

Enhancing Safeguards for Children in Residential Care: Chapter 323

Thursday November 6th, 2008

Handout Materials



**New York State
Office of
Children & Family
Services**

New York State
Office of Children and Family Services
and
Professional Development Program

Enhancing Safeguards for Children in Residential Care: Chapter 323

November 6, 2008

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SUMMARY OF CHANGES TO DEFINITIONS OF ABUSED CHILD AND NEGLECTED CHILD IN RESIDENTIAL CARE

Definitions

The definitions of abuse and neglect pertaining to children in residential care were moved from SSL § 412 to the new SSL § 412-a and revised substantially. The new definitions follow.

An "**abused child in residential care**" is one who is subjected to the following acts, regardless of whether the child is injured:

- 1) being thrown, shoved, kicked, pinched, punched, shaken, choked, smothered, bitten, burned, cut, or stricken
- 2) the display of a weapon or other object that could reasonably be perceived as being meant to inflict pain or injury, in a threatening manner;
- 3) the use of corporal punishment;
- 4) the withholding of nutrition or hydration as punishment; or
- 5) the unlawful administration of any controlled substance or alcoholic beverage.

*Note: For all of the above actions, the statute presumes that such actions create risk of injury and classifies these actions as abuse **unless the action is accidental or is done as an emergency physical intervention to protect the safety of the child or another person.***

Or, an abused child in residential care is one who has had inflicted upon the child a reasonably foreseeable injury that causes death or creates a **substantial risk** of:

- 1) death;
- 2) serious or protracted disfigurement;
- 3) serious or protracted impairment of the child's physical, mental or emotional condition; or
- 4) serious or protracted loss or impairment of the function of any organ.

Or, is subjected to a reasonably foreseeable and substantial risk of injury, by other than accidental means, which would be likely to cause:

- 1) death;
- 2) serious or protracted disfigurement;
- 3) serious or protracted impairment of the child's physical, mental or emotional condition; or
- 4) serious or protracted loss or impairment of the function of any organ.

Or, is the victim of sexual abuse (including sex offenses, use of a child for purposes of prostitution, use of a child for a sexual performance, and incest). However, the corroboration requirements of the Penal Law and the age requirements or age based elements of any such crime do not apply to this definition. *****No injury is needed for an allegation of sex abuse*****

A "**neglected child in residential care**" is a child who is *impaired* physically, mentally or emotionally or is at substantial risk of impairment because of failure to receive:

- 1) adequate food, clothing, shelter, medical, dental, optometric or surgical care consistent with the applicable rules and regulations of the licensing or operating State agency, provided that the facility has reasonable access to the provision of such services and that necessary consents for health care have been sought and obtained;
- 2) access to educational instruction in accordance with the compulsory education provisions in the Education Law;
- 3) proper supervision or guardianship, consistent with the applicable rules and regulations of the licensing or operating State agency.

A neglected child in residential care can also mean a child who *is inflicted* with a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, or is subjected to the risk of a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, where such injury or risk of injury was reasonably foreseeable.

A neglected child in residential care can also mean a child who *is inflicted* with a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, or is subjected to the substantial risk of a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, as a result of a failure to implement an agreed upon plan of prevention and remediation.

A neglected child in residential care can also mean a child who is subjected to the intentional administration of any prescription or non-prescription drug other than in substantial compliance with a prescription or order issued for the child by a licensed, qualified health care practitioner.

"**Physical injury or impairment**" and "impairment of physical condition" mean any confirmed harm, hurt or damage resulting in a significant worsening or diminution of a child's physical condition.

"**Mental or emotional injury or impairment**" and "impairment of mental or emotional condition" will be defined to mean a substantial diminution of a child's psychological or intellectual functioning which is determined by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker, or licensed mental health counselor.

"**Residential care**" now includes inpatient or residential settings certified by the Office of Alcoholism and Substance Abuse Services (OASAS) and designated as serving youth. This adds OASAS residential facilities serving youth to the jurisdiction of IAB. IAB investigations at OASAS facilities will be the responsibility of the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD), except for any stand-alone residential programs certified by OASAS on the same premises as a foster care facility licensed by OCFS, which will be the responsibility of OCFS IAB.

Indicating Reports

To determine if a report can be indicated for abuse or neglect of a child in residential care, IAB staff will be looking for some credible evidence that a specific custodian is responsible (in whole or in part) for abuse or neglect.

For sex abuse cases, the question is whether the subject of the report committed, promoted or knowingly permitted sex abuse.

For cases in which a child was subjected to one of acts listed on page one under item 1, the question is whether the subject of the report committed the action at issue.

For cases involving the intentional administration of a prescription or non-prescription drug, the question is whether the subject of the report intentionally administered drug to the child.

For all other cases, the question is whether the subject of the report caused the injury or impairment of the child or the substantial risk of injury or impairment by:

- 1) direct action,
- 2) conduct and with knowledge or deliberate indifference allowing any such injury, impairment or risk,
- 3) failing to exercise a minimum degree of care,
- 4) failing to comply with a rule or regulation involving care, services or supervision of a child where it was reasonably foreseeable that such failure would result in the abuse or neglect of a child, or
- 5) failing to meet a personal duty imposed by an agreed upon plan of prevention and remediation arising from abuse or neglect of a child in residential care.

Responsibilities of OCFS IAB

Within 60 days of receiving a report of abuse or neglect of a child in residential care, OCFS must make the following determinations:

- a) whether the report is indicated or unfounded;
- b) is there a basis for a familial report to the SCR, and if so, OCFS must make a separate report to the SCR, unless such a report has already been made;
- c) whether it appears likely that a crime may have been committed against the child, and if so, OCFS must transmit a report of the allegations and findings to the appropriate law enforcement authority or confirm that such a report has already been transmitted; and
- d) whether it appears that there was a statutory or regulatory violation relative to the care and treatment of individuals receiving services, and, if so, the IAB investigator must provide that information to the director of the residential facility and the appropriate operating or licensing agency (or, within OCFS, the appropriate OCFS staff) at that time.

Note: The list of determinations under the new law addresses reports that under existing law would be indicated for abuse or neglect of a child in residential care and those cases

where the child would be found to be an institutionally neglected child. Cases that under present law would result in a finding that the child was institutionally neglected will be addressed under item (d) above as statutory and/or regulatory violations.

Procedures

If OCFS determines that a report is indicated (or, it appears a crime was committed against a child, or there was a violation of the statutory, regulatory or other licensing requirements relative to the care and treatment of individuals) then **OCFS must:**

- a) report its findings to the director of the facility and to the appropriate licensing or operating State agency or, within OCFS, to the appropriate OCFS staff;
- b) recommend to the facility and the licensing State agency that appropriate preventive and remedial actions, if any, be undertaken with respect to a residential care facility and/or the subject of the report of the IAB report;

And, the Facility and Licensing State Agency must:

- c) initiate any necessary and appropriate corrective action within a reasonably prompt period of time; and
- d) within a reasonably prompt period of time, the facility must submit to the appropriate licensing State agency and OCFS, and the licensing State agency must submit to OCFS (and send a copy to the facility) a written report of the actions taken to address OCFS' findings and such subsequent progress reports as OCFS may require, including any actions to implement a plan of prevention and remediation.

Other

School-age child care programs: The definition of "subject of the report" in SSL § 412 is clarified to specifically include a director or operator of, or employee or volunteer in, a school-age child care program who allegedly caused or allowed injury, abuse or maltreatment of a child. Workers in school-age child care programs are also specifically included in the list of mandated reporters of suspected child abuse and maltreatment in SSL § 413.

Effective Date

The provisions of the new law that change the IAB definitions and procedures take effect 180 days after enactment, which is January 17, 2009.

Please note also that, for purposes of transition between the current law and the new law, the effective date will apply to the date of actions that may (or may not) constitute IAB. If a report comes in on or after January 17, 2009 that involves an incident or incidents that occurred before January 17, 2009, the current definitions of abuse and neglect of children in residential care will apply. The new definitions of abuse and neglect of children in residential care will apply only to incidents that occur on or after January 17, 2009.

Providers of
residential child care, including:

- Voluntary foster care agencies
- OCFS juvenile justice residential facilities
- Detention programs
- Runaway and homeless youth shelters
- OMH, OMRDD and OASAS residential programs
- The legislation also impacts educational staff at certain Special Act and 853 schools

An abused child in residential care is one who is subjected to the following acts, regardless of whether the child is injured, unless the action is accidental or done as an emergency safety intervention:

- Being thrown, shoved, kicked, pinched, punched, shaken, choked, smothered, bitten, burned, cut, or stricken; or
- The display of a weapon or other object that could reasonably be perceived as being meant to inflict pain or injury, in a threatening manner; or

An abused child in residential care is one who is subjected to the following acts, regardless of whether the child is injured, unless the action is accidental or done as an emergency safety intervention:

- The use of corporal punishment; or
- The withholding of nutrition or hydration as punishment; or
- The unlawful administration of any controlled substance or alcoholic beverage.



Or, an abused child in residential care is one who has had inflicted upon the child a reasonably foreseeable injury that causes death or creates a substantial risk of:

- Death; or
- Serious or protracted disfigurement; or
- Serious or protracted impairment of the child's physical, mental or emotional condition; or
- Serious or protracted loss or impairment of the function of any organ.

Or, is subjected to a reasonably foreseeable and substantial risk of injury, by other than accidental means, which would be likely to cause:

- Death; or
- Serious or protracted disfigurement; or
- Serious or protracted impairment of the child's physical, mental or emotional condition; or
- Serious or protracted loss or impairment of the function of any organ.

Or, is the victim of sexual abuse (including sex offenses, use of a child for purposes of prostitution, use of a child for a sexual performance, and incest)

- corroboration requirements of the Penal Law and the age requirements or age based elements of any such crime do not apply to this definition
- No injury is needed for an allegation of sex abuse!



A **neglected child in residential care** is a child who is impaired physically, mentally or emotionally or is at substantial risk of impairment because of failure to receive:

- Adequate food, clothing, shelter, medical, dental, optometric or surgical care consistent with the applicable rules and regulations of the licensing or operating State agency, provided that the facility has reasonable access to the provision of such services and that necessary consents for health care have been sought and obtained; or

A **neglected child in residential care** is a child who is impaired physically, mentally or emotionally or is at substantial risk of impairment because of failure to receive:

- Access to educational instruction in accordance with the compulsory education provisions in the Education Law; or
- Proper supervision or guardianship, consistent with the applicable rules and regulations of the State licensing or operating agency.

- A **neglected child in residential care** can also mean a child who is inflicted with a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, or is subjected to the risk of a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, where such injury or risk of injury was reasonably foreseeable.



• A **neglected child in residential care** can also mean a child who is inflicted with a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, or is subjected to the substantial risk of a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, as a result of a failure to implement an agreed upon plan of prevention and remediation.

• A neglected child in residential care can also mean a child who is subjected to the intentional administration of any prescription or non-prescription drug other than in substantial compliance with a prescription or order issued for the child by a licensed, qualified health care practitioner.

Newly Defined Terms:

• **Physical injury or impairment and impairment of physical condition** mean any confirmed harm, hurt or damage resulting in a significant worsening or diminution of a child's physical condition.



• **Mental or emotional injury or impairment and impairment of mental or emotional condition** will be defined to mean a substantial diminution of a child's psychological or intellectual functioning which is determined by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker, or licensed mental health counselor.

• **Residential care** now includes inpatient or residential settings certified by the Office of Alcoholism and Substance Abuse Services (OASAS) and designated as serving youth. This adds OASAS residential facilities serving youth to the jurisdiction of IAB.

• IAB investigations at OASAS facilities will be the responsibility of The Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD), except for any stand-alone residential programs certified by OASAS on the same premises as a foster care facility licensed by OCFS, which will be the responsibility of OCFS IAB.



Evaluating Staff Actions:

Was a specific custodian responsible (in whole or in part) for:

- Committing, promoting or knowingly permitting sexual abuse?
- Subjecting a child to any of the listed actions that constitute abuse regardless of injury?

Evaluating Staff Actions:

Was a specific custodian responsible (in whole or in part) for :

- Subjecting child to intentional administration of a prescription or non-prescription drug other than in compliance with prescription or order?

OR - Was a specific custodian responsible (in whole or in part) for causing the impairment of the child or the substantial risk of injury or impairment by:

- Direct action?
- Conduct and with knowledge or deliberate indifference allowing any such injury, impairment or risk?
- Failing to exercise a minimum degree of care?



OR - Was a specific custodian responsible (in whole or in part) for causing the impairment of the child or the substantial risk of injury or impairment by:

- Failing to comply with a rule or regulation involving care, services or supervision of a child where it was reasonably foreseeable that such failure would result in the abuse or neglect of a child?

OR - Was a specific custodian responsible (in whole or in part) for causing the impairment of the child or the substantial risk of injury or impairment by:

- Failing to meet a personal duty imposed by an agreed upon plan of prevention and remediation arising from abuse or neglect of a child in residential care?

Decisions to be made within 60 days of a report:

- Is the report indicated or unfounded?
- Is there a basis for a familial report to the SCR?
 - If so, OCFS must make a separate report to the SCR, unless such a report has already been made.



Decisions to be made
within 60 days of a report:

- Does it appear likely that a crime may have been committed against the child?
 - If so, OCFS must transmit a report of the allegations and findings to the appropriate law enforcement authority or confirm that such a report has already been transmitted.

Decisions to be made
within 60 days of a report:

- Does it appear that there was a statutory or regulatory violation relative to the care and treatment of individuals receiving services?
 - If so, IAB staff must provide that information to the director of the residential facility and the appropriate operating or licensing agency (or, within OCFS, the appropriate OCFS staff) at that time.

If a report is indicated,
OCFS or CQCAPD must:

- Report its findings to the director of the facility and to the appropriate licensing or operating State agency or, within OCFS, to the appropriate OCFS staff.
- Notify the facility and the State licensing agency that appropriate preventive and remedial actions be undertaken with respect to a residential care facility and/or the subject of the IAB report.



If a report is indicated,
the Facility must :

- Initiate the necessary and appropriate corrective action within a reasonably prompt period of time; and
- Within a reasonably prompt period of time, submit a written report of remedial actions to the appropriate state licensing agency and OCFS or CQCAPD; or

OR, the State Licensing Agency must :

- Submit to OCFS or CQCAPD (and send a copy to the facility) a written report of the actions taken to address the findings and such subsequent progress reports as may be required, including any actions to implement a plan of prevention and remediation.

Effective Date of Chapter 323:

- The provisions of the new law that change the IAB definitions and procedures take effect 180 days after enactment, which is

January 17, 2009



PLEASE BE SURE TO NOTE:

- If a report comes in on or after January 17, 2009 that involves an incident or incidents that occurred before January 17, 2009, the current definitions of abuse and neglect of children in residential care will apply.
- The new definitions of abuse and neglect of children in residential care will apply only to incidents that occur on or after January 17, 2009.



Standards of Evidence Impacting Institutional Abuse

Standards of Evidence:

Standard for criminal conviction: Beyond a reasonable doubt

Standard to retain an indicated determination @ fair hearing: Fair
Preponderance

Standard to retain an indicated determination @ administrative review: Fair
Preponderance

Standard to substantiate an allegation and indicate a case: Some credible evidence, any evidence worthy of belief.

Standard to place a call to the SCR: Reasonable Cause to Suspect based on observation or disclosure. You do not have to “prove” but merely suspect. Was there access and opportunity? Was this possible?

AN ACT to amend the social services law and the mental hygiene law, in relation to the protection of children in residential facilities from child abuse and neglect and repealing certain provisions of the social services law relating thereto

Became a law July 21, 2008, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

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

Section 1. Legislative findings. It is vital to provide a comprehensive state system to address the issue of residential child abuse and neglect. Children served in residential settings are particularly vulnerable and deserve at least as stringent a system of preventing and responding to abuse and neglect as those who live at home with their families. Accordingly, the government's response to abuse and neglect of children in residential care must provide full accountability and aggressively protect children from harm. It is therefore critical that the law employs appropriate standards to describe acts of abuse and neglect and delineates the processes that will be employed in response to findings made in an investigation of alleged abuse or neglect.

§ 2. The section heading and subdivisions 1, 2, 4 and 5 of section 412 of the social services law, the section heading as added by chapter 1039 of the laws of 1973, subdivision 1 as separately amended by chapters 543 and 634 of the laws of 1988, subdivisions 2 and 4 as amended by chapter 32 of the laws of 1992 and subdivision 5 as amended by chapter 676 of the laws of 1985, are amended to read as follows:

[Definitions] General definitions.

1. An "abused child" means:

(a) a child under eighteen years of age not in "residential care," as defined in subdivision four of section four hundred twelve-a of this title, and who is defined as an abused child by the family court act; or

(b) a child under the age of eighteen years who is defined as an abused child in residential care pursuant to subdivision [eight] one of [this] section four hundred twelve-a of this title[, ~~or~~

~~(c) a child with a handicapping condition, as defined in subdivision one of section forty-four hundred one of the education law, who is eighteen years of age or older, is in residential care in a school or facility described in paragraph (c), (d), (e) or (f) of subdivision seven of this section, and is defined as an abused child pursuant to subdivision eight of this section; provided that such term shall include a pupil with a handicapping condition in residential care in such a school or facility who is defined as an abused child pursuant to subdivision eight of this section, is twenty-one years of age, and is entitled, pursuant to subdivision five of section forty-four hundred two of the education law, to remain in such school or facility until either the termination of the school year or the termination of the summer program, as applicable];~~

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

2. A "maltreated child" includes:

(a) a child under eighteen years of age not in "residential care" as defined in subdivision ~~[seven]~~ four of ~~[this]~~ section four hundred twelve-a of this title:

(i) defined as a neglected child by the family court act, or

(ii) who has had serious physical injury inflicted upon him or her by other than accidental means; or

(b) a child who is a neglected child in residential care as defined in subdivision ~~[seven]~~ two of ~~[this]~~ section ~~[who is: (i) under eighteen years of age, except that a child with a handicapping condition, as defined in subdivision one of section forty-four hundred one of the education law, who is eighteen years of age or older, is in residential care in a school or facility described in paragraph (c), (d), (e) or (f) of subdivision seven of this section, provided that such term shall include a pupil with a handicapping condition in residential care in such a school or facility who is twenty-one years of age, and is entitled, pursuant to subdivision five of section forty-four hundred two of the education law, to remain in such school or facility until either the termination of the school year or the termination of the summer program, as applicable; and~~

~~(ii) is a neglected child in residential care as defined in subdivision nine of this section]~~ four hundred twelve-a of this title;

4. "Subject of the report" means: (a) any parent of, guardian of, ~~[custodian of]~~ or other person eighteen years of age or older legally responsible for, as defined in subdivision (g) of section one thousand twelve of the family court act, a child reported to the statewide central register of child abuse and maltreatment who is allegedly responsible for causing injury, abuse or maltreatment to such child or who allegedly allows such injury, abuse or maltreatment to be inflicted on such child~~[7]~~; or a director or an operator of, or employee or volunteer in, a home operated or supervised by an authorized agency, the ~~[division for youth]~~ office of children and family services, or an office of the department of mental hygiene or in a family day-care home, a day-care center, a group family day care home, a school-age child care program or a day-services program~~[, or a consultant or any person who is an employee or volunteer of a corporation, partnership, organization or any governmental entity which provides goods or services pursuant to a contract or other arrangement which provides for such consultant or person to have regular and substantial contact with children in residential care]~~ who is allegedly responsible for causing injury, abuse or maltreatment to a child who is reported to the statewide central register of child abuse or maltreatment or who allegedly allows such injury, abuse or maltreatment to be inflicted on such child; or

(b) a subject of a report of an abused or neglected child in residential care as defined in subdivision eight of section four hundred twelve-a of this title;

5. "Other persons named in the report" shall mean and be limited to the following persons who are named in a report of child abuse or maltreatment other than the subject of the report: (a) the child who is reported to the statewide central register of child abuse and maltreatment; and such child's parent, guardian, ~~[custodian]~~ or other person legally responsible for the child who ~~[have]~~ has not been named in the report as allegedly responsible for causing injury, abuse or maltreatment to the child or as allegedly allowing such injury, abuse or maltreatment to be inflicted on such child; ~~[in the case of a report involving abuse or maltreatment of a child in residential care, such~~

~~term shall be deemed to include the child's parent, guardian or other person legally responsible for the child who is not named in such report;] or~~

(b) other persons named in a report of an abused or neglected child in residential care as defined in subdivision nine of section four hundred twelve-a of this title;

§ 3. Subdivisions 6, 7, 8, 9 and 10 of section 412 of the social services law are REPEALED and subdivisions 11 and 12, as renumbered by chapter 32 of the laws of 1992, and subdivision 13 are renumbered subdivisions 6, 7 and 8.

§ 4. The social services law is amended by adding a new section 412-a to read as follows:

§ 412-a. Special definitions relating to children in residential care. When used in this title in relation to allegations that a child has been abused or neglected in residential care and unless the specific context indicates otherwise:

1. "Abused child in residential care" means a "child," as defined in subdivision three of this section, in "residential care," as defined in subdivision four of this section, who:

(a) is subjected to any of the following acts, regardless of whether such act results in injury, when such act is committed by a custodian of the child, is not accidental and does not constitute emergency physical intervention necessary to protect the safety of any person:

(i) being thrown, shoved, kicked, burned, stricken, choked, smothered, pinched, punched, shaken, cut or bitten;

(ii) the display of a weapon, or other object that could reasonably be perceived by the child as a means for the infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury;

(iii) the use of corporal punishment;

(iv) the withholding of nutrition or hydration as punishment; or

(v) the unlawful administration of any controlled substance as defined by article thirty-three of the public health law, or any alcoholic beverage, as defined by section three of the alcoholic beverage control law, to the child; or

(b) is inflicted, by other than accidental means, with a reasonably foreseeable injury that causes death or creates a substantial risk of death, serious or protracted disfigurement, serious or protracted impairment of his or her physical, mental or emotional condition, or serious or protracted loss or impairment of the function of any organ; or

(c) is subjected to a reasonably foreseeable and substantial risk of injury, by other than accidental means, which would be likely to cause death, serious or protracted disfigurement, serious or protracted impairment of his or her physical, mental or emotional condition, or serious or protracted loss or impairment of the function of any organ; or

(d) is the victim of any offense described in article one hundred thirty of the penal law or section 255.25, 255.26 or 255.27 of the penal law; or is allowed, permitted or encouraged to engage in any act described in article two hundred thirty of the penal law; or is allowed or used to engage in acts or conduct described in article two hundred sixty-three of the penal law; provided, however, that (i) the corroboration requirements in the penal law and (ii) the age requirements for the application of articles one hundred thirty, two hundred thirty and two hundred sixty-three of the penal law and any age based element of

any crime described therein shall not apply to the provisions of this title.

2. "Neglected child in residential care" means a "child," as defined in subdivision three of this section, in "residential care," as defined in subdivision four of this section, who:

(a) experiences an impairment of his or her physical, mental or emotional condition or is subjected to a substantial risk of such impairment because he or she has not received:

(i) adequate food, clothing, shelter, medical, dental, optometric or surgical care, consistent with the rules or regulations promulgated by the state agency operating, certifying or supervising the residential facility or program, provided that the facility has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric or surgical treatment have been sought and obtained from the appropriate individuals;

(ii) access to educational instruction in accordance with the provisions of part one of article sixty-five of the education law; or

(iii) proper supervision or guardianship, consistent with the rules or regulations promulgated by the state agency operating, certifying or supervising the residential facility or program; or

(b) is inflicted with a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, or is subjected to the risk of a physical, mental or emotional injury, excluding minor injury, by other than accidental means, where such injury or risk of injury was reasonably foreseeable; or

(c) is inflicted with a physical, mental or emotional injury, excluding minor injury, by other than accidental means, or is subjected to the substantial risk of a physical, mental or emotional injury, excluding minor injury, by other than accidental means, as a result of a failure to implement an agreed upon plan of prevention and remediation pursuant to this chapter, the mental hygiene law, the executive law or the education law; or

(d) is subjected to the intentional administration of any prescription or non-prescription drug other than in substantial compliance with a prescription or order issued for the child by a licensed, qualified health care practitioner.

3. "Child" or "children," for purposes of this section, means an individual or individuals under eighteen years of age; or a child with a disability, as defined in subdivision one of section forty-four hundred one of the education law, who is eighteen years of age or older and is in residential care in a school or facility described in paragraph (c), (d), (e) or (f) of subdivision four of this section; or a pupil with a handicapping condition in residential care in such a school or facility who is twenty-one years of age and is entitled, pursuant to subdivision five of section forty-four hundred two of the education law, to remain in such school or facility until either the termination of the school year or the termination of the summer program, as applicable.

4. "Residential care" means:

(a) care provided to a child who has been placed by the family court with a social services official or the office of children and family services, or whose care and custody or custody and guardianship has been transferred or committed to, a social services official, another authorized agency, or the office of children and family services and such care is provided in an agency operated boarding home, a group home or child care institution;

(b) care provided to a child in a facility or program operated or certified by the office of children and family services pursuant to article nineteen-G or nineteen-H of the executive law, excluding foster family care;

(c) care provided to a child in the New York state school for the blind or the New York state school for the deaf, pursuant to the provisions of articles eighty-seven and eighty-eight of the education law;

(d) care provided to a child in a private residential school which is within the state and which has been approved by the commissioner of education for special education services or programs;

(e) care provided in institutions for the instruction of the deaf and the blind which have a residential component, and which are subject to the visitation of the commissioner of education pursuant to article eighty-five of the education law;

(f) care provided through a residential placement of a child with a special act school district listed in chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, as amended;

(g) care provided to a child in a residential facility licensed or operated by the office of mental health, excluding family care homes;

(h) care provided to a child in a residential facility licensed or operated by the office of mental retardation and developmental disabilities, excluding family care homes;

(i) care provided to a child in an inpatient or residential setting certified by the office of alcoholism and substance abuse services, which has been specifically designated by such office as serving youth; or

(j) care provided to a child by an authorized agency licensed to provide both care enumerated in paragraph (a) of this subdivision and care defined in paragraph (g), (h) or (i) of this subdivision.

5. "Custodian" means a director, operator, employee or volunteer of a residential care facility or program; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a residential care facility pursuant to a contract or other arrangement that permits such person to have regular and substantial contact with children in residential care.

6. "Physical injury or impairment" and "impairment of physical condition," as used in subdivisions one and two of this section, mean any confirmed harm, hurt or damage resulting in a significant worsening or diminution of a child's physical condition.

7. "Mental or emotional injury or impairment" and "impairment of mental or emotional condition," as used in subdivisions one and two of this section, mean a substantial diminution of a child's psychological or intellectual functioning which is determined by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker, or licensed mental health counselor.

8. "Subject of the report of an abused or neglected child in residential care" means any custodian of a child in residential care who is reported to the statewide central register of child abuse and maltreatment for the alleged abuse or neglect of such child, as those terms are defined in subdivisions one and two of this section.

9. "Other persons named in a report of an abused or neglected child in residential care" means and is limited to the following persons who are named in a report to the statewide central register of child abuse and maltreatment other than the subject of the report: the child in residential care who is reported to the statewide central register of child

abuse and maltreatment, and such child's parent, guardian, custodian or other person legally responsible for the child who has not been named in the report as being allegedly responsible, in whole or in part, for the abuse or neglect of the child, as those terms are defined by subdivisions one and two of this section.

§ 5. Subdivision 1 of section 422 of the social services law, as added by chapter 1039 of the laws of 1973, is amended to read as follows:

1. There shall be established in the [~~department~~] office of children and family services a statewide central register of child abuse and maltreatment reports made pursuant to this title.

§ 6. Section 424-b of the social services law, as amended by chapter 634 of the laws of 1988, is amended to read as follows:

§ 424-b. Children in the care of certain public and private agencies. Notwithstanding any inconsistent provisions of law, when a report of child abuse or maltreatment involves a child being cared for in a home operated or supervised by an authorized agency, the [~~division for youth~~] office of children and family services, or an office of the department of mental hygiene, such report shall be accepted and maintained by the [~~department~~] office of children and family services and shall be referred for the purposes of conducting an investigation to the [~~division for youth~~] appropriate staff within the office of children and family services or the appropriate office of the department of mental hygiene, where the child is in the care of such [~~division or office~~] agency; and where the child is in a home operated or supervised by an authorized agency, to the social services district wherein such home is located. The [~~division, office,~~] agency or social services district receiving such referral shall undertake an appropriate investigation of the report, in accordance with the terms and conditions set forth in subdivisions one through eight of section four hundred twenty-four-c of this title. Any person who is alleged to have abused or maltreated a child in a report accepted and referred pursuant to this section shall be accorded the procedural rights set forth in section four hundred twenty-two and in subdivision six of section four hundred twenty-four of this [~~chapter~~] title. Nothing in this section shall impose any duty or responsibility on any child protective service pursuant to section four hundred twenty-two, four hundred twenty-four or any other provision of this article.

§ 7. Section 424-c of the social services law, as added by chapter 719 of the laws of 1986, the opening paragraph and subdivisions 3 and 7 as amended by chapter 32 of the laws of 1992 and subdivision 5 as amended by chapter 12 of the laws of 1996, is amended to read as follows:

§ 424-c. Duties of the commissioner of the office of children and family services concerning reports of abuse or [~~maltreatment~~] neglect of children in residential facilities or programs. With respect to reports of abuse or [~~maltreatment~~] neglect in residential facilities or programs enumerated in paragraphs (a), (b), (c), (d), (e), (f) and [~~(h)~~] (j) of subdivision [~~seven~~] four of section four hundred [~~twelve~~] twelve-a of this title, in addition to complying with other requirements established by this chapter, the commissioner of children and family services shall:

1. Receive from the [~~state~~] statewide central register on a twenty-four hour, seven day a week basis all reports of suspected child abuse or [~~maltreatment~~] neglect in accordance with this title and regulations of the commissioner of children and family services;

2. Maintain and keep up-to-date a child abuse and [~~maltreatment~~] neglect record of all cases reported together with any additional information obtained and a record of the final disposition of the report,

including recommendations by the commissioner of the office of children and family services and action taken with respect to the residential care facility or program or the subject of a report of child abuse or [~~maltreatment~~] neglect pursuant to subdivision two-a of section four hundred sixty-c of this chapter;

3. Not later than seven days after receipt of such report, send a preliminary written report of the initial investigation, including, whenever practicable, an evaluation of whether or not such report constitutes an allegation of child abuse or neglect and actions taken or contemplated, to the [~~state~~] statewide central register. If such investigation results in a determination that the report does not constitute an allegation of abuse or neglect, the [~~department~~] office of children and family services shall refer such report to the appropriate state licensing or operating agency, provided, however, that the name and other personally identifiable information of the person making the report shall not be provided by the [~~department~~] office of children and family services unless such person authorizes such disclosure;

4. Give telephone notice and forward immediately a copy of reports made which involve the death of a child to the appropriate district attorney. In addition, telephone notice shall be given and a copy of all reports made shall be forwarded immediately by the commissioner of children and family services to the appropriate district attorney if a prior request in writing for such notice and copies has been made to the commissioner of children and family services by the district attorney. Such request shall specify the kinds of allegations concerning which the district attorney requires such notice and copies;

5. Upon receipt of such report, commence within twenty-four hours, an appropriate investigation which shall include but not be limited to an evaluation of the residential care facility or program in which the child resides who is named in the report and a determination of the risk to such child if he or she continues to remain in the existing residential care facility or program as well as a determination of the nature, extent and cause of any condition enumerated in such report and, after seeing to the safety of the child and, to the maximum extent feasible, the other children in the facility, forthwith: (a) notify the subject of the report and other persons named in the report in writing of the existence of the report and their respective rights pursuant to this title in regard to amendment; and (b) notify the facility or program and, as appropriate, the [~~division for youth,~~] office of children and family services, the department of education, and the local social services commissioner or school district placing the child of the existence of such report including the name of any child alleged to be abused or [~~maltreated~~] neglected, the name of the subject of the report of child abuse or [~~maltreatment~~] neglect, and any other information which may be necessary to ensure the health and safety of the children in the residential facility;

6. Comply with the terms and conditions for the maintenance of confidential records and due process rights of the subject of the report of child abuse or [~~maltreatment~~] neglect pursuant to sections four hundred twenty-two and four hundred twenty-four-a of this title;

7. Determine, within sixty days[~~7~~] of receiving a report of an allegation that a child is an abused or neglected child in residential care whether:

(a) the report made to the statewide central register of child abuse and maltreatment is "indicated" or "unfounded" in accordance with subdivision one of section four hundred twenty-four-d of this title;

(b) there is reasonable cause to suspect that the child's parent, or other person legally responsible for the child other than a custodian of the child, abused or maltreated the child;

(c) it appears likely that a crime may have been committed against the child; and

(d) it appears that a violation of the statutory, regulatory or other requirements of the licensing agency or operating state agency relative to the care and treatment of individuals receiving services has occurred; and

8. Assist the criminal court during all stages of the court proceeding in accordance with the purposes of this title and other applicable provisions of law.

§ 8. The social services law is amended by adding a new section 424-d to read as follows:

§ 424-d. Determinations rendered on reports of abuse or neglect of children in residential facilities or programs and actions to be taken. With respect to determinations made pursuant to subdivision seven of section four hundred twenty-four-c of this title:

1. A report shall be indicated if the investigation reveals some credible evidence that a child in residential care has been abused or neglected, as those terms are defined by subdivisions one and two of section four hundred twelve-a of this title, and a specific custodian is identified as being responsible, whether in whole or in part, for such abuse or neglect of the child, by:

(a) committing, promoting or knowingly permitting the commission of any of the acts identified in paragraph (d) of subdivision one of section four hundred twelve-a of this title or committing any of the acts identified in paragraph (a) of subdivision one or paragraph (d) of subdivision two of such section; or

(b) causing the physical, mental or emotional injury or impairment of a child or the substantial risk of such injury or impairment by:

(i) direct action;

(ii) conduct and with knowledge or deliberate indifference allowing any such injury, impairment or risk;

(iii) failing to exercise a minimum degree of care;

(iv) failing to comply with a rule or regulation involving care, services or supervision of a child promulgated by the state agency operating, certifying or supervising the residential facility or program where it was reasonably foreseeable that such failure would result in the abuse or neglect of the child; or

(v) failing to meet a personal duty imposed by an agreed upon plan of prevention and remediation arising from abuse or neglect of a child in residential care pursuant to this chapter, the mental hygiene law, the executive law, or the education law.

2. If the office of children and family services determines that there is reasonable cause to suspect that the child's parent, or any other person legally responsible for the child other than a custodian of the child, abused or maltreated the child, the office of children and family services shall make a separate report to the statewide central register for investigation by the applicable local child protective service, unless such a report has already been made.

3. If the office of children family services determines that it appears likely that a crime may have been committed against a child, regardless of whether a report is indicated or unfounded, the office of children and family services shall transmit a report of the allegations

and findings to the appropriate law enforcement authority or confirm that such a report has already been transmitted.

4. If the office of children and family services determines that it appears likely that a crime may have been committed against a child, regardless of whether a report is indicated or unfounded; that a violation of the statutory, regulatory or other requirements of the licensing agency or operating state agency relative to the care and treatment of individuals receiving services has occurred, regardless of whether a report is indicated or unfounded; or that a report is indicated:

(a) the office of children and family services shall report its findings to the director of the facility and to the appropriate licensing or operating state agency or, within such office, to the appropriate office staff;

(b) the office of children and family services shall recommend to the facility and the licensing state agency that appropriate preventive and remedial actions, if any, which may include enforcement or disciplinary actions authorized under section four hundred-sixty-d of this chapter, sections five hundred three and five hundred thirty-two-e of the executive law, article seven, thirteen, sixteen, nineteen, thirty-one, or thirty-two of the mental hygiene law, and/or applicable collective bargaining agreements, be undertaken with respect to a residential care facility and/or the subject of the report of child abuse or neglect;

(c) the facility and the licensing state agency shall initiate any necessary and appropriate corrective action within a reasonably prompt period of time; and

(d) within a reasonably prompt period of time, the facility shall submit to the appropriate licensing state agency and to the office of children and family services, and the licensing state agency shall submit, with a copy to the facility, to such office a written report of the actions taken to address such office's findings and such subsequent progress reports as the office may require including any actions to implement a plan of prevention and remediation as required by this chapter, the executive law, the mental hygiene law or the education law; provided, however, that notwithstanding any other provision of this section, whenever it appears likely to the office of children and family services, the appropriate licensing or operating state agency, or the facility that a crime has been committed against a child, such entity shall immediately notify the appropriate law enforcement agency or confirm that such notification has already been made.

§ 9. Subdivision (c) of section 45.07 of the mental hygiene law, as amended by section 6 of part H of chapter 58 of the laws of 2005, paragraph 1, subparagraph b of paragraph 2 and paragraphs 3 and 5 as amended by chapter 24 of the laws of 2007, is amended to read as follows:

(c) 1. Establish procedures to assure effective investigation of complaints of patients and their parents or legal guardians and employees of mental hygiene facilities affecting such patients including allegations of patient abuse or mistreatment, including all reports of abuse or [~~maltreatment~~] neglect of children in residential care as defined in [~~paragraph~~] paragraphs (g), (h) and (i) of subdivision [~~seven~~] four of section four hundred [~~twelve~~] twelve-a of the social services law, except such facilities or programs enumerated in paragraph (j) of subdivision four of such section, and made pursuant to title six of article six of such law. Such procedures shall include but not be limited to receipt of written complaints, interviews of persons, patients and employees and on-site monitoring of conditions. In addition, the commis-

sion shall establish procedures for the speedy and impartial review of patient abuse and mistreatment allegations called to its attention.

2. With respect to [~~reports~~] a report of abuse or [~~maltreatment~~] neglect of [~~children~~] a child in residential care as defined in paragraph (g), (h) or (i) of subdivision [~~seven~~] four of section four hundred [~~twelve~~] twelve-a of the social services law and made pursuant to title six of article six of such law except such facilities or programs enumerated in paragraph [~~(h)~~] (j) of subdivision [~~seven~~] four of section four hundred [~~twelve~~] twelve-a of the social services law, in addition to complying with requirements of applicable provisions of the social services law and this subdivision, the commission shall:

a. receive from the [~~state~~] statewide central register of child abuse and maltreatment on a twenty-four hour, seven day a week basis all reports of suspected child abuse or [~~maltreatment~~] neglect;

b. maintain and keep up-to-date a child abuse and [~~maltreatment~~] neglect record of all cases reported together with any additional information obtained and a record of the final disposition of the report, including recommendations by the commission and action taken with respect to the residential care facility or the subject of a report of child abuse or [~~maltreatment~~] neglect pursuant to section 16.29 or 31.30 of this chapter;

c. not later than seven days after receipt of such report, send a preliminary written report of the initial investigation, including, whenever practicable, an evaluation of whether or not such report constitutes an allegation of child abuse or neglect and actions taken or contemplated, to the [~~state~~] statewide central register. If such initial investigation results in a determination that the report does not constitute an allegation of abuse or neglect, the commission shall refer such report to the appropriate office of the department, provided, however, that the name and other personally identifiable information of the person making the report shall not be provided by the commission unless such person authorizes such disclosure;

d. give telephone notice and forward immediately a copy of reports made which involve the death of a child to the appropriate district attorney. In addition, telephone notice shall be given and a copy of all reports made shall be forwarded immediately by the commission to the appropriate district attorney if a prior request in writing for such notice and copies has been made to the commission by the district attorney. Such request shall specify the kinds of allegations concerning which the district attorney requires such notice and copies;

e. upon receipt of such report of child abuse or [~~maltreatment~~] neglect, commence within twenty-four hours, an appropriate investigation which shall include but not be limited to an evaluation of the residential care facility in which the child resides who is named in the report and a determination of the risk to such child if he or she continues to remain in the existing residential care facility as well as a determination of the nature, extent and cause of any condition enumerated in such report and, after seeing to the safety of the child and, to the maximum extent feasible, the other children in the facility forthwith: (i) notify the subject of the report and other persons named in the report in writing of the existence of the report and their respective rights pursuant to title six of article six of the social services law in regard to amendment; and (ii) notify the director or operator of the residential facility and the office of mental health [~~or~~], the office of mental retardation and developmental disabilities or the office of alcoholism and substance abuse services of the existence of such report

including the name of any child alleged to be abused or [~~maltreated~~] neglected, the name of the subject of the report of child abuse or [~~maltreatment~~] neglect, and any other information which may be necessary to assure the health and safety of the children in the residential care facility;

f. comply with the terms and conditions for maintenance of confidential records and due process rights of the subject of the report of child abuse or maltreatment pursuant to sections four hundred twenty-two and four hundred twenty-four-a of the social services law;

g. determine within sixty days[7] of receiving a report of an allegation of abuse or neglect of a child in residential care whether:

(i) to recommend to the office of children and family services that the report made to the statewide central register of child abuse and maltreatment is "indicated" or "unfounded" in accordance with paragraph three of this subdivision; [and]

(ii) there is reasonable cause to suspect that the child's parent, or other person legally responsible for the child other than a custodian of the child, abused or maltreated the child;

(iii) it appears likely that a crime may have been committed against the child; and

(iv) it appears that a violation of the statutory, regulatory or other requirements of the licensing agency or operating state agency relative to the care and treatment of individuals receiving services has occurred; and

h. assist the criminal court during all stages of the court proceeding in accordance with the purposes of title six of article six of the social services law and other applicable provisions of law.

3. The commission shall recommend to the office of children and family services that a report of abuse or neglect of a child in residential care be indicated if the investigation reveals some credible evidence that the child has been abused or neglected, as those terms are defined by subdivisions one and two of section four hundred twelve-a of the social services law, and a specific custodian is identified as being responsible, whether in whole or in part, for the abuse or neglect of such child, by:

a. committing, promoting or knowingly permitting the commission of any of the acts identified in paragraph (d) of subdivision one of section four hundred twelve-a of the social services law or committing any of the acts identified in paragraph (a) of subdivision one or paragraph (d) of subdivision two of such section; or

b. causing the physical, mental or emotional injury or impairment of the child or the substantial risk of such injury or impairment by:

(i) direct action;

(ii) conduct and with knowledge or deliberate indifference allowing any such injury, impairment or risk;

(iii) failing to exercise a minimum degree of care;

(iv) failing to comply with a rule or regulation involving care, services or supervision of a child promulgated by the state agency operating, certifying or supervising the residential facility or program where it was reasonably foreseeable that such failure would result in the abuse or neglect of the child; or

(v) failing to meet a personal duty imposed by an agreed upon plan of prevention and remediation arising from abuse or neglect of a child in residential care pursuant to this chapter.

4. If the commission determines that there is reasonable cause to suspect that the child's parent, or any other person legally responsible

for the child other than a custodian of the child, abused or maltreated the child, the commission shall make a separate report to the statewide central register for investigation by the applicable local child protective service, unless such a report has already been made.

5. If the commission determines that it appears likely that a crime may have been committed against the child, regardless of whether a report is indicated or unfounded, the commission shall transmit a report of the allegations and findings to the appropriate law enforcement authority or confirm that such a report has already been transmitted.

6. If the commission determines that it appears likely that a crime may have been committed against a child; that a violation of the statutory, regulatory or other requirements of the licensing agency or operating state agency relative to the care and treatment of individuals receiving services has occurred; or that an investigation has revealed some credible evidence that a child is an abused or neglected child in residential care, as those terms are defined by subdivision one or two of section four hundred twelve-a of the social services law:

a. the commission shall report its findings to the director of the facility and to the appropriate licensing state agency;

b. the commission shall recommend to the facility and the licensing state agency that appropriate preventive and remedial actions, if any, which may include enforcement or disciplinary actions authorized under section four hundred-sixty-d of the social services law, sections five hundred three and five hundred thirty-two-e of the executive law, article seven, thirteen, sixteen, nineteen, thirty-one, or thirty-two of this chapter, and/or applicable collective bargaining agreements, be undertaken with respect to a residential care facility and/or the subject of the report of child abuse or neglect;

c. the facility and the licensing state agency shall initiate any necessary and appropriate corrective action within a reasonably prompt period of time; and

d. within a reasonably prompt period of time, the facility shall submit to the appropriate licensing state agency and to the commission, and the licensing state agency shall submit to the commission, with a copy to the facility, a written report of the actions taken to address the commission's findings and such subsequent progress reports as the commission may require including any actions to implement a plan of prevention and remediation as required by this chapter; provided, however, that notwithstanding any other provision of this section, whenever it appears likely to the commission, the appropriate licensing or operating state agency, or the facility that a crime has been committed against a child, such entity shall immediately notify the appropriate law enforcement agency or confirm that such notification has already been made.

7. Where the office of children and family services determines that some credible evidence of the alleged abuse or [maltreatment] neglect exists, the commission shall notify the parents or legal guardians of such patient. ~~[The commission also shall recommend to the office of mental health or the office of mental retardation and developmental disabilities, as the case may be, that appropriate preventive and remedial actions including legal actions, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law, and pursuant to standards of such offices, promulgated pursuant to section 16.29 or 31.30 of this chapter and other applicable provisions of law, be undertaken with respect to a residential care facility and/or the subject of the report of child abuse or maltreat-~~

~~ment. Nothing in this paragraph shall prevent the commission from making recommendations, as provided for by this paragraph, even though the investigation may fail to result in a determination that there is some credible evidence of the alleged abuse or maltreatment.~~

4.] 8. In order to assure effective investigation of reports of child abuse and [~~maltreatment~~] neglect made pursuant to title six of article six of the social services law, the commission shall establish standards for the provision of training to its employees charged with the investigation of such reports, in at least the following: (a) basic training in the principles and techniques of investigation, including relationships with other investigative bodies, (b) legal issues in child protection including the legal rights of children, employees and volunteers, (c) methods of identification, remediation, treatment and prevention, (d) safety and security procedures, and (e) the principles of child development, the characteristics of children in care, and techniques of group and child management including crisis intervention. The commission shall take all reasonable and necessary actions to assure that its employees are kept apprised on a current basis of all department of mental hygiene policies and procedures relating to the protection of children from abuse and [~~maltreatment~~] neglect.

[5.] 9. The commission shall prepare an annual report to the governor and legislature on the protection of children in residential care from abuse and [~~maltreatment~~] neglect, including the implementation of the provisions of this paragraph and other applicable provisions of law, including reports received, results of investigations by types of facilities, remedial actions taken, and efforts undertaken by the office of mental health [~~and~~], the office of mental retardation and developmental disabilities, and the office of alcoholism and substance abuse services to provide training pursuant to standards established by such offices pursuant to section 16.29 [~~or~~], 31.30 or 32.11 of this chapter.

§ 10. Subparagraph (ii) of paragraph (a) of subdivision 8 of section 422 of the social services law, as amended by chapter 12 of the laws of 1996, is amended to read as follows:

(ii) Upon receipt of a request to amend the record of a child abuse and maltreatment report the [~~department~~] office of children and family services shall immediately send a written request to the child protective service or the state agency which was responsible for investigating the allegations of abuse or maltreatment for all records, reports and other information maintained by the service or state agency pertaining to such indicated report. The service or state agency shall as expeditiously as possible but within no more than twenty working days of receiving such request, forward all records, reports and other information it maintains on such indicated report to the [~~department~~] office of children and family services. The [~~department~~] office of children and family services shall as expeditiously as possible but within no more than fifteen working days of receiving such materials from the child protective service or state agency, review all such materials in its possession concerning the indicated report and determine, after affording such service or state agency a reasonable opportunity to present its views, whether there is [~~some credible~~] a fair preponderance of the evidence to find that the subject committed the act or acts of child abuse or maltreatment giving rise to the indicated report and whether, based on guidelines developed by the [~~department~~] office of children and family services pursuant to subdivision five of section four hundred twenty-four-a of this title, such act or acts could be relevant and reasonably related to employment of the subject of the report by a

provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject of the report being allowed to have regular and substantial contact with children who are cared for by a provider agency, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject of the report to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title.

§ 11. The first undesignated paragraph of subparagraph (ii) of paragraph (c) of subdivision 8 of section 422 of the social services law, as amended by chapter 12 of the laws of 1996, is amended to read as follows:

Upon a determination made at a fair hearing held on or after January first, nineteen hundred eighty-six scheduled pursuant to the provisions of subparagraph (v) of paragraph (a) of this subdivision that the subject has been shown by ~~[some credible]~~ a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the hearing officer shall determine, based on guidelines developed by the ~~[department]~~ office of children and family services pursuant to subdivision five of section four hundred twenty-four-a of this ~~[chapter]~~ title, whether such act or acts are relevant and reasonably related to employment of the subject by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title.

§ 12. Paragraphs (a) and (c) of subdivision 11 of section 422 of the social services law, as amended by chapter 32 of the laws of 1992, are amended to read as follows:

(a) Reports and records made pursuant to this title, including any previous report concerning a subject of the report, other persons named in the report or other pertinent information, involving children who reside in residential facilities or programs enumerated in paragraphs (a), (b), (c), (d), (e), (f) and ~~[(h)]~~ (j) of subdivision ~~[seven]~~ four of section four hundred ~~[twelve]~~ twelve-a of this ~~[chapter]~~ title, shall be transmitted immediately by the statewide central register to the commissioner of the office of children and family services who shall commence an appropriate investigation consistent with the terms and conditions set forth in section four hundred twenty-four-c of this title. ~~[If an investigation determines that some credible evidence of alleged abuse or maltreatment exists, the commissioner shall recommend to the local social services department, the state education department or the division for youth, as the case may be, that appropriate preventive and remedial action including legal action, consistent with applicable collective bargaining agreements and applicable provisions of the civil service law, pursuant to standards and regulations of the department promulgated pursuant to section four hundred sixty-two of this chapter and standards and regulations of the division for youth and the department of education promulgated pursuant to section five hundred one of the executive law, sections forty-four hundred three, forty-three hundred fourteen, forty-three hundred fifty-eight and forty-two hundred twelve of the education law and other applicable provisions of law, be taken with respect to the residential facility or program and/or the~~

~~subject of the report. However, nothing in this paragraph shall prevent the commissioner from making recommendations, as provided for by this paragraph, even though the investigation may fail to result in a determination that there is some credible evidence of the alleged abuse or maltreatment.]~~

(c) Reports and records made pursuant to this title, including any previous report concerning a subject of the report, other persons named in the report or other pertinent information, involving children who reside in a residential facility licensed or operated by the offices of mental health ~~[or]~~, mental retardation and developmental disabilities or alcoholism and substance abuse services except those facilities or programs enumerated in paragraph ~~[(h)]~~ (j) of subdivision ~~[seven]~~ four of section four hundred ~~[twelve]~~ twelve-a of this ~~[chapter]~~ title, shall be transmitted immediately by the statewide central register to the commission on quality of care ~~[for the mentally disabled]~~ and advocacy for persons with disabilities, which shall commence an appropriate investigation in accordance with the terms and conditions set forth in section 45.07 of the mental hygiene law.

§ 13. Subparagraph (iv) of paragraph (e) of subdivision 1 of section 424-a of the social services law, as amended by chapter 634 of the laws of 1988, is amended to read as follows:

(iv) If it is determined after a review by the ~~[department]~~ office of children and family services of all records, reports and information in its possession concerning the subject of the report that there is ~~[some credible]~~ a fair preponderance of the evidence to find that the subject committed the act or acts of abuse or ~~[maltreatment]~~ neglect giving rise to the indicated report, the ~~[department]~~ office of children and family services shall also determine whether such act or acts are relevant and reasonably related to issues concerning the employment of the subject by a provider agency or the subject being allowed to have regular and substantial contact with children cared for by a provider agency or the approval or disapproval of an application which has been submitted by the subject to a licensing agency, based on guidelines developed pursuant to subdivision five of ~~[section four hundred twenty-four-a of this chapter]~~ this section. If it is determined that such act or acts are not relevant and related to such issues, the ~~[department]~~ office of children and family services shall be precluded from informing the provider or licensing agency which made the inquiry to the ~~[department]~~ office of children and family services pursuant to this section that the person about whom the inquiry is made is the subject of an indicated report of child abuse or maltreatment.

§ 14. Paragraph (a) of subdivision 1 of section 413 of the social services law, as separately amended by chapters 193 and 513 of the laws of 2007, is amended to read as follows:

(a) The following persons and officials are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child: any physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern;

psychologist; registered nurse; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; hospital personnel engaged in the admission, examination, care or treatment of persons; a Christian Science practitioner; school official, which includes but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate; social services worker; day care center worker; school-age child care worker; provider of family or group family day care; employee or volunteer in a residential care facility defined in subdivision [~~seven~~] four of section four hundred [~~twelve~~] twelve-a of this title or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

§ 15. Section 415 of the social services law, as amended by section 6 of part B of chapter 3 of the laws of 2005, is amended to read as follows:

§ 415. Reporting procedure. Reports of suspected child abuse or maltreatment made pursuant to this title shall be made immediately by telephone or by telephone facsimile machine on a form supplied by the commissioner of the office of children and family services. Oral reports shall be followed by a report in writing within forty-eight hours after such oral report. Oral reports shall be made to the statewide central register of child abuse and maltreatment unless the appropriate local plan for the provision of child protective services provides that oral reports should be made to the local child protective service. In those localities in which oral reports are made initially to the local child protective service, the child protective service shall immediately make an oral or electronic report to the statewide central register. Written reports shall be made to the appropriate local child protective service except that written reports involving children in residential care, as defined in subdivision [~~seven~~] four of section four hundred [~~twelve~~] twelve-a of this title, or being cared for in a home operated or supervised by an authorized agency, office of children and family services, or an office of the department of mental hygiene, shall be made to the statewide central register of child abuse and maltreatment which shall transmit the reports to the agency responsible for investigating the report, in accordance with paragraph (a) or (c) of subdivision eleven of section four hundred twenty-two or section four hundred twenty-four-b of this title, as applicable. Written reports shall be made in a manner prescribed and on forms supplied by the commissioner of the office of children and family services and shall include the following information: the names and addresses of the child and his or her parents or other person responsible for his or her care, if known, and, as the case may be, the name and address of the residential care facility or program in which the child resides or is receiving care; the child's age, sex and race; the nature and extent of the child's injuries, abuse or maltreatment, including any evidence of prior injuries, abuse or maltreatment to the child or, as the case may be, his or her siblings; the name of the person or persons alleged to be responsible for causing the injury, abuse or maltreatment, if known; family composition, where appropriate; the source of the report; the person making the report and where he or she can be reached; the actions taken by the reporting

source, including the taking of photographs and x-rays, removal or keeping of the child or notifying the medical examiner or coroner; and any other information which the commissioner of the office of children and family services may, by regulation, require, or the person making the report believes might be helpful, in the furtherance of the purposes of this title. Notwithstanding the privileges set forth in article forty-five of the civil practice law and rules, and any other provision of law to the contrary, mandated reporters who make a report which initiates an investigation of an allegation of child abuse or maltreatment are required to comply with all requests for records made by a child protective service relating to such report, including records relating to diagnosis, prognosis or treatment, and clinical records, of any patient or client that are essential for a full investigation of allegations of child abuse or maltreatment pursuant to this title; provided, however, that disclosure of substance abuse treatment records shall be made pursuant to the standards and procedures for disclosure of such records delineated in federal law. Written reports from persons or officials required by this title to report shall be admissible in evidence in any proceedings relating to child abuse or maltreatment.

§ 16. Paragraphs (a) and (b) of subdivision 2-a of section 460-c of the social services law, as amended by chapter 32 of the laws of 1992, are amended to read as follows:

(a) If the report of an investigation of child abuse or maltreatment is indicated, the director or operator of a residential facility or program, including a program described in paragraph ~~[(h)]~~ (j) of subdivision ~~[seven]~~ four of section four hundred ~~[twelve]~~ twelve-a of this chapter, shall submit to the ~~[department]~~ office of children and family services, within ten business days of receipt of notice of the indicated report, a written plan of prevention and remediation to be taken with respect to the subject of the indicated report to assure the continued health and safety of children and provide for the prevention of future acts of abuse or maltreatment. The ~~[department]~~ office of children and family services shall approve or disapprove such plan and specify necessary revisions within ten days of its receipt and shall monitor its implementation pursuant to the provisions of this chapter.

(b) In the event an investigation of a report of alleged child abuse or maltreatment determines that some credible evidence of abuse or maltreatment exists and such abuse or maltreatment may be attributed in whole or in part to noncompliance by the facility or program, including a program described in paragraph ~~[(h)]~~ (j) of subdivision ~~[seven]~~ four of section four hundred ~~[twelve]~~ twelve-a of this chapter, with provisions of this chapter or regulations of the ~~[department]~~ office of children and family services applicable to the operation of such residential facility or program, the director or operator of such facility or program shall, in consultation with officials of the department responsible for the approval of operating certificates and for monitoring the provision of protective services to children, develop a plan of prevention and remediation which shall be submitted to and approved by the ~~[department]~~ office of children and family services in accordance with time limits established by regulations of the ~~[department]~~ office of children and family services. Implementation of such plan shall be jointly monitored by officials of the ~~[department]~~ office of children and family services responsible for the approval of operating certificates and for monitoring the provision of protective services to children. In reviewing the continuing qualification of a residential child care facility or program for an operating certificate, the ~~[department]~~

office of children and family services shall evaluate such facility's or program's compliance with plans of prevention and remediation developed and implemented pursuant to this section.

§ 17. Paragraph (d) of subdivision 2 of section 422 of the social services law is REPEALED.

§ 18. Subdivision 6 of section 422 of the social services law, as amended by chapter 12 of the laws of 1996, is amended to read as follows:

6. In all other cases, the record of the report to the statewide central register shall be expunged ten years after the eighteenth birthday of the youngest child named in the report. In the case of a child in residential care as defined in subdivision [~~seven~~] four of section four hundred [~~twelve~~] twelve-a of this [~~chapter~~] title, the record of the report to the statewide central register shall be expunged ten years after the reported child's eighteenth birthday. In any case and at any time, the commissioner of the office of children and family services may amend any record upon good cause shown and notice to the subjects of the report and other persons named in the report.

§ 19. This act shall take effect immediately; provided, however, that sections two, three, four, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of this act shall take effect on the one hundred eightieth day after it shall have become a law; provided, further, that effective immediately the office of children and family services, the state education department, the office of mental health, the office of mental retardation and developmental disabilities, the office of alcoholism and substance abuse services and the commission on quality of care and advocacy for persons with disabilities are hereby authorized to promulgate and adopt rules and regulations on an emergency basis as necessary for the purpose of implementing the provisions of this act.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S8534A

SPONSOR: MORAHAN

TITLE OF BILL: An act to amend the social services law and the mental hygiene law, in relation to the protection of children in residential facilities from child abuse and neglect and repealing certain provisions of the social services law relating thereto

PURPOSE: This bill will enhance the safety of children in residential children's facilities and programs operated or licensed by the State by: (1) clarifying the standards of alleged abuse and neglect of children in residential care; and (2) clarifying and strengthening the process used to investigate and respond to the alleged abuse and neglect of these children,

SUMMARY OF PROVISIONS: Section 1 of the bill sets forth legislative findings.

Sections 2 and 3 of the bill amend Social Services Law (SSL) § 412 to revise and repeal certain definitions.

Section 4 of the bill creates a new SSL § 412-a to add certain definitions. The new section describes particular injuries, risks of injury and conduct which, if experienced by or committed upon a child, may lead to the conclusion that the child is an abused or neglected child in residential care. In addition, section 4 defines "physical impairment" and "mental or emotional injury or impairment" so that abuse which may be less evident than physical injury will still be addressed.

Section 5 of the bill amends SSL § 422(1) to change a reference to the former Department of Social Services to the Office of Children and Family Services (OCFS).

Section 6 of the bill amends SSL § 424-b to change references to the former Division for Youth to OCFS.

Section 7 of the bill makes a conforming change to SSL § 424-c to reflect the bill's creation of a new SSL § 412-a and apply the section to particular residential facilities and programs, including certain facilities operated or licensed by OCFS, private residential schools for special education approved by the Commissioner of Education, and facilities and programs licensed by OMH, OMRDD or OASAS that are co-located on the same grounds as facilities operated or licensed by OCFS. The section does not apply to other facilities and programs licensed or operated by OMH, OMRDD or OASAS, which are covered by changes made later in the bill to Mental Hygiene Law (MHL) § 45.07.

Section 7 of the bill also amends SSL § 424-c(7) to require that OCFS make certain post-investigation determinations regarding reports of abuse and neglect of children in the specified residential settings. Within 60 days of receiving a report, OCFS must determine whether: (1) the report is "indicated" or "unfounded;" (2) there is reasonable cause to suspect that a parent or person responsible for the child, other than a custodian, abused or maltreated the child; (3) it appears likely that a crime may have been committed against the child; and (4) it appears that a violation of the statutory, regulatory or other requirements of the state oversight agency has occurred.

Section 8 of the bill adds SSL § 424-d, which applies to the same residential settings covered by SSL § 424-c, to specify that a report will be indicated if there is some credible evidence that a specific custodian is responsible for the abuse or neglect of a child in residential care, in whole or in part. A custodian will be deemed responsible if he or she: (1) commits, promotes, or knowingly permits the commission of

the specific acts set forth in SSL §§ 412- a(1)(d) or (2)(d); or (2) injures a child by causing physical, mental or emotional injury or impairment, or a risk thereof, through direct action, deliberate indifference, failure to exercise a minimum degree of care, failure to follow the rules and regulations of the oversight agency, or failure to comply with a plan of remediation.

Section 8 also provides that if OCFS determines that there is reasonable cause to suspect that the child's parent, or any other person legally responsible for the child other than a custodian of the child, abused or maltreated the child, OCFS must make a separate report to the SCR. If OCFS determines that it appears likely that a crime may have been committed against the child, regardless of whether a specific wrongdoer is identified, the agency must transmit a report of the allegations and its findings to the appropriate law enforcement authority, or confirm that such a report has already been transmitted.

Additionally, section 8 provides that if OCFS determines that it appears likely that a crime may have been committed against a child, regardless of whether a report is indicated or unfounded, that there appears to have been a violation of the statutory, regulatory or other requirements of the oversight state agency, regardless of whether a specific wrongdoer is identified, or that a report is indicated, OCFS must report its findings to the director of the facility and to the state oversight agency or, if an OCFS facility is involved, to the appropriate internal staff. Moreover, OCFS shall recommend to the facility and the licensing state agency any appropriate preventive and remedial actions, including enforcement or disciplinary actions under the agency's statutory authority, be taken. Further, both the facility and the state oversight agency must initiate any necessary and appropriate corrective action. The facility shall submit to OCFS and the state agency a written report of the actions taken to address OCFS's findings and such subsequent progress reports as OCFS may require. The state oversight agency must similarly report to OCFS.

Section 9 of the bill makes conforming amendments to MHL § 45,07(c) with respect to investigations of SCR reports pertaining to children in residential care conducted by the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD). Section 9 also establishes the same scheme for CQCAPD's post-investigation procedures as made by sections 7 and 8 regarding OCFS, except that it requires CQCAPD to provide OCFS with its recommendation as to whether a report should be indicated or unfounded, and applies to residential facilities and programs licensed or operated by OMH, OMRDD, and OASAS.

Sections 10 and 11 of the bill amend SSL §§ 422(8)(a)(ii) and (c)(ii) to provide that the standard of proof needed to sustain an indicated report of abuse or neglect of a child in residential care at an administrative review is a fair preponderance of the evidence, rather than credible evidence, to conform with court decisions.

Sections 12, 13, 14, 15, 16 and 18 of the bill make conforming amendments to SSL §§ 422(11)(a) and (c), 424-a(1)(e)(iv), 413(1)(a), 415, 460-c(2-a), 422(6) and 422(11) to reflect new SSL § 412-a, change references to the former Department of Social Services to OCFS, reflect the fair preponderance standards, and delete unnecessary language.

Section 17 of the bill repeals SSL § 422(2)(d)

Section 19 of the bill provides that the bill shall take effect immediately, except that sections 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 shall take effect 180 days after enactment. In addition, the bill authorizes the affected agencies to implement regulations on an emergency basis prior to that date.

EXISTING LAW:

SSL § 412 defines terms used in Title 6 of Article 6 pertaining to child protective services.

SSL § 422 establishes the SCR, which is operated by OCFS, and sets forth its responsibility to receive and refer calls reporting suspected child abuse and maltreatment

SSL § 422(8) provides due process for persons who are subjects of reports of child abuse and maltreatment, including subjects of reports regarding children in residential care. In particular, the statute permits the subject of an indicated report to request that the indicated report be amended to an unfounded report. If the subject makes such a request, an administrative review is conducted. SSL § 422(8) also permits a subject to seek an administrative hearing if the report is not unfounded at the administrative review.

The administrative review and hearing will determine whether there is a preponderance of the evidence showing abuse or maltreatment, as opposed to whether there is some credible evidence of abuse or maltreatment, See *Valmonte v. Bane*, 18 F. 992 (2d Cir. 1994) and *Lee TT v. Dowling*, 87 N.Y.,2d 699 (1996). If there is a preponderance of the evidence showing abuse or neglect, the administrative review and hearing must also determine whether the report is relevant and reasonably related to employment or licensure in the child care field.

SSL § 424-a provides for screening through the SCR of potential employees of residential child care programs, foster parents, adoptive parents, day care providers, and day care staff, among others, to determine if there is a record of the person being the subject of an indicated report in the SCR.

SSL § 424-b provides that when the SCR accepts a report of abuse or maltreatment for a child in residential care, the SCR must refer the report for investigation to the appropriate state agency or local social services district. The agency or district must conduct an investigation pursuant to SSL § 424-c.

SSL § 424-c requires OCFS to receive and investigate SCR reports of abuse or maltreatment of children in certain residential facilities or programs not operated or licensed by OMH or OMRDD.. Under SSL § 424-c(7), OCFS must determine within 60 days whether the report is indicated or unfounded. In addition, OCFS may require the residential facility to take steps necessary to protect the safety of the subject child and develop a corrective action plan.

MHL § 33.13 establishes the confidentiality of information contained in mental hygiene clinical records.

MHL § 45.07(c) provides for investigations by CQCAPD of SCR reports of alleged abuse and neglect of children in certain residential care in facilities operated or licensed by OMH and OMRDD which are called into the SCR. CQCAPD must investigate all such allegations and determine, subject to confirmation by OCFS, whether the allegation should be "indicated" or "unfounded" in accordance with the criteria established under SSL Article 6, Title 6. CQCAPD also represents the interests of the State in any hearings held pursuant to SSL § 422 in order to defend challenges to reports which have been "indicated" pursuant to CQCAPD's recommendation.

MHL § 45 07(c) further provides that where OCFS confirms an indication, CQCAPD must recommend to the facility and the appropriate licensing agency that remedial and preventive actions be taken. Where the allegation is unfounded, CQCAPD may, if warranted, make the same type of recommendations. If, in the course of any CQCAPD investigation, it appears that a crime may have been committed, CQCAPD must notify appropriate law enforcement authorities and assist the criminal court in any proceedings in accordance with the purposes of SSL Article 6, Title 6 of Article 6.

Executive Law Article 19-G provides for the operation by OCFS of residential facilities for youth adjudicated as juvenile delinquents or juvenile offenders and detention facilities

Executive Law Article 19-H provides for supervision and certification by OCFS of residential facilities and programs for runaway and homeless youth.

LEGISLATIVE HISTORY: This is a new bill.

STATEMENT IN SUPPORT: Currently, the law in New York creates different, and in some instances unequal, standards of protection for children depending on where they live. Children who live at home with parents or other caretakers are covered by one set of definitions of abuse and neglect. Children residing in residential programs because they are in foster care, have significant mental health or substance abuse issues, live with significant developmental disabilities, or have been adjudicated delinquent by the family or criminal courts, are protected by different definitions of abuse and neglect. The current definitions of abuse and neglect for those children in residential care are subject to the interpretation that they are less protective than the definitions applicable to children living at home.

All children in the State of New York have a right to similar levels of protection from abuse and neglect regardless of where they reside. Children in facilities operated or licensed by OCFS, SED, OMH, OMRDD and OASAS often have serious social, emotional and mental and physical health needs. Families must be able to rely on the laws of New York and the enforcement power that government agencies exert over those laws to see that their children are cared for in a safe and appropriate manner. They justifiably expect the State, under its *parens patriae* responsibility, to protect the children entrusted to its care from abuse and neglect. This bill establishes an enhanced set of protections for children who have been entrusted to the care and/or oversight of the State.

Providing this enhanced protection to children placed out of their homes in residential settings presents a unique set of challenges. Due to the nature of residential settings - which include transitions of staff as shifts change, team decision making and caretaking roles that differentiate along child care and clinical care lines - it is sometimes difficult to identify the caretaker personally responsible for the harm or serious risk of harm that may be present for a child. This bill enhances the protection of children in residential care by creating a statutory scheme that determines whether abuse or neglect has occurred and what responsive actions should be taken by focusing on the impact to the child.

The bill also enhances the protection of children in residential care by expanding investigations of alleged child abuse and neglect to cover young people in residential settings certified by OASAS.

In addition, the bill provides an enhanced level of care to children in residential care by delineating certain actions that constitute child abuse, even if the child does not experience an injury. While there is no similar list of abusive behaviors applicable in the non-residential context, this bill characterizes as acts of abuse specific conduct including: (1) throwing, shoving, kicking, burning, striking, choking, smothering, pinching, punching, shaking, cutting or biting the child; (2) being threatened with pain or injury through display of a weapon or other dangerous instrument that could be perceived as a means of inflicting pain or injury; (3) the use of corporal punishment; and (4) withholding nutrition or hydration as punishment or unlawfully administering any controlled substance or alcoholic beverage.. The bill also defines "physical impairment" and "mental or emotional injury or impairment" so that abuse which may be less evident than physical injury will still be addressed

Within 60 days of receiving a report of the alleged abuse or neglect of a child in residential care, the investigatory agency - OCFS or CQCAPD - will be required to make four determinations that will drive the kind of follow-up that must be done.. First, the investigatory agency must determine if the report should be indicated - whether credible evidence exists to identify a specific custodian as being personally responsible for the abuse or neglect of the child. Second, the agency must determine whether it appears that a parent or other person legally responsible for a child - other than a custodian -- is responsible for the abuse or maltreatment of the child. Third, the agency must determine if it appears that a crime may have been committed, in which case a referral to law enforcement must be made. Finally, the investigatory agency must determine if there was a regulatory violation committed by the residential facility or program. If the report is indicated by OCFS or recommended for indication by CQCAPD, or if it appears that a crime has been committed or a violation has occurred, the facility and the appropriate State licensing or certifying agency must be notified and corrective action must be taken.

BUDGET IMPLICATIONS: This bill is likely to result in additional costs to the State for training of staff in relation to the revised standards of abuse and neglect and for other costs associated with the investigation of reports of abuse and neglect of children in residential facilities.

EFFECTIVE DATE: This bill takes effect immediately, except that sections 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 take effect 180 days after enactment. In addition, the affected State agencies will have the authority to promulgate emergency regulations prior to that date to be able to implement the bill.

NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES
DIVISION OF CHILD WELFARE AND COMMUNITY SERVICES REGIONAL OFFICES

ALBANY REGIONAL OFFICE

Albany Regional Office (**Region IV**)
NYS OCFS
52 Washington St., Room 261 West
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Director: Kerri Barber, Acting Director
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Counties: Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saint Regis Mohawk Indian Reservation, Saratoga, Schenectady, Schoharie, Warren, Washington

BUFFALO REGIONAL OFFICE

Buffalo Regional Office (**Region I**)
NYS OCFS
295 Main Street
Suite 545, Ellicott Square Building, 5th Floor
Buffalo, NY 14203

Director: Mary Miller
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Counties: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming

NEW YORK CITY REGIONAL OFFICE

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New York, NY 10038

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ROCHESTER REGIONAL OFFICE

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Counties: Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates

SYRACUSE REGIONAL OFFICE

Syracuse Regional Office (**Region III**)
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SPRING VALLEY REGIONAL OFFICE

Spring Valley Regional Office (**Region V**)
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