

TITLE 1

CARE AND PROTECTION OF CHILDREN

- Section 371. Definitions.
- 371-a. Procedure.
- 371-b. Citizen review panels.
- 372. Records and reports.
- 372-b. Adoption services.
- 372-c. Putative father registry.
- 372-d. Adoption services; purchase by department.
- 372-e. Adoption applications; appeals.
- 372-f. Statewide adoption service.
- 372-g. Abandoned infant protection program.
- 372-h. Reporting on post adoption services.
- 373. Religious faith.
- 373-a. Medical histories.
- 374. Authority to place out or board out children.
- 374-a. Interstate compact on the placement of children.
- 374-b. Authority to operate agency boarding home.
- 374-c. Authority to operate group homes.
- 374-d. Authority to operate public institutions for children.
- 374-e. Authority to place out or board out children with therapeutic foster parents.
- 374-f. Authority to enter into leases for dwelling units.
- 375. Requirement of certificate or license to board children.
- 376. Certificate to board children and/or minors under age of eighteen years.
- 377. License to board children.
- 378. Form, duration and limitation of certificates and licenses.
- 378-a. Access to conviction records by authorized agencies.
- 379. Revocation of certificates and licenses.
- 380. Boarding and free homes; records.
- 381. Maternity homes; records and reports.
- 382. Responsibility for children without state residence; license and board.
- 383. Care and custody of children.
- 383-b. Medical treatment for abused, neglected and destitute children; consent of commissioners.
- 383-c. Guardianship and custody of children in foster care.
- 384. Guardianship and custody of children not in foster care.
- 384-a. Transfer of care and custody of children.
- 384-b. Guardianship and custody of destitute or dependent children; commitment by court order; modification of commitment and restoration of parental rights.
- 384-c. Notice in certain proceedings to fathers of children born out-of-wedlock.
- 385. Orders; prohibiting placing out or boarding out; removal.
- 386. Visitation; inspection and supervision.
- 387. Ineligibility for public foster care funds; fiscal penalties.
- 388. Special charters.
- 389. Penalty for violations.
- 390. Child day care; license or registration required.
- 390-a. Standards and training for child day care.

- 390-b. Criminal history review of child care providers, generally.
- 390-c. Notice of pesticide applications.
- 390-c*2. Additional powers and duties of the office of children and family services.
- 390-d. Requiring barriers to be placed around swimming pools and bodies of water on the grounds of family day care homes or group family day care homes.
- 390-e. Criminal history review; mentoring programs.
- 390-f. Report on child care insurance.
- 390-g. Pesticide alternatives.
- 390-h. Notice requirement before closing certain day care centers.
- 390-i. Notice of inspection report.
- 391. Violation; injunction.
- 392. Services for relative caregivers.

§ 371. Definitions

Unless the context or the subject matter manifestly requires a different interpretation, when used in this article or in any special act relating to children,

1. "Child" means a person actually or apparently under the age of eighteen years;

2. "Abandoned child" means a child under the age of eighteen years who is abandoned by both parents, or by the parent having its custody, or by any other person or persons lawfully charged with its care or custody, in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b;

3. "Destitute child" means:

(a) a child under the age of eighteen who is in a state of want or suffering due to lack of sufficient food, clothing, shelter, or medical or surgical care; and:

(i) does not fit within the definition of an "abused child" or a "neglected child" as such terms are defined in section one thousand twelve of the family court act; and

(ii) is without any parent or caretaker as such term is defined in section one thousand ninety-two of the family court act, available to sufficiently care for him or her, due to:

(A) the death of a parent or caretaker; or

(B) the incapacity or debilitation of a parent or caretaker, where such incapacity or debilitation would prevent such parent or caretaker from being able to knowingly and voluntarily enter into a written agreement to transfer the care and custody of said child pursuant to section three hundred fifty-eight-a or three hundred eighty-four-a of the social services law; or

(C) the inability of the local social services district to locate any parent or caretaker, after making reasonable efforts to do so; or

(D) the parent or caretaker being physically located outside of the state of New York and the local social services district is or has been unable to return said child to such parent or caretaker while or after making reasonable efforts to do so, unless the lack of such efforts is or was appropriate under the circumstances;

(b) a child who is under the age of eighteen years and absent from his

or her legal residence without the consent of his or her parent, legal guardian or custodian; or

(c) a child under the age of eighteen who is without a place of shelter where supervision and care are available who is not otherwise covered under paragraph (a) of this subdivision; or

(d) a person who is a former foster care youth under the age of twenty-one who was previously placed in the care and custody or custody and guardianship of the local commissioner of social services or other officer, board or department authorized to receive children as public charges, and who was discharged from foster care due to a failure to consent to continuation in placement, who has returned to foster care pursuant to section one thousand ninety-one of the family court act.

4-a. "Neglected child" means a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

(ii) who has been abandoned by his parents or other person legally responsible for his care.

4-b. "Abused child" means a child less than eighteen years of age whose parent or other person legally responsible for his care

(i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(iii) commits, or allows to be committed, an act of sexual abuse against such child as defined in the penal law.

5. "Juvenile delinquent" means a person over seven and less than sixteen years of age who does any act which, if done by an adult, would constitute a crime.

6. "Person in need of supervision" means a person less than eighteen years of age who is habitually truant or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child's care, or

other lawful authority.

7. "Dependent child" means a child who is in the custody of, or wholly or partly maintained by an authorized agency or an institution, society or other organization of charitable, eleemosynary, correctional, or reformatory character;

8. "Mentally disabled child" means a child who has a mental disability as defined in section 1.03 of the mental hygiene law;

9. "Physically handicapped child" means a child who, by reason of a physical disability or infirmity, whether congenital or acquired by accident, injury or disease, is or may be expected to be totally or partially incapacitated for education or for remunerative occupation, as provided in the education law, or is or may be expected to be handicapped, as provided in the public health law;

10. "Authorized agency" means

(a) Any agency, association, corporation, institution, society or other organization which is incorporated or organized under the laws of this state with corporate power or empowered by law to care for, to place out or to board out children, which actually has its place of business or plant in this state and which is approved, visited, inspected and supervised by the office of children and family services or which shall submit and consent to the approval, visitation, inspection and supervision of such office as to any and all acts in relation to the welfare of children performed or to be performed under this title; provided, however, that on and after June first, two thousand seven, such term shall not include any for-profit corporation or other for-profit entity or organization for the purposes of the operation, management, supervision or ownership of agency boarding homes, group homes, homes including family boarding homes of family free homes, or institutions which are located within this state;

(b) Any court or any social services official of this state authorized by law to place out or to board out children or any Indian tribe that has entered into an agreement with the department pursuant to section thirty-nine of this chapter;

(c) Any agency, association, corporation, institution, society or other organization which is not incorporated or organized under the laws of this state, placing out a child for adoption whose admission to the United States as an eligible orphan with non-quota immigrant status pursuant to the federal immigration and nationality act is sought for the purpose of adoption in the State of New York or who has been brought into the United States with such status and for such purpose, provided, however, that such agency, association, corporation, institution, society or other organization is licensed or otherwise authorized by another state to place out children for adoption, that such agency, association, corporation, institution, society or other organization is approved by the department to place out such children with non-quota immigrant status for adoption in the State of New York, and provided further, that such agency, association, corporation, institution, society or other organization complies with the regulations of the department pertaining to such placements. Notwithstanding any other provision of law to the contrary, such agency shall be limited in its functioning as an authorized agency to the placing out and adoption of such children. This paragraph shall not require the department to approve any such agency, association, corporation, institution, society or other organization which is located in a state which is a party to the interstate compact on the placement of children.

11. "Custody" means custody in pursuance of or in compliance with expressed provisions of law;

12. "Place out" means to arrange for the free care of a child in a family other than that of the child's parent, step-parent, grandparent, brother, sister, uncle, or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care;

13. "Place" or "commit" includes replace and recommit;

14. "Board out" means to arrange for the care of a child in a family, other than that of the child's parent, step-parent or legal guardian, to whom payment is made or agreed to be made for care and maintenance.

15. "Home" includes a family boarding home or a family free home.

16. agency boarding home shall mean a family-type home for children and/or for minors operated by an authorized agency, in quarters or premises owned, leased or otherwise under the control of such agency, for the purpose of providing care and maintenance therein for children or minors under the care of such agency.

17. "Group home" shall mean a facility for the care and maintenance of not less than seven, nor more than twelve children, who are at least five years of age, operated by an authorized agency except that such minimum age shall not be applicable to siblings placed in the same facility nor to children whose mother is placed in the same facility.

18. "Public institution for children" shall mean an institution which is established and maintained by a public welfare district for the purpose of providing care and maintenance therein for children and minors for whose care such district is responsible and who require care away from their own homes.

19. "Foster parent" shall mean any person with whom a child, in the care, custody or guardianship of an authorized agency, is placed for temporary or long-term care, and "foster child" shall mean any person, in the care, custody or guardianship of an authorized agency, who is placed for temporary or long-term care.

20. "Therapeutic foster parent" means a foster parent who is certified or licensed pursuant to section three hundred seventy-five or section three hundred seventy-six of this article, or otherwise approved and who has successfully completed a training program developed by professionals experienced in treating children who exhibit high levels of disturbed behavior, emotional disturbance or physical or health needs. For any such child placed in their care, such parent shall assist in the implementation of the therapeutic treatment portion of the family service plan required by section four hundred nine-e of this article.

21. "Supervised independent living program" shall mean one or more of a type of agency boarding home operated and certified by an authorized agency in accordance with the regulations of the office of children and family services to provide a transitional experience for older youth who, based upon their circumstances, are appropriate for transition to the level of care and supervision provided in the program. Each supervised independent living unit shall be located in the community separate from any of the agency's other congregate dwellings.

§ 371-a. Procedure. In any proceeding commenced pursuant to this chapter in which the family court has exercised jurisdiction, the provisions of articles one, two and eleven of the family court act shall apply to the extent that they do not conflict with the specific provisions of the social services law.

§ 371-b. Citizen review panels. 1. There shall be established at least three citizen review panels. At least one panel shall be established for the city of New York and at least two panels shall be established for social services districts or combinations of districts outside of the city of New York. The panel in the city of New York shall create one subcommittee for each borough for the purposes of evaluating the extent

to which the state and the social services district are discharging their child protection responsibilities within that particular borough, in accordance with subsection three of this section. The office of children and family services shall make available resources to support the needs of each citizen review panel.

2. Each citizen review panel shall consist of thirteen members, seven of whom shall be appointed by the governor, three of whom shall be appointed by the temporary president of the senate, and three of whom shall be appointed by the speaker of the assembly. Each panel shall duly elect a chairperson of such panel. Each panel shall be composed of volunteer members who are broadly representative of the community in which such panel is established, including members who have expertise in the prevention and treatment of child abuse and neglect. No person employed by federal, state, county or municipal agencies which directly deliver child welfare services may be appointed to a panel.

3. Each citizen review panel shall, by examining the policies and procedures of the state and social services districts and, where appropriate, specific cases, evaluate the extent to which the agencies are effectively discharging their child protection responsibilities in accordance with: (a) the state plan established pursuant to 42 U.S.C. § 5106a(b); (b) the child protection standards set forth in 42 U.S.C. § 5106a(b); and (c) any other criteria that the panel considers important to ensure the protection of children. Each panel shall meet not less than once every three months. Each panel may hold public hearings on issues within the panel's jurisdiction.

4. Each citizen review panel shall have access to information on specific cases in accordance with paragraph (A) of subdivision four of section four hundred twenty-two of this chapter. Each panel shall also have reasonable access to public and private facilities which are in receipt of public funds and are providing child welfare services within the panel's jurisdiction. Where necessary, the office shall assist a panel in obtaining access to information or facilities as authorized in accordance with this section. Each panel shall also have access to the report prepared by the state pursuant to 42 U.S.C. § 5106a(d).

5. Each citizen review panel shall prepare and make available to the public, on an annual basis, a report containing: (a) a summary of the activities of the panel; and (b) the findings and recommendations of the panel. Each report shall be submitted by February first and shall omit all confidential information used to prepare the report.

6. The members of each citizen review panel shall not disclose to any person or government official any identifying information about any specific child protection case. A member who knowingly violates this duty of confidentiality may be subject to a civil penalty not to exceed one thousand dollars and removal from the panel.

7. The legal defense of a member of a citizen review panel shall be governed by the terms of section seventeen of the public officers law.

§ 372. Records and reports. 1. Every court, and every public board, commission, institution, or officer having powers or charged with duties in relation to abandoned, delinquent, destitute, neglected or dependent children who shall receive, accept or commit any child shall provide and keep a record showing: (a) the full and true name of the child,

(b) his sex and date and place of birth, if ascertainable, or his apparent age,

(c) the full and true names and places of birth of his parents, and their actual residence if living, or their latest known residence, if deceased or whereabouts unknown and the name and actual residence of any other person having custody of the child, as nearly as the same can

reasonably be ascertained,

(d) the religious faith of the parents and of the child,

(e) the name and address of any person, agency, institution or other organization to which the child is committed, placed out, boarded out, or otherwise given into care, custody or control,

(f) the religious faith and occupation of the head or heads of the family with whom the child is placed out or boarded out and their relationship, if any, to the child,

(g) if any such child shall die, the date and cause of death and place of burial,

(h) any further disposition or change in care, custody or control of the child,

(i) the date or dates of reception and of any subsequent disposition or change in care, custody or control and, in case of adoption, the name and title of the judge or surrogate making the order of adoption, the date of such order and the date and place of filing of such order,

(j) the reasons for any act performed in reference to such child herein required to be recorded, together with such further information as the department may require; and shall make to the department upon blanks provided by the department reports of each such child placed out, or boarded out, containing the information herein required to be kept; and shall furnish such information to any authorized agency to which any such child shall be committed or otherwise given into custody.

2. Every charitable, eleemosynary, reformatory, or correctional institution, public or private, incorporated or unincorporated, and every agency, association, corporation, institution, society or other organization which shall receive, accept, or admit any child whether or not in receipt of payments from public funds for the support of such child shall provide and keep a record as described in subdivision one, and also showing how, by whom and for what reason such child shall have been given into its custody or committed to it and shall make reports of each such child to the department upon blanks provided by the department giving all the information required by subdivision one to be recorded together with such further information as the department may require. Except as to children placed out, boarded out or surrendered or for whom guardianship is accepted or adoption provided, the requirement of this section shall not apply to hospitals, day nurseries, eleemosynary day schools, and summer and vacation homes and camps, or to institutions for the care of convalescent, anaemic, under-nourished or cardiac children, preventoria, working boys' homes, emergency shelters and schools for the blind and for the deaf, but all such hospitals, homes and institutions shall keep such records and make to the department such reports as the department may require.

3. Such records maintained by the department or an authorized agency, including a local social services district, regarding such children are confidential, provided, however, that such records are subject to the provisions of article thirty-one of the civil practice law and rules. When either the subject foster child, or such child's parent, or such child's guardian if any, is not a party to the action, a copy of the notice or motion for discovery shall be served upon such parent, guardian, and child and, if the child is still a minor, the child's attorney. Such persons may thereafter appear in the action with regard to such discovery. Where no action is pending, upon application by a parent, relative or legal guardian of such child or by an authorized agency, after due notice to the institution or authorized agency affected and hearing had thereon, the supreme court may by order direct the officers of such institution or authorized agency to furnish to such

parent, relative, legal guardian or authorized agency such extracts from the record relating to such child as the court may deem proper. The department through its authorized agents and employees may examine at all reasonable times the records required by this section to be kept.

4. (a) All such records relating to such children shall be open to the inspection of the board and the department at any reasonable time, and the information called for under this section and such other data as may be required by the department shall be reported to the department, in accordance with the regulations of the department. Such records kept by the department shall be deemed confidential and shall be safeguarded from coming to the knowledge of and from inspection or examination by any person other than one authorized, by the department, by a judge of the court of claims when such records are required for the trial of a claim or other proceeding in such court or by a justice of the supreme court, or by a judge of the family court when such records are required for the trial of a proceeding in such court, after a notice to all interested persons and a hearing, to receive such knowledge or to make such inspection or examination. No person shall divulge the information thus obtained without authorization so to do by the department, or by such judge or justice.

(b) (i) Notwithstanding any inconsistent provision of law to the contrary, records relating to children kept pursuant to this section shall be made available to officers and employees of the state comptroller or of the city comptroller of the city of New York, or of the county officer designated by law or charter to perform the auditing function in any county not wholly contained within a city, for the purposes of a duly authorized performance audit, provided that such comptroller shall have certified to the keeper of such records that he or she has instituted procedures developed in consultation with the department to limit access to client-identifiable information to persons requiring such information for purposes of the audit, that such persons shall not use such information in any way except for purposes of the audit and that appropriate controls and prohibitions are imposed on the dissemination of client-identifiable information obtained in the conduct of the audit. Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such child or the child's family shall not be made available to such officers and employees unless disclosure of such information is absolutely essential to the specific audit activity and the department gives prior written approval.

(ii) Any failure to maintain the confidentiality of client-identifiable information shall subject such comptroller or officer to denial of any further access to records until such time as the audit agency has reviewed its procedures concerning controls and prohibitions imposed on the dissemination of such information and has taken all reasonable and appropriate steps to eliminate such lapses in maintaining confidentiality to the satisfaction of the department. The department shall establish the grounds for denial of access to records contained under this section and shall recommend, as necessary, a plan of remediation to the audit agency. Except as provided in this section, nothing in this paragraph shall be construed as limiting the powers of such comptroller or officer to access records which he is otherwise authorized to audit or obtain under any other applicable provision of law. Any person given access to information pursuant to this paragraph who releases data or information to persons or agencies not authorized to receive such information shall be guilty of a class A misdemeanor.

4-a. Notwithstanding any provisions of law to the contrary, social services districts shall provide a written summary of services rendered to a child upon the request of a probation service conducting an investigation pursuant to the provisions of section 351.1 of the family court act. Information provided to a probation service pursuant to the provisions of this subdivision shall be maintained by such service according to the provisions of subdivision five of section 351.1 of the family court act.

4-b. Notwithstanding any other provision of law, foster care information governed by this section may be released by the department or an authorized agency to a person, agency or organization for purposes of a bona fide research project. Identifying information shall not be made available, however, unless it is absolutely essential to the research purpose and the department gives prior approval. Information released pursuant to this subdivision shall not be re-disclosed except as otherwise permitted by law and upon the approval of the department.

5. The requirements of this section to keep records and make reports shall not apply to the birth parent or parents, or relatives within the second degree of such parents.

6. The provisions of this section as to records and reports to the department shall apply also to the placing out, adoption or boarding out of a child and the acceptance of guardianship or of surrender of a child.

7. An authorized agency as defined in paragraphs (a) and (b) of subdivision ten of section three hundred seventy-one of this chapter or any primary or secondary school or an office of the division for youth, except agencies operating pursuant to article nineteen-H of the executive law, who shall receive, accept, enroll or commit any child under such circumstances as shall reasonably indicate that such child may be a missing person shall make inquiries of each such child to the division of criminal justice services in a manner prescribed by such division; provided that as used in this subdivision a court shall not be included within the definition of an authorized agency. If such child appears to match a child registered with the statewide central register for missing children as described in section eight hundred thirty-seven-e of the executive law, or one registered with the national crime information center register, such agency shall immediately contact the local law enforcement agency.

8. In any case where a child is to be placed with or discharged to a relative or other person legally responsible pursuant to section ten hundred seventeen or ten hundred fifty-five of the family court act, such relative or other person shall be provided with such information by an authorized agency as is provided to foster parents pursuant to this section and applicable regulations of the department.

§ 372-b. Adoption services. 1. a. A prospective adoptive parent shall have a right to a fair hearing pursuant to section twenty-two of this chapter concerning the failure of a social services official to provide adoption services authorized to be provided pursuant to this section and the state's consolidated services plan. At the time a child is placed in a prospective adoptive home, the prospective adoptive parent shall be notified in writing of his or her right to such fair hearing.

b. Each social services official shall provide, either directly or through purchase of service, adoption services for each child in their care who is freed for adoption. Such adoption services shall include the evaluation of a child's placement needs and pre-placement planning, recruitment of and homestudy for prospective adoptive parents, training of adoptive parents, placement planning, supervision and post adoption

services.

2. The department shall promulgate regulations which shall require that adoption services be made available to all children who are listed with the New York state adoption service. Such regulations shall also provide for cooperation between local social services commissioners, and for apportioning reimbursement for adoption services where more than one agency or social services district has provided such services for a child.

2-a. The department shall promulgate regulations requiring all adoption agencies to forward names and addresses of all persons who have applied for adoption of a hard-to-place or handicapped child, as defined in section four hundred fifty-one of this chapter. A list of such names and addresses shall be maintained by the department and made available, without charge, to every agency in the state to assist them in placing such children for adoption.

3. The department shall promulgate regulations to maintain enlightened adoption policies and to establish standards and criteria for adoption practices.

§ 372-c. Putative father registry. 1. The department shall establish a putative father registry which shall record the names and addresses of: (a) any person adjudicated by a court of this state to be the father of a child born out-of-wedlock; (b) any person who has filed with the registry before or after the birth of a child out-of-wedlock, a notice of intent to claim paternity of the child; (c) any person adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child, where a certified copy of the court order has been filed with the registry by such person or any other person; (d) any person who has filed with the registry an instrument acknowledging paternity pursuant to section 4-1.2 of the estates, powers and trusts law.

2. A person filing a notice of intent to claim paternity of a child or an acknowledgement of paternity shall include therein his current address and shall notify the registry of any change of address pursuant to procedures prescribed by regulations of the department.

3. A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed therewith and, upon receipt of such notification by the registry, the revoked notice of intent to claim paternity shall be deemed a nullity nunc pro tunc.

4. An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party, other than the person who filed such notice, in any proceeding in which such fact may be relevant.

5. The department shall, upon request, provide the names and addresses of persons listed with the registry to any court or authorized agency, and such information shall not be divulged to any other person, except upon order of a court for good cause shown.

§ 372-d. Adoption services; purchase by department. 1. The department may provide, through purchase of services from authorized agencies, adoption services for any child who has been referred to the statewide adoption service pursuant to section three hundred seventy-two-c and who has not been placed for adoption within three months after the date of such referral.

2. As used in this section "adoption services" shall mean those services and activities set forth in subdivision one of section three hundred seventy-two-b of this chapter.

3. In accordance with regulations of the department, expenditures made by the department for the provision, through purchase, of adoption

services for a child pursuant to this section shall be subject to reimbursement to the state by the social services district charged with the guardianship and custody of the child, as follows: fifty percent of the amount expended for the provision of such adoption services after first deducting from such amount any federal funds properly received or to be received on account thereof.

§ 372-e. Adoption applications; appeals. 1. An authorized agency shall keep a record of applications received from persons seeking to become adoptive parents, including all actions taken on such applications.

2. The department shall promulgate regulations setting forth standards and procedures to be followed by authorized agencies in evaluating persons who have applied to such agencies for the adoption of a child. Such regulations shall also restrict the evaluation process so as not to unnecessarily duplicate previous investigations which may have been made of the adoptive applicant in the context of a prior adoption application or an application for licensure or certification to board children.

3. (a) Upon an authorized agency's denial of an application, the authorized agency shall furnish the applicant with a written statement setting forth its reason for the denial of the application. Such written statement shall include a notice to the applicant, in bold face type, of such applicant's right to request and be granted a hearing in accordance with the provisions of subdivision four of this section.

(b) Upon an authorized agency's failure to act on an application within six months of its submission, the authorized agency shall, on such applicant's request, furnish the applicant with a written statement setting forth its reason for its failure to act on the application. Such written statement shall include a notice to the applicant, in bold face type, of such applicant's right to request and be granted a hearing in accordance with the provisions of subdivision four of this section.

4. Any person whose application has been denied or whose application has not been acted upon by an authorized agency within six months of its submission may request and shall be granted a hearing in accordance with the provisions of section twenty-two of this chapter relating to fair hearings.

§ 372-f. Statewide adoption service. 1. There shall be established by the department either directly or through purchase a statewide adoption service which shall serve all authorized agencies in the state as a means of recruiting adoptive families for children who have been legally freed for adoption but have remained in foster care for a period of three months or more. Such period in foster care shall include any period of foster care immediately preceding the date on which the child was legally freed for adoption. The service shall provide descriptions and photographs of such children, and shall also provide any other information deemed useful in the recruitment of adoptive families for each such child. The service shall be updated monthly.

2. The service may be organized on a regional basis, but shall be provided to all authorized child caring agencies and in accordance with the regulations of the department, to all appropriate citizen groups and other organizations and associations interested in children's services.

3. The department shall promulgate regulations governing the operations of the adoption service.

4. (a) Except as set forth in paragraph (b) of this subdivision, each authorized agency shall refer to the adoption service, accompanied by a photograph and description, as shall be required by departmental regulations, each child in its care who has been legally freed for adoption and who has been in foster care for the period specified in

subdivision one of this section and for whom no adoptive home has been found. If the child is fourteen years or older and will not consent to his or her adoption, such child need not be listed on the service. Such children's names shall be forwarded to the department by the authorized agency, with reference to the specific reason by which the child was not placed on the service. The department shall establish procedures for periodic review of the status of such children. If the department determines that adoption would be appropriate for a child not listed with the service, the agency shall forthwith list the child. Each authorized agency may voluntarily refer any child who has been legally freed for adoption. In addition, upon referral of a child by an authorized agency, the department may determine that the listing of a child with the service is not in the child's best interest where: the child has been placed with a relative within the third degree of consanguinity of the parents of the child and the child does not have a permanency goal of adoption, or the child is not emotionally prepared for an adoptive placement. Any child who is not listed based on one of these factors and who is not placed in an adoptive placement within six months of referral to the department must be listed with the service at the end of the six month period in accordance with regulations of the department except where the child is placed with a relative within the third degree of consanguinity of the parents of the child, in which case the department may determine that the listing continues to be contrary to the child's best interests. The department shall establish procedures for the periodic review of the status of such children.

(b) An authorized agency shall not refer to the adoption service a child in its care who has been legally freed for adoption when the child has been placed with a foster parent who has expressed, in writing, an interest in adopting the child; provided, however, that such child shall be referred to the adoption service in accordance with paragraph (a) of this subdivision where the foster parent has withdrawn interest in adopting the child or has been disapproved as an adoptive resource for the child. An authorized agency shall not refer to the adoption service a child in its care who has been legally freed for adoption where the agency has identified two or more potential placements for the child; provided, however, that such child shall be referred to the adoption service in accordance with paragraph (a) of this subdivision when such child has not been placed into an adoptive home within nine months of having been freed for adoption.

§ 372-g. Abandoned infant protection program. The office of children and family services shall develop and implement a public information program to inform the general public of the provisions of the abandoned infant protection act. The program may include but not be limited to the following elements:

1. educational and informational materials in print, audio, video, electronic, or other media;
2. public service announcements and advertisements; and
3. establishment of toll-free telephone hotlines to provide information.

§ 372-h. Reporting on post adoption services. 1. The office of children and family services shall place information on its website regarding post adoption services funded by the office. The office shall work with social services districts to place information, to the extent that it is available, on each social services district website regarding post adoption services funded by the social services district.

2. The office of children and family services shall collect and compile, by social services district:

(a) the following information on post adoption services funded by the office:

(i) the number of children and families served; and

(ii) the type of services provided; and

(b) the number of families receiving preventive services where post adoption services was identified as a necessary and appropriate service as part of the family assessment service plan held pursuant to section four hundred nine-e of this article and the status of such services.

3. The office of children and family services shall compile, to the extent that such information is available electronically through the state automated child welfare information system, the following non-identifying information by social services district:

(a) the number of children entering foster care that had previously been adopted;

(b) the number of families receiving preventive services where at least one child in the household had previously been adopted; and

(c) for the children and families identified in paragraphs (a) and (b) of this subdivision, the types of services, including post adoption services, identified as necessary and appropriate for the child or the members of the child's family as part of the family assessment service plan held pursuant to section four hundred nine-e of this article and the status of such services.

4. (a) The office of children and family services shall submit an annual report to the speaker of the assembly, the temporary president of the senate and the chairpersons of the senate and assembly children and families committees starting no later than September first, two thousand fifteen. Such report shall include data and information required by subdivision two of this section for the preceding year, to the extent that such information is available, and any other information the office of children and family services deems appropriate. The office of children and family services shall indicate the extent to which the information collected reflects the total population described in subdivision two of this section, and identify any impediments to collecting such information.

(b) Beginning September first, two thousand seventeen, the annual report required by paragraph (a) of this subdivision shall be expanded to include data and information required by subdivision three of this section for the preceding year, to the extent that such information is available, and any other information the office of children and family services deems appropriate.

§ 373. Religious faith. 1. Whenever a child is committed to any agency, association, corporation, institution or society, other than an institution supported and controlled by the state or a subdivision thereof, such commitment shall be made, when practicable, to an authorized agency under the control of persons of the same religious faith as that of the child.

2. Whenever any child is surrendered, released, placed out, or boarded out, in a family, a home or an institution, or in an agency boarding home, or in a group home, or to an authorized agency, or in the custody of any person other than that of a relative within the second degree, such surrender, release, placement or boarding out shall when practicable, be to, with or in the custody of a person or persons of the same religious faith as that of the child or to an authorized agency under the control of persons of the same religious faith as that of the child.

3. In appointing guardians of children, and in granting orders of adoption of children, the court shall, when practicable, appoint as such

guardians, and give custody through adoption, only to a person or persons of the same religious faith as that of the child.

4. The provisions of subdivision one, two and three of this section shall be so interpreted as to assure that in the care, protection, adoption, guardianship, discipline and control of any child, its religious faith shall be preserved and protected.

5. Whenever a child is placed out or boarded out in the custody, or under the supervision or control, of a person or of persons of a religious faith different from that of the child, or if a guardian of a child is appointed whose religious faith is different from that of the child, or if letters of adoption of a child are granted to a person or persons whose religious faith is different from that of the child or if a child is committed to an agency, association, corporation, society or institution, which is under the control of persons of a religious faith different from that of the child, the court, public board, commission or official shall state or recite the facts which impelled such disposition to be made contrary to the religious faith of the child or to any person whose religious faith is different from that of the child and such statement shall be a part of the minutes of the proceeding, and subject to inspection by the department or an authorized agency. This subdivision shall not apply to institutions supported and controlled by the state or a subdivision thereof.

6. The provisions of this section in relation to the protection of the religious faith of children shall also apply to minors between sixteen and eighteen years of age.

7. The provisions of subdivisions one, two, three, four, five and six of this section shall, so far as consistent with the best interests of the child, and where practicable, be applied so as to give effect to the religious wishes of the birth mother, and of the birth father whose consent would be required for the child's adoption pursuant to section one hundred eleven of the domestic relations law, if the child is born out-of-wedlock, or if born in-wedlock, the religious wishes of the birth parents of the child, or if only one of the birth parents of an in-wedlock child is then living, the religious wishes of the birth parent then living. Religious wishes of a parent shall include wishes that the child be placed in the same religion as the birth parent or in a different religion from the birth parent or with indifference to religion or with religion a subordinate consideration. Expressed religious wishes of a birth parent shall mean those which have been set forth in a writing signed by the birth parent, except that, in a non-agency adoption, such writing shall be an affidavit of the birth parent. In the absence of expressed religious wishes, as defined in this subdivision, determination of the religious wishes, if any, of the birth parent, shall be made upon the other facts of the particular case, and, if there is no evidence to the contrary, it shall be presumed that the birth parent wishes the child to be reared in the religion of the birth parent.

§ 373-a. Medical histories. Notwithstanding any other provision of law to the contrary, to the extent they are available, the medical histories of a child legally freed for adoption or of a child to be placed in foster care and of his or her birth parents, with information identifying such birth parents eliminated, shall be provided by an authorized agency to such child's prospective adoptive parent or foster parent and upon request to the adoptive parent or foster parent when such child has been adopted or placed in foster care. To the extent they are available, the medical histories of a child in foster care and of his or her birth parents shall be provided by an authorized agency to

such child when discharged to his or her own care and upon request to any adopted former foster child; provided, however, medical histories of birth parents shall be provided to an adoptee with information identifying such birth parents eliminated. Such medical histories shall include all available information setting forth conditions or diseases believed to be hereditary, any drugs or medication taken during pregnancy by the child's birth mother and any other information, including any psychological information in the case of a child legally freed for adoption or when such child has been adopted, or in the case of a child to be placed in foster care or placed in foster care which may be a factor influencing the child's present or future health. The department shall promulgate and may alter or amend regulations governing the release of medical histories pursuant to this section.

§ 374. Authority to place out or board out children. 1. An authorized agency is hereby empowered and permitted to place out and board out children.

1-a. In any agreement between an authorized agency and foster parents with whom a child or children are to be placed or boarded, there shall be contained therein the following language: "It is duly acknowledged by the parties hereto that pursuant to the law of the state of New York, a foster parent shall have preference in any proceedings to adopt the child subject to this agreement upon such child having been in the custody of such foster parent for a period in excess of twelve months".

2. No person, agency, association, corporation, institution, society or other organization except an authorized agency shall place out or board out any child but the provisions of this section shall not restrict or limit the right of a parent, legal guardian or relative within the second degree to place out or board out a child.

3. Except as hereinafter provided no court, public board, commission or official shall place out or board out a child in a family not residing within this state.

(a) A commissioner of public welfare or a city public welfare officer authorized, pursuant to the provisions of section three hundred ninety-eight of the social welfare law, to accept the surrender of a child, may place out a child for the purpose of adoption in a family not residing within this state. No placement of a child in a family not residing within this state shall be made unless an agreement for such placement shall have been reached between the public welfare official making such placement and the appropriate welfare or other public official on a state or local level in the state where the family resides who is authorized by law to supervise children in institutional or foster care homes. Such agreement shall include provision for the supervision of the family and the child during the period preceding a final adoption.

(b) A commissioner of public welfare or a city public welfare officer authorized, pursuant to the provisions of section three hundred ninety-eight of the social welfare law, to place children in family homes, may board out a child in a family not residing within this state. No child may be boarded out in a family not residing within this state unless an agreement for such placement shall have been reached between the public welfare official making such placement and the appropriate welfare or other public official on a state or local level in the state where the family resides who is authorized by law to supervise children in institutional or foster care homes. Such agreement shall include provision for the supervision of the family and the child during the period while the child is boarded out.

4. (a) No hospital or lying-in asylum whether incorporated or

unincorporated where women or girls may be received, cared for or treated during pregnancy or during or after delivery except as hereinafter provided and no person licensed to carry on like work under the provisions of article twenty-eight of the public health law shall be an authorized agency for placing out or boarding out children or place out any child in a foster home whether for adoption or otherwise either directly or indirectly or as agent or representative of the mother or parents of such child.

(b) Every such hospital and licensed person shall forthwith report to the county or city officer or board charged by law with the care of destitute children away from their homes where such hospital is located or where such child is cared for by such licensed person any child abandoned or left in the care or custody of such hospital or licensed person provided, however, that no such report except as provided in section three hundred seventy-two shall be required to be made by a hospital which is also an authorized agency.

(c) Such officer or board shall receive and care for such child as a destitute or abandoned child and may bring the case of such child before the family court in the county or city for adjudication.

(d) The expense of caring for such child as a public charge shall be paid as provided by this chapter.

5. Nothing contained in this section shall deprive any hospital of any right or power conferred upon it by its charter or act of incorporation or specified in its certificate of incorporation.

6. An authorized agency, as defined in paragraphs (a) and (c) of subdivision ten of section three hundred seventy-one of this title, may charge or accept a fee or other compensation to or from a person or persons with whom it has placed out a child, for the reasonable and necessary expenses of such placement; and no agency, association, corporation, institution, society or organization, except such an authorized agency, and no person may or shall request, accept or receive any compensation or thing of value, directly or indirectly, in connection with the placing out or adoption of a child or for assisting a birth parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption; and no person may or shall pay or give to any person or to any agency, association, corporation, institution, society or organization, except such an authorized agency, any compensation or thing of value in connection with the placing out or adoption of a child or for assisting a birth parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption. The prohibition set forth in this section applies to any adoptive placement activity involving a child born in New York state or brought into this state or involving a New York resident seeking to bring a child into New York state for the purpose of adoption.

This subdivision shall not be construed to prevent the payment of salaries or other compensation by an authorized agency to the officers or employees thereof; nor shall it be construed to prevent the payment by a person with whom a child has been placed out of reasonable and actual medical fees or hospital charges for services rendered in connection with the birth of such child or of other necessary expenses incurred by the birth mother in connection with or as a result of her pregnancy or the birth of the child, or of reasonable and actual nursing, medical or hospital fees for the care of such child, if such payment is made to the physician, nurse or hospital who or which rendered the services or to the birth mother of the child, or to prevent the receipt of such payment by such physician, nurse, hospital or birth

mother. This subdivision shall not be construed to prevent the payment by an adoptive parent, as defined in section one hundred nine of the domestic relations law, of the birth mother's reasonable and actual expenses for housing, maternity clothing, clothing for the child and transportation for a reasonable period not to exceed sixty days prior to the birth and the later of thirty days after the birth or thirty days after the parental consent to the adoption, unless a court determines, in writing, that exceptional circumstances exist which require the payment of the birth mother's expenses beyond the time periods stated in this sentence. This subdivision shall not be construed to prevent the payment by an adoptive parent, as defined in section one hundred nine of the domestic relations law, of reasonable and actual legal fees charged for consultation and legal advice, preparation of papers and representation and other legal services rendered in connection with an adoption proceeding or of necessary disbursements incurred for or in an adoption proceeding. No attorney or law firm shall serve as the attorney for, or provide any legal services to both the birth parent and adoptive parent in regard to the placing out of a child for adoption or in an adoption proceeding. No attorney or law firm shall serve as the attorney for, or provide any legal services to, both an authorized agency and adoptive parent or both an authorized agency and birth parent where the authorized agency provides adoption services to such birth parent or adoptive parent, where the authorized agency provides foster care for the child, or where the authorized agency is directly or indirectly involved in the placing out of such child for adoption.

7. After receipt of notice from the state commissioner of health or the department of health of the city of New York, as the case may be, that an application has been received by such commissioner or department for a license or for the renewal of a license to conduct a maternity hospital or lying-in asylum, pursuant to the provisions of article twenty-eight of the public health law, the department shall, after notice to the applicant and opportunity for him to be heard, certify in writing to such commissioner or city department that the department has reasonable cause to believe that the applicant is violating or has violated the provisions of this section, if such be the case. The department shall so certify within thirty days of the date it received notice, or within such additional period, not to exceed thirty days, as the department may request in writing addressed to the commissioner or administration giving notice.

§ 374-a. Interstate compact on the placement of children. 1. The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I. PURPOSE AND POLICY

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to

evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. DEFINITIONS

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. CONDITIONS FOR PLACEMENT

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. RETENTION OF JURISDICTION

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. COMPACT ADMINISTRATOR

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. LIMITATIONS

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. ENACTMENT AND WITHDRAWAL

This compact shall be open to joinder by any state, territory or possession of the United States, the district of Columbia, the commonwealth of Puerto Rico, and, with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

2. Any requirement of this state for a license, permit, or the posting of a bond to entitle an agency to place children shall not apply to a public sending agency (within the meaning of the interstate compact on the placement of children) of or in another state party to said compact.

3. Financial responsibility for any child placed pursuant to the provisions of the interstate compact for the placement of children shall be determined in accordance with the provisions of article five thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of section three hundred eighty-two of this chapter with respect to such responsibility also may be invoked.

4. The "appropriate public authorities" as used in article three of the interstate compact on the placement of children shall, with reference to New York, mean the department of social services, except that, with respect to the placement of children "adjudicated delinquent", as that phrase is used in article six thereof, who are to be placed in a facility operated or supervised by the division for youth, shall mean the division for youth, and said department and division shall receive and act with reference to notices required by said article three.

5. As used in paragraph (a) of article five of the interstate compact

on the placement of children the phrase "appropriate authority in the receiving state" with reference to New York state shall mean the commissioner of social services of the social services district in which the child may be at the time of discharge, and, with respect to children "adjudicated delinquent", as that phrase is used in article six thereof, who are to be discharged from a facility operated or supervised by the division for youth, shall mean the division for youth.

6. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of article five of the interstate compact on the placement of children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the comptroller in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

7. Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under sections three hundred eighty-two, three hundred eighty-six or three hundred ninety-eight of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of article five of the interstate compact on the placement of children.

8. Neither the prohibition of, nor the limitations on out of state placement of children contained in sections three hundred seventy-four and three hundred ninety-eight of this chapter shall apply to placements made pursuant to the interstate compact on the placement of children.

9. Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to article six of the interstate compact on the placement of children and shall retain jurisdiction as provided in article five thereof.

10. As used in article seven of the interstate compact on the placement of children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said article seven.

11. (a) In addition to the conditions for placement set forth in subdivision one of this section, the sending agency shall, in the case of a placement preliminary to a possible adoption, submit to the compact administrator a full statement setting forth all fees, including the categories of such fees, paid and to be paid by the adoptive parent to any agency or person in exchange for the adoptive placement.

(b) The compact administrator shall not approve a proposed placement where such placement violates subdivision six of section three hundred seventy-four of this chapter.

12. Placement of a child in this state in violation of subdivision one of this section by an out of state sending agency shall, in addition to any other remedy or sanction imposed by law, subject the agency violating such provision to a civil action for money damages including fees, compensation and other remuneration paid by any person on account of or incident to the placement of a child in violation of such provision.

Placement of a child by an out of state sending agency in violation of such provision shall subject such agency to the exercise of personal jurisdiction over such agency by a court pursuant to subparagraph (i) of paragraph three of subdivision (a) of section three hundred two of the

civil practice law and rules.

§ 374-b. Authority to operate agency boarding home. 1. An authorized agency which is not a court, public board, commission, or official, is hereby empowered and permitted to operate agency boarding homes in compliance with regulations of the department; and a social services official who is authorized to place children in family homes and institutions, pursuant to section three hundred ninety-eight, may be authorized by the department to operate agency boarding homes, in compliance with such regulations, if such official applies for such authority and demonstrates to the department his need therefor and that suitable care is not otherwise available for children and/or minors under the care of such official through an authorized agency under the control of persons of the same religious faith as such children. No agency boarding home shall care for more than six children or minors except that such a home may provide care for more than six brothers and sisters of the same family. Such homes shall be subject to supervision, visitation and inspection by the department and shall also be subject to visitation and inspection by the board.

2. (a) If an authorized agency plans to establish one or more boarding homes within a municipality, it shall notify the chief executive officer of the municipality in writing of its intentions and include in such notice a description of the nature, size and the community support requirements of the program.

(b) For purposes of this subdivision, "municipality" means an incorporated village, if a facility is to be located therein; a town, if the facility is to be located therein, and not simultaneously within an incorporated village; or a city, except that in the city of New York, the community board with jurisdiction over the area in which such a facility is to be located shall be considered the municipality.

3. An authorized agency that has received approval from the office of children and family services may operate a supervised independent living program, as defined in section three hundred seventy-one of this title. The office of children and family services shall promulgate regulations establishing the standards for approval and operation of supervised independent living programs.

§ 374-c. Authority to operate group homes. 1. An authorized agency which is not a court, public board, commission or official is hereby empowered and permitted to operate group homes in compliance with regulations of the department. A social services official who is authorized to place children in family homes and institutions, pursuant to section three hundred ninety-eight, may be authorized by the department to operate group homes in compliance with such regulations, provided that such official demonstrates to the satisfaction of the department the need therefor and that suitable care is not otherwise available for children under the care of such official through an authorized agency under the control of persons of the same religious faith as such children. Such homes shall be subject to supervision, visitation and inspection by the department and shall also be subject to visitation and inspection by the board.

2. (a) If an authorized agency plans to establish one or more group homes within a municipality, it shall notify the chief executive officer of the municipality in writing of its intentions and include in such notice a description of the nature, size and the community support requirements of the program.

(b) For purposes of this subdivision, "municipality" means an incorporated village, if a facility is to be located therein; a town, if the facility is to be located therein, and not simultaneously within an

incorporated village; or a city, except that in the city of New York, the community board with jurisdiction over the area in which such a facility is to be located shall be considered the municipality.

§ 374-d. Authority to operate public institutions for children. A social services official who is authorized to place children in family homes and institutions, pursuant to section three hundred ninety-eight, may be authorized by the department to operate public institutions for children in compliance with regulations of the department, provided that such official demonstrates to the satisfaction of the department the need therefor and that suitable care is not otherwise available for children under the care of such official. Such institutions shall be subject to supervision, visitation and inspection by the department and shall also be subject to visitation and inspection by the board.

§ 374-e. Authority to place out or board out children with therapeutic foster parents. A social services official or agency who is authorized to place out or board out children pursuant to section three hundred ninety-eight or three hundred seventy-four of this article, is authorized by the department to place out or board out children having special needs with therapeutic foster parents pursuant to subdivision fifteen of section three hundred ninety-eight of this article and in compliance with regulations of the department. Such placement shall only be made, however, when the official or agency demonstrates to the satisfaction of the department that state expenditures incurred in placing a child with a therapeutic foster parent are less than those that would be incurred if the children were placed in an institution.

§ 374-f. Authority to enter into leases for dwelling units. Any inconsistent provisions of this chapter or any other law notwithstanding, a public welfare official authorized to operate agency boarding homes or group homes is hereby empowered to rent or lease dwelling units in his capacity as a public welfare official, as lessee, in any federal project, state project or municipal project, as defined in the public housing law, or in any municipally-aided project or state-aided project, or other project, as defined in the private housing finance law, or elsewhere, for the purpose of operating therein such agency boarding homes or group homes, and is hereby empowered to contract, in his capacity as a public welfare official, as contractor, with individuals for their services in conducting such homes and caring for children or minors placed in such homes.

§ 375. Requirement of certificate or license to board children. Except for relatives within the second degree or third degree of the parents of a child or children, relatives within the second degree or third degree of the step-parent of a child or children, legally appointed guardians, schools and academies meeting the requirements of the education law as to compulsory education, camps operated for profit for the accommodation of school age children during school vacation periods under permits issued by health officers pursuant to chapter seven of the state sanitary code, and persons with whom a child or children are placed out, no person shall receive, board or keep any child under the age of eighteen years unless certified or licensed to do so as provided in this title.

§ 376. Certificate to board children and/or minors under age of eighteen years. * 1. An authorized agency which shall board out any child/or minor under the age of eighteen years shall issue to the person receiving such child and/or minor for board a certificate to receive, board or keep a child/or minor under the age of eighteen years. Prior to issuing such certificate, the agency shall require that an applicant set forth: his or her employment history, provide personal and employment

references and sign a sworn statement indicating whether the applicant, to the best of his or her knowledge, has ever been convicted of a crime in this state or any other jurisdiction. Not until all inquiries are completed and evaluated shall the agency cause such certificate to be issued.

* NB Effective until June 27, 2015

* 1. An authorized agency which shall board out any child and/or minor under the age of eighteen years shall issue to the person receiving such child and/or minor for board a certificate to receive, board or keep a child and/or minor under the age of eighteen years. Prior to issuing such certificate, the agency shall require that an applicant set forth: his or her employment history, provide personal and employment references and sign a sworn statement indicating whether the applicant, to the best of his or her knowledge, has ever been convicted of a crime in this state or any other jurisdiction. The agency shall determine whether the applicant has ever held such a certificate, or a license or approval and, if so, whether the certificate, license or approval was revoked, not renewed, or a child was removed from the home, and the reason therefor. In such instances, the agency shall evaluate the circumstances, pursuant to regulations established by the office, to determine whether a certificate should be issued and the home re-opened. Not until all inquiries are completed and evaluated shall the agency cause such certificate to be issued.

* NB Effective June 27, 2015

2. The agency issuing or renewing any such certificate shall forthwith transmit a copy or report thereof to the board.

3. No person shall be certified by more than one authorized agency but any person so certified may receive for care at board or otherwise a child and/or minor under the age of eighteen years from other sources upon the written consent and approval of the certifying agency as to each such child and/or minor.

§ 377. License to board children. * 1. Application for a license to receive, board or keep any child shall be made in writing to the commissioner of social services in and for the social services district wherein the premises to be licensed are located, in the form and manner prescribed by the department. The department shall require that an applicant set forth: his or her employment history, provide personal and employment references and sign a sworn statement indicating whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this state or any other jurisdiction. Not until all inquiries are completed and evaluated shall the commissioner of social services cause such license to be issued.

* NB Effective until June 27, 2015

* 1. Application for a license to receive, board or keep any child shall be made in writing to the commissioner of social services in and for the social services district wherein the premises to be licensed are located, in the form and manner prescribed by the office of children and family services. The office shall require that an applicant set forth: his or her employment history, provide personal and employment references and sign a sworn statement indicating whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this state or any other jurisdiction. Such commissioner of social services shall also determine whether the applicant has ever held such a license, or a certificate or approval, and, if so, whether the license, certificate or approval was revoked, not renewed, or a child was removed from the home, and the reason therefor. In such instances, such commissioner of social services shall evaluate the circumstances,

pursuant to regulations established by the office, to determine whether a license should be issued and the home re-opened. Not until all inquiries are completed and evaluated shall the commissioner of social services cause such license to be issued.

* NB Effective June 27, 2015

2. Before any such license shall be issued an authorized agent or employee of the social services district shall visit and inspect the premises for which such license is requested, make such further inquiry and investigation as may be required to ascertain compliance with applicable requirements.

3. If it appears from such inquiry and investigation that the applicant maintains a home suitable for the care of children in accordance with the regulations of the department, the commissioner of social services shall cause such license to be issued in such manner as the department may provide.

4. The commissioner of social services, issuing or renewing any such license, shall in accordance with the directions of the department, transmit a copy or report thereof to the department.

§ 378. Form, duration and limitation of certificates and licenses. 1. Certificates or licenses to receive, board or keep any child and/or minor shall be in the form prescribed and provided by the department to the effect that such person is regarded by the issuing authorized agency or social services department, as the case may be, as maintaining a home suitable for the care of children and/or minors and specifying the name, address, and religious faith of the person to whom issued, the number of children and/or minors for whom such person is certified or licensed to care and such other information as the department may require.

2. Such certificates and licenses shall be valid for not more than two years after date of issue but may be renewed or extended subject to regulations established by the office of children and family services.

3. No such license shall permit the reception for board of more than six children and if there are children not received for board living in the home of a person to whom such license is issued, whether children of such person or otherwise, the sum of the number of such children and of the number of children permitted to be received for board by such license shall not exceed six, excepting, however, that such license may permit the reception for board of additional children if such children (a) are siblings or half-siblings, or are siblings or half-siblings of a child living in the home, (b) are children freed for adoption as defined in subdivision (b) of section one thousand eighty-seven of the family court act, and have been placed for adoption with the person to whom such license is issued, or (c) are minor parents who are foster children and the minor parents' children.

4. No such certificate shall permit the reception for board of more than six children and/or minors and if there are children under thirteen years of age not received for board living in the home of the person to whom such certificate is issued, whether children of such person or otherwise, the total number of such children and of the number of children and/or minors permitted to be received for board by such certificate shall not exceed six, excepting, however, that such certificate may permit the reception for board of up to two additional children if such children (a) are siblings or half-siblings, or are siblings or half-siblings of a child living in the home, (b) are children freed for adoption as defined in subdivision (b) of section one thousand eighty-seven of the family court act, and have been placed for adoption with the person to whom such certificate is issued, or (c) are minor parents who are foster children and the minor parents' children.

5. The department shall establish and may alter or amend regulations governing the issuing and revocation of such licenses and certificates and prescribing standards, records, accommodations and equipment for the care of children and/or minors received under such licenses and certificates.

§ 378-a. Access to conviction records by authorized agencies. 1. Every authorized agency which operates a residential program for children licensed or certified by the office of children and family services, and the office of children and family services in relation to any juvenile justice program it operates, shall request that the justice center for the protection of people with special needs check, and upon such request, such justice center shall request and shall be authorized to receive from the division of criminal justice services and the federal bureau of investigation criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law concerning each prospective operator, employee or volunteer of such a residential program who will have regular and substantial unsupervised or unrestricted physical contact with children in such program. For the purposes of this section, "operator" shall include any natural person with an ownership interest in the authorized agency. Access to and the use of such information shall be governed by the provisions of section eight hundred forty-five-b of the executive law.

1-a. Excluding the authorized agencies authorized to request and receive criminal history information pursuant to subdivision one of this section, and subject to the rules and regulations of the division of criminal justice services, an authorized agency defined in subdivision ten of section three hundred seventy-one of this title shall have access to criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, pertaining to persons who have applied for and are under active consideration for employment by such authorized agency in positions where such persons will have the potential for regular and substantial unsupervised and unrestricted physical contact with children in the program. Upon receipt of such criminal history information, the authorized agency shall provide the prospective employee with a copy of such criminal history information and a copy of article twenty-three-A of the correction law and inform such prospective employee of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to the regulations and procedures established by the division of criminal justice services. The authorized agency shall designate one or two persons in its employ who shall be authorized to request, receive and review the criminal history information pursuant to this subdivision, and only such persons and the prospective employee to which the criminal history information relates shall have access to such information; provided, however, that such criminal history information may be disclosed to other personnel empowered by the agency to make decisions concerning prospective employees. The authorized agency shall notify the division of criminal justice services of each person authorized to have access to such criminal history information pursuant to this subdivision. Except as otherwise provided in this subdivision, such criminal history information shall be confidential and any person who willfully permits the release of such confidential criminal history information to persons not permitted by this subdivision to receive such information shall be guilty of a misdemeanor.

2. (a) Notwithstanding any other provision of law to the contrary, and

subject to rules and regulations of the division of criminal justice services, an authorized agency, as defined in subdivision ten of section three hundred seventy-one of this title, shall perform a criminal history record check with the division of criminal justice services regarding any prospective foster parent or prospective adoptive parent or, a prospective successor guardian in accordance with paragraph (d) of subdivision two of section four hundred fifty-eight-b of this article, and any person over the age of eighteen who is currently residing in the home of such prospective foster parent, prospective adoptive parent or prospective successor guardian. Provided, however, that for prospective foster parents and prospective adoptive parents and other persons over the age of eighteen in their homes, the checks required by this paragraph shall be conducted before the foster parent or adoptive parent is finally certified or approved for the placement of a child. Persons who are over the age of eighteen residing in the home of a certified or approved foster parent and who previously did not have a criminal history record check performed in accordance with this subdivision shall have such a criminal history record check performed when the foster parent applies for renewal of his or her certification or approval as a foster parent. The division of criminal justice services is authorized to submit fingerprints to the federal bureau of investigation for the purpose of a nationwide criminal history record check pursuant to and consistent with public law 92-544 to determine whether such prospective foster parent, prospective adoptive parent, prospective successor guardian or person over the age of eighteen currently residing in the home of such prospective parent or guardian has a criminal history in any state or federal jurisdiction. The provisions and procedures of this section, including the criminal history record check of persons over the age of eighteen who are currently residing in the home of the foster parent, also shall apply to prospective foster parents certified by the office of children and family services and to family homes certified by any other state agency where such family homes care for foster children in accordance with a memorandum of understanding with the office of children and family services.

(b) Every authorized agency shall obtain a set of the prospective foster parent, prospective adoptive parent or prospective successor guardian's fingerprints and those of any person over the age of eighteen who currently resides in the home of such prospective foster parent, prospective adoptive parent or prospective successor guardian, and such other information as is required by the office of children and family services and the division of criminal justice services. The authorized agency shall provide to the applicant blank fingerprint cards and a description of how the completed fingerprint cards will be used upon submission to the authorized agency. The authorized agency shall promptly transmit such fingerprint cards to the office of children and family services. The office of children and family services shall promptly submit such fingerprint cards and the processing fee imposed pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law to the division of criminal justice services for its full search and retain processing. Notwithstanding any other provision of law to the contrary, the processing fee shall be submitted by the office of children and family services and no part thereof shall be charged to the prospective foster parent, prospective adoptive parent, prospective successor guardian or any person over the age of eighteen who currently resides in the home of such prospective foster parent, prospective adoptive parent or prospective successor guardian who submitted a fingerprint card pursuant to this subdivision.

(c) The division of criminal justice services shall promptly provide to the office of children and family services a criminal history record, if any, with respect to the prospective foster parent, prospective adoptive parent or prospective successor guardian and any other person over the age of eighteen who resides in the home of the prospective foster parent, prospective adoptive parent or prospective successor guardian, or a statement that the individual has no criminal history record.

(d) Notwithstanding any other provision of law to the contrary, the office of children and family services, upon receipt of a criminal history record from the division of criminal justice services, may request, and is entitled to receive, information pertaining to any offense contained in such criminal history record from any state or local law enforcement agency or court for the purposes of determining whether any ground relating to such criminal conviction or pending criminal charge exists for denying an application.

(e) After reviewing any criminal history record information provided by the division of criminal justice services, the office of children and family services shall promptly notify the authorized agency or other state agency that:

(1) Notwithstanding any other provision of law to the contrary, an application for certification or approval of a prospective foster parent or prospective adoptive parent shall be denied and, in the event of death or incapacity of a relative guardian, an agreement to provide payments to a prospective successor guardian pursuant to title ten of this article shall not be approved pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, as applicable, where a criminal history record of the prospective foster parent, prospective adoptive parent or prospective successor guardian, as applicable, reveals a conviction for:

(A) a felony conviction at any time involving: (i) child abuse or neglect; (ii) spousal abuse; (iii) a crime against a child, including child pornography; or (iv) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery; or

(B) a felony conviction within the past five years for physical assault, battery, or a drug-related offense; or

(2) Notwithstanding any other provision of law to the contrary, a final determination of an application for certification or approval of a prospective foster parent or prospective adoptive parent and, in relation to prospective successor guardians, approval pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article shall be held in abeyance whenever the criminal history record of the prospective foster parent, prospective adoptive parent or prospective successor guardian, as applicable, reveals:

(A) a charge for a crime set forth in subparagraph one of this paragraph which has not been finally resolved; or

(B) a felony conviction that may be for a crime set forth in subparagraph one of this paragraph. An authorized agency may proceed with a determination of such application, in a manner consistent with this subdivision, only upon receiving subsequent notification from the office of children and family services regarding the status of such charge or the nature of such conviction; or

(3) consistent with the provisions of article twenty-three-A of the correction law, an application for certification or approval of a prospective foster parent or prospective adoptive parent may be denied,

an agreement to provide payments to a prospective successor guardian pursuant to title ten of this article may not be approved pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, as applicable, where:

(A) a criminal history record of the prospective foster parent, prospective adoptive parent or prospective successor guardian reveals a charge or a conviction of a crime other than one set forth in subparagraph one of this paragraph; or

(B) a criminal history record of any other person over the age of eighteen who resides in the home of the prospective foster parent, prospective adoptive parent or prospective successor guardian reveals a charge or a conviction of any crime; or

(4) Notwithstanding any other provision of law to the contrary, an application for renewal of the certification or approval of a foster parent submitted on or after October first, two thousand eight shall be denied based on the conviction of the foster parent of a crime set forth in subparagraph one of this paragraph where such conviction occurred on or after October first, two thousand eight; or

(5) Notwithstanding any other provision of law to the contrary, the certification or approval of a foster parent, or the approval of an adoptive parent who has not completed the adoption process, shall be revoked based on the conviction of the foster parent or the adoptive parent of a crime set forth in subparagraph one of this paragraph; or

(6) the prospective foster parent, prospective adoptive parent or prospective successor guardian and any person over the age of eighteen who is residing in the home of the prospective foster parent, prospective adoptive parent or prospective successor guardian has no criminal history record.

(f) Except as otherwise set forth in this paragraph, any notification by the office of children and family services pursuant to paragraph (e) of this subdivision shall include a summary of the criminal history record provided by the division of criminal justice services, including, but not limited to, the specific crime or crimes for which the prospective foster parent or parents, adoptive parent or parents or prospective successor guardian or guardians or any adults over the age of eighteen living in the home have been charged or convicted, as applicable. When responding to an inquiry from a voluntary authorized agency or other non-public agency with respect to the results of a national criminal history check performed by the federal bureau of investigation, the office of children and family services shall advise the voluntary authorized agency or other non-public agency of the category or categories of crime or crimes and shall not provide the voluntary authorized agency or other non-public agency with the specific crime or crimes absent the written consent of the person for whom the national criminal history check was performed.

(g) When an authorized agency has denied an application or approval in accordance with the provisions of paragraph (e) of this subdivision, the authorized agency shall provide to the applicant a written statement setting forth the reasons for such denial, including, as authorized by paragraph (f) of this subdivision, the summary of the criminal history record provided to the authorized agency by the office of children and family services. The authorized agency shall also provide a description of the division of criminal justice services' record review process and any remedial processes provided by the office of children and family services to any prospective foster parent, prospective adoptive parent or prospective successor guardian. If the applicant is disqualified under item (ii) of clause (A) of subparagraph one of paragraph (e) of

this subdivision, then the applicant may apply for relief from the mandatory disqualification based on the grounds that the offense was not spousal abuse as that term is defined in paragraph (j) of this subdivision.

(h) Where a criminal history record of the certified or approved foster parent, prospective adoptive parent or of any other person over the age of eighteen who resides in the home of the certified or approved foster parent or prospective adoptive parent reveals a charge or conviction of any crime, the authorized agency shall perform a safety assessment of the conditions in the household. Such assessment shall include: whether the subject of the charge or conviction resides in the household; the extent to which such person may have contact with foster children or other children residing in the household; and the status, date and nature of the criminal charge or conviction. The authorized agency shall thereafter take all appropriate steps to protect the health and safety of such child or children, including, when appropriate, the removal of any foster child or children from the home. Where the authorized agency denies the application or revokes the approval or certification of the foster parent or the prospective adoptive parent in accordance with the standards set forth in paragraph (e) of this subdivision, such authorized agency shall remove any foster child or children from the home of the foster parent or the prospective adoptive parent.

(i) Any criminal history record provided by the division of criminal justice services, and any summary of the criminal history record provided by the office of children and family services to an authorized agency pursuant to this subdivision, is confidential and shall not be available for public inspection; provided, however, nothing herein shall prevent an authorized agency, the office of children and family services or other state agency referenced in paragraph (a) of this subdivision from disclosing criminal history information to any administrative or judicial proceeding relating to the denial or revocation of a certification or approval of a foster parent or an adoptive parent or the removal of the foster child from the home or the failure to approve a prospective successor guardian pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article or the termination of an agreement for payments pursuant to title ten of this article that is made in accordance with paragraph (h) of subdivision four of section four hundred fifty-eight-b of this article. Where there is a pending court case, the authorized agency which received the criminal history record summary from the office of children and family services, shall provide a copy of such summary to the family court or surrogate's court.

(j) For the purposes of this subdivision "spousal abuse" is an offense defined in section 120.05, 120.10, 121.12 or 121.13 of the penal law where the victim of such offense was the defendant's spouse; provided, however, spousal abuse shall not include a crime in which the prospective foster parent, prospective adoptive parent or prospective successor guardian, who was the defendant, has received notice pursuant to paragraph (g) of this subdivision and the office of children and family services finds after a fair hearing held pursuant to section twenty-two of this chapter, that he or she was the victim of physical, sexual or psychological abuse by the victim of such offense and such abuse was a factor in causing the prospective foster parent, prospective adoptive parent or prospective successor guardian to commit such offense.

(k) The office of children and family services shall inform the

division of criminal justice services when a person is no longer certified or approved as a foster parent or is no longer a prospective adoptive parent so that the division of criminal justice services may terminate its retain processing with regard to such person and any person over the age of eighteen who is residing in the home of the foster parent or prospective adoptive parent. At least once a year, the office of children and family services will be required to conduct a validation of the records maintained by the division of criminal justice services.

(1) The office of children and family services, in consultation with the division of criminal justice services, shall promulgate regulations for the purpose of implementing the provisions of this subdivision relating to the standards for the certification or approval of foster parents or adoptive parents.

§ 379. Revocation of certificates and licenses. 1. A certificate or license to receive, board or keep any child and/or minor under the age of eighteen years may be revoked for cause by the authorized agency or the commissioner of social services by which it was issued and any such certificate or license to receive, board or keep any child may be revoked for cause by the commissioner.

2. An agency revoking any such certificate and a commissioner of social services revoking any such license shall notify the department of such revocation at once.

§ 380. Boarding and free homes; records. Every person who receives, boards or keeps a child and/or minor under a license or certificate shall keep a record in a register to be provided by the department showing the name, date of birth and religious faith of each child and/or minor received, the names and addresses of his parents or guardian or of the authorized agency from whom received and of the person by whom placed and by whom removed, the dates of reception and removal and such other information as may be required by the department.

§ 381. Maternity homes; records and reports. Every hospital or lying-in asylum whether incorporated or unincorporated where women or girls may be received, cared for or treated during pregnancy or during or after delivery and every person licensed to carry on like work under the provisions of article twenty-eight of the public health law shall keep a record showing the full and true name and address including street and number, if any, of every such woman or girl and of each child of such woman or girl received, admitted or born on the premises, the full and true names and addresses and the religious faith of the parents of every such child, the dates of reception, admission or birth and of discharge or departure of each such woman, girl or child, the full and true names and addresses of the person or persons by whom any such child is removed or taken away, the amount paid for the care of any such woman, girl or child and the full and true names and addresses of the person or persons making such payment or payments; and shall keep such further record as may be required by regulations of the department. The department may, through its authorized agents and employees, at all reasonable times, inspect and examine such records and may require from such licensed person or from such hospital and its directors, officers, trustees, employees, manager, superintendent, owner or other person responsible for its operation, all information in their possession with reference to any such child not taken away or removed from such hospital by his parents or parent.

§ 382. Responsibility for children without state residence; license and board. 1. Any person, institution, corporation or agency which shall bring, or cause to be brought, into the state of New York any

child not having a state residence, or which shall receive or accept any child from outside of the state of New York, not having state residence, shall be responsible for the care and maintenance of such child whether placed out, boarded out or otherwise cared for unless adopted by foster parents. Such responsibility shall continue during the minority of such child and thereafter until he is self-supporting.

2. (a) It shall be unlawful for any person, agency, association, corporation, society, institution or other organization, except an authorized agency, to bring, send or cause to be brought or sent into the state of New York any child for the purpose of placing or boarding such child or procuring the placing of such child, by adoption, guardianship, or otherwise, in a family, a home or institution, except with an authorized agency, in this state, without first obtaining a license from the department.

(b) This subdivision shall not apply to a sending agency, as defined in article two of section three hundred seventy-four-a of this title, which is located in a state which is a party to the interstate compact on the placement of children, provided, however, that all persons who reside in such a state, except officers or employees of the state or a subdivision thereof who are acting in their official capacity, shall comply with the provisions of this section.

(c) This section shall not apply to and shall not restrict or limit the right of a parent, legal guardian, or relative within the second degree of a child from bringing or sending the child or causing the child to be brought or sent, into the state of New York for the purpose of placing out or boarding out the child.

3. Application for a license shall be submitted on a form approved and provided by the department and be accompanied by proof that the applicant holds a license, or is approved by the department or similar body in the state where the applicant resides, or where its chief office is located, or where it has its place of business.

4. Before bringing, sending, or causing to be brought or sent into this state any child, the person, agency, association, corporation, society, institution or other organization, duly licensed as provided in this section must furnish the department a blanket indemnity bond of a reputable surety company in favor of the state in the penal sum of not less than ten thousand dollars. Such bond must be approved as to form and sufficiency by the department and conditioned as follows:

That such licensee (a) will report to the department immediately the name of each such child, its age, the name of the state, and city, town, borough or village, or the name of the country from which such child came, the religious faith of the parents of the child, the full name and last residence of its parent or parents, the name of the custodian from whom it is taken, and the name and residence of the person or authorized agency with whom it is placed or boarded, released or surrendered, or to whom adoption or guardianship is granted, and the death of such child or any reboarding, replacement or other disposition;

(b) will remove from the state within thirty days after written notice is given any such child becoming a public charge during his minority;

(c) will remove from the state immediately upon its release any such child who within three years from the time of its arrival within the state is committed to an institution or prison as a result of conviction for juvenile delinquency or crime;

(d) will place or cause to be placed or board or cause to be boarded such child under agreement which will secure to such child a proper home, and will make the person so receiving such child responsible for

its proper care, education and training;

(e) will comply with section three hundred seventy-three;

(f) will supervise the care and training of such child and cause it to be visited at least annually by a responsible agent of the licensee; and

(g) will make to the department such reports as it from time to time may require.

5. In the event of the failure of such licensee to comply with the second and third conditions of the bond hereinbefore mentioned, and to remove, after thirty days' notice so to do, a child becoming a public charge, such portion of the bond shall be forfeited to the state or the county or municipality thereof as shall equal the sum which shall have been expended by the state or such county or municipality thereof for the care or maintenance or in the prosecution of such child or for its return to the licensee.

§ 383. Care and custody of children. 1. The parent of a child remanded or committed to an authorized agency shall not be entitled to the custody thereof, except upon consent of the court, public board, commission, or official responsible for the commitment of such child, or in pursuance of an order of a court or judicial officer of competent jurisdiction, determining that the interest of such child will be promoted thereby and that such parent is fit, competent and able to duly maintain, support and educate such child. The name of such child shall not be changed while in the custody of an authorized agency.

2. The custody of a child placed out or boarded out and not legally adopted or for whom legal guardianship has not been granted shall be vested during his minority, or until discharged by such authorized agency from its care and supervision, in the authorized agency placing out or boarding out such child and any such authorized agency may in its discretion remove such child from the home where placed or boarded.

3. Any adult husband and his adult wife and any adult unmarried person, who, as foster parent or parents, have cared for a child continuously for a period of twelve months or more, may apply to such authorized agency for the placement of said child with them for the purpose of adoption, and if said child is eligible for adoption, the agency shall give preference and first consideration to their application over all other applications for adoption placements. However, final determination of the propriety of said adoption of such foster child shall be within the sole discretion of the court, as otherwise provided herein.

Foster parents having had continuous care of a child, for more than twelve months, through an authorized agency, shall be permitted as a matter of right, as an interested party to intervene in any proceeding involving the custody of the child. Such intervention may be made anonymously or in the true name of said foster parents.

4. An adult married person who has executed a legally enforceable separation agreement or is a party to a marriage in which a valid decree of separation has been entered and who becomes or has been the custodian of a child placed in their care as a result of court ordered foster care may apply to such authorized agency for placement of said child with them for the purpose of adoption. Applications filed pursuant to this subdivision by persons who, as foster parents, have cared for a child continuously for a period of twelve months or more shall be entitled to the same consideration and preference as are given to applications filed pursuant to subdivision three of this section. Final determination of the propriety of said adoption of such foster child, however, shall be within the sole discretion of the court, as otherwise provided herein.

5. Any proceeding brought in connection with the provisions of this section shall have preference over all other causes in all courts.

§ 383-b. Medical treatment for abused, neglected and destitute children; consent of commissioners. The local commissioner of social services or the local commissioner of health may give effective consent for medical, dental, health and hospital services for any child who has been found by the family court to be an abused, neglected or destitute child, or who has been taken into or kept in protective custody or removed from the place where he or she is residing, or who has been placed in the custody of such commissioner, pursuant to section four hundred seventeen of this article or section one thousand twenty-two, section one thousand twenty-four, section one thousand twenty-seven, section one thousand ninety-four or section one thousand ninety-five of the family court act.

§ 383-c. Guardianship and custody of children in foster care. 1. Method. For the purposes of this section, a child in foster care shall mean a child in the care and custody of an authorized agency pursuant to section three hundred eighty-four-a of this title or article three, seven or ten of the family court act. The guardianship of the person and the custody of a child in foster care under the age of eighteen years may be committed to an authorized agency by a written instrument which shall be known as a surrender, and signed:

(a) if both parents shall then be living, by the parents of such child, or by the surviving parent, if either parent of such child be dead;

(b) if either one of such parents shall have for a period of six months then next preceding abandoned such child as set forth in section three hundred eighty-four-b of this title, by the other of such parents;

(c) if such child is born out of wedlock, by the mother of such child, and by the father of such child, if such father's consent would be required for the child's adoption, pursuant to section one hundred eleven of the domestic relations law;

(d) if both parents of such child are dead, or if such child is born out of wedlock and the mother of such child is dead, by the guardian of the person of such child lawfully appointed, with the approval of the court or officer which appointed such guardian to be entered of record.

2. Terms. (a) Such guardianship shall be in accordance with the provisions of this article and the instrument shall be upon such terms and subject to such conditions as may be agreed upon by the parties thereto and shall comply with subdivision five of this section; provided, however, that an authorized agency shall not accept a surrender instrument conditioned upon adoption by a particular person, unless such person is a certified or approved foster parent, where the permanency plan for the child is for the child to be adopted by that person or the agency has fully investigated and approved such person as an adoptive parent in accordance with applicable statute and regulations. No such agency shall draw or receive money from public funds for the support of any such child except upon the written order or permit of the social services official of the county or city sought to be charged with the support of such child.

(b) If a surrender instrument designates a particular person or persons who will adopt a child, such person or persons, the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney, may enter into a written agreement providing for communication or contact between the child and the child's parent or parents on such terms and conditions as may be agreed to by the parties. If a surrender instrument does not designate

a particular person or persons who will adopt the child, then the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney may enter into a written agreement providing for communication or contact, on such terms and conditions as may be agreed to by the parties. Such agreement also may provide terms and conditions for communication with or contact between the child and the child's biological siblings or half-siblings, if any. If any such sibling or half-sibling is fourteen years of age or older, such terms and conditions shall not be enforceable unless such sibling or half-sibling consents to the agreement in writing. If the court before which the surrender instrument is presented for approval determines that the agreement concerning communication and contact is in the child's best interests, the court shall approve the agreement. If the court does not approve the agreement, the court may nonetheless approve the surrender; provided, however, that the birth parent or parents executing the surrender instrument shall be given the opportunity at that time to withdraw such instrument. Enforcement of any agreement prior to the adoption of the child shall be in accordance with subdivision (b) of section one thousand fifty-five-a of the family court act. Subsequent to the adoption of the child, enforcement of any agreement shall be in accordance with section one hundred twelve-b of the domestic relations law.

3. Judicial surrenders. (a) A surrender of a child to an authorized agency for the purpose of adoption may be executed and acknowledged before a judge of the family court or a surrogate in this state. If the child being surrendered is in foster care as a result of a proceeding before the family court pursuant to article ten or ten-A of the family court act or section three hundred fifty-eight-a of this chapter, the surrender shall be executed and acknowledged before the family court that exercised jurisdiction over such proceeding and, shall be assigned, wherever practicable, to the judge who last presided over such proceeding. A surrender executed and acknowledged before a court in another state shall satisfy the requirements of this section if it is executed by a resident of the other state before a court of record which has jurisdiction over adoption proceedings in that state, and a certified copy of the transcript of that proceeding, showing compliance with paragraph (b) of this subdivision, is filed as part of the adoption proceeding in this state.

(b) Before a judge or surrogate approves a judicial surrender, the judge or surrogate shall order that notice of the surrender proceeding be given to persons identified in subdivision two of section three hundred eighty-four-c of this title and to such other persons as the judge or surrogate may, in his or her discretion, prescribe. At the time that a parent appears before a judge or surrogate to execute and acknowledge a surrender, the judge or surrogate shall inform such parent of the right to be represented by legal counsel of the parent's own choosing and of the right to obtain supportive counseling and of any right to have counsel assigned pursuant to section two hundred sixty-two of the family court act, section four hundred seven of the surrogate's court procedure act, or section thirty-five of the judiciary law. The judge or surrogate also shall inform the parent of the consequences of such surrender, including informing such parent that the parent is giving up all rights to have custody, visit with, speak with, write to or learn about the child, forever, unless the parties have agreed to different terms pursuant to subdivision two of this section, or, if the parent registers with the adoption information register, as specified in section forty-one hundred thirty-eight-d of the public health law, that

the parent may be contacted at any time after the child reaches the age of eighteen years, but only if both the parent and the adult child so choose. The court shall determine whether the terms and conditions agreed to by the parties pursuant to subdivision two of this section are in the child's best interests before approving the surrender. The judge or surrogate shall inform the parent that where a surrender containing conditions has been executed, the parent is obligated to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is expressly waived by a statement written by the parent and appended to or included in such instrument. The judge or surrogate also shall inform the parent that the surrender shall become final and irrevocable immediately upon its execution and acknowledgment. The judge or surrogate shall give the parent a copy of such surrender upon the execution thereof.

4. Extra-judicial surrenders. (a) In any case where a surrender is not executed and acknowledged before a judge or surrogate pursuant to subdivision three of this section, such surrender shall be executed and acknowledged by the parent, in the presence of at least two witnesses, before a notary public or other officer authorized to take proof of deeds. At least one witness shall be an employee of an authorized agency trained, in accordance with the regulations of the department of children and family services, to receive surrenders. At least one witness shall be a person who is either a licensed master social worker, licensed clinical social worker or an attorney and who is not an employee, volunteer, consultant or agent of or attorney for the authorized agency to which the child is being surrendered. The commissioner of the office of children and family services, after consultation with the chief administrator of the courts, shall promulgate standards to help ensure the impartial selection and independence of such witnesses. Any witness may, if so commissioned, serve as notary under this subdivision.

(b) The authorized agency to which the child was surrendered shall file an application for approval of the extra-judicial surrender with the court in which the adoption proceeding is expected to be filed or, if not known, the family or surrogate's court in the county in which the agency has its principal office. If the child being surrendered is in foster care as a result of a proceeding before the family court pursuant to article ten or ten-A of the family court act or section three hundred fifty-eight-a of this chapter, the application shall be filed in the family court that exercised jurisdiction over such proceeding and, shall be assigned, wherever practicable, to the judge who last presided over such proceeding. The application shall be filed no later than fifteen days after execution of such surrender. The application shall be accompanied by affidavits from all the witnesses before whom the surrender was executed and acknowledged as provided for in paragraph (a) of this subdivision, stating:

(i) the date, time and place where the surrender was executed and acknowledged;

(ii) that the parent was provided with a copy of the surrender;

(iii) that the surrender was read in full to the parent in his or her principal language and the parent was given an opportunity to ask questions and obtain answers regarding the nature and consequences of the surrender, including the consequences of, and procedures to be followed in, cases of a substantial failure of a material condition, if any, contained in the surrender instrument and the obligation to provide

the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is expressly waived by a statement written by the parent and appended to or included in such instrument; and

(iv) that the parent executed and acknowledged the surrender.

(c) The authorized agency to which a child is surrendered pursuant to this subdivision must affix an affidavit to the application, by an employee responsible for providing or arranging supportive counseling, which specifies:

(i) when supportive counseling was offered to the parent by the authorized agency;

(ii) whether the parent accepted the offer of supportive counseling; and

(iii) if accepted, when supportive counseling was provided and the nature of such supportive counseling.

(d) Before a judge or surrogate approves an extra-judicial surrender, the judge or surrogate shall order notice to be given to the person who executed the surrender, to persons identified in subdivision two of section three hundred eighty-four-c of this title and to such other persons as the judge or surrogate may, in his or her discretion, prescribe. The petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to section three hundred eighty-four-c, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to such section. No person who has received such notice and been afforded an opportunity to be heard may challenge the validity of a surrender approved pursuant to this subdivision in any other proceeding. Nothing in this section shall be deemed to dispense with the consent to adopt if otherwise required of any person who has not executed the surrender.

(e) The agency to which the child is surrendered promptly shall notify such court of any correspondence or communication received from the parent or a person on the parent's behalf subsequent to the execution of the surrender and prior to a final order of adoption of the child, if such correspondence or communication could reasonably indicate the parent's wish to revoke the surrender.

(f) The court shall enter an order either approving or disapproving the surrender. If the court disapproves the surrender, the surrender shall be deemed a nullity and without force or effect, and the court may direct that any subsequent surrender shall be executed only before the court in accordance with subdivision three of this section.

5. Instrument. (a) There shall be a form of instrument for a judicial surrender and a form of instrument for an extra-judicial surrender.

(b) The instrument for a judicial surrender and the instrument for an extra-judicial surrender shall be in a form prescribed by the commissioner after consultation with the chief administrator of the courts and shall state in plain language in conspicuous bold print on the first page:

(i) that the parent has the right, before signing the surrender, to speak to a lawyer of her or his own choosing and any other person she or he wishes; to have that lawyer and any other person present with her or him at the time of the signing of the surrender; and has the right to ask the court to appoint a lawyer free of charge if the parent cannot afford to hire one; and has the right to have supportive counseling;

(ii) that the parent is giving up all rights to have custody, visit

with, speak with, write to or learn about the child, forever, unless the parties have agreed to different terms pursuant to subdivision two of this section, and unless such terms are written in the surrender, or, if the parent registers with the adoption information register, as specified in section forty-one hundred thirty-eight-d of the public health law, that the parent may be contacted at anytime after the child reaches the age of eighteen years, but only if both the parent and the adult child so choose;

(iii) that the child will be adopted without the parent's consent and without further notice to the parent, and will be adopted by any person that the agency chooses, unless the surrender paper contains the name of the person or persons who will be adopting the child; and

(iv) that the parent cannot be forced to sign the surrender paper, and cannot be punished if he or she does not sign the paper; and would not be subject to any penalty for refusing to sign the surrender.

(c) A surrender instrument for a judicial surrender also shall state in plain language in conspicuous bold print at the beginning thereof that the surrender becomes final and irrevocable immediately upon execution and acknowledgement, and that the parent cannot bring a case in court to revoke the surrender or to regain custody of the child. Where the parties have agreed that the surrender shall be subject to conditions pursuant to subdivision two of this section, the instrument shall further state in plain language that:

(i) the authorized agency shall notify the parent, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, the attorney for the child and the court that approved the surrender within twenty days of any substantial failure of a material condition of the surrender prior to the finalization of the adoption of the child; and

(ii) except for good cause shown, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and the child's attorney in accordance with section one thousand fifty-five-a of the family court act within thirty days of such failure, in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such filing, the parent and/or attorney for the child may file such a petition at any time up to sixty days after notification of the failure. Such petition filed by a parent or attorney for the child must be filed prior to the child's adoption; and

(iii) the parent is obligated to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is expressly waived by a statement written by the parent and appended to or included in such instrument.

Nothing in this paragraph shall limit the notice on the instrument with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of the child.

(d) An extra-judicial surrender instrument also shall state in plain language in conspicuous bold print at the beginning thereof that:

(i) the name and address of the court in which the application for approval of the extra-judicial surrender will be filed;

(ii) that a revocation of the surrender will be effective if it is in writing and postmarked or received by the court named in the surrender within forty-five days of the signing of the surrender; and

(iii) that a revocation of the surrender more than forty-five days

after its signing will not be effective if the child has been placed in an adoptive home, and the surrender shall be final and irrevocable and the parent cannot revoke the surrender or bring a case in court to revoke the surrender or regain custody of the child, and that the agency will not notify the parent when the child is placed in an adoptive home, and the parent may lose all rights at the end of the forty-five day period without further notice. Where the parties have agreed that the surrender shall be subject to conditions pursuant to subdivision two of this section, the instrument shall further state in plain language that:

(A) the authorized agency shall notify the parent, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, the law guardian for the child and the court that approved the surrender within twenty days of any substantial failure of a material condition of the surrender prior to the finalization of the adoption of the child; and

(B) except for good cause shown, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and law guardian in accordance with section one thousand fifty-five-a of the family court act within thirty days of such failure in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such filing, the parent and/or law guardian for the child may file such a petition at any time up to sixty days after notification of the failure. Such petition filed by a parent or law guardian must be filed prior to the adoption of the child; and

(C) the parent is obligated to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument.

Nothing in this subparagraph shall limit the notice on the instrument with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of the child.

(e) Any surrender instrument subject to the provisions of this section shall include an adoption information registry birth parent registration consent form, stating whether or not such biological parent or parents whose consent is subject to the provisions of this section, consents to the receipt of identifying information by the child to be adopted upon registration with the adoption information registry established by section forty-one hundred thirty-eight-c of the public health law and upon the adoptee reaching the age of eighteen. If such consent is made, it shall be revocable by either of the biological parents at any time. The revocation of the consent by one of the parents shall revoke the consent of both parents. The failure of a biological parent to complete the consent form shall have no effect on the finality of the consent to adoption. A copy of the form required by this subdivision, shall be forwarded to the state adoption information registry for inclusion in the records maintained by such registry. Any fees authorized to be charged by the state adoption registry for filing documentation with such registry shall be waived for the form required by this subdivision.

(f) A surrender shall be recorded in the office of the county clerk in the county where the surrender is executed, or where the principal office of such authorized agency is located, in a book which such county clerk shall provide and shall keep under seal. Such record shall be subject to inspection and examination only as provided in subdivisions

three and four of section three hundred seventy-two of this title.

(g) Whenever the term surrender, surrender paper or surrender instrument is used in any law relating to the adoption of children in foster care, it shall mean and refer exclusively to the instrument described herein for the commitment of the guardianship of the person and the custody of a child to an authorized agency by the child's parent, parents or guardian, and in no case shall it be deemed to apply to any instrument purporting to commit the guardianship of the person and the custody of a child to any person other than an authorized agency, nor shall such term or the provisions of this section be deemed to apply to any instrument transferring the care and custody of a child to an authorized agency pursuant to section three hundred eighty-four-a of this title.

(h) Upon execution of a surrender instrument, the parent executing the surrender shall provide information to the extent known regarding the other parent, any person to whom the surrendering parent had been married at the time of the conception or birth of the child and any other person who would be entitled to notice of a proceeding to terminate parental rights pursuant to section three hundred eighty-four-c of this title. Such information shall include, but not be limited to, such parent's or person's name, last-known address, social security number, employer's address and any other identifying information. Any information provided pursuant to this paragraph shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of this article; provided, however, that the failure to provide such information shall not invalidate the surrender.

6. Effect of surrender and revocation. (a) If the court disapproves the surrender pursuant to subdivision four of this section, or if a revocation of an extra-judicial surrender is mailed and postmarked or otherwise delivered to the court named in the surrender within forty-five days of the execution of the surrender, such surrender shall be deemed a nullity, and the child shall be returned to the care and custody of the authorized agency.

(b) If a revocation of an extra-judicial surrender is mailed and postmarked or otherwise delivered to the court named in the surrender more than forty-five days after its execution and the child has not been placed in an adoptive home, such surrender shall be deemed a nullity, and the child shall be returned to the care and custody of the authorized agency. For the purposes of this subdivision, no child shall be deemed to have been placed in the home of adoptive parents unless the fact of such placement, the date thereof, the date of the agreement pertaining thereto and the names and addresses of the adoptive parents shall have been recorded in a bound volume maintained by the agency for the purpose of recording such information in chronological order. The absence of judicial approval of an extra-judicial surrender shall not revive, extend or toll the period for revocation of such surrender.

(c) In any case in which the authorized agency determines that the persons specified in the surrender will not adopt the child or in any other case of a substantial failure of a material condition prior to the finalization of the adoption of the child, the agency promptly shall notify the parent thereof, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, and shall notify the court and the law guardian for the child within twenty days. In any such case, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and law guardian in accordance with section one

thousand fifty-five-a of the family court act, as applicable, within thirty days, except for good cause shown, in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such a filing, the parent and/or law guardian for the child may file such a petition at any time up to sixty days after the notification of the failure. Such petition filed by a parent or law guardian must be filed prior to the adoption. Nothing in this paragraph shall limit the rights and remedies, if any, available to the parties and the law guardian with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of the child.

(d) Nothing contained in this section shall bar actions or proceedings brought on the ground of fraud, duress or coercion in the execution or inducement of a surrender. No action or proceeding may be maintained by the surrendering parent or guardian for the custody of the surrendered child or to revoke or annul such surrender except as provided herein.

7. Surrenders by persons in foster care. Notwithstanding any other provision of law, a surrender for adoption executed by a parent, parents or guardian who is in foster care shall be executed only before a judge of the family court.

8. Adoption proceeding. (a) Upon the court's order approving the surrender, the attorney for the petitioning authorized agency shall promptly serve upon persons who have been approved by such agency as the child's adoptive parents, notice of entry of the order approving the surrender and advising such persons that they may commence an adoption proceeding. In accordance with the regulations of the department, the authorized agency shall advise such persons of the procedures necessary for adoption of the child. The authorized agency shall cooperate with such persons in the provision of necessary documentation.

(b) The adoptive parent may commence the adoption proceeding in a court of competent jurisdiction in accordance with subdivision three of section one hundred thirteen or subdivision two of section one hundred fifteen of the domestic relations law, as applicable; provided, however, that in the case of an extra-judicial surrender, such proceeding shall be initiated more than forty-five days after the surrender is executed. Commencement of such a proceeding shall not revive, extend or toll the period for revocation of an extra-judicial surrender pursuant to this section.

9. Intervention. (a) Any person or persons having custody of a child for the purpose of adoption through an authorized agency shall be permitted as a matter of right, as an interested party, to intervene in any proceeding commenced to set aside a surrender purporting to commit a guardianship of the person or custody of a child executed under the provisions of this section. Such intervention may be made anonymously or in the true name of such person.

(b) Any person or persons having custody for more than twelve months through an authorized agency for the purpose of foster care shall be permitted as a matter of right, as an interested party, to intervene in any proceeding commenced to set aside a surrender purporting to commit the guardianship of the person and custody of a child executed under the provisions of this section. Such intervention may be made anonymously or in the true name of such person or persons having custody of the child for the purpose of foster care.

10. Adoption and permanency hearing.

a. Upon acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to subdivision three or four of this section, the court shall inquire whether any foster parent or parents

with whom the child resides, or any relative of the child, or other person, seeks to adopt such child. If such person or persons do seek to adopt such child, such person or persons may submit, and the court shall accept, all such petitions for the adoption of the child, together with an adoption home study, if any, completed by an authorized agency, or disinterested person as such term is defined in subdivision three of section one hundred sixteen of the domestic relations law. The court shall thereafter establish a schedule for completion of other inquiries and investigations necessary to complete review of the adoption of the child and shall immediately set a schedule for completion of the adoption.

b. Upon acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to subdivision three or four of this section, the court shall schedule an initial freed child permanency hearing pursuant to section one thousand eighty-nine of the family court act. Subsequent permanency hearings shall be held pursuant to section one thousand eighty-nine of the family court act.

§ 384. Guardianship and custody of children not in foster care. 1. Method. The guardianship of the person and the custody of a child who is not in foster care under the age of eighteen years may be committed to an authorized agency by a written instrument which shall be known as a surrender, and signed:

(a) if both parents shall then be living, by the parents of such child, or by the surviving parent, if either parent of such child be dead;

(b) if either one of such parents shall have for a period of six months then next preceding abandoned such child, by the other of such parents;

(c) if such child is born out of wedlock, by the mother of such child, and by the father of such child, if such father's consent would be required for the child's adoption, pursuant to section one hundred eleven of the domestic relations law;

(d) if both parents of such child are dead, or if such child is born out of wedlock and the mother of such child is dead by the guardian of the person of such child lawfully appointed, with the approval of the court or officer which appointed such guardian to be entered of record.

2. Terms. (a) Such guardianship shall be in accordance with the provisions of this article and the instrument shall be upon such terms and subject to such conditions as may be agreed upon by the parties thereto. The instrument shall recite that the authorized agency is thereby authorized and empowered to consent to the adoption of such child in the place and stead of the person signing the instrument, and may recite that the person signing the instrument waives any notice of such adoption; provided, however, that an authorized agency shall not accept a surrender instrument conditioned upon adoption by a particular person, unless the agency has fully investigated and certified or approved such person as a qualified adoptive parent. Any surrender instrument subject to the provisions of this section shall include an adoption information registry birth parent registration consent form, stating whether or not such biological parent or parents whose consent is subject to the provisions of this section, consents to the receipt of identifying information by the child to be adopted, upon registration with the adoption information registry established by section forty-one hundred thirty-eight-c of the public health law and upon the adoptee reaching the age of eighteen. If such consent is made, it shall be revocable by either of the biological parents at any time. The revocation of the consent by one of the parents shall revoke the consent

of both parents. The failure of a biological parent to complete the consent form shall have no effect on the finality of the consent to adoption. A copy of the form required by this subdivision, shall be forwarded to the state adoption information registry for inclusion in the records maintained by such registry. Any fees authorized to be charged by the state adoption registry for filing documentation with such registry shall be waived for the form required by this subdivision. No such agency shall draw or receive money from public funds for the support of any such child except upon the written order or permit of the local social services official of the county or city sought to be charged with the support of such child.

(b) If a surrender instrument designates a particular person or persons who will adopt a child, such person or persons, the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney, may enter into a written agreement providing for communication or contact between the child and the child's parent or parents on such terms and conditions as may be agreed to by the parties.

If a surrender instrument does not designate a particular person or persons who will adopt the child, then the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney may enter into a written agreement providing for communication or contact, on such terms and conditions as may be agreed to by the parties. Such agreement also may provide terms and conditions for communication with or contact between the child and the child's biological sibling or half-sibling, if any. If any such sibling or half-sibling is fourteen years of age or older, such terms and conditions shall not be enforceable unless such sibling or half-sibling consents to the agreement in writing. If the court before which the surrender instrument is presented for approval determines that the agreement concerning communication and contact is in the child's best interests, the court shall approve the agreement. If the court does not approve the agreement, the court may nonetheless approve the surrender; provided, however, that the birth parent or parents executing the surrender instrument shall be given the opportunity at that time to withdraw such instrument. Enforcement of any agreement prior to the adoption of the child shall be in accordance with subdivision (b) of section one thousand fifty-five-a of the family court act. Subsequent to the adoption of the child, enforcement of any agreement shall be in accordance with section one hundred twelve-b of the domestic relations law.

3. Instrument. The instrument herein provided shall be executed and acknowledged (a) before any judge or surrogate in this state having jurisdiction over adoption proceedings, except that if the child is being surrendered as a result of, or in connection with, a proceeding before the family court pursuant to article ten or ten-A of the family court act, the instrument shall be executed and acknowledged in the family court that exercised jurisdiction over such proceeding and shall be assigned, wherever practicable, to the judge who last presided over such proceeding; or (b) in the presence of one or more witnesses and acknowledged by such witness or witnesses, in the latter case before a notary public or other officer authorized to take proof of deeds, and shall be recorded in the office of the county clerk in the county where such instrument is executed, or where the principal office of such authorized agency is located, in a book which such county clerk shall provide and shall keep under seal. Such record shall be subject to inspection and examination only as provided in subdivisions three and

four of section three hundred seventy-two of this title. Notwithstanding any other provision of law, if the parent surrendering the child for adoption is in foster care the instrument shall be executed before a judge of the family court.

Whenever the term surrender or surrender instrument is used in any law relating to the adoption of children who are not in foster care, it shall mean and refer exclusively to the instrument hereinabove described for the commitment of the guardianship of the person and the custody of a child to an authorized agency by his parents, parent or guardian; and in no case shall it be deemed to apply to any instrument purporting to commit the guardianship of the person and the custody of a child to any person other than an authorized agency, nor shall such term or the provisions of this section be deemed to apply to any instrument transferring the care and custody of a child to an authorized agency pursuant to section three hundred eighty-four-a of this chapter.

Any person or persons having custody of a child for the purpose of adoption through an authorized agency shall be permitted as a matter of right, as an interested party, to intervene in any proceeding commenced to set aside a surrender purporting to commit a guardianship of the person or custody of a child executed under the provisions of this section. Such intervention may be made anonymously or in the true name of said person.

Any person or persons having custody for more than twelve months through an authorized agency for the purpose of foster care shall be permitted as a matter of right, as an interested party, to intervene in any proceeding commenced to set aside a surrender purporting to commit the guardianship of the person and custody of a child executed under the provisions of this section. Such intervention may be made anonymously or in the true name of said person or persons having custody of the child for the purpose of foster care.

A copy of such surrender shall be given to such surrendering parent upon the execution thereof. The surrender shall include the following statement: "I, (name of surrendering parent), this ___ day of _____, _____, have received a copy of this surrender. (Signature of surrendering parent)". Such surrendering parent shall so acknowledge the delivery and the date of the delivery in writing on the surrender.

Where the parties have agreed that the surrender shall be subject to conditions pursuant to subdivision two of this section, the instrument shall further state in plain language that:

(i) the authorized agency shall notify the parent, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, the attorney for the child and the court that approved the surrender within twenty days of any substantial failure of a material condition of the surrender prior to the finalization of the adoption of the child; and

(ii) except for good cause shown, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and the child's attorney in accordance with section one thousand fifty-five-a of the family court act within thirty days of such failure, in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such filing, the parent and/or attorney for the child may file such a petition at any time up to sixty days after notification of such failure. Such petition filed by a parent or attorney for the child must be filed prior to the child's adoption; and

(iii) the parent is obligated to provide the authorized agency with a

designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is expressly waived by a statement written by the parent and appended to or included in such instrument.

Nothing in this paragraph shall limit the notice on the instrument with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of the child.

4. Upon petition by an authorized agency, a judge of the family court, or a surrogate, may approve such surrender, on such notice to such persons as the surrogate or judge may in his or her discretion prescribe. If the child is being surrendered as a result of, or in connection with, a proceeding before the family court pursuant to article ten or ten-A of the family court act, the petition shall be filed in the family court that exercised jurisdiction over such proceeding and shall be assigned, wherever practicable, to the judge who last presided over such proceeding. The petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to section three hundred eighty-four-c of this title, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to such section. No person who has received such notice and been afforded an opportunity to be heard may challenge the validity of a surrender approved pursuant to this subdivision in any other proceeding. However, this subdivision shall not be deemed to require approval of a surrender by a surrogate or judge for such surrender to be valid.

5. If a duly executed and acknowledged adoption surrender shall so recite, no action or proceeding may be maintained by the surrendering parent or guardian for the custody of the surrendered child or to revoke or annul such surrender where the child has been placed in the home of adoptive parents and more than thirty days have elapsed since the execution of the surrender or where the purpose of such action or proceeding is to return the child to or vest the child's custody in any person other than the parent or guardian who originally executed such surrender. This subdivision shall not bar actions or proceedings brought on the ground of fraud, duress or coercion in the execution or inducement of a surrender.

For the purposes of this subdivision, no child shall be deemed to have been placed in the home of adoptive parents unless the fact of such placement, the date thereof, the date of the agreement pertaining thereto and the names and addresses of the adoptive parents shall have been recorded in a bound volume maintained by the agency for the purpose of recording such information in chronological order.

Where the parties have agreed that the surrender shall be subject to conditions pursuant to subdivision two of this section and where there has been a substantial failure of a material condition prior to the finalization of the adoption of the child, the agency shall notify the parent thereof, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, and shall notify the court and the law guardian for the child within twenty days of such failure. In any such case, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and law guardian in accordance with section one thousand fifty-five-a of the family court act within thirty days of such

failure, except for good cause shown, in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such a filing, the parent and/or law guardian for the child may file such a petition at any time up to sixty days after notification of the failure. Such a petition filed by a parent or law guardian must be filed prior to the adoption. Nothing in this paragraph shall limit the rights and remedies available to the parties and the law guardian pursuant to section one hundred twelve-b of the domestic relations law with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of a child.

6. In an action or proceeding to determine the custody of a child not in foster care surrendered for adoption and placed in an adoptive home or to revoke or annul a surrender instrument in the case of such child placed in an adoptive home, the parent or parents who surrendered such child shall have no right to the custody of such child superior to that of the adoptive parents, notwithstanding that the parent or parents who surrendered the child are fit, competent and able to duly maintain, support and educate the child. The custody of such child shall be awarded solely on the basis of the best interests of the child, and there shall be no presumption that such interests will be promoted by any particular custodial disposition.

7. Upon acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to this section, the court shall schedule an initial freed child permanency hearing pursuant to section one thousand eighty-nine of the family court act.

8. Upon execution of a surrender instrument, the parent executing the surrender shall provide information to the extent known regarding the other parent, any person to whom the surrendering parent had been married at the time of the conception or birth of the child and any other person who would be entitled to notice of a proceeding to terminate parental rights pursuant to section three hundred eighty-four-c of this title. Such information shall include, but not be limited to, such parent's or person's name, last-known address, social security number, employer's address and any other identifying information. Any information provided pursuant to this subdivision shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of this article; provided, however, that the failure to provide such information shall not invalidate the surrender.

§ 384-a. Transfer of care and custody of children. 1. Method. The care and custody of a child may be transferred by a parent or guardian, and the care of a child may be transferred by any person to whom a parent has entrusted the care of the child, to an authorized agency by a written instrument in accordance with the provisions of this section. Such transfer by a person who is not the child's parent or guardian shall not affect the rights or obligations of the parents or guardian, and such transfer shall be deemed a transfer of the care and custody of the child for the purposes of section three hundred fifty-eight-a of this chapter.

1-a. Prior to accepting a transfer of care and custody, a local social services official shall commence a search to locate any non-respondent parent of the child and shall conduct an immediate investigation to (a) locate relatives of the child, including all of the child's grandparents, all suitable relatives identified by either and any relative identified by a child over the age of five as a relative who plays or has played a significant positive role in his or her life, and to inform them of the opportunity for becoming foster parents or for

seeking custody or care of the child, and that the child may be adopted by foster parents if attempts at reunification with the birth parent are not required or are unsuccessful; and to determine whether the child may appropriately be placed with a suitable person related to the child and whether such relative seeks approval as a foster parent pursuant to this chapter for the purposes of providing care for such child, or wishes to provide care and custody for the child until the parent or other person responsible for the care of the child is able to resume custody; and (b) identify minor siblings or half-siblings of the child and to determine whether such siblings or half-siblings have been or are being transferred to the care and custody of such official. Such official shall provide or arrange for the provision of care so as to permit the child and his or her minor siblings or half-siblings to be placed together unless, in the judgment of such official, such placement would be contrary to the best interests of the children; whereupon, such official shall provide or arrange for regular visitation and other forms of regular communication between such children unless, in the judgment of such official, such visitation and communication would be contrary to the best interests of such children. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's best interests unless such placement or visitation and communication would be contrary to the child's health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation.

1-b. Upon accepting the transfer of care and custody of a child from the parent, guardian or other person to whom care of the child has been entrusted, a local social services official shall obtain information to the extent known from such person regarding the other parent, any person to whom the parent transferring care and custody had been married at the time of the conception or birth of the child and any other person who would be entitled to notice of a proceeding to terminate parental rights pursuant to section three hundred eighty-four-c of this title. Such information shall include, but not be limited to, such parent's or person's name, last-known address, social security number, employer's address and any other identifying information. Any information provided pursuant to this subdivision shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of this article; provided, however, that the failure to provide such information shall not invalidate the transfer of care and custody.

2. Terms. (a) The instrument shall be upon such terms, for such time and subject to such conditions as may be agreed upon by the parties thereto. The office of children and family services may promulgate suggested terms and conditions for inclusion in such instruments, but shall not require that any particular terms and conditions be included. If the instrument provides that the child is to be returned by the authorized agency on a date certain or upon the occurrence of an identifiable event, such agency shall return such child at such time unless such action would be contrary to court order entered at any time prior to such date or event or within ten days thereafter pursuant to section three hundred eighty-four-b of this title or article six, ten, or ten-A of the family court act or unless and so long as the parent or guardian is unavailable or incapacitated to receive the child. The parent or guardian may, upon written notice to such agency, request return of the child at any time prior to the identified date or event, whereupon such agency may, without court order, return the child or, within ten days after such request, may notify the parent or guardian that such request is denied. If such agency denies or fails to act upon

such request, the parent or guardian may seek return of the care and custody of the child by motion in family court for return of such child and order to show cause, or by writ of habeas corpus in the supreme court or family court. If the instrument fails to specify a date or identifiable event upon which such agency shall return such child, such agency shall return the child within twenty days after having received notice that the parent or guardian wishes the child returned, unless such action would be contrary to court order entered at any time prior to the expiration of such twenty day period pursuant to section three hundred eighty-four-b of this title or article six, ten, or ten-A of the family court act. Expenditures by a local social services district for the care and maintenance of a child who has been continued in the care of an authorized agency in violation of the provisions of this subdivision shall not be subject to state reimbursement.

(b) No provisions set forth in any such instrument regarding the right of the parent or guardian to visit the child or to have services provided to the child and to the parent or guardian to strengthen the parental relationship may be terminated or limited by the authorized agency having the care and custody of the child unless: (i) the instrument shall have been amended to so limit or terminate such right, pursuant to subdivision three of this section; or (ii) the right of visitation or to such services would be contrary to or inconsistent with a court order obtained in any proceeding in which the parent or guardian was a party.

(c) The instrument shall state, in lay terms, in conspicuous print of at least eighteen point type:

(i) that the parent or guardian has the right, prior to signing the instrument transferring the care and custody of the child to an authorized agency, to legal representation of the parent's own choosing. The agency shall provide the parent or guardian with a list of attorneys or legal services organizations, if any, which provide free legal services to persons unable to otherwise obtain such services;

(ii) that the parent or guardian has no legal obligation to transfer the care and custody of the child to such official, and will incur no legal sanction for failing to do so;

(iii) that the law permits the instrument to specify a date certain or an identifiable event upon which the child is to be returned, and if no date or event is specified, that the parent or guardian has a right to the return of the child within twenty days of a request for return, unless otherwise ordered by the court; and to otherwise have the child returned in accordance with the terms of the instrument and the provisions of this section;

(iv) that the parent or guardian has a right to supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state's consolidated services plan, to visit the child, and to determine jointly with the agency the terms and frequency of visitation;

(v) that the parent or guardian, subject to the terms of the instrument, has an obligation

(A) to visit the child,

(B) to plan for the future of the child,

(C) to meet with and consult with the agency about such plan,

(D) to contribute to the support of the child to the extent of his or her financial ability to do so, and

(E) to inform the agency of any change of name and address;

(vi) that the failure of the parent or guardian to meet the obligations listed in subparagraph (v) could be the basis for a court

proceeding for the commitment of the guardianship and custody of the child to an authorized agency thereby terminating parental rights;

(vii) that the parent or guardian has a right to a fair hearing pursuant to section twenty-two of this chapter concerning the agency's failure to permit the parent or guardian to visit the child or to provide supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state's consolidated services plan, to the child and to the parent or guardian;

(viii) the amount of money which the parent will periodically contribute to the support of the child and the schedule for such payments, if known.

(ix) that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights.

(d) In any case where a parent who has transferred care and custody of a child to a social services official pursuant to this section informs the social services official that an order or judgment conferring visitation rights relating to the child has been entered by the family court or supreme court or that a written agreement as described in section two hundred thirty-six of the domestic relations law between the parents confers such rights, any instrument executed pursuant to this section shall incorporate the provisions of such order, judgment or agreement to the extent that visitation rights are affected and shall provide for visitation or other rights as required by such order, judgment or agreement. Such incorporation shall not preclude a social services official from exercising his authority pursuant to paragraph (e) or (f) of this subdivision.

(e) Where a social services official opposes incorporation of an order, judgment or agreement described in paragraph (d) of this subdivision, such official may, upon execution of the instrument described in this section and upon notice to the non-custodial parent or grandparent named in such order, judgment or agreement, be heard thereon in a proceeding pursuant to section three hundred fifty-eight-a of this chapter.

(f) Nothing in this section shall be deemed to prohibit a social services official or an attorney for the child, if any, from making an application to modify the terms of a visitation order, incorporated pursuant to this section, for good cause shown, upon notice to all interested parties, or to limit the right of a non-custodial parent or grandparent to seek visitation pursuant to applicable provisions of law.

(g) In the event a child whose care and custody is transferred pursuant to this section is admitted to a hospital operated or licensed by the office of mental health and cannot be returned to the physical custody of his or her parent or guardian upon request because, pursuant to section four hundred of this chapter, the medical director of the facility has not authorized the removal of the child, the child shall nonetheless be deemed to have been returned to the legal care and custody of his or her parent or guardian. Expenditures by a social services district for the care and maintenance of such a child shall be subject to state reimbursement notwithstanding the provisions of section one hundred fifty-three-b of this chapter.

(h) (i) Where a local social services official determines that a child is at significant risk of placement in the care and custody of the local commissioner of social services during the eighteen months immediately following review by such official because the custodial parent or legal guardian of such child is suffering from a progressively chronic or irreversibly fatal illness and it is determined that there is neither a

relative nor a close friend identified by the custodial parent or the legal guardian able to assume legal guardianship of the child, the custodial parent or legal guardian shall be assisted by the local social services district in transferring the care and custody of the child to an authorized agency by a written instrument in accordance with the provisions for this section which provides the transfer shall not take effect until the parent or legal guardian dies, becomes debilitated or incapacitated as defined in subdivision one of section seventeen hundred twenty-six of the surrogate's court procedure act.

(ii) Where a local social services official determines that a child is at significant risk of placement in the care and custody of the local commissioner of social services during the eighteen months immediately following a review of such official because the custodial parent or legal guardian is suffering from a progressively chronic or irreversibly fatal illness and there is a relative or close friend identified by the custodial parent or legal guardian who is able and willing to assume care and custody of the child, but who requires foster care services and financial support thereof pursuant to section three hundred ninety-eight-a of this article, the custodial parent or legal guardian shall be assisted by the local social services district in transferring the care and custody of the child to an authorized agency by a written instrument in accordance with the provisions of this section. Such instrument shall provide that the transfer of custody shall not take effect until the parent or legal guardian dies, becomes debilitated or incapacitated as defined in subdivision one of section seventeen hundred twenty-six of the surrogate's court procedure act. If otherwise qualified, the social services official shall assist the person identified to accept care and custody of the child to become certified as a foster parent.

(iii) A local social services official who accepts or proposes to accept the care and custody of a child by means of a written instrument executed pursuant to this paragraph, shall, pursuant to section three hundred fifty-eight-a of this chapter, petition the family court of the county or city in which the local social services official has his or her office to approve such written instrument. A written instrument executed pursuant to this paragraph and approved pursuant to section three hundred fifty-eight-a of this chapter shall be in effect until the court reviews the child's placement pursuant to article ten-A of the family court act. The status of a child subject to such an instrument shall be reviewed by the court pursuant to article ten-A of the family court act.

(iv) Upon receiving a notice from the custodial parent or the legal guardian that the parent or legal guardian is no longer debilitated or incapacitated and that the parent or legal guardian requests the immediate return of the child, the social services district shall return such child to the parent or legal guardian within ten days of receiving notice, except where a contrary court order has been issued pursuant to part two, five or seven of article ten of the family court act.

3. Amendment. (a) The parties to the instrument or anyone acting on their behalf with their consent may amend it by mutual consent but only by a supplemental instrument executed in the same manner as the original instrument. The supplemental instrument shall be attached to, and become part of, the original instrument. The supplemental instrument shall contain the recitation required in paragraph (c) of subdivision two of this section.

(b) The instrument shall also be deemed amended where ordered by the family court pursuant to the provisions of paragraph (d) of subdivision

ten of section three hundred fifty-eight-a of this chapter.

4. Execution. The instrument shall be executed in the presence of one or more witnesses and shall include only the provisions, terms and conditions agreed upon by the parties thereto.

5. Records. The instrument shall be kept in a file maintained for that purpose by the agency accepting the care and custody of the child. A copy of the instrument shall be given to the parent or guardian at the time of the execution of the instrument.

6. An instrument executed pursuant to the provisions of this section shall not constitute a remand or commitment pursuant to this chapter.

§ 384-b. Guardianship and custody of destitute or dependent children; commitment by court order; modification of commitment and restoration of parental rights.

1. Statement of legislative findings and intent.

(a) The legislature recognizes that the health and safety of children is of paramount importance. To the extent it is consistent with the health and safety of the child, the legislature further hereby finds that:

(i) it is desirable for children to grow up with a normal family life in a permanent home and that such circumstance offers the best opportunity for children to develop and thrive;

(ii) it is generally desirable for the child to remain with or be returned to the birth parent because the child's need for a normal family life will usually best be met in the home of its birth parent, and that parents are entitled to bring up their own children unless the best interests of the child would be thereby endangered;

(iii) the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home; and

(iv) when it is clear that the birth parent cannot or will not provide a normal family home for the child and when continued foster care is not an appropriate plan for the child, then a permanent alternative home should be sought for the child.

(b) The legislature further finds that many children who have been placed in foster care experience unnecessarily protracted stays in such care without being adopted or returned to their parents or other custodians. Such unnecessary stays may deprive these children of positive, nurturing family relationships and have deleterious effects on their development into responsible, productive citizens. The legislature further finds that provision of a timely procedure for the termination, in appropriate cases, of the rights of the birth parents could reduce such unnecessary stays.

It is the intent of the legislature in enacting this section to provide procedures not only assuring that the rights of the birth parent are protected, but also, where positive, nurturing parent-child relationships no longer exist, furthering the best interests, needs, and rights of the child by terminating parental rights and freeing the child for adoption.

2. For the purposes of this section, (a) "child" shall mean a person under the age of eighteen years; and, (b) "parent" shall include an incarcerated parent unless otherwise qualified.

3. (a) The guardianship of the person and the custody of a destitute or dependent child may be committed to an authorized agency, or to a foster parent authorized pursuant to section one thousand eighty-nine of the family court act to institute a proceeding under this section, or to a relative with care and custody of the child, by order of a surrogate or judge of the family court, as hereinafter provided. Where such

guardianship and custody is committed to a foster parent or to a relative with care and custody of the child, the family court or surrogate's court shall retain continuing jurisdiction over the parties and the child and may, upon its own motion or the motion of any party, revoke, modify or extend its order, if the foster parent or relative fails to institute a proceeding for the adoption of the child within six months after the entry of the order committing the guardianship and custody of the child to such foster parent or relative. Where the foster parent or relative institutes a proceeding for the adoption of the child and the adoption petition is finally denied or dismissed, the court which committed the guardianship and custody of the child to the foster parent or relative shall revoke the order of commitment. Where the court revokes an order committing the guardianship and custody of a child to a foster parent or relative, it shall commit the guardianship and custody of the child to an authorized agency.

(b) A proceeding under this section may be originated by an authorized agency or by a foster parent authorized to do so pursuant to section one thousand eighty-nine of the family court act or by a relative with care and custody of the child or, if an authorized agency ordered by the court to originate a proceeding under this section fails to do so within the time fixed by the court, by the child's attorney or guardian ad litem on the court's direction.

(c) Where a child was placed or continued in foster care pursuant to article ten, ten-A or ten-C of the family court act or section three hundred fifty-eight-a of this chapter, a proceeding under this section shall be originated in the family court in the county in which the proceeding pursuant to article ten, ten-A or ten-C of the family court act or section three hundred fifty-eight-a of this chapter was last heard and shall be assigned, wherever practicable, to the judge who last heard such proceeding. Where multiple proceedings are commenced under this section concerning a child and one or more siblings or half-siblings of such child, placed or continued in foster care with the same commissioner pursuant to section one thousand fifty-five, one thousand eighty-nine or one thousand ninety-five of the family court act, all of such proceedings may be commenced jointly in the family court in any county which last heard a proceeding under article ten, ten-A or ten-C of the family court act regarding any of the children who are the subjects of the proceedings under this section. In such instances, the case shall be assigned, wherever practicable, to the judge who last presided over such proceeding. In any other case, a proceeding under this section, including a proceeding brought in the surrogate's court, shall be originated in the county where either of the parents of the child reside at the time of the filing of the petition, if known, or, if such residence is not known, in the county in which the authorized agency has an office for the regular conduct of business or in which the child resides at the time of the initiation of the proceeding. To the extent possible, the court shall, when appointing an attorney for the child, appoint an attorney who has previously represented the child.

(c-1) Before hearing a petition under this section, the court in which the termination of parental rights petition has been filed shall ascertain whether the child is under the jurisdiction of a family court pursuant to a placement in a child protective or foster care proceeding or continuation in out-of-home care pursuant to a permanency hearing and, if so, which court exercised jurisdiction over the most recent proceeding. If the court determines that the child is under the jurisdiction of a different family court, the court in which the

termination of parental rights petition was filed shall stay its proceeding for not more than thirty days and shall communicate with the court that exercised jurisdiction over the most recent proceeding. The communication shall be recorded or summarized on the record by the court in which the termination of parental rights petition was filed. Both courts shall notify the parties and child's attorney, if any, in their respective proceedings and shall give them an opportunity to present facts and legal argument or to participate in the communication prior to the issuance of a decision on jurisdiction. The court that exercised jurisdiction over the most recent proceeding shall determine whether it will accept or decline jurisdiction over the termination of parental rights petition. This determination of jurisdiction shall be incorporated into an order regarding jurisdiction that shall be issued by the court in which the termination of parental rights petition was filed within thirty days of such filing. If the court that exercised jurisdiction over the most recent proceeding determines that it should exercise jurisdiction over the termination of parental rights petition, the order shall require that the petition shall be transferred to that court forthwith but in no event more than thirty-five days after the filing of the petition. The petition shall be assigned, wherever practicable, to the judge who heard the most recent proceeding. If the court that exercised jurisdiction over the most recent proceeding declines to exercise jurisdiction over the adoption petition, the court in which the termination of parental rights petition was filed shall issue an order incorporating that determination and shall proceed forthwith.

(d) The family court shall have exclusive, original jurisdiction over any proceeding brought upon grounds specified in paragraph (c), (d) or (e) of subdivision four of this section, and the family court and surrogate's court shall have concurrent, original jurisdiction over any proceeding brought upon grounds specified in paragraph (a) or (b) of subdivision four of this section, except as provided in paragraphs (c) and (c-1) of this subdivision.

(e) A proceeding under this section is originated by a petition on notice served upon the child's parent or parents, the attorney for the child's parent or parents and upon such other persons as the court may in its discretion prescribe. Such notice shall inform the parents and such other persons that the proceeding may result in an order freeing the child for adoption without the consent of or notice to the parents or such other persons. Such notice also shall inform the parents and such other persons of their right to the assistance of counsel, including any right they may have to have counsel assigned by the court in any case where they are financially unable to obtain counsel. The petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section and section three hundred eighty-four-c of this title, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to the provisions of this section or of section three hundred eighty-four-c of this title. When the proceeding is initiated in family court service of the petition and other process shall be made in accordance with the provisions of section six hundred seventeen of the family court act, and when the proceeding is initiated in surrogate's court, service shall be made in accordance with the provisions of section three hundred seven of the surrogate's court procedure act. When the proceeding is initiated on the grounds of abandonment of a child less than one year of age at the

time of the transfer of the care and custody of such child to a local social services official, the court shall take judicial notice of efforts to locate the child's parents or other known relatives or other persons legally responsible pursuant to paragraph (ii) of subdivision (b) of section one thousand fifty-five of the family court act.

(f) In any proceeding under this section in which the surrogate's court has exercised jurisdiction, the provisions of the surrogate's court procedure act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section in which the family court has exercised jurisdiction, the provisions of articles one, two and eleven of the family court act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section, the provisions and limitations of article thirty-one of the civil practice law and rules shall apply to the extent that they do not conflict with the specific provisions of this section. In determining any motion for a protective order, the court shall consider the need of the party for the discovery to assist in the preparation of the case and any potential harm to the child from the discovery. The court shall set a schedule for discovery to avoid unnecessary delay. Any proceeding originated in family court upon the ground specified in paragraph (d) of subdivision four of this section shall be conducted in accordance with the provisions of part one of article six of the family court act.

(g) (i) An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon a finding that one or more of the grounds specified in subdivision four of this section are based upon clear and convincing proof.

(ii) Where a proceeding has been properly commenced under this section by the filing of a petition before the eighteenth birthday of a child, an order committing the guardianship and custody of a child pursuant to this section upon a finding under subdivision four of this section shall be granted after the eighteenth birthday of a child where the child consents to such disposition.

(h) In any proceeding brought upon a ground set forth in paragraph (c) of subdivision four, neither the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil practice law and rules, nor the physician-patient and related privileges, as set forth in section forty-five hundred four of the civil practice law and rules, nor the psychologist-client privilege, as set forth in section forty-five hundred seven of the civil practice law and rules, nor the social worker-client privilege, as set forth in section forty-five hundred eight of the civil practice law and rules, shall be a ground for excluding evidence which otherwise would be admissible.

(i) In a proceeding instituted by an authorized agency pursuant to the provisions of this section, proof of the likelihood that the child will be placed for adoption shall not be required in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child to an authorized agency.

(j) The order and the papers upon which it was granted in a proceeding under this section shall be filed in the court, and a certified copy of such order shall also be filed in the office of the county clerk of the county in which such court is located, there to be recorded and to be inspected or examined in the same manner as a surrender instrument, pursuant to the provisions of section three hundred eighty-four of this chapter.

(k) Where the child is over fourteen years of age, the court may, in

its discretion, consider the wishes of the child in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child.

(1) (i) Notwithstanding any other law to the contrary, whenever: the child shall have been in foster care for fifteen months of the most recent twenty-two months; or a court of competent jurisdiction has determined the child to be an abandoned child; or the parent has been convicted of a crime as set forth in subdivision eight of this section, the authorized agency having care of the child shall file a petition pursuant to this section unless based on a case by case determination: (A) the child is being cared for by a relative or relatives; or (B) the agency has documented in the most recent case plan, a copy of which has been made available to the court, a compelling reason for determining that the filing of a petition would not be in the best interest of the child; or (C) the agency has not provided to the parent or parents of the child such services as it deems necessary for the safe return of the child to the parent or parents, unless such services are not legally required; or (D) the parent or parents are incarcerated, or participating in a residential substance abuse treatment program, or the prior incarceration or participation of a parent or parents in a residential substance abuse treatment program is a significant factor in why the child has been in foster care for fifteen of the last twenty-two months, provided that the parent maintains a meaningful role in the child's life based on the criteria set forth in subparagraph (v) of this paragraph and the agency has not documented a reason why it would otherwise be appropriate to file a petition pursuant to this section.

(ii) For the purposes of this section, a compelling reason whereby a social services official is not required to file a petition for termination of parental rights in accordance with subparagraph (i) of this paragraph includes, but is not limited to, where:

(A) the child was placed into foster care pursuant to article three or seven of the family court act and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is either (1) return to his or her parent or guardian or (2) discharge to independent living;

(B) the child has a permanency goal other than adoption;

(C) the child is fourteen years of age or older and will not consent to his or her adoption;

(D) there are insufficient grounds for filing a petition to terminate parental rights; or

(E) the child is the subject of a pending disposition under article ten of the family court act, except where such child is already in the custody of the commissioner of social services as a result of a proceeding other than the pending article ten proceeding, and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is discharge to his or her parent or guardian.

(iii) For the purposes of this paragraph, the date of the child's entry into foster care is the earlier of sixty days after the date on which the child was removed from the home or the date the child was found by a court to be an abused or neglected child pursuant to article ten of the family court act.

(iv) In the event that the social services official or authorized agency having care and custody of the child fails to file a petition to terminate parental rights within sixty days of the time required by this section, or within ninety days of a court direction to file a proceeding not otherwise required by this section, such proceeding may be filed by

the foster parent of the child without further court order or by the attorney for the child on the direction of the court. In the event of such filing the social services official or authorized agency having care and custody of the child shall be served with notice of the proceeding and shall join the petition.

(v) For the purposes of clause (D) of subparagraph (i) of this paragraph, an assessment of whether a parent maintains a meaningful role in his or her child's life shall be based on evidence, which may include the following: a parent's expressions or acts manifesting concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child; efforts by the parent to communicate and work with the authorized agency, law guardian, foster parent, the court, and the parent's attorney or other individuals providing services to the parent, including correctional, mental health and substance abuse treatment program personnel for the purpose of complying with the service plan and repairing, maintaining or building the parent-child relationship; a positive response by the parent to the authorized agency's diligent efforts as defined in paragraph (f) of subdivision seven of this section; and whether the continued involvement of the parent in the child's life is in the child's best interest. In assessing whether a parent maintains a meaningful role in his or her child's life, the authorized agency shall gather input from individuals and agencies in a reasonable position to help make this assessment, including but not limited to, the authorized agency, law guardian, parent, child, foster parent or other individuals of importance in the child's life, and parent's attorney or other individuals providing services to the parent, including correctional, mental health and substance abuse treatment program personnel. The court may make an order directing the authorized agency to undertake further steps to aid in completing its assessment.

4. An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon one or more of the following grounds:

(a) Both parents of the child are dead, and no guardian of the person of such child has been lawfully appointed; or

(b) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, abandoned such child for the period of six months immediately prior to the date on which the petition is filed in the court; or

(c) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, are presently and for the foreseeable future unable, by reason of mental illness or mental retardation, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the date on which the petition is filed in the court; or

(d) The child is a permanently neglected child; or

(e) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, severely or repeatedly abused such child. Where a court has determined that reasonable efforts to reunite the child with his or her parent are not required, pursuant to the family court act or this chapter, a petition to terminate parental rights on the ground of severe abuse as set forth in subparagraph (iii) of paragraph (a) of subdivision eight of this section may be filed immediately upon such determination.

5. (a) For the purposes of this section, a child is "abandoned" by his parent if such parent evinces an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency. In the absence of evidence to the contrary, such ability to visit and communicate shall be presumed.

(b) The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of the foregoing parental acts manifesting such intent, shall not preclude a determination that such parent has abandoned his or her child. In making such determination, the court shall not require a showing of diligent efforts, if any, by an authorized agency to encourage the parent to perform the acts specified in paragraph (a) of this subdivision.

6. (a) For the purposes of this section, "mental illness" means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

(b) For the purposes of this section, "mental retardation" means subaverage intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

(c) The legal sufficiency of the proof in a proceeding upon the ground set forth in paragraph (c) of subdivision four of this section shall not be determined until the judge has taken the testimony of a psychologist, or psychiatrist, in accordance with paragraph (e) of this subdivision.

(d) A determination or order upon a ground set forth in paragraph (c) of subdivision four shall in no way affect any other right, or constitute an adjudication of the legal status of the parent.

(e) In every proceeding upon a ground set forth in paragraph (c) of subdivision four the judge shall order the parent to be examined by, and shall take the testimony of, a qualified psychiatrist or a psychologist licensed pursuant to article one hundred fifty-three of the education law as defined in section 730.10 of the criminal procedure law in the case of a parent alleged to be mentally ill or retarded, such psychologist or psychiatrist to be appointed by the court pursuant to section thirty-five of the judiciary law. The parent and the authorized agency shall have the right to submit other psychiatric, psychological or medical evidence. If the parent refuses to submit to such court-ordered examination, or if the parent renders himself unavailable therefor whether before or after the initiation of a proceeding under this section, by departing from the state or by concealing himself therein, the appointed psychologist or psychiatrist, upon the basis of other available information, including, but not limited to, agency, hospital or clinic records, may testify without an examination of such parent, provided that such other information affords a reasonable basis for his opinion.

7. (a) For the purposes of this section, "permanently neglected child" shall mean a child who is in the care of an authorized agency and whose parent or custodian has failed for a period of either at least one year or fifteen out of the most recent twenty-two months following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the

future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child. The court shall consider the special circumstances of an incarcerated parent or parents, or of a parent or parents participating in a residential substance abuse treatment program, when determining whether a child is a "permanently neglected child" as defined in this paragraph. In such cases, the court also shall consider the particular constraints, including but not limited to, limitations placed on family contact and the unavailability of social or rehabilitative services to aid in the development of a meaningful relationship between the parent and his or her child, that may impact the parent's ability to substantially and continuously or repeatedly maintain contact with his or her child and to plan for the future of his or her child as defined in paragraph (c) of this subdivision. Where a court has previously determined in accordance with paragraph (b) of subdivision three of section three hundred fifty-eight-a of this chapter or section one thousand thirty-nine-b, subparagraph (A) of paragraph (i) of subdivision (b) of section one thousand fifty-two, paragraph (b) of subdivision two of section seven hundred fifty-four or paragraph (c) of subdivision two of section 352.2 of the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as defined in this section. In the event that the parent defaults after due notice of a proceeding to determine such neglect, such physical and financial ability of such parent may be presumed by the court.

(b) For the purposes of paragraph (a) of this subdivision, evidence of insubstantial or infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a determination that such child is a permanently neglected child. A visit or communication by a parent with the child which is of such character as to overtly demonstrate a lack of affectionate and concerned parenthood shall not be deemed a substantial contact.

(c) As used in paragraph (a) of this subdivision, "to plan for the future of the child" shall mean to take such steps as may be necessary to provide an adequate, stable home and parental care for the child within a period of time which is reasonable under the financial circumstances available to the parent. The plan must be realistic and feasible, and good faith effort shall not, of itself, be determinative. In determining whether a parent has planned for the future of the child, the court may consider the failure of the parent to utilize medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to such parent.

(d) For the purposes of this subdivision:

(i) A parent shall not be deemed unable to maintain contact with or plan for the future of the child by reason of such parent's use of drugs or alcohol, except while the parent is actually hospitalized or institutionalized therefor; and

(ii) The time during which a parent is actually hospitalized or institutionalized shall not interrupt, but shall not be part of, a period of failure to maintain contact with or plan for the future of a child.

(e) Notwithstanding the provisions of paragraph (a) of this subdivision, evidence of diligent efforts by an agency to encourage and strengthen the parental relationship shall not be required when:

(i) The parent has failed for a period of six months to keep the

agency apprised of his or her location, provided that the court may consider the particular delays or barriers an incarcerated parent or parents, or a parent or parents participating in a residential substance abuse treatment program, may experience in keeping the agency apprised of his or her location; or

(ii) An incarcerated parent has failed on more than one occasion while incarcerated to cooperate with an authorized agency in its efforts to assist such parent to plan for the future of the child, as such phrase is defined in paragraph (c) of this subdivision, or in such agency's efforts to plan and arrange visits with the child as described in subparagraph five of paragraph (f) of this subdivision.

(f) As used in this subdivision, "diligent efforts" shall mean reasonable attempts by an authorized agency to assist, develop and encourage a meaningful relationship between the parent and child, including but not limited to:

(1) consultation and cooperation with the parents in developing a plan for appropriate services to the child and his family;

(2) making suitable arrangements for the parents to visit the child except that with respect to an incarcerated parent, arrangements for the incarcerated parent to visit the child outside the correctional facility shall not be required unless reasonably feasible and in the best interest of the child;

(3) provision of services and other assistance to the parents, except incarcerated parents, so that problems preventing the discharge of the child from care may be resolved or ameliorated;

(4) informing the parents at appropriate intervals of the child's progress, development and health;

(5) making suitable arrangements with a correctional facility and other appropriate persons for an incarcerated parent to visit the child within the correctional facility, if such visiting is in the best interests of the child. When no visitation between child and incarcerated parent has been arranged for or permitted by the authorized agency because such visitation is determined not to be in the best interest of the child, then no permanent neglect proceeding under this subdivision shall be initiated on the basis of the lack of such visitation. Such arrangements shall include, but shall not be limited to, the transportation of the child to the correctional facility, and providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the incarcerated parent's ability to maintain contact with the child. When the parent is incarcerated in a correctional facility located outside the state, the provisions of this subparagraph shall be construed to require that an authorized agency make such arrangements with the correctional facility only if reasonably feasible and permissible in accordance with the laws and regulations applicable to such facility; and

(6) providing information which the authorized agency shall obtain from the office of children and family services, outlining the legal rights and obligations of a parent who is incarcerated or in a residential substance abuse treatment program whose child is in custody of an authorized agency, and on social or rehabilitative services available in the community, including family visiting services, to aid in the development of a meaningful relationship between the parent and child. Wherever possible, such information shall include transitional and family support services located in the community to which an incarcerated parent or parent participating in a residential substance abuse treatment program shall return.

8. (a) For the purposes of this section a child is "severely abused" by his or her parent if (i) the child has been found to be an abused child as a result of reckless or intentional acts of the parent committed under circumstances evincing a depraved indifference to human life, which result in serious physical injury to the child as defined in subdivision ten of section 10.00 of the penal law; or

(ii) the child has been found to be an abused child, as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law and, for the purposes of this section the corroboration requirements contained in the penal law shall not apply to proceedings under this section; or

(iii) (A) the parent of such child has been convicted of murder in the first degree as defined in section 125.27, murder in the second degree as defined in section 125.25, manslaughter in the first degree as defined in section 125.20, or manslaughter in the second degree as defined in section 125.15, and the victim of any such crime was another child of the parent or another child for whose care such parent is or has been legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act, or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the homicide; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act, or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the attempted homicide; (B) the parent of such child has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; (C) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the victim of any such crime was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or (D) the parent of such child has been convicted under the law in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in clause (A), (B) or (C) of this subparagraph; and

(iv) the agency has made diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are

unlikely to be successful in the foreseeable future. Where a court has previously determined in accordance with this chapter or the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as set forth in this section.

(b) For the purposes of this section a child is "repeatedly abused" by his or her parent if:

(i) the child has been found to be an abused child, (A) as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; or (B) as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law; and

(ii) (A) the child or another child for whose care such parent is or has been legally responsible has been previously found, within the five years immediately preceding the initiation of the proceeding in which such abuse is found, to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, in the case of a finding of abuse as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law, or (B) the parent has been convicted of a crime under section 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 or 130.80 of the penal law against the child, a sibling of the child or another child for whose care such parent is or has been legally responsible, within the five year period immediately preceding the initiation of the proceeding in which abuse is found; and

(iii) the agency has made diligent efforts, to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. Where a court has previously determined in accordance with this chapter or the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as set forth in this section.

(c) Notwithstanding any other provision of law, the requirements of paragraph (g) of subdivision three of this section shall be satisfied if one of the findings of abuse pursuant to subparagraph (i) or (ii) of paragraph (b) of this subdivision is found to be based on clear and convincing evidence.

(d) A determination by the court in accordance with article ten of the family court act based upon clear and convincing evidence that the child was a severely abused child as defined in subparagraphs (i) and (ii) of paragraph (a) of this subdivision shall establish that the child was a severely abused child in accordance with this section. Such a determination by the court in accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(e) A determination by the court in accordance with article ten of the family court act based upon clear and convincing evidence that a child was abused as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; or (B) as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law shall establish that the child was an abused child for the purpose of a determination as required by subparagraph (i) or (ii) of paragraph (b) of this subdivision. Such a determination by the court in accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(f) Upon a finding pursuant to paragraph (a) or (b) of this subdivision that the child has been severely or repeatedly abused by his or her parent, the court shall enter an order of disposition either (i) committing the guardianship and custody of the child, pursuant to this section, or (ii) suspending judgment in accordance with section six hundred thirty-three of the family court act, upon a further finding, based on clear and convincing, competent, material and relevant evidence introduced in a dispositional hearing, that the best interests of the child require such commitment or suspension of judgment. Where the disposition ordered is the commitment of guardianship and custody pursuant to this section, an initial freed child permanency hearing shall be completed pursuant to section one thousand eighty-nine of the family court act.

9. Nothing in this section shall be construed to terminate, upon commitment of the guardianship and custody of a child to an authorized agency or foster parent, any rights and benefits, including but not limited to rights relating to inheritance, succession, social security, insurance and wrongful death action claims, possessed by or available to the child pursuant to any other provision of law. Notwithstanding any other provision of law, a child committed to the custody and guardianship of an authorized agency pursuant to this section shall be deemed to continue in foster care until such time as an adoption or another planned permanent living arrangement is finalized. Where the disposition ordered is the commitment of guardianship and custody pursuant to this section, an initial freed child permanency hearing shall be held pursuant to section one thousand eighty-nine of the family court act.

10. Upon the court's order transferring custody and guardianship to the commissioner, the attorney for the petitioning authorized agency shall promptly serve upon the persons who have been approved by such agency as the child's adoptive parents, notice of entry of such order and advise such persons that an adoption proceeding may be commenced. In accordance with the regulations of the department, the authorized agency shall advise such persons of the procedures necessary for adoption of the child. The authorized agency shall cooperate with such persons in the provision of necessary documentation.

11. Upon the entry of an order committing the guardianship and custody of a child pursuant to this section, the court shall inquire whether any foster parent or parents with whom the child resides, or any relative of the child, or other person, seeks to adopt such child. If such person or persons do seek to adopt such child, such person or persons may submit, and the court shall accept, all such petitions for the adoption of the

child, together with an adoption home study, if any, completed by an authorized agency or disinterested person as such term is defined in subdivision three of section one hundred sixteen of the domestic relations law. The court shall thereafter establish a schedule for completion of other inquiries and investigations necessary to complete review of the adoption of the child and shall immediately set a schedule for completion of the adoption.

12. If the court determines to commit the custody and guardianship of the child pursuant to this section, or if the court determines to suspend judgement pursuant to section six hundred thirty-three of the family court act, the court in its order shall determine if there is any parent to whom notice of an adoption would be required pursuant to section one hundred eleven-a of the domestic relations law. In its order the court shall indicate whether such person or persons were given notice of the proceeding and whether such person or persons appeared. Such determinations shall be conclusive in all subsequent proceedings relating to the custody, guardianship or adoption of the child.

13. A petition to modify a disposition of commitment of guardianship and custody in order to restore parental rights may be brought in accordance with part one-A of article six of the family court act where the conditions enumerated in section six hundred thirty-five of such part have been met.

§ 384-c. Notice in certain proceedings to fathers of children born out-of-wedlock. 1. Notwithstanding any inconsistent provision of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any proceeding initiated pursuant to sections three hundred fifty-eight-a, three hundred eighty-four, and three hundred eighty-four-b of this chapter, involving a child born out-of-wedlock. Persons specified in subdivision two of this section shall not include any person who has been convicted of one or more of the following sexual offenses in this state or convicted of one or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, when the child who is the subject of the proceeding was conceived as a result: (A) rape in first or second degree; (B) course of sexual conduct against a child in the first degree; (C) predatory sexual assault; or (D) predatory sexual assault against a child.

2. Persons entitled to notice, pursuant to subdivision one of this section, shall include:

(a) any person adjudicated by a court in this state to be the father of the child;

(b) any person adjudicated by a court of another state or territory of the United States to be the father of the child, when a certified copy of the court order has been filed with the putative father registry, pursuant to section three hundred seventy-two-c of this chapter;

(c) any person who has timely filed an unrevoked notice of intent to claim paternity of the child, pursuant to section three hundred seventy-two-c of this chapter;

(d) any person who is recorded on the child's birth certificate as the child's father;

(e) any person who is openly living with the child and the child's mother at the time the proceeding is initiated or at the time the child was placed in the care of an authorized agency, and who is holding himself out to be the child's father;

(f) any person who has been identified as the child's father by the

mother in written, sworn statement;

(g) any person who was married to the child's mother within six months subsequent to the birth of the child and prior to the execution of a surrender instrument or the initiation of a proceeding pursuant to section three hundred eighty-four-b; and

(h) any person who has filed with the putative father registry an instrument acknowledging paternity of the child, pursuant to section 4-1.2 of the estates, powers and trusts law.

3. The provisions of this section shall not apply to persons entitled to notice pursuant to section one hundred eleven of the domestic relations law. The sole purpose of notice under this section shall be to enable the person served pursuant to subdivision two to present evidence to the court relevant to the best interests of the child. In any proceeding brought upon the ground specified in paragraph (d) of subdivision four of section three hundred eighty-four-b, a person served pursuant to this section may appear and present evidence only in the dispositional hearing.

4. Notice under this section shall be given at least twenty days prior to the proceeding by delivery of a copy of the petition and notice to the person. Upon a showing to the court, by affidavit or otherwise, on or before the date of the proceeding or within such further time as the court may allow, that personal service cannot be effected at the person's last known address with reasonable effort, notice may be given, without prior court order therefor, at least twenty days prior to the proceeding by registered or certified mail directed to the person's last known address or, where the person has filed a notice of intent to claim paternity pursuant to section three hundred seventy-two-c, to the address last entered therein. Notice by publication shall not be required to be given to a person entitled to notice pursuant to the provisions of this section.

5. A person may waive his right to notice under this section by written instrument subscribed by him and acknowledged or proved in the manner required for the execution of a surrender instrument pursuant to section three hundred eighty-four of this chapter.

6. The notice given to persons pursuant to this section shall inform them of the time, date, place and purpose of the proceeding and shall also apprise such persons that their failure to appear shall constitute a denial of their interest in the child which denial may result, without further notice, in the transfer or commitment of the child's care, custody or guardianship or in the child's adoption in this or any subsequent proceeding in which such care, custody or guardianship or adoption may be at issue.

7. No order of the court in any proceeding pursuant to section three hundred fifty-eight-a, three hundred eighty-four or three hundred eighty-four-b of this chapter or in any subsequent proceeding involving the child's custody, guardianship or adoption shall be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section but failed to appear, or who waived notice pursuant to subdivision five. Nor shall any order of the court in any proceeding involving the child's custody, guardianship or adoption be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section in any previous proceeding in which the court determined that the transfer or commitment of the child's care, custody or guardianship to an authorized agency was in the child's best interests.

§ 385. Orders; prohibiting placing out or boarding out; removal. 1. Prohibiting placing out or boarding out. Whenever the commissioner

shall decide that any disposition of a child under this title has been made for purposes of gain, or without due inquiry as to the character and reputation of the person with whom such child is placed, or in such manner that such child is subjected to cruel or improper treatment or neglect or immoral surroundings, or in such manner that the religious faith of the child is not preserved and protected as provided by this title, the commissioner may issue an order prohibiting such an authorized agency, association, corporation, institution, society or other organization from thereafter placing out or boarding out any child. No such order shall be issued until after an opportunity to be heard before the commissioner or his designee and after reasonable notice has been given, with a copy of the charge. A full record of the proceedings and decision on such hearing shall be kept by the department. Any such order issued by the commissioner may be revoked by the commissioner.

2. Whenever the commissioner shall find a minor

(a) placed out or boarded out in a home which is unsuitable or has no license or certificate, or

(b) cared for under a certificate or license but neglected or without suitable care or protection, he may order its removal within thirty days by the agency which placed it and if such order cannot be served upon such agency, it may be addressed to the public board, commission, or officer of the county charged with the care of such child. If such child is not removed within the specified time, the matter may be brought before the children's court or other court having jurisdiction, for adjudication and disposition.

3. Review of orders. Any person, agency, association, corporation, institution, society or other organization, aggrieved by the decision of the commissioner in making any order pursuant to the provisions of this title, may institute, in the judicial district in which the applicant resides or has its chief office, a proceeding under article seventy-eight of the civil practice law and rules in which the reasonableness of such decision shall be subject to review.

§ 386. Visitation; inspection and supervision. 1. The board or the department is authorized to visit, in its discretion, any minor under the age of twenty-one years committed, placed out or boarded out and not legally adopted or in the custody of a legal guardian.

2. The board or the department is authorized to visit, in its discretion, any home or place where a child or children are received, boarded or kept under a license or certificate whether or not such children are maintained as public charges. Every licensed home shall, if practicable, be visited by the department at least four times in each year.

§ 387. * Ineligibility for public foster care funds; fiscal penalties.

* NB Effective until June 30, 2017

* Public foster care funds; ineligibility.

* NB Effective June 30, 2017

* 1. The office of children and family services shall, by regulation, promulgate standards to determine that an authorized agency, or one or more of its programs or facilities, is ineligible to receive public foster care funds or should be assessed a fiscal penalty. Such standards shall include the following:

(a) lack of public need, including but not limited to geographic or programmatic need, for the agency or one or more of its programs or facilities;

(b) failure of the agency to promote the placement of children in permanent, safe family homes through return to the children's own

families or through adoption, or other appropriate objectives for children, as measured by such factors as length of stay in foster care for children with similar personal and family characteristics; and

(c) a pattern or practice of repeated violation of the provisions of this chapter or of the regulations of the office of children and family services promulgated thereunder.

* NB Effective until June 30, 2017

* 1. The department shall, by regulation, promulgate standards to determine that an authorized agency, or one or more of its programs or facilities, is ineligible to receive public foster care funds. Such standards shall include the following:

(a) lack of public need, including but not limited to geographic or programmatic need, for the agency or one or more of its programs or facilities;

(b) failure of the agency to promote the placement of children in permanent family homes through return to the children's own families or through adoption, or other appropriate objectives for children, as measured by such factors as length of stay in foster care for children with similar personal and family characteristics; and

(c) a pattern or practice of repeated violation of the provisions of this chapter or of the regulations of the department promulgated thereunder which have occasioned the denial of reimbursement pursuant to section one hundred fifty-three-d or three hundred ninety-eight-b of this chapter.

Such standards shall be developed with the participation of the child welfare standards advisory council established pursuant to section four hundred nine-h of this chapter and in consultation with public and voluntary authorized agencies, citizens' groups and concerned individuals and organizations including the state council on children and families.

* NB Effective June 30, 2017

* 2. A determination of ineligibility to receive public foster care funds or the assessment of a fiscal penalty shall be made upon a finding of substantial noncompliance with one or more of the standards developed and adopted pursuant to subdivision one of this section. Such findings and determination shall be made in accordance with the hearing procedures set forth in section four hundred sixty-d of this chapter relating to the revocation, suspension or limiting of operating certificates. Such determination shall be subject to judicial review in accordance with article seventy-eight of the civil practice law and rules.

* NB Effective until June 30, 2017

* 2. A determination of ineligibility to receive public foster care funds shall be made upon a finding of substantial noncompliance with one or more of the standards developed and adopted pursuant to subdivision one of this section. Such findings and determination shall be made in accordance with the hearing procedures set forth in section four hundred sixty-d of this chapter relating to the revocation, suspension or limiting of operating certificates. Such determination shall be subject to judicial review in accordance with article seventy-eight of the civil practice law and rules.

* NB Effective June 30, 2017

3. A determination of ineligibility to receive public foster care funds shall specify whether it applies to the agency generally or to a particular program or facility of the agency.

4. A social services official shall not purchase foster care from any authorized agency, or program or facility thereof, which has been

determined to be ineligible to receive public foster care funds in accordance with the provisions of this section. Any contract between a social services district and an authorized agency shall be deemed null and void to the extent that it is inconsistent with the provisions of this subdivision.

5. The commissioner shall report forthwith in writing, to the governor, the temporary president of the senate and the speaker of the assembly with respect to each case in which a determination of ineligibility to receive public foster care funds has been made pursuant to this section. Such report shall contain the name of the agency and the reason or reasons for the determination of ineligibility.

* 6. Any fiscal penalty received by the office of children and family services pursuant to this section shall be deposited to the credit of the children and family services quality enhancement fund established pursuant to section ninety-seven-yyy of the state finance law.

* NB Repealed June 30, 2017

§ 388. Special charters. The power and authority given to agencies, associations, corporations, institutions and societies in their charters shall not be abrogated or nullified, except as the same are in conflict with this title.

§ 389. Penalty for violations. 1. Except as hereinafter provided, any person, corporation, agency, society, institution or other organization, wilfully violating this title, other than section three hundred ninety-g of this title, or failing to comply with any order which the department is authorized under this title to make, shall be guilty of a misdemeanor.

2. (a) Any person, corporation, society, institution or other organization who or which violates the provisions of subdivision six of section three hundred seventy-four of this chapter shall be guilty of a misdemeanor, for the first such offense. Any person, corporation, society, institution or other organization who or which violates the provisions of subdivision six of section three hundred seventy-four of this chapter, after having been once convicted of violating such provisions, shall be guilty of a felony.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, any person, corporation, society, institution or other organization who or which violates subdivision six of section three hundred seventy-four of this title, where such unlawful compensation or thing of value accepted or received exceeds five thousand dollars in value, shall be guilty of a class E felony as defined in the penal law. Any person, corporation, society, institution, or other organization who or which violates subdivision six of section three hundred seventy-four of this title, where such unlawful compensation or thing of value accepted or received exceeds five thousand dollars in value, after having been previously convicted of violating subdivision six of section three hundred seventy-four of this title, shall be guilty of a class D felony as defined in the penal law.

§ 390. Child day care; license or registration required. 1. Definitions. (a) (i) "Child day care" shall mean care for a child on a regular basis provided away from the child's residence for less than twenty-four hours per day by someone other than the parent, step-parent, guardian, or relative within the third degree of consanguinity of the parents or step-parents of such child.

(ii) Child day care shall not refer to care provided in:

(A) a day camp, as defined in the state sanitary code;

(B) an after-school program operated for the purpose of religious education, sports, or recreation;

(C) a facility:

(1) providing day services under an operating certificate issued by the department;

(2) providing day treatment under an operating certificate issued by the office of mental health or office of mental retardation and developmental disabilities; or

(D) a kindergarten, pre-kindergarten, or nursery school for children three years of age or older, or after-school program for children operated by a public school district or by a private school or academy which is providing elementary or secondary education or both, in accordance with the compulsory education requirements of the education law, provided that the kindergarten, pre-kindergarten, nursery school, or after school program is located on the premises or campus where the elementary or secondary education is provided.

(b) "Child day care provider" shall mean any individual, association, corporation, partnership, institution or agency whose activities include providing child day care or operating a home or facility where child day care is provided.

(c) "Child day care center" shall mean any program or facility caring for children for more than three hours per day per child in which child day care is provided by a child day care provider except those programs operating as a group family day care home as such term is defined in paragraph (d) of this subdivision, a family day care home, as such term is defined in paragraph (e) of this subdivision, and a school-age child care program, as such term is defined in paragraph (f) of this subdivision.

(d) "Group family day care home" shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for seven to twelve children of all ages, except for those programs operating as a family day care home, as such term is defined in paragraph (e) of this subdivision, which care for seven or eight children. A group family day care provider may provide child day care services to four additional children if such additional children are of school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during those periods of the year in which school is not in session. There shall be one caregiver for every two children under two years of age in the group family home. A group family day care home must have at least one assistant to the operator present when child day care is being provided to seven or more children when none of the children are school age, or nine or more children when at least two of the children are school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during those periods of the year in which school is not in session. This assistant shall be selected by the group family day care operator and shall meet the qualifications established for such position by the regulations of the office of children and family services.

(e) "Family day care home" shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for three to six children. There shall be one caregiver for every two children under two years of age in the family day care home. A family day care provider may, however, care for seven or eight children at any one time if no more than six of the children are less than school age and the school-aged children receive care primarily before or after the period such children are ordinarily in

school, during school lunch periods, on school holidays, or during those periods of the year in which school is not in session in accordance with the regulations of the office of children and family services and the office inspects such home to determine whether the provider can care adequately for seven or eight children.

(f) "School age child care" shall mean a program caring for more than six school-aged children who are under thirteen years of age or who are incapable of caring for themselves. Such programs shall be in operation consistent with the local school calendar. School age child care programs shall offer care during the school year to an enrolled group of children at a permanent site before or after the period children enrolled in such program are ordinarily in school or during school lunch periods and may also provide such care on school holidays and those periods of the year in which school is not in session.

2. (a) Child day care centers caring for seven or more children and group family day care programs, as defined in subdivision one of this section, shall obtain a license from the office of children and family services and shall operate in accordance with the terms of such license and the regulations of such office. Initial licenses shall be valid for a period of up to two years; subsequent licenses shall be valid for a period of up to four years so long as the provider remains substantially in compliance with applicable law and regulations during such period.

(b) Family day care homes, child day care centers caring for at least three but fewer than seven children, and school-age child care programs shall register with the department and shall operate in compliance with the regulations of the department.

(c) Any child day care provider not required to obtain a license pursuant to paragraph (a) of this subdivision or to register with the department pursuant to paragraph (b) of this subdivision may register with the department.

(d) (i) The office of children and family services shall promulgate regulations for licensure and for registration of child day care pursuant to this section. Procedures for obtaining a license or registration or renewing a license shall include a satisfactory inspection of the facility by the office of children and family services prior to issuance of the license or registration or renewal of the license.

(ii) (A) Initial registrations shall be valid for a period of up to two years, subsequent registrations shall be valid for a period of up to four years so long as the provider remains substantially in compliance with applicable law and regulations during such period.

(B) After initial registration by the child day care provider, the office of children and family services shall not accept any subsequent registration by such provider, unless:

(1) such provider has met the training requirements set forth in section three hundred ninety-a of this title;

(2) such provider has met the requirements of section three hundred ninety-b of this title relating to criminal history screening;

(3) such provider has complied with the requirements of section four hundred twenty-four-a of this article; and

(4) the office of children and family services has received no complaints about the home, center, or program alleging statutory or regulatory violations, or, having received such complaints, the office of children and family services has determined, after inspection pursuant to paragraph (a) of subdivision three of this section, that the home, center, or program is operated in compliance with applicable statutory and regulatory requirements.

(C) Where the office of children and family services has determined that a registration should not be continued because the requirements of clause (B) of this subparagraph have not been satisfied, the office of children and family services may terminate the registration. If the office of children and family services does not terminate the registration, the office of children and family services shall inspect the home or program before acknowledging any subsequent registration. Where the home or program has failed to meet the requirements of this section, the office of children and family services may reject any subsequent registration of a provider. Nothing herein shall prohibit the office of children and family services from terminating or suspending registration pursuant to subdivision ten of this section where the office of children and family services determines that termination or suspension is necessary.

(iv) Child day care providers who have been issued a license shall openly display such license in the facility or home for which the license is issued. Child day care providers who have registered with the department shall provide proof of registration upon request.

(e) Notwithstanding any other provision of this section, where a child is cared for by a parent, guardian or relative within the third degree of consanguinity of the parent of such child and such person simultaneously provides child day care for other children, only the other children shall be considered in determining whether such person must be registered or licensed, provided that such person is not caring, in total, for more than eight children.

2-a. (a) The office of children and family services shall promulgate regulations which establish minimum quality program requirements for licensed and registered child day care homes, programs and facilities. Such requirements shall include but not be limited to (i) the need for age appropriate activities, materials and equipment to promote cognitive, educational, social, cultural, physical, emotional, language and recreational development of children in care in a safe, healthy and caring environment (ii) principles of childhood development (iii) appropriate staff/child ratios for family day care homes, group family day care homes, school age day care programs and day care centers, provided however that such staff/child ratios shall not be less stringent than applicable staff/child ratios as set forth in part four hundred fourteen, four hundred sixteen, four hundred seventeen or four hundred eighteen of title eighteen of the New York code of rules and regulations as of January first, two thousand (iv) appropriate levels of supervision of children in care (v) minimum standards for sanitation, health, infection control, nutrition, buildings and equipment, safety, security procedures, first aid, fire prevention, fire safety, evacuation plans and drills, prevention of child abuse and maltreatment, staff qualifications and training, record keeping, and child behavior management.

(b) The use of electronic monitors as a sole means of supervision of children in day care shall be prohibited, except that electronic monitors may be used in family day care homes and group family day care homes as an indirect means of supervision where the parents of any child to be supervised have agreed in advance to the use of such monitors as an indirect means of supervision and the use of such monitors is restricted to situations where the children so supervised are sleeping.

(c) No child less than six weeks of age may be cared for by a licensed or registered day care provider, except in extenuating circumstances where prior approval for care of such children has been given by the office of children and family services. Extenuating circumstances for

the purposes of this section shall include but not be limited to the medical or health needs of the parent or child, or the economic hardship of the parent.

3. (a) The office of children and family services may make announced or unannounced inspections of the records and premises of any child day care provider, whether or not such provider has a license from, or is registered with, the office of children and family services. The office of children and family services shall make unannounced inspections of the records and premises of any child day care provider within fifteen days after the office of children and family services receives a complaint that, if true, would indicate such provider does not comply with the regulations of the office of children and family services or with statutory requirements. If the complaint indicates that there may be imminent danger to the children, the office of children and family services shall investigate the complaint no later than the next day of operation of the provider. The office of children and family services may provide for inspections through the purchase of services.

(b) Where inspections have been made and violations of applicable statutes or regulations have been found, the office of children and family services shall within ten days advise the child day care provider in writing of the violations and require the provider to correct such violations. The office of children and family services may also act pursuant to subdivisions ten and eleven of this section.

(c) (i) The office of children and family services shall establish a toll-free statewide telephone number to receive inquiries about child day care homes, programs and facilities and complaints of violations of the requirements of this section or regulations promulgated under this section. The office of children and family services shall develop a system for investigation, which shall include inspection, of such complaints. The office of children and family services may provide for such investigations through purchase of services. The office of children and family services shall develop a process for publicizing such toll-free telephone number to the public for making inquiries or complaints about child day care homes, programs or facilities.

(ii) Information to be maintained and available to the public through such toll-free telephone number shall include, but not be limited to:

(A) current license and registration status of child day care homes, programs and facilities including whether a license or registration is in effect or has been revoked or suspended; and

(B) child care resource and referral programs providing services pursuant to title five-B of this article and other resources known to the office of children and family services which relate to child day care homes, programs and facilities in the state.

(iii) Upon written request identifying a particular child day care home, program or facility, the office of children and family services shall provide the information set forth below. The office of children and family services may charge reasonable fees for copies of documents provided, consistent with the provisions of article six of the public officers law. The information available pursuant to this clause shall be:

(A) the results of the most recent inspection for licensure or registration and any subsequent inspections by the office of children and family services;

(B) complaints filed against child day care homes, programs or facilities which describes the nature of the complaint and states how the complaint was resolved, including the status of the office of children and family services investigation, the steps taken to rectify

the complaint, and the penalty, if any, imposed; and

(C) child day care homes, programs or facilities which have requested or received a waiver from any applicable rule or regulation, and the regulatory requirement which was waived.

(iv) Nothing in this paragraph shall be construed to require or permit the disclosure either orally or in writing of any information that is confidential pursuant to law.

(d) Where investigation or inspection reveals that a child day care provider which must be licensed or registered is not, the office of children and family services shall advise the child day care provider in writing that the provider is in violation of the licensing or registration requirements and shall take such further action as is necessary to cause the provider to comply with the law, including directing an unlicensed or unregistered provider to cease operation. In addition, the office of children and family services shall require the provider to notify the parents or guardians of children receiving care from the provider that the provider is in violation of the licensing or registration requirements and shall require the provider to notify the office of children and family services that the provider has done so. Any provider who is directed to cease operations pursuant to this paragraph shall be entitled to a hearing before the office of children and family services. If the provider requests a hearing to contest the directive to cease operations, such hearing must be scheduled to commence as soon as possible but in no event later than thirty days after the receipt of the request by the office of children and family services. The provider may not operate the center, home or program after being directed to cease operations, regardless of whether a hearing is requested. If the provider does not cease operations, the office of children and family services may impose a civil penalty pursuant to subdivision eleven of this section, seek an injunction pursuant to section three hundred ninety-one of this title, or both.

(e) (i) Where an authorized agency is subsidizing child day care pursuant to any provision of this chapter, the authorized agency may submit to the department justification for a need to impose additional requirements upon child day care providers and a plan to monitor compliance with such additional requirements. No such additional requirements or monitoring may be imposed without the written approval of the department.

(ii) An authorized agency may refuse to allow a child day care provider who is not in compliance with this section and regulations issued hereunder or any approved additional requirements of the authorized agency to provide child day care to the child. In accordance with the plan approved by the department, an authorized agency shall have the right to make announced or unannounced inspections of the records and premises of any provider who provides care for such children, including the right to make inspections prior to subsidized children receiving care in a home where the inspection is for the purpose of determining whether the child day care provider is in compliance with applicable law and regulations and any additional requirements imposed upon such provider by the authorized agency. Where an authorized agency makes such inspections, the authorized agency shall notify the department immediately of any violations of this section or regulations promulgated hereunder, and shall provide the department with an inspection report whether or not violations were found, documenting the results of such inspection.

(iii) Nothing contained in this paragraph shall diminish the authority of the department to conduct inspections or provide for inspections

through purchase of services as otherwise provided for in this section. Nothing contained in this paragraph shall obligate the department to take any action to enforce any additional requirements imposed on child day care providers by an authorized agency.

(f) Individual local social services districts may alter their participation in activities related to arranging for, subsidizing, delivering and monitoring the provision of subsidized child day care provided, however, that the total participation of an individual district in all activities related to the provision of subsidized child day care shall be no less than the participation level engaged in by such individual district on the effective date of this section.

4. (a) The office of children and family services on an annual basis shall inspect at least twenty percent of all registered family day care homes, registered child day care centers and registered school age child care programs to determine whether such homes, centers and programs are operating in compliance with applicable statutes and regulations. The office of children and family services shall increase the percentage of family day care homes, child day care centers and school age child care programs which are inspected pursuant to this subdivision as follows: to at least thirty percent by the thirty-first of December two thousand; and to at least fifty percent by the thirty-first of December two thousand one. The office of children and family services may provide for such inspections through purchase of services. Priority shall be given to family day care homes which have never been licensed or certified prior to initial registration.

(b) Any family day care home or school-age child care program licensed, registered, or certified by the department or by any authorized agency on the effective date of this section shall be deemed registered until the expiration of its then-current license or certificate unless such license or certificate is suspended or revoked pursuant to subdivision ten of this section. Family day care homes and school-age child care programs not licensed, registered, or certified on the effective date of this section shall register pursuant to subdivision two of this section.

5. Child day care providers required to have a license from the department or to be registered with the department pursuant to this section shall not be exempt from such requirement through registration with another state agency, or certification, registration, or licensure by any local governmental agency or any authorized agency.

6. Unless otherwise limited by law, a parent with legal custody or a legal guardian of any child in a child day care program shall have unlimited and on demand access to such child or ward. Such parent or guardian unless otherwise limited by law, also shall have the right to inspect on demand during its hours of operation any area of a child day care center, group family day care home, school-age child care program, or family day care home to which the child or ward of such parent or guardian has access or which could present a hazard to the health and safety of the child or ward.

7. (a) The department shall implement on a statewide basis programs to educate parents and other potential consumers of child day care programs about their selection and use. The department may provide for such implementation through the purchase of services. Such education shall include, but not be limited to, the following topics:

- (i) types of child day care programs;
- (ii) factors to be considered in selecting and evaluating child day care programs;
- (iii) regulations of the department governing the operation of

different types of programs;

(iv) rights of parents or guardians in relation to access to children and inspection of child day care programs;

(v) information concerning the availability of child day care subsidies;

(vi) information about licensing and registration requirements;

(vii) prevention of child abuse and maltreatment in child day care programs, including screening of child day care providers and employees;

(viii) tax information; and

(ix) factors to be considered in selecting and evaluating child day care programs when a child needs administration of medications during the time enrolled.

(b) The department shall implement a statewide campaign to educate the public as to the legal requirements for registration of family day care and school-age child care, and the benefits of such registration. The department may provide for such implementation through the purchase of services. The campaign shall:

(i) use various types of media;

(ii) include the development of public educational materials for families, family day care providers, employers and community agencies;

(iii) explain the role and functions of child care resource and referral programs, as such term is used in title five-B of this article;

(iv) explain the role and functions of the department in regard to registered programs; and

(v) publicize the department's toll-free telephone number for making complaints of violations of child day care requirements related to programs which are required to be licensed or registered.

8. The department shall establish and maintain a list of all current registered and licensed child day care programs and a list of all programs whose license or registration has been revoked, rejected, terminated, or suspended. Such information shall be available to the public, pursuant to procedures developed by the department.

8-a. The office of children and family services shall not make available to the public online any group family day care home provider's or family day care provider's home street address or map showing the location of such provider's home where such provider has requested to opt out of the online availability of this information. The office shall provide a written form informing a provider of their right to opt out of providing information online, and shall also permit a provider to request to opt out through the office's website.

9. The department shall make available, directly or through purchase of services, to registered child day care providers information concerning:

(a) liability insurance;

(b) start-up grants;

(c) United States department of agriculture food programs;

(d) subsidies available for child day care;

(e) tax information; and

(f) support services required to be provided by child care resource and referral programs as set forth in subdivision three of section four hundred ten-r of this article.

10. Any home or facility providing child day care shall be operated in accordance with applicable statutes and regulations. Any violation of applicable statutes or regulations shall be a basis to deny, limit, suspend, revoke, or terminate a license or registration. Consistent with articles twenty-three and twenty-three-A of the correction law, and guidelines referenced in subdivision two of section four hundred

twenty-five of this article, if the office of children and family services is made aware of the existence of a criminal conviction or pending criminal charge concerning an operator of a family day care home, group family day care home, school-age child care program, or child day care center or concerning any assistant, employee or volunteer in such homes, programs or centers, or any persons age eighteen or over who reside in such homes, such conviction or charge may be a basis to deny, limit, suspend, revoke, reject, or terminate a license or registration. Before any license issued pursuant to the provisions of this section is suspended or revoked, before registration pursuant to this section is suspended or terminated, or when an application for such license is denied or registration rejected, the applicant for or holder of such registration or license is entitled, pursuant to section twenty-two of this chapter and the regulations of the office of children and family services, to a hearing before the office of children and family services. However, a license or registration shall be temporarily suspended or limited without a hearing upon written notice to the operator of the facility following a finding that the public health, or an individual's safety or welfare, are in imminent danger. The holder of a license or registrant is entitled to a hearing before the office of children and family services to contest the temporary suspension or limitation. If the holder of a license or registrant requests a hearing to contest the temporary suspension or limitation, such hearing must be scheduled to commence as soon as possible but in no event later than thirty days after the receipt of the request by the office of children and family services. Suspension shall continue until the condition requiring suspension or limitation is corrected or until a hearing decision has been issued. If the office of children and family services determines after a hearing that the temporary suspension or limitation was proper, such suspension or limitation shall be extended until the condition requiring suspension or limitation has been corrected or until the license or registration has been revoked.

11. (a) (i) The office of children and family services shall adopt regulations establishing civil penalties of no more than five hundred dollars per day to be assessed against child day care centers, school age child care programs, group family day care homes or family day care homes for violations of this section, sections three hundred ninety-a and three hundred ninety-b of this title and any regulations promulgated thereunder. The regulations establishing civil penalties shall specify the violations subject to penalty.

(ii) The office of children and family services shall adopt regulations establishing civil penalties of no more than five hundred dollars per day to be assessed against child day care providers who operate child day care centers or group family day care homes without a license or who operate family day care homes, school-age child care programs, or child day care centers required to be registered without obtaining such registration.

(iii) In addition to any other civil or criminal penalty provided by law, the office of children and family services shall have the power to assess civil penalties in accordance with its regulations adopted pursuant to this subdivision after a hearing conducted in accordance with procedures established by regulations of the office of children and family services. Such procedures shall require that notice of the time and place of the hearing, together with a statement of charges of violations, shall be served in person or by certified mail addressed to the school age child care program, group family day care home, family day care home, or child day care center at least thirty days prior to

the date of the hearing. The statement of charges shall set forth the existence of the violation or violations, the amount of penalty for which the program may become liable, the steps which must be taken to rectify the violation, and where applicable, a statement that a penalty may be imposed regardless of rectification. A written answer to the charges of violations shall be filed with the office of children and family services not less than ten days prior to the date of hearing with respect to each of the charges and shall include all material and relevant matters which, if not disclosed in the answer, would not likely be known to the office of children and family services.

(iv) The hearing shall be held by the commissioner of the office of children and family services or the commissioner's designee. The burden of proof at such hearing shall be on the office of children and family services to show that the charges are supported by a preponderance of the evidence. The commissioner of the office of children and family services or the commissioner's designee, in his or her discretion, may allow the child day care center operator or provider to attempt to prove by a preponderance of the evidence any matter not included in the answer. Where the child day care provider satisfactorily demonstrates that it has rectified the violations in accordance with the requirements of paragraph (c) of this subdivision, no penalty shall be imposed except as provided in paragraph (c) of this subdivision.

(b) (i) In assessing penalties pursuant to this subdivision, the office of children and family services may consider the completeness of any rectification made and the specific circumstances of such violations as mitigating factors.

(ii) Upon the request of the office of children and family services, the attorney general shall commence an action in any court of competent jurisdiction against any child day care program subject to the provisions of this subdivision and against any person, entity or corporation operating such center or school age child care program, group family day care home or family day care home for the recovery of any penalty assessed by the office of children and family services in accordance with the provisions of this subdivision.

(iii) Any such penalty assessed by the office of children and family services may be released or compromised by the office of children and family services before the matter has been referred to the attorney general; when such matter has been referred to the attorney general, such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the office of children and family services.

(c) (i) Except as provided for in this paragraph, a child day care provider shall avoid payment of a penalty imposed pursuant to this subdivision where the provider has rectified the condition which resulted in the imposition of the penalty within thirty days of notification of the existence of the violation of statute or regulation.

(ii) Clause (i) of this paragraph notwithstanding, rectification shall not preclude the imposition of a penalty pursuant to this subdivision where:

(A) the child day care provider has operated a child day care center or group family day care home without a license, has refused to seek a license for the operation of such a center or home, or has continued to operate such a center or home after denial of a license application, revocation of an existing license or suspension of an existing license;

(B) the child day care provider has operated a family day care home, school-age child care program or child day care center required to be registered without being registered, has refused to seek registration

for the operation of such home, program or center or has continued to operate such a home, program or center after denial of a registration application, revocation of an existing registration or suspension of an existing registration;

(C) there has been a total or substantial failure of the facility's fire detection or prevention systems or emergency evacuation procedures;

(D) the child day care provider or an assistant, employee or volunteer has failed to provide adequate and competent supervision;

(E) the child day care provider or an assistant, employee or volunteer has failed to provide adequate sanitation;

(F) the child day care provider or an assistant, employee, volunteer or, for a family day care home or group family day care home, a member of the provider's household, has injured a child in care, unreasonably failed to obtain medical attention for a child in care requiring such attention, used corporal punishment against a child in care or abused or maltreated a child in care;

(G) the child day care provider has violated the same statutory or regulatory standard more than once within a six month period;

(H) the child day care provider or an assistant, employee or volunteer has failed to make a report of suspected child abuse or maltreatment when required to do so pursuant to section four hundred thirteen of this article; or

(I) the child day care provider or an assistant, employee or volunteer has submitted to the office of children and family services a forged document as defined in section 170.00 of the penal law.

(d) Any civil penalty received by the office of children and family services pursuant to this subdivision shall be deposited to the credit of the "quality child care and protection fund" established pursuant to section ninety-seven-ww of the state finance law.

(e) (i) The office of children and family services shall deny a new application for licensure or registration made by a day care provider whose license or registration was previously revoked or terminated based on a violation of statute or regulation for a period of two years from the date that the revocation or termination of the license or registration became finally effective, unless such office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of children in the center, program or home. For the purposes of this paragraph, the date that the revocation or termination became finally effective shall be, as applicable:

(A) the date that the revocation or termination became effective based on the notice of revocation or termination;

(B) the date that the hearing decision was issued upholding the revocation or termination;

(C) the date of issuance of a final court order affirming the revocation or termination or affirming a hearing decision that upheld the revocation or termination; or

(D) another date mutually agreed upon by the office of children and family services and the provider.

(ii) (A) Such office shall deny a new application for licensure or registration made by a day care provider who is enjoined or otherwise prohibited by a court order from operation of a day care center, group family day care home, family day care home or school-age child care program without a license or registration for a period of two years from the date of the court order unless the court order specifically enjoins the provider from providing day care for a period longer than two years, in which case the office shall deny any new application made by the

provider while the provider is so enjoined.

(B) Such office shall deny a new application for licensure or registration made by a day care provider who is assessed a second civil penalty by such office for having operated a day care center, group family day care home, family day care home or school-age child care program without a license or registration for a period of two years from the date of the second fine. For the purposes of this paragraph, the date of the second fine shall be either the date upon which the day care provider signs a stipulation agreement to pay the second fine or the date upon which a hearing decision is issued affirming the determination of such office to impose the second fine, as applicable.

(iii) A day care provider who surrenders the provider's license or registration while such office is engaged in enforcement seeking suspension, revocation or termination of such provider's license or registration pursuant to the regulations of such office, shall be deemed to have had their license or registration revoked or terminated and shall be subject to the prohibitions against licensing or registration pursuant to subparagraph (i) of this paragraph for a period of two years from the date of surrender of the license or registration.

12. (a) Notwithstanding any other provision of law, except as may be required as a condition of licensure or registration by regulations promulgated pursuant to this section, no village, town (outside the area of any incorporated village), city or county shall adopt or enact any law, ordinance, rule or regulation which would impose, mandate or otherwise enforce standards for sanitation, health, fire safety or building construction on a one or two family dwelling or multiple dwelling used to provide group family day care or family day care than would be applicable were such child day care not provided on the premises. No village, town (outside the area of any incorporated village), city or county shall prohibit or restrict use of a one or two family dwelling, or multiple dwelling for family or group family day care where a license or registration for such use has been issued in accordance with regulations issued pursuant to this section. Nothing in this paragraph shall preclude local authorities with enforcement jurisdiction of the applicable sanitation, health, fire safety or building construction code from making appropriate inspections to assure compliance with such standards.

(b) Notwithstanding any other provision of law, but pursuant to section five hundred eighty-one-b of the real property tax law, no assessing unit, as defined in subdivision one of section one hundred two of the real property tax law, in the assessment of the value of any parcel used for residential purposes and registered as a family day care home pursuant to this section, shall consider the use or registration of such parcel as a family day care home.

13. Notwithstanding any other provision of law, this section, except for paragraph (a-1) of subdivision two-a of this section, shall not apply to child day care centers in the city of New York.

§ 390-a. Standards and training for child day care. 1. All office of children and family services and municipal staff employed to accept registrations, issue licenses or conduct inspections of child day care homes, programs or facilities, subject to the amounts appropriated therefor, shall receive training in at least the following: regulations promulgated by the office of children and family services pursuant to section three hundred ninety of this title; child abuse prevention and identification; safety and security procedures in child day care settings; the principles of childhood development, and the laws, regulations and procedures governing the protection of children from

abuse or maltreatment.

2. No license or registration shall be issued to a family day care home, group family day care home, school age child care program or child day care center and no such registration or license shall be renewed until it can be demonstrated by the employer or licensing agency that there is a procedure developed and implemented, in accordance with section three hundred ninety-b of this title and pursuant to regulations of the office of children and family services, to:

(a) review and evaluate the backgrounds of and information supplied by any person applying to be a child day care center or school-age child care program employee or volunteer or group family day care assistant, a provider of family day care or group family day care, or a director of a child day care center, head start day care center or school-age child care program. Such procedures shall include but not be limited to the following requirements: that the applicant set forth his or her employment history, provide personal and employment references; submit such information as is required for screening with the statewide central register of child abuse and maltreatment in accordance with the provisions of section four hundred twenty-four-a of this article; sign a sworn statement indicating whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this state or any other jurisdiction; and provide his or her fingerprints for submission to the division of criminal justice services in accordance with the provisions of section three hundred ninety-b of this title;

(b) establish relevant minimal experiential and educational qualifications for employees and directors of child day care centers or head start day care center programs;

(c) assure adequate and appropriate supervision of employees and volunteers of group family day care homes, family day care homes, child day care centers and school-age child care programs; and

(d) demonstrate, in the case of child day care centers, group family day care homes, family day care homes and school-age child care programs the existence of specific procedures which will assure the safety of a child who is reported to the state central register of child abuse and maltreatment as well as other children provided care by such homes, centers or programs, immediately upon notification that a report has been made with respect to a child named in such report while the child was in attendance at such homes, centers or programs.

(e) establish necessary rules to provide for uniform visitor control procedures, including visitor identification.

3. (a) The office of children and family services shall promulgate regulations requiring operators, program directors, employees and assistants of family day care homes, group family day care homes, school-age child care programs and child day care centers to receive thirty hours of training every two years; provided, however, that fifteen hours of such training must be received within the first six months of the initial licensure, registration or employment. Such training requirements shall also apply to any volunteer in such day care homes, programs or centers who has the potential for regular and substantial contact with children. The thirty hours of training required during the first biennial cycle after initial licensure or registration shall include training received while an application for licensure or registration pursuant to section three hundred ninety of this title is pending. The office of children and family services may provide this training through purchase of services.

(b) The training required in paragraph (a) of this subdivision shall address the following topics:

(i) principles of childhood development, focusing on the developmental stages of the age groups for which the program provides care;
(ii) nutrition and health needs of infants and children;
(iii) child day care program development;
(iv) safety and security procedures;
(v) business record maintenance and management;
(vi) child abuse and maltreatment identification and prevention;
(vii) statutes and regulations pertaining to child day care;
(viii) statutes and regulations pertaining to child abuse and maltreatment; and

(ix) for operators, program directors, employees and assistants of family day care homes, group family day care homes and child day care centers, education and information on the identification, diagnosis and prevention of shaken baby syndrome.

(c) For the thirty hours of biennial training required after the initial period of licensure or registration, each provider who can demonstrate basic competency shall determine in which of the specified topics he or she needs further study, based on the provider's experience and the needs of the children in the provider's care.

(d) Family day care home and group family day care home operators shall obtain training pertaining to protection of the health and safety of children, as required by regulation, prior to the issuance of a license or registration by the office of children and family services.

(e) Upon request by the office of children and family services, the child day care applicant or provider shall submit documentation demonstrating compliance with the training requirements of this section.

4. No license or registration shall be issued to a family day care home or group family day care home and no such registration shall be renewed if barriers, as defined in paragraph (d) of subdivision one of section three hundred ninety-d of this title, are not present around any swimming pool or body of water, as defined in paragraphs (b) and (c) of subdivision one of section three hundred ninety-d of this title, located on its grounds, pursuant to section three hundred ninety-d of this title.

5. a. The site provider of a family day care home or group family day care home shall provide that at least one employee who holds a valid certification in a course of study in first aid knowledge and skills and cardiopulmonary resuscitation, with an emphasis on providing that aid to children, as approved by the commissioner of the office of children and family services, be on premises during the operating hours of such family day care home or group family day care home.

b. The site supervisor of a school-age child care program shall provide that at least one employee who holds a valid certification in a course of study in first aid knowledge and skills and cardiopulmonary resuscitation, with an emphasis on providing that aid to children, as approved by the commissioner of the office of children and family services, be on premises during the operating hours of such school-age child care program.

c. The director of a child day care center shall provide that at least one employee who holds a valid certification in a course of study in first aid knowledge and skills and cardiopulmonary resuscitation, with an emphasis on providing that aid to children, as approved by the commissioner of the office of children and family services, be on premises during the operating hours of such child day care center.

§ 390-b. Criminal history review of child care providers, generally.

1. (a) Notwithstanding any other provision of law to the contrary, and subject to rules and regulations of the division of criminal justice

services, the office of children and family services shall perform a criminal history record check with the division of criminal justice services regarding any operator, employee or volunteer of a child day care center or school age child care provider, as defined in paragraphs (c) and (f) of subdivision one of section three hundred ninety of this title. Child day care center operators, school age child care operators and any employees or volunteers, who previously did not have a criminal history record check performed in accordance with this subdivision shall have such a criminal history record check performed when the child day care center or school age child care provider applies for license or registration renewal. Child day care centers which are not subject to the provisions of section three hundred ninety of this title, shall not be subject to the provisions of this section. The provisions of this section shall apply to a volunteer only where the volunteer has the potential for regular and substantial contact with children enrolled in the program.

(b) Notwithstanding any other provision of law to the contrary, and subject to rules and regulations of the division of criminal justice services, the office of children and family services shall perform a criminal history record check with the division of criminal justice services regarding the operator, any assistants, employees or volunteers of a group family day care home or family day care home, as defined in paragraphs (d) and (e) of subdivision one of section three hundred ninety of this title, and any person age eighteen or over residing on the premises of the group family day care home or family day care home which is to be licensed or registered in accordance with section three hundred ninety of this title. Group family day care home operators, family day care home operators, any assistants, employees or volunteers, and persons who are age eighteen or over residing on the premises of a licensed group family day care home or registered family day care home who previously did not have a criminal history record check performed in accordance with this subdivision shall have such a criminal history record check performed when the group family day care home or family day care home applies for renewal of the home's license or registration. The provisions of this section shall apply to a volunteer only where the volunteer has the potential for regular and substantial contact with children enrolled in the program.

2. (a) As part of the provider's application for, or renewal of, a child day care center or school age child care license or registration, the provider shall furnish the office of children and family services with fingerprint cards of any operator of a child day care center or school age child care program, and any employee or volunteer, who previously did not have a criminal history record check performed in accordance with this section, together with such other information as is required by the office of children and family services and the division of criminal justice services.

(b) Every child day care center or school age child care provider shall obtain a set of fingerprints for each prospective employee or volunteer and such other information as is required by the office of children and family services and the division of criminal justice services. The child day care center or school age child care program shall furnish to the applicant blank fingerprint cards and a description of how the completed fingerprint cards will be used. The child day care center or school age child care program shall promptly transmit such fingerprint cards to the office of children and family services.

(c) As part of the provider's application for, or renewal of, a group family day care home license or family day care home registration, the

provider shall furnish the office of children and family services with fingerprint cards of any operator of a group family day care home or family day care home, and any assistant, employee or volunteer, and any person age eighteen or over residing on the premises of the group family day care home or family day care home, who previously did not have a criminal history record check performed in accordance with this section, together with such other information as is required by the office of children and family services and the division of criminal justice services.

(d) Every group family day care home or family day care home provider shall obtain a set of fingerprints for each prospective assistant, employee, volunteer and any person age eighteen or over who will be residing on the premises of the group family day care home or family day care home, and such other information as is required by the office of children and family services and the division of criminal justice services. The group family day care home or family day care home provider shall furnish to the applicant blank fingerprint cards and a description of how the completed fingerprint cards will be used. The group family day care home or family day care home provider shall promptly transmit such fingerprint cards to the office of children and family services.

(e) The office of children and family services shall pay the processing fee imposed pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law. The office of children and family services shall promptly submit the fingerprint cards and the processing fee to the division of criminal justice services for its full search and retain processing.

(f) A licensed or registered child day care center, school-age child care program, group family day care home or family day care home may temporarily approve an applicant to be an employee, assistant or volunteer for such provider while the results of the criminal history record check are pending, but shall not allow such person to have unsupervised contact with children during such time.

3. Notwithstanding any other provision of law to the contrary, after reviewing any criminal history record information provided by the division of criminal justice services, of an individual who is subject to a criminal history record check pursuant to this section, the office of children and family services and the provider shall take the following actions:

(a) (i) Where the criminal history record of an applicant to be an operator of a child day care center, school age child care program, group family day care home, family day care home, or any person over the age of eighteen residing in such a home, reveals a felony conviction at any time for a sex offense, crime against a child, or a crime involving violence, or a felony conviction within the past five years for a drug-related offense, the office of children and family services shall deny the application unless the office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of the children in the center, program or home; or

(ii) Where the criminal history record of an applicant to be an operator of a child day care center, school age child care program, group family day care home, family day care home, or any person over the age of eighteen residing in such a home, reveals a conviction for a crime other than one set forth in subparagraph (i) of this paragraph, the office of children and family services may deny the application, consistent with article twenty-three-A of the correction law; or

(iii) Where the criminal history record of an applicant to be an operator of a child day care center, school age child care program, group family day care home, family day care home, or any other person over the age of eighteen residing in such a home, reveals a charge for any crime, the office of children and family services shall hold the application in abeyance until the charge is finally resolved.

(b) (i) Where the criminal history record of a current operator of a child day care center, school age child care program, group family day care home, family day care home, or any other person over the age of eighteen residing in such a home, reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office of children and family services shall deny, limit, suspend, revoke, reject or terminate a license or registration based on such a conviction, unless the office determines, in its discretion, that continued operation of the center, program or home will not in any way jeopardize the health, safety or welfare of the children in the center, program or home;

(ii) Where the criminal history record of a current operator of a child day care center, school age child care program, group family day care home, family day care home, or any other person over the age of eighteen residing in such a home, reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office may deny, limit, suspend, revoke, reject or terminate a license or registration based on such a conviction, consistent with article twenty-three-A of the correction law;

(iii) Where the criminal history record of a current operator of a child day care center, school age child care program, group family day care home, family day care home, or any other person over the age of eighteen residing in such a home, reveals a charge for any crime, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office may suspend a license or registration based on such a charge where necessary to protect the health and safety of the children in the program.

(c) (i) Where the criminal history record of an applicant to be an employee or volunteer at a child day care center or school age child care program reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall direct the provider to deny the application unless the office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of the children in the center or program;

(ii) Where the criminal history record of an applicant to be an employee or volunteer at a child day care center or school age child care program reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services may, consistent with article twenty-three-A of the correction law, direct the provider to deny the application;

(iii) Where the criminal history record of an applicant to be an employee or volunteer at a child day care center or school age child care program reveals a charge for any crime, the office of children and family services shall hold the application in abeyance until the charge

is finally resolved.

(d) (i) Where the criminal history record of a current employee or volunteer at a child day care center or school age child care program reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office shall direct the provider to terminate the employee or volunteer based on such a conviction, unless the office determines, in its discretion, that the continued presence of the employee or volunteer in the center or program will not in any way jeopardize the health, safety or welfare of the children in the center or program;

(ii) Where the criminal history record of a current employee or volunteer at a child day care center or school age child care program reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office may direct the provider to terminate the employee or volunteer based on such a conviction, consistent with article twenty-three-A of the correction law;

(iii) Where the criminal history record of a current employee or volunteer at a child day care center or school age child care program reveals a charge for any crime, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program.

(e) (i) Where the criminal history record of an applicant to be an employee, assistant or volunteer at a group family day care home or family day care home reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall direct the provider to deny the application unless the office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of the children in the home;

(ii) Where the criminal history record of an applicant to be an employee, assistant or volunteer at a group family day care home or family day care home reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services may, consistent with article twenty-three-A of the correction law, direct the provider to deny the application;

(iii) Where the criminal history record of an applicant to be an employee, assistant or volunteer at a group family day care home or family day care home reveals a charge for any crime, the office of children and family services shall hold the application in abeyance until the charge is finally resolved.

(f) (i) Where the criminal history record of a current employee, assistant or volunteer at a group family day care home or family day care home reveals a conviction for a crime set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the home. The office of children and family services shall direct the provider to terminate the employee, assistant or volunteer based on such a conviction, unless the office determines, in its discretion, that the

continued presence of the employee, assistant or volunteer in the home will not in any way jeopardize the health, safety or welfare of the children in the home;

(ii) Where the criminal history record of a current employee, assistant or volunteer at a group family day care home or family day care home reveals a conviction for a crime other than one set forth in subparagraph (i) of paragraph (a) of this subdivision, the office of children and family services shall conduct a safety assessment of the home and take all appropriate steps to protect the health and safety of the children in the home. The office may direct the provider to terminate the employee, assistant or volunteer based on such a conviction, consistent with article twenty-three-A of the correction law;

(iii) Where the criminal history record of a current employee, assistant or volunteer at a group family day care home or family day care home reveals a charge for any crime, the office of children and family services shall conduct a safety assessment of the home and take all appropriate steps to protect the health and safety of the children in the home.

(g) Advise the provider that the individual has no criminal history record.

4. Prior to making a determination to deny an application pursuant to subdivision three of this section, the office of children and family services shall afford the applicant an opportunity to explain, in writing, why the application should not be denied.

5. Notwithstanding any other provision of law to the contrary, the office of children and family services, upon receipt of a criminal history record from the division of criminal justice services, may request, and is entitled to receive, information pertaining to any crime contained in such criminal history record from any state or local law enforcement agency, district attorney, parole officer, probation officer or court for the purposes of determining whether any ground relating to such criminal conviction or pending criminal charge exists for denying a license, registration, application or employment.

6. The notification by the office of children and family services to the child day care provider pursuant to this section shall include a summary of the criminal history record, if any, provided by the division of criminal justice services.

7. Where the office of children and family services directs a child day care provider to deny an application based on the criminal history record, the provider must notify the applicant that such record is the basis of the denial.

8. Any safety assessment required pursuant to this section shall include a review of the duties of the individual, the extent to which such individual may have contact with children in the program or household and the status and nature of the criminal charge or conviction. Where the office of children and family services performs the safety assessment, it shall thereafter take all appropriate steps to protect the health and safety of children receiving care in the child day care center, school age child care program, family day care home or group family day care home.

9. Any criminal history record provided by the division of criminal justice services, and any summary of the criminal history record provided by the office of children and family services to a child day care provider pursuant to this section, is confidential and shall not be available for public inspection; provided, however, nothing herein shall prevent a child day care provider or the office of children and family

services from disclosing criminal history information at any administrative or judicial proceeding relating to the denial or revocation of an application, employment, license or registration. The subject of a criminal history review conducted pursuant to this section shall be entitled to receive, upon written request, a copy of the summary of the criminal history record provided by the office of children and family services to the child day care provider. Unauthorized disclosure of such records or reports shall subject the provider to civil penalties in accordance with the provisions of subdivision eleven of section three hundred ninety of this title.

10. A child day care provider shall advise the office of children and family services when an individual who is subject to criminal history record review in accordance with subdivision one or two of this section is no longer subject to such review. The office of children and family services shall inform the division of criminal justice services when an individual who is subject to criminal history review is no longer subject to such review so that the division of criminal justice services may terminate its retain processing with regard to such person. At least once a year, the office of children and family services will be required to conduct a validation of the records maintained by the division of criminal justice services.

* § 390-c. Notice of pesticide applications. 1. For the purposes of this section the following terms shall have the meanings set forth below:

(a) "Pesticide" shall have the same meaning as in subdivision thirty-five of section 33-0101 of the environmental conservation law.

(b) "Daycare facility" shall mean licensed and registered child daycare homes, programs and facilities.

2. Each daycare facility shall be subject to the following notice requirements when pesticides are used at such facility:

(a) A notice of each pesticide application shall be posted in a common area of the facility which is conspicuously visible to persons dropping off or picking up children from the facility. Such notice shall be posted not less than forty-eight hours prior to the pesticide application.

(b) The notice required to be posted pursuant to paragraph (a) of this subdivision shall include at a minimum:

(i) the location and specific date of the application at the daycare facility. In case of outdoor applications the notice must provide a specific date, and may include two alternative dates in case the application cannot be made due to weather conditions.

(ii) the product name and pesticide registration number assigned by the United States Environmental Protection Agency.

(iii) the following statement "This notice is to inform you of a pending pesticide application at this facility. You may wish to discuss with a representative of the daycare facility what precautions are being taken to protect your child from exposure to these pesticides. Further information about the product or products being applied, including any warnings that appear on the label of the pesticide or pesticides that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticide Telecommunications Network Information at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158".

(iv) the name of a representative of the daycare facility and contact number for additional information.

(c) For purposes of this section the following pesticide applications shall not be subject to the notification posting requirements:

(i) the application of anti microbial pesticides and anti microbial products as defined by FIFRA in 7 U.S.C. §136 (mm) and 136q (h) (2);

(ii) the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces, or less, when used to protect individuals from an imminent threat from stinging and biting insects including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;

(iii) any application where the daycare facility remains unoccupied for a continuous seventy-two hour period following the application of the pesticide;

(iv) nonvolatile rodenticides in tamper resistant bait stations or in areas inaccessible to children;

(v) silica gels and other nonvolatile ready-to-use, paste, foam or gel formulations of insecticides in areas inaccessible to children;

(vi) nonvolatile insecticidal baits in tamper resistant bait stations or in areas inaccessible to children;

(vii) application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under section 40 CFR Part 152.25;

(viii) boric acid and disodium octaborate tetrahydrate;

(ix) the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide; or

(x) any emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided however, that prior to any such emergency application, the person making such application shall make a good faith effort to supply the written notice required pursuant to this section. Upon making such an emergency application, the person making such application shall notify the commissioner of health, using a form developed by such commissioner for such purposes that shall include minimally the name of the person making the application, the pesticide business registration number or certified applicator number of the person making such application, the location and date of such application, the product name and USEPA registration number of the pesticide applied and the reason for such application. The commissioner of health shall review such form to ensure that the circumstance did warrant such emergency application. Such forms shall be kept on file at the department of health for three years from the date of application and shall be available to any individual upon request.

3. Any person, other than a daycare facility, who contracts for the application of a pesticide at a daycare facility shall provide to such facility operator information required to be contained in the posting pursuant to subdivision two of this section at least forty-eight hours prior to such application.

4. (a) Any daycare facility that violates the provisions of subdivision two of this section shall, for a first such violation of this section, in lieu of penalty, be issued a written warning and shall also be issued educational materials pursuant to subdivision two of section 33-1005 of the environmental conservation law. Such facility shall, however, for a second violation, be liable to the people of the state for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation, such penalties to be assessed by the commissioner after a hearing or opportunity to be heard.

(b) Any person who violates subdivision three of this section shall, for a first such violation of this section, in lieu of penalty, be

issued a written warning, and shall also be issued educational materials pursuant to subdivision two of section 33-1005 of the environmental conservation law. Such person shall, however, for a second violation, be liable to the people of the state for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation, such penalties to be assessed by the commissioner of environmental conservation after a hearing or opportunity to be heard.

* NB There are 2 § 390-c's

* § 390-c. Additional powers and duties of the office of children and family services. 1. The commissioner of children and family services is authorized and directed to promulgate necessary rules and regulations to ensure that, whenever a child day care provider is licensed or registered pursuant to section three hundred ninety of this article, the police department and fire department of the municipality wherein such licensee or registrant is authorized to operate and the state police shall be notified of the existence of the child day care center, its location and the fact that children are likely to be at that location in the event of an emergency. In those cases where the local municipality does not have a police department or a fire department, the sheriff of the appropriate county shall be notified in lieu thereof.

2. The commissioner of children and family services is authorized and directed to conduct a study to determine the best method of compiling an accurate and accessible central record of information regarding the safe operation of each day care center licensed or registered within the state. Such record should include but not be limited to complaints by parents or guardians, internal incident reports, reports by police or fire departments, local or state building code violations, any relevant information gathered from utility providers or other visitors to the day care center and any additional information held by another state or local agency regarding a day care provider or a day care center location which could affect safe operation of a day care center.

3. On or before the thirtieth day of June in the year next succeeding the year in which this section takes effect, the commissioner of children and family services shall report to the governor, the temporary president of the senate and the speaker of the assembly regarding the results of the study undertaken pursuant to subdivision two of this section.

* NB There are 2 § 390-c's

§ 390-d. Requiring barriers to be placed around swimming pools and bodies of water on the grounds of family day care homes or group family day care homes. 1. For the purposes of this section the following terms shall have the meanings set forth below:

(a) "Grounds of a family day care home or group family day care home" shall mean in, on or within any building, structure or land contained within the real property boundary line of a family day care home or a group family day care home.

(b) "Swimming pool" shall mean any outdoor pool or tub intended for swimming, bathing or wading purposes.

(c) "Bodies of water" shall include, but not limited to, ponds, springs, streams, creeks, lakes, rivers and oceans.

(d) "Barriers" shall mean all fences, enclosures or other materials sufficient to form an obstruction to the free passage of persons through such materials.

2. (a) Any swimming pool or body of water located on the grounds of a family day care home or group family day care home shall be surrounded by a barrier sufficient to form an obstruction to the free passage of

children through such barrier into such swimming pool or body of water. Such barrier shall be adequate to make such swimming pool or body of water inaccessible to children which, including gates thereto, shall be at least four feet high from the adjacent ground. All such gates shall include a locked barrier which shall be located at least four feet high above the adjacent ground or otherwise made inaccessible to children from the outside.

(b) Where a body of water is present and not wholly contained within the grounds of family day care home or group family day care home, the grounds of such home must be surrounded and enclosed by a barrier sufficient to make such body of water inaccessible to children.

(c) All pathways, walkways, decks or any other connecting entrance to such swimming pool or body of water shall be obstructed by a barrier sufficient to impede the free passage of children into or around the area immediately adjacent to such swimming pool or body of water.

(d) Swimming pools or bodies of water that are entirely covered by a solid object which is secured by sufficient weight, locking apparatus, and/or other device that would prevent a child in care from removing the solid object and accessing the swimming pool or body of water, shall be considered a sufficient barrier for the purposes of this section.

(e) As an alternative to surrounding the pool or other body of water located on the grounds of a family day care home or group family day care home with a barrier as described in paragraph (a) of this subdivision, the day care provider may use the property for day care if the provider bars access to such pool or other body of water by surrounding a part of the grounds not including such pool or other body of water with a barrier as described in paragraph (a) of this subdivision provided that:

(i) There is no unsecured means of egress from the home by which children could gain access to the pool or other body of water. For purposes of this paragraph, the day care provider may secure a door or other means of egress that is remotely located from the pool or other body of water by use of an alarm device or system that will alert the day care provider if the door or other means of egress is opened;

(ii) All children in care are directly and closely supervised by the provider or an assistant at all times the children are outside the home or other dwelling where the day care is provided; and

(iii) The parents or guardians of each child in care have submitted to the provider a written acknowledgment that the pool or other body of water exists, that a barrier as otherwise required by this section has not been provided, and that the children will have the potential for access to the pool or other body of water.

(f) Where a natural barrier or other obstacle located on the property lies between the pool or body of water and the building in which the family or group family day care is provided such that the natural barrier or other obstacle prevents access by children in care to the pool or body of water, a fence or additional barrier as otherwise required by this section shall not be required and the day care provider may use the property for day care provided that:

(i) There is no unsecured means of egress from the home by which children could gain access to the pool or other body of water. For purposes of this paragraph, the day care provider may secure a door or other means of egress that is remotely located from the pool or other body of water by use of an alarm device or system that will alert the day care provider if the door or other means of egress is opened;

(ii) All children in care are directly and closely supervised by the provider or an assistant at all times the children are outside the home

or other dwelling where the day care is provided; and

(iii) The parents or guardians of each child in care have submitted to the provider a written acknowledgment that the pool or other body of water exists, that a barrier as otherwise required by this section has not been provided, and that the children will have the potential for access to the body of water.

In determining what constitutes a natural barrier or other obstacle for purposes of this paragraph, the presence of natural and artificial terrain features or constructs may be considered along with the distance between the building in which the family or group family day care is provided and the pool or body of water.

3. Where a swimming pool or body of water is located on a property adjacent to a family or group family day home, the child day care provider must take suitable precautions to prevent the children in care from having access to the adjacent swimming pool or body of water, including taking any precautions specifically required by the office of children and family services to protect the safety of children receiving day care.

4. Nothing in this section shall preclude local authorities with enforcement jurisdiction of the applicable sanitation, health, fire safety or building construction code from making appropriate inspections to assure compliance with such standards.

§ 390-e. Criminal history review; mentoring programs. 1. For the purposes of this section, the following words shall have the following meanings:

(a) "Prospective employee" shall mean a person being considered for employment by a mentoring program.

(b) "Prospective mentor" shall mean an individual who is currently applying to volunteer to help a child or a group of children in a mentoring program for a period of time. Such help shall include, but not be limited to, being a positive role model for youth, building relationships with youth, and providing youth with academic assistance and exposure to new experiences and examples of opportunity that enhance the ability of children to become responsible adults.

(c) "Mentoring program" shall mean a formalized program, operated by a corporation which has been incorporated pursuant to subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law or pursuant to subparagraph four of paragraph (a) of section one hundred two of the business corporation law, or operated by an educational institution or school district, that matches youth with adult volunteers with the purpose of providing such youth with positive role models to enhance their development.

(d) "Office" shall mean the office of children and family services.

2. Mentoring programs may perform a criminal history record check on all prospective employees and mentors.

3. Notwithstanding any other provision of law to the contrary, subject to the rules and regulations of the division of criminal justice services, mentoring programs may apply for a criminal history record check with the division of criminal justice services regarding any prospective employee or any prospective mentor who may engage in unsupervised activities with youth or in activities with youth in a setting without constant agency or parental oversight. Each mentoring program that chooses to complete such criminal background checks on prospective employees or on prospective mentors shall establish a policy for completing criminal background checks on such prospective employees or mentors. Such policy shall apply one uniform standard for the completion of criminal background checks for all prospective employees

and one uniform standard for the completion of criminal background checks for all prospective mentors. Any mentoring program that chooses to complete criminal background checks on both prospective employees and prospective mentors may utilize the same uniform process for the completion of the criminal background checks on prospective employees and prospective mentors or they may choose one uniform process for prospective employees and another uniform process for prospective mentors.

4. Every mentoring program that chooses to apply for a criminal history background check with the division of criminal justice services shall obtain a set of fingerprints from each individual for whom a criminal background check is to be completed and such other information as is required by the office and the division of criminal justice services. For each prospective employee or mentor for whom the mentoring program completes a criminal background check, the mentoring program shall provide the applicant with blank fingerprint cards and a description of how the completed fingerprint card will be used upon submission to the mentoring program. The mentoring program shall promptly transmit such fingerprint card and the processing fee to the office. The office shall promptly submit the fingerprint card and the processing fee, imposed pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, to the division of criminal justice services for its full search and retain processing.

5. Upon receipt of a criminal history record from the division of criminal justice services, the office shall promptly provide to the mentoring program the criminal history record, if any, with respect to the prospective employee or mentor, or a statement that the individual has no criminal history record.

6. Upon receipt of the results of a criminal background check pursuant to this section, the mentoring program shall determine whether or not the prospective employee or mentor shall be offered employment or the opportunity to volunteer with the program. Such determination shall be made in accordance with the criteria established in section seven hundred fifty-two of the correction law.

7. Upon the request of any person previously convicted of one or more criminal offenses who has been denied employment pursuant to subdivision six of this section, the mentoring program shall provide, within thirty days of such request, a written statement setting forth the reasons for such denial. Any such person denied employment pursuant to subdivision six of this section shall be afforded the opportunities for enforcement available pursuant to section seven hundred fifty-five of the correction law.

8. Notwithstanding the provisions of this section, with the exception of a sex offense or a crime against a child, a custodial parent or guardian may sign a waiver authorizing a mentor to work with his or her child regardless of a criminal charge or crime related to a mentor. Such process shall only be initiated upon the consent of the prospective mentor, and be on a form and of a content to be developed by the office. Where applicable, a mentoring program may notify a custodial parent or guardian of his or her waiver right, but a waiver shall only be authorized by a custodial parent or guardian.

9. Any criminal history record provided to a mentoring program pursuant to this section shall be confidential pursuant to the applicable federal and state laws, rules and regulations, and shall not be published or in any way disclosed to persons other than authorized personnel, unless otherwise authorized by law.

10. Every mentoring program shall provide each custodial parent or

guardian of every child participating in its mentoring program with a description of the kind of criminal background checks conducted by the mentoring program on its prospective employees and mentors. Such description shall include identification of the source utilized to obtain criminal background histories on prospective employees and mentors, a list of crimes that would lead the program to deny employment or the opportunity to volunteer as a prospective employee or mentor, and any other process utilized to determine whether or not a prospective employee or mentor with a conviction record shall be offered employment or the opportunity to volunteer. Such description shall clearly state whether or not prospective employees or mentors may be hired or offered the opportunity to volunteer despite the existence of a conviction history.

§ 390-f. Report on child care insurance. The commissioner of the office of children and family services in consultation with the superintendent of financial services, shall undertake a study of the availability, accessibility, and affordability of insurance policies to child care providers. The study shall include, but not be limited to, a review of homeowner insurance policies and health insurance policies. The study shall be completed and a report submitted no later than January first, two thousand nine, to the governor, the commissioner of the office of children and family services, the temporary president of the senate and the speaker of the assembly.

§ 390-g. Pesticide alternatives. 1. For purposes of this section the following terms shall have the meanings set forth below:

(a) "Day care" shall apply to all child day care centers or head start day care centers, as defined in section three hundred ninety of this title.

(b) "Pesticide" shall have the same meaning as set forth in subdivision thirty-five of section 33-0101 of the environmental conservation law, provided however that it shall not include:

(i) the application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. Section 136(mm) and 136q(h) (2);

(ii) the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets;

(iii) the use of non-volatile insect or rodent bait in a tamper resistant container;

(iv) the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;

(v) the use of boric acid and disodium octaborate tetrahydrate; or

(vi) the use of horticultural soap and oils that do not contain synthetic pesticides or synergists.

2. No day care shall apply pesticide to any playgrounds, turf, athletic or playing fields, except that an emergency application of a pesticide may be made as determined by the county health department or for a county not having a health department such authority as the county legislature shall designate, the commissioner of health or his or her designee, the commissioner of environmental conservation or his or her designee, or, in the case of a public school, the school board.

§ 390-h. Notice requirement before closing certain day care centers.

1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Child day care center" shall mean a child day care center as defined in paragraph (c) of subdivision one of section three hundred

ninety of this title.

(b) "Person legally responsible" shall mean a person legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act.

2. (a) Notwithstanding any other provision of law to the contrary, in a city having a population of one million or more, if the social services district seeks to close a child day care center under contract with such district, it shall provide at least six months written notice to the child day care center and the parents or persons legally responsible for children enrolled in such centers, prior to the closing.

(b) Paragraph (a) of this subdivision shall not apply in cases where a local social services district seeks to close a child day care center for violating the regulations of the office of children and family services, or for health and safety reasons.

(c) Paragraph (a) of this subdivision shall not apply in cases where a local social services district seeks to close a child day care center on an expedited basis for reasons of public safety, criminal behavior by the center, breach of contract with the local social services district, suspension or revocation of the center's license for non-economic reasons.

§ 390-i. Notice of inspection report. In every child day care program that is licensed or registered pursuant to section three hundred ninety of this title, the child day care provider shall post and maintain in a prominent place, a notice, to be provided by the office of children and family services, that shall state the date the most recent child care inspection occurred and provide information for parents and caregivers regarding how to obtain information from such office regarding the results of the inspection. If possible, the child day care provider shall also post such information on the child day care program's website. Such child day care programs shall post and maintain, in a prominent place, such program's most recent compliance history as shown on the office of children and family services website.

§ 391. Violation; injunction. Violations of any provision of this title may be prohibited by injunction. Whenever the commissioner has reason to believe that any provision of this title is being violated, or is about to be violated, he may maintain and prosecute, in the name of the people of this state, an action in the supreme court for the purpose of obtaining an injunction restraining such violation.

Notwithstanding any limitation of the civil practice law and rules, such court may, on motion and affidavit, and upon proof that such violation is one which reasonably may result in injury to any person, whether or not such person is a party to such action, grant a preliminary injunction or interlocutory injunction upon such terms as may be just. No security on the part of the people of this state shall be required.

§ 392. Services for relative caregivers. Notwithstanding any other provision of law to the contrary, local social services districts shall make available through the district's website or by other means information for relatives caring for children outside of the foster care system. Such information shall include but not necessarily be limited to:

1. information relating to child only grants, including but not limited to, how to apply for child only grants; and

2. information on department of family assistance or local department of social services funded resources for relative caregivers, including those that provide supportive services for relative caregivers.