11 service, [the chairman of the commission on quality of care for the  
12 mentally disabled] the executive director of the justice center for the  
13 protection of people with special needs or the director of a mental  
14 hygiene facility, as defined in subdivision two of section [45.01] five  
15 hundred fifty of the [mental hygiene] executive law, at which the  
16 deceased was a patient or resident, the coroner, coroner's physician or  
17 medical examiner shall provide such person with a copy of all reports  
18 and records, including, but not limited to, autopsy reports and toxico-  
19 logical reports related to the deceased prepared by a person, partner-  
20 ship, corporation or governmental agency pursuant to any agreement or  
21 contract with the coroner or medical examiner with respect to the death  
22 of a patient or resident receiving services [for a mental disability] at  
23 such a mental hygiene facility.

24 (b) Upon the written request of the commissioner of mental health, or  
25 commissioner of [mental retardation and] developmental disabilities, or  
26 a director of a departmental facility as defined in section 1.03 of the  
27 mental hygiene law, or the [chairman of the commission on quality of  
28 care for the mentally disabled] executive director of the justice center

1 for the protection of people with special needs, the coroner, coroner's  
2 physician or medical examiner shall transmit to the commissioner, or  
3 such director, [or chairman,] or any member of the [mental hygiene]  
4 justice center medical review board [designated by the chairman of such  
5 commission], original autopsy slides, tissue materials and specimens  
6 taken from the body of a deceased patient or resident as defined in  
7 paragraph (a) of this section. Such original materials may be used and  
8 tested by such office of the department of mental hygiene, or such  
9 director, and [mental hygiene] justice center medical review board  
10 pursuant to its authority under section [45.17] five hundred fifty-six  
11 of the [mental hygiene] executive law. Such slides, materials and spec-  
12 imens may be retained for a reasonable time, and shall be returned to  
13 the office of the coroner or medical examiner in good condition allowing  
14 for reasonable use for study and testing purposes.

15 § 2. Subdivisions (a) and (d) of section 7.09 of the mental hygiene  
16 law, subdivision (a) as added by chapter 978 of the laws of 1977 and  
17 subdivision (d) as added by chapter 477 of the laws of 1979, are amended  
18 to read as follows:

19 (a) The commissioner shall exercise all powers vested in the office.  
20 He may delegate any function, power, or duty assigned to him or to the  
21 office of mental health to a director of a facility operated by such  
22 office or to any other officer or employee of such office, unless other-  
23 wise provided by law. He may enter into agreements with the executive  
24 director of the justice center for the protection of people with special  
25 needs or the other commissioners of the department in order to ensure  
26 that programs and services are provided for all of the mentally disa-  
27 bled.

1 (d) The commissioner and directors of office facilities may request  
2 and upon such request the coroner, coroner's physician or medical exam-  
3 iner shall provide to such persons access to original autopsy slides,  
4 tissue materials and specimens derived from any autopsy or inquiry with  
5 respect to the death of a patient or resident in a mental hygiene facil-  
6 ity, as defined in [section 45.01 of this chapter] subdivision two of  
7 section five hundred fifty of the executive law. Such original materials  
8 shall be preserved intact, except for unavoidable changes due to neces-  
9 sary scientific testing, and shall be returned to the coroner, coroner's  
10 physician or medical examiner.

11 § 3. Subdivision (b) of section 7.21 of the mental hygiene law, as  
12 amended by chapter 558 of the laws of 2011, is amended to read as  
13 follows:

14 (b) Such director shall have the responsibility of seeing that there  
15 is humane treatment of the patients at his or her facility and shall  
16 investigate, or cause to be investigated, every [case of alleged patient  
17 abuse or mistreatment] reportable incident in accordance with article  
18 eleven of the social services law. Also in accordance with article elev-  
19 en of the social services law, the director shall require allegations of  
20 reportable incidents to be reported to the vulnerable persons' central  
21 register, which shall screen and immediately forward reports that appear  
22 to allege crimes to the appropriate law enforcement agency. The [direc-  
23 tor] vulnerable persons' central register shall notify immediately, and  
24 in any event within three working days, the board of visitors of the  
25 facility and the mental hygiene legal service located in the same judi-  
26 cial department as the hospital, school, or institution of every  
27 complaint of patient abuse or [mistreatment] neglect and shall inform  
28 the board and the mental hygiene legal service of the results of his

1 investigation. [If it appears that a crime may have been committed, the  
2 director shall give notice thereof to the district attorney or other  
3 appropriate law enforcement official as soon as possible, and in any  
4 event within three working days unless it appears that the crime  
5 includes an employee, intern, volunteer, consultant, contractor, or  
6 visitor and the alleged conduct caused physical injury or the patient  
7 was subject to unauthorized sexual contact, or if it appears the crime  
8 is endangering the welfare of an incompetent or physically disabled  
9 person pursuant to section 260.25 of the penal law, or if the crime was  
10 any felony under state or federal law, then the district attorney or  
11 other appropriate law enforcement official must be contacted immediate-  
12 ly, and in any event no later than twenty-four hours.]

13 § 4. Subdivisions (a) and (c) of section 13.09 of the mental hygiene  
14 law, subdivision (a) as added by chapter 978 of the laws of 1977 and  
15 subdivision (c) as added by chapter 477 of the laws of 1979, are amended  
16 to read as follows:

17 (a) The commissioner shall exercise all powers vested in the office.  
18 He or she may delegate any function, power, or duty assigned to him or  
19 her or to the office to any officer or employee of the office, unless  
20 otherwise provided by law. He or she may enter into agreements with  
21 other commissioners of the department in order to ensure that programs  
22 and services are provided for all of the mentally disabled.

23 (c) The commissioner and directors of office facilities may request  
24 and upon such request the coroner, coroner's physician or medical exam-  
25 iner shall provide to such persons access to original autopsy slides,  
26 tissue materials and specimens derived from any autopsy or inquiry with  
27 respect to the death of a patient or resident in a mental hygiene facil-  
28 ity, as defined in [section 45.01 of this chapter] subdivision two of

1 section five hundred fifty of the executive law. Such original materials  
2 shall be preserved intact, except for unavoidable changes due to neces-  
3 sary scientific testing and shall be returned to the coroner, coroner's  
4 physician or medical examiner.

5 § 5. Subdivision (b) of section 13.21 of the mental hygiene law, as  
6 amended by section 3 of part J of chapter 56 of the laws of 2012, is  
7 amended to read as follows:

8 (b) Such directors shall have the responsibility of seeing that there  
9 is humane treatment of individuals with developmental disabilities  
10 receiving services in settings operated, licensed, certified, funded or  
11 approved by this office and shall investigate, or cause to be investi-  
12 gated, every reportable incident in accordance with article eleven of  
13 the social services law. Also in accordance with article eleven of the  
14 social services law, the director shall require allegations of report-  
15 able incidents to be reported to the vulnerable persons' central regis-  
16 ter, which shall screen and immediately forward reports that appear to  
17 allege crimes to the appropriate law enforcement agency. [A director of  
18 a state operations office] The vulnerable persons' central register  
19 shall notify immediately, and in any event within three working days,  
20 the board of visitors of the facility and the mental hygiene legal  
21 service located in the same judicial department as the state operations  
22 office of every complaint of patient abuse or mistreatment and shall  
23 inform the board and the mental hygiene legal service of the results of  
24 his or her investigation. [If it appears that a crime may have been  
25 committed, such state operations director shall give notice thereof to  
26 the district attorney or other appropriate law enforcement official as  
27 soon as possible, and in any event within three working days unless it  
28 appears that the crime includes an employee, intern, volunteer, consult-

1 ant, contractor, or visitor and the alleged conduct caused physical  
2 injury or the patient was subject to unauthorized sexual contact, or if  
3 it appears the crime is endangering the welfare of an incompetent or  
4 physically disabled person pursuant to section 260.25 of the penal law,  
5 or if the crime was any felony under state or federal law, then the  
6 district attorney or other appropriate law enforcement official must be  
7 contacted immediately, and in any event no later than twenty-four  
8 hours.]

9 § 6. Subdivision 2 of section 13.34 of the mental hygiene law is  
10 REPEALED and subdivisions 3, 4, 5 and 6 are renumbered subdivisions 2,  
11 3, 4 and 5.

12 § 7. Subdivisions 1 and 2 of section 13.34 of the mental hygiene law,  
13 subdivision 1 as amended by section 16 of part J of chapter 56 of the  
14 laws of 2012, subdivision 2 as amended by chapter 542 of the laws of  
15 2011 and such subdivision as renumbered by section six of this act, are  
16 amended to read as follows:

17 1. There shall be at each developmental center facility listed in  
18 section 13.17 of this article, an ombudsman who shall be an employee of  
19 the [commission on quality of care and advocacy for persons with disa-  
20 bilities] justice center for the protection of people with special needs  
21 under article [forty-five] twenty of [this chapter] the executive law  
22 and who shall be responsible for receiving and responding to any  
23 complaints regarding [individual clients] individuals receiving services  
24 residing in such facility. The ombudsman shall have the following powers  
25 and duties:

26 i. to advise and consult with individuals receiving services, parents,  
27 guardians, correspondents and other interested persons with respect to

1 any complaints, or issues related to [the conditions of clients' resi-  
2 dents] individuals receiving services;

3 ii. to review and attempt to remedy specific complaints with responsi-  
4 ble and appropriate staff;

5 iii. where it appears that care has not been rendered as required by  
6 applicable standards to refer the complaint to the appropriate agency or  
7 body for its attention;

8 iv. to receive and keep confidential any complaint, information or  
9 inquiry from any source. The records of the ombudsman shall be confiden-  
10 tial, and shall not be available to the public;

11 v. to advise and consult with the board of visitors served by the  
12 ombudsman with respect to any complaints or issues relating to [condi-  
13 tions of client's residence] individuals receiving services, treatment  
14 and care and to regularly attend the meetings of such board; and

15 vi. to meet with the commissioner, or a representative of the commis-  
16 sioner, on a quarterly basis regarding systemic issues in the ombuds-  
17 man's jurisdiction.

18 2. The ombudsman shall be afforded initial training and orientation by  
19 the [commission on quality of care and advocacy for persons with disa-  
20 bilities] justice center for the protection of people with special  
21 needs.

22 § 8. Subdivision (b) of section 16.13 of the mental hygiene law is  
23 REPEALED and a new subdivision (b) is added to read as follows:

24 (b) Making reports of allegations of reportable incidents in accord-  
25 ance with article eleven of the social services law to the vulnerable  
26 persons' central register, which shall screen and immediately forward  
27 reports that appear to allege crimes to the appropriate law enforcement  
28 agency.

1 § 9. Section 16.29 of the mental hygiene law, as amended by chapter 24  
2 of the laws of 2007, subdivision (b) as amended by chapter 37 of the  
3 laws of 2011, is amended to read as follows:

4 § 16.29 [Child abuse and maltreatment in residential care] Abuse,  
5 neglect, and significant incidents involving vulnerable  
6 persons.

7 (a) The commissioner, in consultation with the executive director of  
8 the justice center for the protection of people with special needs,  
9 shall promulgate regulations establishing standards for the protection  
10 of [children in residential] service recipients in the care of facili-  
11 ties and provider agencies operated, licensed or certified by the office  
12 from [abuse and maltreatment] reportable incidents pursuant to article  
13 eleven of the social services law, including procedures for:

14 (1) [reviewing and evaluating the backgrounds of and information  
15 supplied by any person applying to be an employee, a volunteer or  
16 consultant,] consistent with appropriate collective bargaining agree-  
17 ments and applicable provisions of the civil service law[. Such review  
18 and evaluation shall include but not be limited to the following  
19 requirements: that the applicant set forth his or her employment histo-  
20 ry, provide personal and employment references and relevant experiential  
21 and educational information and, sign a sworn statement whether, to the  
22 best of his or her knowledge, he or she has ever been convicted of a  
23 crime in this state or any other jurisdiction], assisting the justice  
24 center for the protection of people with special needs with its review  
25 and evaluation of criminal background checks of prospective employees,  
26 as set forth in subdivision five of section five hundred fifty-three of  
27 the executive law;

1 (2) establishing minimal experiential and educational qualifications  
2 for employees that are consistent with appropriate collective bargaining  
3 agreements and applicable provisions of the civil service law;

4 (3) assuring adequate and appropriate supervision of employees, volun-  
5 teers and consultants;

6 (4) demonstrating that appropriate action is taken to assure the safe-  
7 ty of [the child who is reported to the state central register] a  
8 service recipient as well as other [children] persons in care, imme-  
9 diately upon notification that a [report of child abuse or maltreatment]  
10 reportable incident has been made [with respect to a child in a residen-  
11 tial facility] in accordance with article eleven of the social services  
12 law;

13 (4-a) consistent with applicable collective bargaining agreements,  
14 assuring that an individual who has committed a category one offense, as  
15 defined in paragraph (a) of subdivision four of section four hundred  
16 ninety-three of the social services law, that is included on the vulner-  
17 able persons' central register is not hired or otherwise used in any  
18 position in which such individual would have regular and substantial  
19 contact with a service recipient in any program operated, licensed or  
20 certified by the office;

21 (5) removing a [child] service recipient when it is determined that  
22 there is a risk to such [child] person if he or she continues to remain  
23 in a [residential] facility; and

24 (6) taking appropriate preventive and remedial action, including legal  
25 action, consistent with appropriate collective bargaining agreements and  
26 applicable provisions of the civil service law. [Such] The commissioner  
27 shall adopt standards [shall also establish as a priority] as estab-

1 lished by the justice center for the protection of people with special  
2 needs, that:

3 (i) administrators, employees, volunteers and consultants receive  
4 training in at least the following: [child] abuse prevention and iden-  
5 tification, safety and security procedures, the principles of child  
6 development, the characteristics of [children] persons in care and tech-  
7 niques of group [and child] management including crisis intervention,  
8 the laws, regulations and procedures governing the protection of [chil-  
9 dren] vulnerable persons from [abuse and maltreatment] reportable inci-  
10 dents, and other appropriate topics provided, however, that the office  
11 may exempt administrators and consultants from such requirements upon  
12 demonstration of substantially equivalent knowledge or experience; and

13 (ii) [children] service recipients receive instruction consistent with  
14 their age, needs and circumstances as well as the needs and circum-  
15 stances within the facility or program, in techniques and procedures  
16 which will enable [such children] them to advocate and protect them-  
17 selves from [abuse and maltreatment] reportable incidents.

18 The commissioner, in consultation with the executive director of the  
19 justice center for the protection of people with special needs, shall  
20 take all reasonable and necessary actions to assure that employees,  
21 volunteers and consultants in [residential care] facilities operated or  
22 overseen by the office are kept apprised on a current basis of all poli-  
23 cies and procedures of the office relating to the protection of [chil-  
24 dren from abuse and maltreatment] vulnerable persons, and shall monitor  
25 and supervise the provision of training to such administrators, employ-  
26 ees, volunteers, children and consultants. Standards developed pursuant  
27 to this subdivision shall, to the extent possible, be consistent with  
28 those promulgated by other state agencies for such purposes.

1 (b) The commissioner shall provide necessary assistance to the [state  
2 commission on quality of care and advocacy for persons with disabili-  
3 ties] justice center for the protection of people with special needs in  
4 the conduct of investigations pursuant to [section 45.07 of this chap-  
5 ter] article eleven of the executive law, shall consider its recommenda-  
6 tions for appropriate preventive and remedial action including legal  
7 actions, and shall provide or direct a residential facility licensed or  
8 operated by the office for people with developmental disabilities to  
9 provide written reports thereon to the [commission] justice center as to  
10 the implementation of plans of prevention and remediation approved by  
11 such office.

12 (c) The commissioner shall provide for the development and implementa-  
13 tion of a plan of prevention and remediation with respect to [an indi-  
14 cated] a substantiated report of [child abuse or maltreatment] a report-  
15 able incident. Such action shall include:

16 (i) within ten days of receipt of [an indicated] a substantiated  
17 report of [child abuse or maltreatment] a reportable incident, develop-  
18 ment and implementation of a plan of prevention and remediation to be  
19 taken [with respect to a custodian or the residential facility in order]  
20 to assure the continued health [and], safety and welfare of [children]  
21 service recipients and to provide for the prevention of future acts of  
22 [abuse or maltreatment] reportable incidents; and

23 (ii) development and implementation of a plan of prevention and reme-  
24 diation, in the event an investigation of a report of an alleged [child  
25 abuse or maltreatment determines that some credible evidence of abuse or  
26 maltreatment] reportable incident exists and such [abuse or maltreat-  
27 ment] reportable incident may be attributed in whole or in part to  
28 noncompliance by the facility with the provisions of this chapter or

1 regulations of the office applicable to the operation of such [residen-  
2 tial] facility. Any plan of prevention and remediation required to be  
3 developed pursuant to this subdivision by a facility supervised by the  
4 office shall be submitted to and approved by such office in accordance  
5 with time limits established by regulations of such office. Implementa-  
6 tion of the plan shall be monitored by such office. In reviewing the  
7 continued qualifications of a residential facility or program for an  
8 operating certificate, the office shall evaluate such facility's compli-  
9 ance with plans of prevention and remediation developed and implemented  
10 pursuant to this subdivision.

11 § 10. Section 31.30 of the mental hygiene law, as added by chapter 24  
12 of the laws of 2007, is amended to read as follows:

13 § 31.30 [Child abuse and maltreatment in residential care] Abuse,  
14 neglect, and significant incidents involving vulnerable  
15 persons.

16 (a) The commissioner in consultation with the executive director of  
17 the justice center for the protection of people with special needs,  
18 shall promulgate regulations establishing standards for the protection  
19 of [children in residential] service recipients in the care [and  
20 maltreatment] of facilities and provider agencies operated, licensed or  
21 certified by the office from reportable incidents pursuant to article  
22 eleven of the social services law, including procedures for:

23 1. [reviewing and evaluating the backgrounds of and information  
24 supplied by any person applying to be an employee, a volunteer or  
25 consultant,] consistent with appropriate collective bargaining agree-  
26 ments and applicable provisions of the civil service law[. Such review  
27 and evaluation shall include, but not be limited to, the following  
28 requirements: that the applicant set forth his or her employment histo-

1 ry, provide personal and employment references and relevant experiential  
2 and educational information and, sign a sworn statement whether, to the  
3 best of his or her knowledge, he or she has ever been convicted of a  
4 crime in this state or any other jurisdiction], assisting the justice  
5 center for the protection of people with special needs with its review  
6 and evaluation of criminal background checks of prospective employees,  
7 as set forth in subdivision five of section five hundred fifty-three of  
8 the executive law;

9 2. establishing minimal experiential and educational qualifications  
10 for employees that are consistent with appropriate collective bargaining  
11 agreements and applicable provisions of the civil service law;

12 3. assuring adequate and appropriate supervision of employees, volun-  
13 teers and consultants;

14 4. demonstrating that appropriate action is taken to assure the safety  
15 of the [child who is reported to the state central register] service  
16 recipient as well as other [children] persons in care, immediately upon  
17 notification that a [report of child abuse or maltreatment] reportable  
18 incident has been made [with respect to a child's custodian in a resi-  
19 dential facility] in accordance with article eleven of the social  
20 services law;

21 4-a. consistent with applicable collective bargaining agreements  
22 assuring that an individual who has committed a category one offense, as  
23 defined in paragraph (a) of subdivision four of section four hundred  
24 ninety-three of the social services law, that is included on the vulner-  
25 able persons' central register is not hired or otherwise used in any  
26 position in which such individual would have regular and substantial  
27 contact with a service recipient in any program operated, licensed or  
28 certified by the office;

1 5. removing a [child] service recipient when it is determined that  
2 there is risk to such [child] person if he or she continues to remain in  
3 a [residential] facility; and

4 6. taking appropriate preventive and remedial actions, including legal  
5 action, consistent with appropriate collective bargaining agreements and  
6 applicable provisions of the civil service law. [Such] The commissioner  
7 shall adopt standards [shall also establish] as established by the  
8 justice center for the protection of people with special needs, that:

9 (i) administrators, employees, volunteers and consultants receive  
10 training in at least the following: [child] abuse prevention and iden-  
11 tification, safety and security procedures, the principles of child  
12 development, the characteristics of [children] persons in care and tech-  
13 niques of group [and child] management including crisis intervention,  
14 the laws, rules and regulations and procedures governing the protection  
15 of [children] vulnerable persons from [abuse and maltreatment,] report-  
16 able incidents and other appropriate topics; provided, however, that  
17 [either] the office may exempt administrators and consultants from such  
18 requirements upon demonstration of substantially equivalent knowledge or  
19 experience; and

20 (ii) [children] service recipients receive instruction consistent with  
21 their age, needs and circumstances as well as the needs and circum-  
22 stances within the facility or program, in techniques and procedures  
23 that will enable [such children] them to advocate and protect themselves  
24 from [abuse and maltreatment] reportable incidents.

25 The commissioner, in consultation with the executive director of the  
26 justice center for the protection of people with special needs, shall  
27 take all reasonable and necessary actions to assure that employees,  
28 volunteers or consultants in [residential care] facilities operated or