

1 following: child abuse prevention and identification, safety and securi-  
2 ty procedures, the principles of child development, the characteristics  
3 of children in care and techniques of group and child management includ-  
4 ing crisis intervention, the laws, regulations and procedures governing  
5 the protection of children from [abuse and maltreatment] reportable  
6 incidents, and other appropriate topics, provided however, that the  
7 department may exempt administrators and consultants from such require-  
8 ments upon demonstration of substantially equivalent knowledge or expe-  
9 rience; and

10 (B) subject to the amounts appropriated therefor, children receive  
11 instruction, consistent with their age, needs and circumstances as well  
12 as the needs and circumstances of the facility, in techniques and proce-  
13 dures which will enable such children to protect themselves from [abuse  
14 and maltreatment] reportable incidents.

15 The department shall take all reasonable and necessary actions to  
16 assure that employees, volunteers and consultants in residential facili-  
17 ties and programs are kept apprised on a current basis of all department  
18 policies and procedures relating to the protection of children from  
19 [abuse and maltreatment] reportable incidents and shall monitor and  
20 supervise the provision of training to such administrators, employees,  
21 volunteers, children and consultants. Regulations and standards devel-  
22 oped pursuant to this section shall, to the extent possible, be consist-  
23 ent with those promulgated by other state agencies for such purposes;

24 (b) [Cooperate with the state department of social services to protect  
25 the health and safety of pupils at the school pursuant to title six of  
26 article six of the social services law. Such cooperation shall include:  
27 the making of reports of alleged child abuse or maltreatment; providing  
28 necessary assistance to the state department of social services in the

1 department's investigation thereof and considering the recommendations  
2 of the state department of social services for preventive and remedial  
3 action including legal action and provide or direct the residential  
4 facility to provide such written reports to the department of social  
5 services as to the implementation of plans of prevention and remediation  
6 approved by the department; and

7 (c)] Provide for the development and implementation of a plan of  
8 prevention and remediation with respect to [an indicated] a substanti-  
9 ated report of [child abuse or maltreatment] a reportable incident. Such  
10 action shall include: (i) within ten days of receipt of [an indicated]  
11 such a report [of child abuse or maltreatment] of a reportable incident,  
12 development and implementation of a plan of prevention and remediation  
13 to be taken with respect to a custodian or the residential facility in  
14 order to assure the continued health and safety of children and to  
15 provide for the prevention of future acts [of abuse or maltreatment]  
16 constituting reportable incidents; and (ii) development and implementa-  
17 tion of a plan of prevention and remediation, in the event an investi-  
18 gation of a report of an alleged [child abuse or maltreatment] report-  
19 able incident determines that some credible evidence of [abuse or  
20 maltreatment] such reportable incident exists and such [abuse or  
21 maltreatment] reportable incident may be attributed in whole or in part  
22 to noncompliance by the residential facility or program with provisions  
23 of this chapter or regulations of the department applicable to the oper-  
24 ation of such residential facility or program. Any plan of prevention  
25 and remediation required to be developed pursuant to [paragraph (ii) of]  
26 this subdivision by a facility supervised by the department shall be  
27 submitted to and approved by the department in accordance with time  
28 limits established by regulations of the department. Implementation of

1 the plan shall be monitored by the department. In reviewing the contin-  
2 ued qualifications of a residential facility or program for an operating  
3 certificate, the department shall evaluate such facility's compliance  
4 with plans of prevention and remediation developed and implemented  
5 pursuant to this subdivision.

6 § 4. Subdivisions 11, 12, 13, 14, 15, 16, 17, 18, 19 and 19-a of  
7 section 4403 of the education law, subdivisions 11, 12 and 13 as amended  
8 by chapter 32 of the laws of 1992, subdivisions 14, 15 and 16 as added  
9 by chapter 53 of the laws of 1986, subdivision 17 as amended by chapter  
10 53 of the laws of 1987, subdivision 18 as added by chapter 428 of the  
11 laws of 1992, subdivision 19 as added by chapter 600 of the laws of 1994  
12 and subdivision 19-a as amended by chapter 378 of the laws of 2007, are  
13 amended to read as follows:

14 11. To promulgate regulations concerning standards for the protection  
15 of children in residential care from [abuse and maltreatment] reportable  
16 incidents in accordance with this section and article eleven of the  
17 social services law, including procedures for:

18 (a) consistent with appropriate collective bargaining agreements and  
19 applicable provisions of the civil service law, the review and evalu-  
20 ation of the backgrounds of and the information supplied by any person  
21 applying to be an employee, a volunteer or consultant, which shall  
22 include but not be limited to the following requirements: that the  
23 applicant set forth his or her employment history, provide personal and  
24 employment references, and relevant experiential and educational quali-  
25 fications and, sign a sworn statement indicating whether the applicant,  
26 to the best of his or her knowledge has ever been convicted of a crime  
27 in this state or any other jurisdiction;

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

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

7 (d) demonstrating by a residential facility or program that appropri-  
8 ate action is taken to assure the safety of the child who is [reported]  
9 alleged to have been subjected to a reportable incident in a report to  
10 the [state] vulnerable persons' central register in accordance with  
11 section four hundred ninety-two of the social services law as well as  
12 other children in care, immediately upon notification that such a report  
13 of [child abuse or maltreatment] an allegation of a reportable incident  
14 has been made with respect to a child in such residential facility or  
15 program;

16 (e) removing a child when it is determined that there is risk to such  
17 child if he or she continues to remain within a residential facility or  
18 program; and

19 (f) appropriate preventive and remedial action to be taken including  
20 legal actions, consistent with appropriate collective bargaining agree-  
21 ments and applicable provisions of the civil service law.

22 Such standards shall also establish as a priority requirements that:

23 (A) subject to amounts appropriated therefor, administrators, employ-  
24 ees, volunteers and consultants receive training in at least the follow-  
25 ing: child abuse prevention and identification, safety and security  
26 procedures, the principles of child development, the characteristics of  
27 children in care, and techniques of group and child management including  
28 crisis intervention, the laws, regulations and procedures governing the

1 protection of children from [abuse and maltreatment] reportable inci-  
2 dents, and other appropriate topics, provided however, that the depart-  
3 ment may exempt administrators and consultants from such requirements  
4 upon demonstration of substantially equivalent knowledge or experience;  
5 and

6 (B) subject to the amounts appropriated therefor, children receive  
7 instruction, consistent with their age, needs and circumstances as well  
8 as the needs and circumstances within the program, in techniques and  
9 procedures which will enable such children to advocate for and protect  
10 themselves from [abuse and maltreatment] reportable incidents.

11 The department shall take all reasonable and necessary actions to  
12 assure that employees, volunteers and consultants in residential facili-  
13 ties and programs are kept apprised on a current basis of all department  
14 policies and procedures relating to the protection of children from  
15 [abuse and maltreatment] reportable incidents and shall monitor and  
16 supervise the provision of training to such administrators, employees,  
17 volunteers, children and consultants. Regulations and standards devel-  
18 oped pursuant to this subdivision shall, to the extent possible, be  
19 consistent with those promulgated by other state agencies for such  
20 purposes.

21 12. [To cooperate with the state department of social services and  
22 other departments, divisions and agencies of the state when a report is  
23 received pursuant to title six of article six of the social services law  
24 to protect the health and safety of children in residential placement.  
25 Such cooperation shall include: the making of reports of alleged child  
26 abuse or maltreatment; providing necessary assistance to the state  
27 department of social services in the department's investigation thereof  
28 and considering the recommendations of the state department of social

1 services for preventive and remedial action, including legal action and  
2 providing written reports thereon to the department of social services  
3 as to the implementation of plans of prevention and remediation approved  
4 by the department.

5 13.] To provide for the development and implementation of a plan of  
6 prevention and remediation with respect to [an indicated] a substanti-  
7 ated report of [child abuse or maltreatment] a reportable incident.  
8 Such action shall include: (a) within ten days of receipt of [an indi-  
9 cated] a substantiated report of [child abuse or maltreatment] a report-  
10 able incident, development and implementation of a plan of prevention  
11 and remediation to be taken with respect to a custodian or the residen-  
12 tial facility in order to assure the continued health and safety of  
13 children and to provide for the prevention of future acts [of abuse or  
14 maltreatment] constituting reportable incidents; and (b) development and  
15 implementation of a plan of prevention and remediation, in the event an  
16 investigation of a report of an alleged [child abuse or maltreatment]  
17 reportable incident determines that some credible evidence of [abuse or  
18 maltreatment] such reportable incident exists and such [abuse or  
19 maltreatment] reportable incident may be attributed in whole or in part  
20 to noncompliance by the residential facility or program with provisions  
21 of this chapter or regulations of the department applicable to the oper-  
22 ation of such residential facility or program. Any plan of prevention  
23 and remediation required to be developed pursuant to [paragraph (b) of]  
24 this subdivision by a facility supervised by the department shall be  
25 submitted to and approved by the department in accordance with time  
26 limits established by regulations of the department. Implementation of  
27 the plan shall be monitored by the department. In reviewing the contin-  
28 ued qualifications of a residential facility or program for an operating

1 certificate, the department shall evaluate such facility's compliance  
2 with plans of prevention and remediation developed and implemented  
3 pursuant to this subdivision.

4 [14] 13. To provide technical assistance to school districts for  
5 appropriate evaluation and assessment.

6 [15] 14. To provide technical assistance to school districts to  
7 assist in the adaptation of curriculum for the instruction of children  
8 with handicapping conditions.

9 [16] 15. To provide technical assistance to school districts to  
10 assist in developing criteria for placement in special education and  
11 criteria for reviewing the ability of a pupil to participate in regular  
12 education.

13 [17] 16. Commencing with the nineteen hundred eighty-seven--eighty-  
14 eight school year, to provide for instruction during the months of July  
15 and August of students with handicapping conditions who have received  
16 state appointments pursuant to article eighty-five, eighty-seven or  
17 eighty-eight of this chapter and whose handicapping conditions, in the  
18 judgment of the commissioner, are severe enough to exhibit the need for  
19 a structured learning environment of twelve months duration to maintain  
20 developmental levels, by making such appointments for twelve months;  
21 provided that the initial term of appointment of a student with a handi-  
22 capping condition who is the minimum age eligible for such a state  
23 appointment shall not commence during the months of July or August.

24 [18] 17. To approve the provision of early intervention services, as  
25 defined in section twenty-five hundred forty-one of the public health  
26 law, by agencies which are approved providers of special services or  
27 programs pursuant to section forty-four hundred ten of this article  
28 based on such agency's compliance with the coordinated standards and

1 procedures for early intervention services established pursuant to title  
2 II-A of article twenty-five of the public health law and, where applica-  
3 ble, teacher certification requirements.

4 [19] 18. To establish guidelines for determining when a child is at  
5 risk of a future placement in a residential school, and for the  
6 provision by committees on special education of information to parents  
7 and other persons in parental relationship concerning the availability  
8 of community support services to meet the needs of the family. The  
9 guidelines shall be developed by the department after consultation with  
10 the office of mental health, the office [of mental retardation and] for  
11 people with developmental disabilities, the office of alcoholism and  
12 substance abuse services, the department of health, the department of  
13 social services and the division for youth.

14 [19-a] 19. To adopt regulations prescribing the state complaint  
15 procedures pursuant to sections 300.151 through 300.153 of title thir-  
16 ty-four of the code of federal regulations, where an individual or  
17 organization files a written complaint alleging that a public agency has  
18 violated part B of the individuals with disabilities education act. Such  
19 regulations shall include, but not be limited to, remedies for denial of  
20 appropriate services, including, as appropriate, the awarding of mone-  
21 tary reimbursement, compensatory services or other corrective action  
22 appropriate to the needs of the child.

23 § 5. Subdivision 2 of section 3650 of the education law, as added by  
24 chapter 181 of the laws of 2007, is amended to read as follows:

25 2. The commissioner, in consultation with the [state commission on  
26 quality care and advocacy for persons with disabilities] justice center  
27 for the protection of people with special needs, shall promulgate rules  
28 and regulations requiring every school bus driver operating a school bus

1 which has or will have one or more students with a disability as passen-  
2 gers to receive training and instruction relating to the understanding  
3 of, and attention to, the special needs of such students. Such training  
4 and instruction may be included with the training and instruction  
5 required pursuant to paragraph a of subdivision one of this section and  
6 shall be provided at least once per year or more frequently as deter-  
7 mined by the commissioner in consultation with the state comprehensive  
8 school bus driver safety training council. For the purposes of this  
9 subdivision, the term "student with a disability" shall have the same  
10 meaning as such term is defined in subdivision one of section forty-four  
11 hundred one of this chapter. Any person employed as a school bus driver  
12 on January first, two thousand nine who is subject to the provisions of  
13 this subdivision shall comply with the requirements of this subdivision  
14 by July first, two thousand nine. Any school bus driver hired after  
15 January first, two thousand nine who is subject to the requirements of  
16 this subdivision shall complete such training and instruction prior to  
17 assuming his or her duties.

18 § 6. Subdivision 4 of section 1229-d of the vehicle and traffic law,  
19 as added by chapter 181 of the laws of 2007, is amended to read as  
20 follows:

21 (4) The commissioner of education, in consultation with the [state  
22 commission on quality care and advocacy for persons with disabilities]  
23 justice center for the protection of people with special needs, shall  
24 promulgate rules and regulations requiring that every school bus attend-  
25 ant serving a student or students with a disability receive training and  
26 instruction relating to the understanding of and attention to the  
27 special needs of such students. Such training and instruction may be  
28 included with the training and instruction required pursuant to subdivi-

1 sion three of this section and shall be provided at least once per year  
2 or more frequently as determined by the commissioner of education in  
3 consultation with the state comprehensive school bus driver safety  
4 training council. For the purposes of this subdivision, the term  
5 "student with a disability" shall have the same meaning as such term is  
6 defined in subdivision one of section forty-four hundred one of the  
7 education law. Any person employed as a school bus attendant serving a  
8 student or students with a disability on January first, two thousand  
9 nine shall comply with the requirements of this subdivision by July  
10 first, two thousand nine. Any person hired after January first, two  
11 thousand nine shall complete such training, instruction and testing  
12 prior to assuming his or her duties as a school bus attendant serving a  
13 student or students with a disability.

14 § 7. This act shall take effect June 30, 2013; provided, however, that  
15 the amendments to subdivision 18 of section 4403 of the education law  
16 made by section four of this act shall not affect the repeal of such  
17 subdivision and shall be deemed repealed therewith; provided further  
18 that the amendments to subdivision 19-a of section 4403 of the education  
19 law made by section four of this act shall not affect the expiration of  
20 such subdivision and shall be deemed to expire therewith.

21

## PART F

22 Section 1. Subdivision (a) of section 16.33 of the mental hygiene law,  
23 as amended by chapter 575 of the laws of 2004, is amended to read as  
24 follows:

25 (a) Every provider of services who contracts with or is approved or  
26 otherwise authorized by the office to provide services, except (1) a

1 department facility, (2) a hospital as defined in article twenty-eight  
2 of the public health law, or (3) a licensed professional under title  
3 eight of the education law who does not have employees or volunteers who  
4 will have regular and substantial unsupervised or unrestricted physical  
5 contact with the clients of such provider, and every applicant to be  
6 such a provider of services except (i) a department facility, (ii) a  
7 hospital as defined in article twenty-eight of the public health law, or  
8 (iii) a licensed professional under title eight of the education law and  
9 who does not have employees or volunteers who will have regular and  
10 substantial unsupervised or unrestricted physical contact with the  
11 clients of such provider, shall request that the [office] justice center  
12 for the protection of people with special needs check, and upon such  
13 request [the office] such justice center shall request and shall be  
14 authorized to receive from the division of criminal justice services  
15 criminal history information, as such phrase is defined in paragraph (c)  
16 of subdivision one of section eight hundred forty-five-b of the execu-  
17 tive law, concerning each (A) prospective operator, employee or volun-  
18 teer of such provider who will have regular and substantial unsupervised  
19 or unrestricted physical contact with the clients of such provider, or  
20 (B) other person over the age of eighteen who is to reside in a family  
21 care home, except any person receiving family care services, who will  
22 have regular and substantial unsupervised or unrestricted physical  
23 contact with the clients of such provider. For purposes of this section,  
24 "operator" shall include any natural person with an ownership interest  
25 in the provider of services.

26 § 2. The mental hygiene law is amended by adding a new section 19.20  
27 to read as follows:

1 § 19.20 Review of criminal history information concerning certain  
2 prospective employees and volunteers.

3 Every provider of services who contracts with or is approved or other-  
4 wise authorized by the office to provide services, except (1) a depart-  
5 ment facility, (2) a hospital as defined in article twenty-eight of the  
6 public health law, or (3) a licensed professional under title eight of  
7 the education law who does not have employees or volunteers who will  
8 have regular and substantial unsupervised or unrestricted physical  
9 contact with the clients of such provider, shall request that the office  
10 request and receive from the division of criminal justice services crim-  
11 inal history information, as such phrase is defined in paragraph (c) of  
12 subdivision one of section eight hundred forty-five-b of the executive  
13 law, concerning each prospective employee or volunteer of such provider  
14 who will have regular and substantial unsupervised or unrestricted phys-  
15 ical contact with the clients of such provider.

16 (a) Prior to requesting the office to obtain a criminal history infor-  
17 mation concerning any prospective employee or volunteer, a provider  
18 shall:

19 (1) inform the prospective employee or volunteer in writing that the  
20 provider is required to request his or her criminal history information  
21 and review such information pursuant to this section; and

22 (2) obtain the signed informed consent of the prospective employee or  
23 volunteer on a form supplied by the division of criminal justice  
24 services which indicates that such person has:

25 (i) been informed of the right and procedures necessary to obtain,  
26 review and seek correction of his or her criminal history information;

27 (ii) been informed of the reason for the request for his or her crimi-  
28 nal history information;

1 (iii) consented to such request; and

2 (iv) supplied on the form a current mailing or home address.

3 Upon receiving such written consent, the provider shall obtain two sets  
4 of fingerprints of such prospective employee or volunteer and provide  
5 such fingerprints to the office pursuant to regulations established by  
6 the division of criminal justice services.

7 (b) A provider requesting criminal history information pursuant to  
8 this section shall also complete a form developed for such purpose by  
9 the division of criminal justice services. Such form shall include a  
10 sworn statement of the person designated by such provider to request,  
11 receive and review criminal history information pursuant to paragraph  
12 one of subdivision (g) of this section certifying that:

13 (1) such criminal history information will be used by the provider  
14 solely for purposes authorized by this section;

15 (2) the provider and its staff are aware of and will abide by the  
16 confidentiality requirements and all other provisions of this section;  
17 and

18 (3) the persons designated by the provider to receive criminal history  
19 information pursuant to paragraph one of subdivision (g) of this section  
20 shall upon receipt immediately mark such criminal history information  
21 "confidential," and shall at all times maintain such criminal history  
22 information in a secure place.

23 (c) Upon receipt of the fingerprints and sworn statement required by  
24 subdivisions (a) and (b) of this section, the office shall promptly  
25 submit the fingerprints to the division of criminal justice services.  
26 The division of criminal justice services shall promptly forward a set  
27 of the applicant's fingerprints to the federal bureau of investigation  
28 for the purpose of a nationwide criminal history record check to deter-

1 mine whether such applicant has been convicted of a criminal offense in  
2 any state other than New York or in a federal jurisdiction.

3 (d) The division of criminal justice services shall promptly provide  
4 the requested criminal history information, if any, to the office. Crim-  
5 inal history information provided by the division of criminal justice  
6 services pursuant to this section shall be furnished only by mail or  
7 other method of secure and confidential delivery, addressed to the  
8 office. Such information and the envelope in which it is enclosed, if  
9 any, shall be prominently marked "confidential," and shall at all times  
10 be maintained by the office in a secure place.

11 (e) After receiving any criminal history information provided by the  
12 division of criminal justice services concerning a prospective employee  
13 or volunteer, the office shall review the information to determine  
14 whether such prospective employee or volunteer has been convicted of a  
15 criminal offense in any state other than New York or in a federal juris-  
16 dition. If the record does not include such information, the office  
17 shall forward a summary of the New York criminal history information to  
18 the provider who shall proceed pursuant to subdivision (g) of this  
19 section. For the purposes of this section, "summary of the criminal  
20 history information" shall mean a comprehensive synopsis of criminal  
21 history information which shall include an individualized statement for  
22 each pending charge and each criminal conviction which has not been  
23 vacated, reversed or sealed.

24 (f) Where the criminal history information received by the office  
25 includes a criminal offense in any state other than New York or in a  
26 federal jurisdiction, the office shall consider whether to approve or  
27 disapprove the prospective employee based on the criminal history infor-  
28 mation in accordance with the provisions of article twenty-three-A of

1 the correction law and subdivisions fifteen and sixteen of section two  
2 hundred ninety-six of the executive law and notify the provider of its  
3 determination, provided, however, that a reasonable time before making a  
4 determination pursuant to this subdivision, the office shall provide the  
5 prospective employee or volunteer with a copy of the criminal history  
6 information and a copy of article twenty-three-A of the correction law,  
7 and inform such prospective employee or volunteer of his or her right to  
8 seek correction of any incorrect information contained in such criminal  
9 history information pursuant to the regulations and procedures estab-  
10 lished by the division of criminal justice services.

11 (g) Where the provider receives a summary of the criminal history  
12 information from the office pursuant to subdivision (e) of this section,  
13 the provider shall consider the information in accordance with the  
14 provisions of article twenty-three-A of the correction law and subdivi-  
15 sions fifteen and sixteen of section two hundred ninety-six of the exec-  
16 utive law.

17 (1) A provider shall designate one or two persons in its employ who  
18 shall be authorized to request, receive and review the summary of the  
19 criminal history information, and only such persons and the prospective  
20 employee or volunteer to which the criminal history information relates  
21 shall have access to such information; provided, however, that the  
22 summary of the criminal history information may be disclosed to other  
23 personnel authorized by the provider who are empowered to make decisions  
24 concerning prospective employees or volunteers and provided further that  
25 such other personnel shall also be subject to the confidentiality  
26 requirements and all other provisions of this section. A provider shall  
27 notify the office of each person authorized to have access to criminal  
28 history information pursuant to this section.

1 (2) Upon receipt of the summary of criminal history information pursu-  
2 ant to this section, a provider shall provide the prospective employee  
3 or volunteer with a copy of such summary of the criminal history infor-  
4 mation and a copy of article twenty-three-A of the correction law, and  
5 inform such prospective employee or volunteer of his or her right to  
6 seek correction of any incorrect information contained in such criminal  
7 history information pursuant to the regulations and procedures estab-  
8 lished by the division of criminal justice services.

9 (h) A prospective employee or volunteer may withdraw from the applica-  
10 tion process, without prejudice, at any time regardless of whether he or  
11 she, the office or the provider has reviewed his or her criminal history  
12 information. Where a prospective employee or volunteer withdraws from  
13 the application process, any fingerprints and criminal history informa-  
14 tion concerning such prospective employee or volunteer received by the  
15 office or the provider shall, within ninety days, be returned to such  
16 prospective employee or volunteer.

17 (i) The commissioner of the division of criminal justice services  
18 shall promulgate all rules and regulations necessary to implement the  
19 provisions of this section, which shall include convenient procedures  
20 for prospective employees and volunteers to promptly verify the accuracy  
21 of their criminal history information and, to the extent authorized by  
22 law, to have access to relevant documents related thereto.

23 (j) Any person who willfully permits the release of any confidential  
24 criminal history information contained in the report to persons not  
25 permitted by this section to receive such information shall be guilty of  
26 a misdemeanor.

27 § 3. The mental hygiene law is amended by adding a new section 19.20-a  
28 to read as follows:

1 § 19.20-a Review of criminal history information concerning prospective  
2 providers, operators and individuals seeking to be creden-  
3 tialed by the office.

4 The office shall be authorized to receive from the division of crimi-  
5 nal justice services criminal history information, as such phrase is  
6 defined in paragraph (c) of subdivision one of section eight hundred  
7 forty-five-b of the executive law, concerning each applicant to be a  
8 provider of services or operator of such provider except: (1) a depart-  
9 ment facility; (2) a hospital as defined in article twenty-eight of the  
10 public health law; or (3) a licensed professional under title eight of  
11 the education law who does not have employees or volunteers who will  
12 have regular and substantial unsupervised or unrestricted physical  
13 contact with the clients of such provider, and for every individual  
14 seeking to be credentialed by the office to provide substance use disor-  
15 der services pursuant to section 19.07 of this article. For purposes of  
16 this section, "operator" shall include any natural person with an owner-  
17 ship interest in the provider of services.

18 (a) Prior to requesting criminal history information concerning any  
19 prospective provider, operator or individual seeking to be credentialed,  
20 the office shall:

21 (1) inform the prospective provider, operator or individual seeking to  
22 be credentialed in writing that the office is required to request his or  
23 her criminal history information from the division of criminal justice  
24 services and review such information pursuant to this section; and

25 (2) obtain the signed informed consent of the prospective provider,  
26 operator or individual seeking to be credentialed on a form supplied by  
27 the division of criminal justice services which indicates that such  
28 person has:

1 (i) been informed of the right and procedures necessary to obtain,  
2 review and seek correction of his or her criminal history information;

3 (ii) been informed of the reason for the request for his or her crimi-  
4 nal history information;

5 (iii) consented to such request; and

6 (iv) supplied on the form a current mailing or home address.

7 Upon receiving such written consent, the office may obtain two sets of  
8 fingerprints of such prospective provider, operator or individual seek-  
9 ing to be credentialed pursuant to regulations established by the divi-  
10 sion of criminal justice services.

11 (b) The office shall designate one or two persons in its employ who  
12 shall be authorized to request, receive and review criminal history  
13 information, and only such persons and the prospective provider, opera-  
14 tor or individual seeking to be credentialed to which the criminal  
15 history information relates shall have access to such information;  
16 provided, however, that criminal history information may be disclosed to  
17 other personnel authorized by the office who are empowered to make deci-  
18 sions concerning prospective providers, operators or individuals seeking  
19 to be credentialed and provided further that such other personnel shall  
20 also be subject to the confidentiality requirements and all other  
21 provisions of this section. The office shall notify the division of  
22 criminal justice services of each person authorized to have access to  
23 criminal history information pursuant to this section.

24 (c) The office shall request criminal history information pursuant to  
25 this section by completing a form developed for such purpose by the  
26 division of criminal justice services. Such form shall include a sworn  
27 statement of the persons designated by the office to request, receive

1 and review criminal history information pursuant to subdivision (b) of  
2 this section certifying that:

3 (1) such criminal history information will be used by the office sole-  
4 ly for purposes authorized by this section;

5 (2) the office and its staff are aware of and will abide by the confi-  
6 dentiality requirements and all other provisions of this section; and

7 (3) the person designated by the office to receive criminal history  
8 information pursuant to subdivision (b) of this section shall upon  
9 receipt immediately mark such criminal history information "confiden-  
10 tial," and shall at all times maintain such criminal history information  
11 in a secure place.

12 (d) Upon receipt of the fingerprints and sworn statement required by  
13 subdivisions (a) and (c) of this section, the division of criminal  
14 justice services shall promptly forward a set of the individual's fing-  
15 erprints to the federal bureau of investigation for the purpose of a  
16 nationwide criminal history record check to determine whether such indi-  
17 vidual has been convicted of a criminal offense in any state other than  
18 New York or in a federal jurisdiction.

19 (e) The division of criminal justice services shall promptly provide  
20 the requested criminal history information to the office. Criminal  
21 history information provided by the division of criminal justice  
22 services pursuant to this section shall be furnished only by mail or  
23 other method of secure and confidential delivery, addressed to the  
24 office. Such information and the envelope in which it is enclosed, if  
25 any, shall be prominently marked "confidential," and shall at all times  
26 be maintained by the office in a secure place.

27 (f) Upon receipt of criminal history information pursuant to this  
28 section and before making a determination, the office shall provide the

1 prospective provider, operator or individual seeking to be credentialed  
2 with a copy of such criminal history information and a copy of article  
3 twenty-three-A of the correction law and inform such prospective provid-  
4 er, operator or individual seeking to be credentialed of his or her  
5 right to seek correction of any incorrect information contained in such  
6 criminal history information pursuant to the regulations and procedures  
7 established by the division of criminal justice services.

8 (g) Criminal history information obtained pursuant to this section  
9 shall be considered by the office in accordance with the provisions of  
10 article twenty-three-A of the correction law and subdivisions fifteen  
11 and sixteen of section two hundred ninety-six of the executive law.

12 (h) A prospective provider, operator or individual seeking to be  
13 credentialed may withdraw from the application process, without preju-  
14 dice, at any time regardless of whether or not he or she or the office  
15 has reviewed his or her criminal history information. Where a prospec-  
16 tive provider, operator or individual seeking to be credentialed with-  
17 draws from the application process, any fingerprints and criminal histo-  
18 ry information concerning such prospective provider, operator or  
19 individual seeking to be credentialed received by the office shall,  
20 within ninety days, be returned to such prospective provider, operator  
21 or individual seeking to be credentialed by the person designated for  
22 receipt of criminal history information pursuant to subdivision (b) of  
23 this section.

24 (i) The commissioner of the division of criminal justice services  
25 shall promulgate all rules and regulations necessary to implement the  
26 provisions of this section, which shall include convenient procedures  
27 for prospective providers, operators or individuals seeking to be  
28 credentialed to promptly verify the accuracy of their criminal history

1 information and, to the extent authorized by law, to have access to  
2 relevant documents related thereto.

3 (j) Any person who willfully permits the release of any confidential  
4 criminal history information contained in the report to persons not  
5 permitted by this section to receive such information shall be guilty of  
6 a misdemeanor.

7 § 4. Subdivision 1 of section 378-a of the social services law, as  
8 amended by chapter 7 of the laws of 1999, is amended to read as follows:

9 1. [Subject to rules and regulations of the division of criminal  
10 justice services, an] Every authorized agency which operates a residen-  
11 tial program for children and the office of children and family services  
12 shall [have access to conviction records maintained by state law  
13 enforcement agencies pertaining to persons who have applied for and are  
14 under active consideration for employment by such authorized agency in  
15 positions where such persons will be engaged directly in the care and  
16 supervision of children] request that the justice center for the  
17 protection of people with special needs check, and upon such request,  
18 such justice center shall request and shall be authorized to receive  
19 from the division of criminal justice services criminal history informa-  
20 tion, as such phrase is defined in paragraph (c) of subdivision one of  
21 section eight hundred forty-five-b of the executive law concerning each  
22 prospective operator, employee or volunteer of such residential program  
23 who will have regular and substantial unsupervised or unrestricted phys-  
24 ical contact with children in such program. For the purposes of this  
25 section, "operator" shall include any natural person with an ownership  
26 interest in the authorized agency. Access to and the use of such infor-  
27 mation shall be governed by the provisions of section eight hundred  
28 forty-five-b of the executive law.

1 § 5. Subdivision 2 and paragraph (a) of subdivision 5 of section 845-b  
2 of the executive law, subdivision 2 as amended by chapter 769 of the  
3 laws of 2005 and paragraph (a) of subdivision 5 as amended by chapter  
4 331 of the laws of 2006, are amended to read as follows:

5 2. Where a provider is authorized or required to request a check of  
6 criminal history information by an authorized agency pursuant to section  
7 16.33 or 31.35 of the mental hygiene law [or], article twenty-eight-E of  
8 the public health law or subdivision one of section three hundred seven-  
9 ty-eight-a of the social services law, such provider shall proceed  
10 pursuant to the provisions of this section and in a manner consistent  
11 with the provisions of article twenty-three-A of the correction law,  
12 subdivisions fifteen and sixteen of section two hundred ninety-six of  
13 this chapter and all other applicable laws.

14 (a) Where the criminal history information concerning a subject indi-  
15 vidual reveals a felony conviction at any time for a sex offense, a  
16 felony conviction within the past ten years involving violence, or a  
17 conviction [for endangering the welfare of an incompetent or physically  
18 disabled person] pursuant to section 260.00, 260.25, 260.32 or 260.34 of  
19 the penal law, and in the case of criminal history information obtained  
20 pursuant to section twenty-eight hundred ninety-nine-a of the public  
21 health law, where the criminal history information concerning a subject  
22 individual reveals a conviction at any time of any class A felony; a  
23 conviction within the past ten years of any class B or C felony, any  
24 class D or E felony defined in article one hundred twenty, one hundred  
25 thirty, one hundred fifty-five, one hundred sixty, one hundred seventy-  
26 eight or two hundred twenty of the penal law; or any crime defined in  
27 [sections] section 260.32 or 260.34 of the penal law; or any comparable  
28 offense in any other jurisdiction, the authorized agency shall deny or

1 disapprove the application for or renewal of the operating certificate,  
2 contract, approval, employment of the subject individual or other  
3 authorization to provide services, or direct the provider to deny  
4 employment, as applicable, unless the authorized agency determines, in  
5 its discretion, that approval of the application or renewal or employ-  
6 ment will not in any way jeopardize the health, safety or welfare of the  
7 beneficiaries of such services.

8 § 6. This act shall take effect on June 30, 2013; provided, however,  
9 that effective immediately, the addition, amendment or repeal of any  
10 rule or regulation necessary for the implementation of this act on its  
11 effective date are authorized to be made and completed on or before such  
12 date.

13

## PART G

14 Section 1. The opening paragraph and subdivision 4 of section 240.50  
15 of the penal law, the opening paragraph as amended by chapter 276 of the  
16 laws of 1973 and subdivision 4 as amended by chapter 400 of the laws of  
17 2008, are amended to read as follows:

18 A person is guilty of falsely reporting an incident in the third  
19 degree when, knowing the information reported, conveyed or circulated to  
20 be false or baseless, he or she:

21 4. Reports, by word or action, an alleged occurrence or condition of  
22 child abuse or maltreatment or abuse or neglect of a vulnerable person  
23 which did not in fact occur or exist to:

24 (a) the statewide central register of child abuse and maltreatment, as  
25 defined in title six of article six of the social services law or the

1 vulnerable persons' central register as defined in article eleven of  
2 such law, or

3 (b) any person required to report cases of suspected child abuse or  
4 maltreatment pursuant to subdivision one of section four hundred thir-  
5 teen of the social services law or to report cases of suspected abuse or  
6 neglect of a vulnerable person pursuant to section four hundred ninety-  
7 one of such law, knowing that the person is required to report such  
8 cases, and with the intent that such an alleged occurrence be reported  
9 to the statewide central register or vulnerable persons' central regis-  
10 ter.

11 § 2. Paragraph (h) of subdivision 3 of section 130.05 of the penal  
12 law, as amended by chapter 264 of the laws of 2003, is amended and a new  
13 paragraph (i) is added to read as follows:

14 (h) a client or patient and the actor is a health care provider or  
15 mental health care provider charged with rape in the third degree as  
16 defined in section 130.25, criminal sexual act in the third degree as  
17 defined in section 130.40, aggravated sexual abuse in the fourth degree  
18 as defined in section 130.65-a, or sexual abuse in the third degree as  
19 defined in section 130.55, and the act of sexual conduct occurs during a  
20 treatment session, consultation, interview, or examination[.]; or

21 (i) a resident or inpatient of a residential facility operated,  
22 licensed or certified by (i) the office of mental health; (ii) the  
23 office for people with developmental disabilities; or (iii) the office  
24 of alcoholism and substance abuse services, and the actor is an employee  
25 of the facility not married to such resident or inpatient. For purposes  
26 of this paragraph, "employee" means either: an employee of the agency  
27 operating the residential facility, who knows or reasonably should know  
28 that such person is a resident or inpatient of such facility and who

1 provides direct care services, case management services, medical or  
2 other clinical services, habilitative services or direct supervision of  
3 the residents in the facility in which the resident resides; or an offi-  
4 cer or other employee, consultant, contractor or volunteer of the resi-  
5 dential facility, who knows or reasonably should know that the person is  
6 a resident of such facility and who is in direct contact with residents  
7 or inpatients; provided, however, that the provisions of this paragraph  
8 shall only apply to a consultant, contractor or volunteer providing  
9 services pursuant to a contractual arrangement with the agency operating  
10 the residential facility or, in the case of a volunteer, a written  
11 agreement with such facility, provided that the person received written  
12 notice concerning the provisions of this paragraph; provided further,  
13 however, "employee" shall not include a person with a developmental  
14 disability who is or was receiving services and is also an employee of a  
15 service provider and who has sexual contact with another service recipi-  
16 ent who is a consenting adult who has consented to such contact.

17 § 3. The penal law is amended by adding a new section 260.24 to read  
18 as follows:

19 § 260.24 Endangering the welfare of an incompetent or physically disa-  
20 bled person in the second degree.

21 A person is guilty of endangering the welfare of an incompetent or  
22 physically disabled person in the second degree when he or she reckless-  
23 ly engages in conduct which is likely to be injurious to the physical,  
24 mental or moral welfare of a person who is unable to care for himself or  
25 herself because of physical disability, mental disease or defect.

26 Endangering the welfare of an incompetent or physically disabled  
27 person in the second degree is a class A misdemeanor.

1 § 4. Section 260.25 of the penal law, as amended by chapter 381 of the  
2 laws of 1998, is amended to read as follows:

3 § 260.25 Endangering the welfare of an incompetent or physically disa-  
4 bled person in the first degree.

5 A person is guilty of endangering the welfare of an incompetent or  
6 physically disabled person in the first degree when he knowingly acts in  
7 a manner likely to be injurious to the physical, mental or moral welfare  
8 of a person who is unable to care for himself or herself because of  
9 physical disability, mental disease or defect.

10 Endangering the welfare of an incompetent or physically disabled  
11 person in the first degree is a class [A misdemeanor] E felony.

12 § 5. This act shall take effect on the thirtieth day after it shall  
13 have become a law.

14 PART H

15 Section 1. Section 1, 2, 3 and 4 of chapter 606 of the laws of 2011,  
16 amending the mental hygiene law relating to creating an abuse prevention  
17 notification system, is amended to read as follows:

18 Section 1. The mental hygiene law is amended by adding a new section  
19 16.34 to read as follows:

20 § 16.34 Certain information regarding persons working with people with  
21 developmental disabilities.

22 (a) [If the office receives a request] Upon a request to the justice  
23 center for criminal history information for a prospective employee or  
24 volunteer pursuant to section eight hundred forty-five-b of the execu-  
25 tive law, the justice center shall notify the office, and if the office  
26 has [on file] available, after a reasonably diligent search a substanti-

1 ated report that the prospective employee or volunteer engaged in behav-  
2 ior that constituted abuse or serious neglect of a patient or consumer  
3 in a program licensed, operated, or certified by the office, the office  
4 shall [furnish] cause to be furnished a summary of such report or  
5 reports [together with any written response from the employee or volun-  
6 teer referred to in subdivision (c) of this section,] to the provider  
7 that requested the criminal history information from the justice center  
8 with respect to such prospective employee or volunteer[. The office  
9 shall provide such] ; provided, however, summary reports provided shall  
10 be limited to substantiated reports based on investigations that  
11 commenced prior to the effective date of this section. Such summary  
12 report [and response, if any,] shall be provided to the authorized  
13 person as defined in paragraph (b) of subdivision one of section eight  
14 hundred forty-five-b of the executive law and at that same time the  
15 office shall furnish such documents to the prospective employee or  
16 volunteer at the address for such person listed on the request.

17 (b) The summary report provided by the office to a provider of  
18 services pursuant to subdivision (a) of this section shall be received  
19 by the provider subject to the confidentiality provisions of subdivision  
20 seven of section eight hundred forty-five-b of the executive law.

21 (c) [When the office receives a substantiated report indicating that  
22 an employee or volunteer engaged in behavior that constitutes abuse or  
23 serious neglect, the office shall provide such employee or volunteer  
24 with written notification that he or she may obtain and review the  
25 summary report and submit a written statement in response to the summary  
26 report pursuant to regulations and procedures established by the office.  
27 If the office receives such written statement, the office shall transmit

1 such written statement to any provider together with the summary report  
2 provided pursuant to this section.

3 (d) The office shall establish an appeals process by which an employee  
4 or volunteer may challenge the determination that a report is substanti-  
5 ated, with a de novo standard of review. The appeals process shall not  
6 address or reverse any termination of employment that may have occurred  
7 due to the report, but shall address whether future potential employers  
8 receive a substantiated report when requesting criminal history informa-  
9 tion.

10 (e) The office shall establish a process for expunging a substantiated  
11 report from a person's record. A person may apply for expunging the  
12 substantiated report from his or her record after a period of five years  
13 from the filing of the report. The person shall affirmatively demon-  
14 strate to the commissioner clear and convincing evidence of rehabili-  
15 tation.

16 (f)] For the purposes of this section the following terms shall have  
17 the following meanings:

18 1. "abuse" shall mean physical abuse, sexual abuse, or psychological  
19 abuse; and

20 2. "serious neglect" shall mean [the] intentional acts or omissions  
21 that endanger the life or health of a person receiving services.

22 3. "substantiated report" shall mean that, after investigation, the  
23 commission on quality care and advocacy for persons with disabilities or  
24 the office has determined, in writing, that a report filed by such  
25 commission, by the office, or by a provider certified by the office,  
26 meets the criteria of abuse or serious neglect, as defined in this  
27 section, of a patient or consumer in a program licensed, operated, or  
28 certified by the office and that the report and credible information

1 submitted support the relevant allegations in the report or shall mean  
2 that the prospective employee or volunteer was either found guilty in a  
3 disciplinary proceeding, or there was a settlement agreement in which  
4 the prospective employee or volunteer admitted guilt.

5 [(g)] (d) Nothing in this section shall be interpreted to limit the  
6 office's ability to investigate abuse, neglect or maltreatment, whether  
7 intentional or unintentional, under current law or regulations.

8 § 2. Section 16.19 of the mental hygiene law is amended by adding a  
9 new subdivision (e) to read as follows:

10 (e) The commissioner shall promulgate rules and regulations requiring  
11 that when the office or a provider licensed, certified or operated by  
12 the office conducts an investigation regarding potential abuse,  
13 maltreatment or neglect of a person receiving services, any affected  
14 employee or volunteer shall be provided a copy of regulations and proce-  
15 dures governing such investigations and, in writing, notify the employee  
16 or volunteer subject of the investigation of the right and procedures  
17 for obtaining and responding to any report filed by the provider with  
18 the office in accordance with this section.

19 § 3. Paragraph 1 of subdivision (c) of section 45.07 of the mental  
20 hygiene law, as amended by chapter 192 of the laws of 2010, is amended  
21 to read as follows:

22 1. Establish procedures to assure effective investigation of  
23 complaints of patients and their parents or legal guardians and employ-  
24 ees of mental hygiene facilities affecting such patients including alle-  
25 gations of patient abuse or mistreatment, including all reports of abuse  
26 or neglect of children in residential care as defined in paragraphs (g),  
27 (h) and (i) of subdivision four of section four hundred twelve-a of the  
28 social services law, except such facilities or programs enumerated in

1 paragraph (j) of subdivision four of such section, and made pursuant to  
2 title six of article six of such law. Such procedures shall include but  
3 not be limited to receipt of written complaints, interviews of persons,  
4 patients and employees and on-site monitoring of conditions. In addi-  
5 tion, the commission shall establish procedures for the speedy and  
6 impartial review of patient abuse and mistreatment allegations called to  
7 its attention. No complaint, report or allegation shall be declined by  
8 the commission solely because the complaint, report or allegation is  
9 made anonymously. [When conducting an investigation pursuant to this  
10 section, the commission shall provide any affected employee or volunteer  
11 with a copy of this section and the regulations and procedures governing  
12 such investigations and, in writing, notify the employee or volunteer of  
13 the investigation and of the right and procedures for obtaining and  
14 responding to any report filed by the commission with the applicable  
15 office in accordance with this section.]

16 § 4. This act shall take effect [on the first of January next succeed-  
17 ing the date on which it shall have become a law] June 30, 2013;  
18 provided, however, that effective immediately the commissioner of devel-  
19 opmental disabilities and the commissioner of mental health may adopt,  
20 amend, suspend or repeal rules or regulations and take other actions  
21 prior to and in preparation for the timely implementation of this act on  
22 its effective date.

23 § 2. Chapter 6 of the laws of 2012, amending chapter 606 of the laws  
24 of 2011, amending the mental hygiene law relating to creating an abuse  
25 prevention notification system, is REPEALED.

26 § 3. This act shall take effect immediately.

27 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-  
28 sion, section or part of this act shall be adjudged by any court of

1 competent jurisdiction to be invalid, such judgment shall not affect,  
2 impair, or invalidate the remainder thereof, but shall be confined in  
3 its operation to the clause, sentence, paragraph, subdivision, section  
4 or part thereof directly involved in the controversy in which such judg-  
5 ment shall have been rendered. It is hereby declared to be the intent of  
6 the legislature that this act would have been enacted even if such  
7 invalid provisions had not been included herein.

8 § 4. This act shall take effect immediately provided, however, that  
9 the applicable effective date of Parts A through H of this act shall be  
10 as specifically set forth in the last section of such Parts.