

STATE OF NEW YORK

5142

2007-2008 Regular Sessions

IN SENATE

April 25, 2007

Introduced by Sen. KRUGER -- (at request of the Office of Children and Family Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families

AN ACT to amend the family court act and the social services law, in relation to the responsibilities of the statewide central register of child abuse and maltreatment; and to repeal paragraphs (b), (c), (d) and (e) of subdivision 2 of section 424-a of the social services law relating to post notification fair hearings

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

1 Section 1. Section 1051 of the family court act is amended by adding a
2 new subdivision (g) to read as follows:
3 (g)(i) Where the court dismisses a petition after a hearing on the
4 merits, the petitioning child protective agency shall so notify the
5 office of children and family services. Where the child protective agen-
6 cy withdraws a petition with prejudice, the child protective service
7 shall so notify the office of children and family services. Where such
8 office is satisfied that the subjects and the substance of an indicated
9 report have sufficient commonality with the respondents and facts
10 alleged in the petition before the court, such office shall amend the
11 record to indicate that the report is "unfounded" and legally seal such
12 report.
13 (ii) Where there has been a family court finding of abuse or neglect
14 against the subject in regard to an allegation contained in a report of
15 child abuse or maltreatment, the petitioning child protective service
16 shall so notify the office of children and family services. Where such
17 office is satisfied that the subjects and substance of an indicated
18 report of child abuse or maltreatment have sufficient commonality with
19 the respondents and facts in the family court finding of abuse or
20 neglect pursuant to this article, such office shall note in the record

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

LBD09816-01-7

1 that for purposes of an administrative review or fair hearing pursuant
2 to section four hundred twenty-two or four hundred twenty-four-a of the
3 social services law, there is an irrebuttable presumption that said
4 allegation is substantiated by a fair preponderance of the evidence.

5 (iii) Where there has been an appeal of a dismissal of a proceeding
6 pursuant to this article and the appeal and any subsequent proceedings
7 in family court resulting from the appeal ultimately results in a find-
8 ing of abuse or neglect against the subject of a report, the petitioning
9 child protective service shall make a new report of alleged child abuse
10 or maltreatment based on such finding. The statewide central register of
11 child abuse and maltreatment shall accept such report notwithstanding
12 that the original report based on the original allegations was unfounded
13 in conformance with this subdivision.

14 (iv) Where there has been an appeal of a finding of abuse or neglect
15 against the subject of a report in regard to an allegation contained in
16 a report of child abuse or maltreatment and the appeal and any subse-
17 quent proceedings in family court ultimately result in a dismissal on
18 the merits or a withdrawal of the petition with prejudice, the child
19 protective service shall so notify the office of children and family
20 services. Where such office is satisfied that the subjects and the
21 substance of an indicated report have sufficient commonality with the
22 respondents and facts alleged in the petition before the court so as to
23 negate the necessity for a fair hearing pursuant to section four hundred
24 twenty-two or four hundred twenty-four-a of the social services law,
25 such office shall amend the record to indicate that the report is
26 "unfounded" and legally seal such report.

27 § 2. Paragraphs (b) and (c) of subdivision 5 of section 20 of the
28 social services law, as amended by chapter 12 of the laws of 1996, are
29 amended to read as follows:

30 (b) Such report shall contain a factual section which will include (i)
31 the cause of death, whether from natural or other causes, (ii) identifi-
32 cation of child protective or other services provided or actions taken
33 regarding such child and his or her family, (iii) any extraordinary or
34 pertinent information concerning the circumstances of the child's death,
35 (iv) whether the child or the child's family had received assistance,
36 care or services from the social services district prior to such child's
37 death, and (v) any action or further investigation undertaken by the
38 ~~[department]~~ office of children and family services or by the local
39 social services district since the death of the child~~[, and (vi)]~~. It
40 shall also include, as appropriate, a findings section containing recom-
41 mendations for local or state administrative or policy changes.

42 Such report shall contain no information that would identify the name
43 of the deceased child, his or her siblings, the parent or other person
44 legally responsible for the child or any other members of the child's
45 household, but shall refer instead to the case, which may be denoted in
46 any fashion determined appropriate by the ~~[department]~~ office of chil-
47 dren and family services or a local social services district. ~~[In making~~
48 ~~a fatality report available]~~ At the time such office issues a fatality
49 report, it shall determine whether disclosure of the factual section of
50 the report to the public pursuant to paragraph (c) of this subdivision~~[,~~
51 ~~the department may respond to a child specific request for such report~~
52 ~~if the commissioner determines that such disclosure is not]~~ will be
53 contrary to the best interests of the deceased child's siblings or other
54 children in the household, pursuant to subdivision five of section four
55 hundred twenty-two-a of this chapter. Except as it may apply directly to
56 the cause of the death of the child, nothing herein shall be deemed to

1 authorize the release or disclosure to the public of the substance or
2 content of any psychological, psychiatric, therapeutic, clinical or
3 medical reports, evaluations or like materials or information pertaining
4 to such child or the child's family.

5 (c) No later than six months from the date of the death of such child,
6 the [~~department~~] office of children and family services shall forward
7 its report to the social services district, chief county executive offi-
8 cer, chairperson of the local legislative body of the county where the
9 child's death occurred and the social services district which had care
10 and custody or custody and guardianship of the child, if different. The
11 [~~department~~] office of children and family services shall notify the
12 temporary president of the senate and the speaker of the assembly as to
13 the issuance of such reports and, in addition to the requirements of
14 section seventeen of this chapter, shall submit an annual cumulative
15 report to the governor and the legislature incorporating the data in the
16 above reports and including appropriate findings and recommendations.
17 Such reports concerning the death of a child and such cumulative reports
18 shall immediately thereafter be made available to the public after such
19 forwarding or submittal; provided, however, that if such office deter-
20 mines that disclosure of the factual section of the report concerning
21 the death of the child will be contrary to the best interests of the
22 deceased child's siblings or other children in the household pursuant to
23 paragraph (b) of this subdivision, then only the findings section of the
24 report shall be released to the public.

25 § 3. Subdivision 4 of section 22 of the social services law is amended
26 by adding a new paragraph (c) to read as follows:

27 (c)(i) Notwithstanding the provisions of paragraphs (a) and (b) of
28 subdivision eight of section four hundred twenty-two of this chapter,
29 where the office of children and family services is satisfied that the
30 subjects and substance of an indicated report of child abuse or
31 maltreatment have sufficient commonality with the respondents and facts
32 alleged in a child protective petition brought under article ten of the
33 family court act and such office has been advised by the local child
34 protective service or subject of the report that such a petition has
35 been filed and the proceeding in family court is unresolved, the fair
36 hearing shall be stayed pending a determination on the child protective
37 proceeding before the family court.

38 (ii) In a hearing held pursuant to subdivision eight of section four
39 hundred twenty-two or section four hundred twenty-four-a of this chap-
40 ter, a family court finding of abuse or neglect against the subject in
41 regard to an allegation contained in a report of child abuse or
42 maltreatment shall create an irrebuttable presumption at the fair hear-
43 ing that said allegation is substantiated by a fair preponderance of the
44 evidence. A dismissal on the merits by the family court following a
45 fact-finding hearing with regard to an allegation contained in the indi-
46 cated report against the same subject or a withdrawal with prejudice of
47 a petition containing such an allegation shall create an irrebuttable
48 presumption that said allegation is not substantiated by a fair prepon-
49 derance of the evidence.

50 § 4. Paragraphs (b) and (c) of subdivision 1 of section 412 of the
51 social services law, as separately amended by chapters 543 and 634 of
52 the laws of 1988, are amended to read as follows:

53 (b) a child under the age of [~~eighteen~~] twenty-one years who is
54 defined as an abused child in residential care pursuant to subdivision
55 eight of this section; or

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

14 § 5. Subparagraph (i) of paragraph (b) of subdivision 2 of section 412
15 of the social services law, as amended by chapter 32 of the laws of
16 1992, is amended to read as follows:

17 (i) under [~~eighteen~~] twenty-one years of age, except that a child with
18 a handicapping condition, as defined in subdivision one of section
19 forty-four hundred one of the education law, who is [~~eighteen years of~~
20 ~~age or older, is~~] in residential care in a school or facility described
21 in paragraph (c), (d), (e) or (f) of subdivision seven of this section,
22 provided that such term shall include a pupil with a handicapping condi-
23 tion in residential care in such a school or facility who is twenty-one
24 years of age, and is entitled, pursuant to subdivision five of section
25 forty-four hundred two of the education law, to remain in such school or
26 facility until either the termination of the school year or the termi-
27 nation of the summer program, as applicable; and

28 § 6. Subdivision 2 of section 422 of the social services law is
29 amended by adding a new paragraph (e) to read as follows:

30 (e) Where there has been an appeal of a dismissal of a proceeding
31 under article ten of the family court act and the appeal and any subse-
32 quent proceedings in family court resulting from the appeal ultimately
33 result in a finding of abuse or neglect against the subject of a report,
34 the petitioning child protective service shall make a new report of
35 alleged child abuse or maltreatment based on such finding. The statewide
36 central register of child abuse and maltreatment shall accept such
37 report notwithstanding that the original report based on the original
38 allegations was unfounded.

39 § 7. Subparagraph (v) of paragraph (a) and paragraphs (b) and (c) of
40 subdivision 5 of section 422 of the social services law, subparagraph
41 (v) of paragraph (a) and paragraph (b) as amended and paragraph (c) as
42 added by chapter 555 of the laws of 2000, are amended to read as
43 follows:

44 (v) to a district attorney, an assistant district attorney, an inves-
45 tigator employed in the office of a district attorney, or to a sworn
46 officer of the division of state police, of a city, county, town or
47 village police department or of a county sheriff's office when such
48 official verifies that the report is necessary to conduct an active
49 investigation or prosecution of a violation of subdivision [~~three~~] four
50 of section [~~240.55~~] 240.50 of the penal law.

51 (b) Persons given access to unfounded reports pursuant to subparagraph
52 (v) of paragraph (a) of this subdivision shall not redisclose such
53 reports except as necessary to conduct such appropriate investigation or
54 prosecution and shall request of the court that any copies of such
55 reports produced in any court proceeding be redacted to remove the names
56 of the subjects and other persons named in the reports or that the court

1 issue an order protecting the names of the subjects and other persons
2 named in the reports from public disclosure. The local child protective
3 service or state agency shall not indicate the subsequent report solely
4 based upon the existence of the prior unfounded report or reports.
5 Notwithstanding section four hundred fifteen of this title, section one
6 thousand forty-six of the family court act, or, except as set forth
7 herein, any other provision of law to the contrary, an unfounded report
8 shall not be admissible in any judicial or administrative proceeding or
9 action; provided, however, an unfounded report may be introduced into
10 evidence: (i) by the subject of the report where such subject is a
11 respondent in a proceeding under article ten of the family court act or
12 is a plaintiff or petitioner in a civil action or proceeding alleging
13 the false reporting of child abuse or maltreatment; or (ii) in a criminal
14 court for the purpose of prosecuting a violation of subdivision
15 [~~three~~ four] of section [~~240.55~~ 240.50] of the penal law. Legally sealed
16 unfounded reports shall be expunged ten years after the receipt of the
17 report. [~~Whenever the office of children and family services determines
18 that there is some credible evidence of abuse or maltreatment as a
19 result of an investigation of a report conducted pursuant to subdivision
20 (c) of section 45.07 of the mental hygiene law, the office of children
21 and family services shall notify the commission on quality of care for
22 the mentally disabled.~~]

23 (c) Notwithstanding any other provision of law, the office of children
24 and family services may, in its discretion, grant a request to expunge
25 an unfounded report where: (i) the source of the report was convicted of
26 a violation of subdivision [~~three~~ four] of section [~~240.55~~ 240.50]
27 of the penal law in regard to such report; or (ii) the subject of the
28 report presents clear and convincing evidence that affirmatively refutes
29 the allegation of abuse or maltreatment; provided however, that the
30 absence of credible evidence supporting the allegation of abuse or
31 maltreatment shall not be the sole basis to expunge the report. Nothing
32 in this paragraph shall require the office of children and family
33 services to hold an administrative hearing in deciding whether to
34 expunge a report. Such office shall make its determination upon review-
35 ing the written evidence submitted by the subject of the report and any
36 records or information obtained from the state or local agency which
37 investigated the allegations of abuse or maltreatment.

38 § 8. Paragraph (a), subparagraphs (i) and (ii) of paragraph (b) and
39 subparagraphs (i) and (ii) of paragraph (c) of subdivision 8 of section
40 422 of the social services law, as amended by chapter 12 of the laws of
41 1996, are amended to read as follows:

42 (a) (i) At any time subsequent to the completion of the investigation
43 but in no event later than ninety days after the subject of the report
44 is notified that the report is indicated the subject may request the
45 [~~commissioner~~] office of children and family services to amend the
46 record of the report. If [~~the commissioner~~] such office does not amend
47 the report in accordance with such request within ninety days of receiving
48 the request, the subject shall have the right to a fair hearing,
49 held in accordance with paragraph (b) of this subdivision, to determine
50 whether the record of the report in the central register should be
51 amended on the grounds that it is inaccurate or it is being maintained
52 in a manner inconsistent with this title.

53 (ii) Upon receipt of a request to amend the record of a child abuse
54 and maltreatment report the [~~department~~] office of children and family
55 services shall immediately send a written request to the child protec-
56 tive service or the state agency which was responsible for investigating

1 the allegations of abuse or maltreatment for all records, reports and
2 other information maintained by the service or state agency pertaining
3 to such indicated report. The service or state agency shall as expe-
4 ditiously as possible but within no more than twenty working days of
5 receiving such request, forward all records, reports and other informa-
6 tion it maintains on such indicated report to the [~~department~~] office of
7 children and family services, including a copy of the petition in any
8 child protective proceeding based on such indicated report and, where
9 there has been a finding or final determination by the court, a copy of
10 the court order or decision. The [~~department~~] office of children and
11 family services shall as expeditiously as possible but within no more
12 than fifteen working days of receiving such materials from the child
13 protective service or state agency, review all such materials in its
14 possession concerning the indicated report and determine, after afford-
15 ing such service or state agency a reasonable opportunity to present its
16 views, whether there is [~~some—credible~~] a fair preponderance of the
17 evidence [~~to find~~] that the subject committed the act or acts of child
18 abuse or maltreatment giving rise to the indicated report and whether,
19 based on guidelines developed by [~~the department~~] such office pursuant
20 to subdivision five of section four hundred twenty-four-a of this title,
21 such act or acts could be relevant and reasonably related to employment
22 of the subject of the report by a provider agency, as defined by subdivi-
23 sion three of section four hundred twenty-four-a of this title, or
24 relevant and reasonably related to the subject of the report being
25 allowed to have regular and substantial contact with children who are
26 cared for by a provider agency, or relevant and reasonably related to
27 the approval or disapproval of an application submitted by the subject
28 of the report to a licensing agency, as defined by subdivision four of
29 section four hundred twenty-four-a of this title.

30 (iii) If it is determined at the review held pursuant to this para-
31 graph [~~+a~~] that there is [~~no—credible~~] not a preponderance of the
32 evidence in the record to find that the subject committed an act or acts
33 of child abuse or maltreatment, the [~~department~~] office of children and
34 family services shall amend the record to indicate that the report is
35 "unfounded" and notify the subject forthwith.

36 (iv) If it is determined at the review held pursuant to this paragraph
37 [~~+a~~] that there is [~~some—credible~~] a fair preponderance of the evidence
38 in the record to find that the subject committed such act or acts but
39 that such act or acts could not be relevant and reasonably related to
40 the employment of the subject by a provider agency or to the subject
41 being allowed to have regular and substantial contact with children who
42 are cared for by a provider agency or the approval or disapproval of an
43 application which could be submitted by the subject to a licensing agen-
44 cy, the [~~department~~] office of children and family services shall be
45 precluded from informing a provider or licensing agency which makes an
46 inquiry to [~~the department~~] such office pursuant to the provisions of
47 section four hundred twenty-four-a of this title concerning the subject
48 that the person about whom the inquiry is made is the subject of an
49 indicated report of child abuse or maltreatment. The [~~department~~] office
50 of children and family services shall [~~notify forthwith~~] cause a notice
51 to be sent to the subject of the report [~~of~~] regarding such determi-
52 nations and that a fair hearing has been scheduled pursuant to paragraph
53 (b) of this subdivision. The sole issue at such hearing shall be whether
54 the subject has been shown by [~~some—credible~~] a fair preponderance of
55 the evidence to have committed the act or acts of child abuse or
56 maltreatment giving rise to the indicated report.

1 (v) If it is determined at the review held pursuant to this paragraph
2 [~~(a)~~] that there is [~~some credible~~] a fair preponderance of the evidence
3 in the record to prove that the subject committed an act or acts of
4 child abuse or maltreatment and that such act or acts could be relevant
5 and reasonably related to the employment of the subject by a provider
6 agency or to the subject being allowed to have regular and substantial
7 contact with children cared for by a provider agency or the approval or
8 disapproval of an application which could be submitted by the subject to
9 a licensing agency, the [~~department~~] office of children and family
10 services shall [~~notify forthwith~~] cause notice to be sent to the subject
11 of the report [~~of~~] regarding such determinations and advising the
12 subject that a fair hearing has been scheduled pursuant to paragraph (b)
13 of this subdivision.

14 (vi) Notwithstanding the provisions of subparagraph (ii) of this para-
15 graph, where the office of children and family services is satisfied
16 that the subjects and substance of an indicated report have sufficient
17 commonality with the respondents and facts alleged in a child protective
18 petition brought under article ten of the family court act and such
19 office has been advised by the local child protective service or subject
20 of the report that such a petition has been filed and the proceeding in
21 family court is unresolved, the review held pursuant to this paragraph
22 shall be stayed pending a determination on the child protective proceed-
23 ing before the family court.

24 (i) If the [~~department, within ninety days~~] office of children and
25 family services, after receiving a request from the subject that the
26 record of a report be amended, does not amend the record in accordance
27 with such request, [~~the department~~] such office shall schedule a fair
28 hearing and shall provide notice of the scheduled hearing date to the
29 subject, the statewide central register and, as appropriate, to the
30 child protective service or the state agency which investigated the
31 report. The subject of the report shall be advised that he or she has
32 the burden of proof at such hearing to show that the act or acts of
33 abuse or maltreatment could not be relevant and reasonably related to
34 any employment of the subject by a provider agency, or to the subject
35 being allowed to have regular and substantial contact with children
36 cared for by a provider agency, or the approval or disapproval of an
37 application which could be submitted by the subject to a licensing agen-
38 cy.

39 (ii) The burden of proof in such a hearing shall be on the child
40 protective service or the state agency which investigated the report, as
41 the case may be, except as provided in subparagraph (i) of this para-
42 graph. In such a hearing, the fact that there is a family court finding
43 of abuse or neglect against the subject in regard to an allegation
44 contained in the report shall create an irrebuttable presumption that
45 said allegation is substantiated by [~~some credible~~] a fair preponderance
46 of the evidence. In such a hearing, the fact that there was a dismissal
47 on the merits by the family court following a fact-finding hearing with
48 regard to an allegation contained in the indicated report against the
49 same subject or a withdrawal with prejudice of a petition containing
50 such an allegation shall create an irrebuttable presumption that said
51 allegation is not substantiated by a fair preponderance of the evidence.
52 The child protective service shall be required to produce at such hear-
53 ing a copy of the petition and order of the family court where there was
54 a finding of abuse or neglect or a dismissal on the merits. The burden
55 of proof in such a hearing shall be on the subject of the report to show
56 that the act or acts of abuse or maltreatment could not be relevant and

1 reasonably related to the employment of the subject by a provider agency
2 or to the subject being allowed to have regular and substantial contact
3 with children cared for by a provider agency or the approval or disap-
4 approval of an application which could be submitted by the subject to a
5 licensing agency.

6 (i) If it is determined at the fair hearing that there is [~~no-credi-~~
7 ~~ble~~] not a fair preponderance of the evidence in the record to find that
8 the subject committed an act or acts of child abuse or maltreatment, the
9 [~~department~~] office of children and family services shall amend the
10 record to reflect that such a finding was made at the administrative
11 hearing, order any child protective service or state agency which inves-
12 tigated the report to similarly amend its records of the report, and
13 shall notify the subject forthwith of the determination.

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

31 § 9. Subdivision 8 of section 422 of the social services law is
32 amended by adding a new paragraph (f) to read as follows:

33 (f) (i) Notwithstanding the provisions of paragraphs (a) and (b) of
34 this subdivision, where the office of children and family services is
35 satisfied that the subjects and substance of an indicated report have
36 sufficient commonality with the respondents and facts alleged in a child
37 protective petition brought under article ten of the family court act
38 and such office has been advised by the local child protective service
39 or subject of the report that such petition has been filed and the
40 proceeding in family court is unresolved, the fair hearing shall be
41 stayed pending a determination on the child protective proceeding before
42 the family court. A family court finding of abuse or neglect against the
43 subject in regard to an allegation contained in the report shall create
44 an irrebuttable presumption at the fair hearing that said allegation is
45 substantiated by a fair preponderance of the evidence.

46 (ii) Regardless of whether there has been a request pursuant to this
47 subdivision or pursuant to section four hundred twenty-four-a of this
48 title for amendment of the record of the report, where the office of
49 children and family services is notified in accordance with subdivision
50 (g) of section one thousand fifty-one of the family court act that a
51 petition in a child protective proceeding was dismissed after a hearing
52 on the merits or that the petition was withdrawn with prejudice, and
53 such office is satisfied that the respondent and facts alleged in such
54 petition have sufficient commonality with the subject and the substance
55 of the indicated report, such office shall amend the record to indicate
56 that the report is "unfounded" and legally seal the report. The office

1 of children and family services shall so notify the subject and, as
2 appropriate, the hearing officer and the child protective service.

3 § 10. Subdivision 10 and paragraph (a) of subdivision 11 of section
4 422 of the social services law, as amended by chapter 32 of the laws of
5 1992, are amended to read as follows:

6 10. Whenever the [~~department~~] office of children and family services
7 determines that there is some credible evidence of abuse or maltreatment
8 as a result of an investigation of a report conducted pursuant to this
9 title or section 45.07 of the mental hygiene law concerning a child in
10 residential care, [~~the department~~] such office shall notify the child's
11 parent or guardian and transmit copies of reports made pursuant to this
12 title to the director or operator of the residential facility or program
13 and, as applicable, the local social services commissioner or school
14 district placing the child, [~~division for youth,~~] department of educa-
15 tion, commission on quality of care for the mentally disabled, office of
16 mental health, office of mental retardation and developmental disabili-
17 ties, and any law guardian appointed to represent the child whose
18 appointment has been continued by a family court judge during the term
19 of a child's placement.

20 (a) Reports and records made pursuant to this title, including any
21 previous report concerning a subject of the report, other persons named
22 in the report or other pertinent information, involving children who
23 reside in residential facilities or programs enumerated in paragraphs
24 (a), (b), (c), (d), (e), (f) and (h) of subdivision seven of section
25 four hundred twelve of this [~~chapter~~] title, shall be transmitted imme-
26 diately by the central register to the [~~commissioner who~~] office of
27 children and family services which shall commence an appropriate inves-
28 tigation consistent with the terms and conditions set forth in section
29 four hundred twenty-four-c of this title. If an investigation determines
30 that some credible evidence of alleged abuse or maltreatment exists, the
31 [~~commissioner~~] office of children and family services shall recommend to
32 the local social services department[~~, the state education department~~]
33 or the [~~division for youth, as the case may be,~~] responsible state agen-
34 cy that appropriate preventive and remedial action including legal
35 action, consistent with applicable collective bargaining agreements and
36 applicable provisions of the civil service law, pursuant to standards
37 and regulations of the [~~department~~] office of children and family
38 services promulgated pursuant to section four hundred sixty-two of this
39 chapter and section five hundred one of the executive law, standards and
40 regulations of the [~~division for youth and the~~] department of education
41 promulgated pursuant to [~~section five hundred one of the executive law,~~]
42 sections forty-four hundred three, forty-three hundred fourteen, forty-
43 three hundred fifty-eight and forty-two hundred twelve of the education
44 law and other applicable provisions of law, be taken with respect to the
45 residential facility or program and/or the subject of the report. Howev-
46 er, nothing in this paragraph shall prevent the [~~commissioner~~] office of
47 children and family services from making recommendations, as provided
48 for by this paragraph, even though the investigation may fail to result
49 in a determination that there is some credible evidence of the alleged
50 abuse or maltreatment.

51 § 11. Subdivision 14 of section 422 of the social services law, as
52 added by chapter 477 of the laws of 1989, is amended to read as follows:

53 14. The [~~department~~] office of children and family services shall
54 refer suspected cases of falsely reporting child abuse and maltreatment
55 in violation of subdivision [~~three~~] four of section [~~240.55~~] 240.50 of

1 the penal law to the appropriate law enforcement agency or district
2 attorney.

3 § 12. Subdivisions 13 and 14 of section 424 of the social services
4 law, subdivision 13 as renumbered by chapter 477 of the laws of 1989,
5 are renumbered subdivisions 14 and 15 and a new subdivision 13 is added
6 to read as follows:

7 13. (a) notify the office of children and family services where the
8 court dismisses a petition alleging that a child is an abused or
9 neglected child after holding a hearing on the merits of such petition
10 or where the child protective service withdraws such petition with prej-
11 udice;

12 (b) notify the office of children and family services where the court
13 makes a finding of abuse or neglect against the subject in regard to an
14 allegation contained in a report of child abuse or maltreatment;

15 (c) make a report of suspected child abuse or maltreatment to the
16 statewide central register of child abuse and maltreatment where there
17 has been an appeal of a dismissal of a proceeding under article ten of
18 the family court act and such appeal and any subsequent proceedings in
19 family court ultimately result in a finding of abuse or neglect against
20 the subject of a report. The report shall be based on the finding of
21 abuse or neglect and shall be made notwithstanding the unfounding of any
22 previous report to the statewide central register of child abuse and
23 maltreatment concerning the original allegations that resulted in the
24 unfounded report. In such a situation, the report may be indicated
25 based on the family court finding of abuse or neglect without conducting
26 the investigation normally required pursuant to this section;

27 (d) notify the office of children and family services where there has
28 been an appeal of a finding under article ten of the family court act
29 and such appeal and any subsequent proceedings in family court ultimate-
30 ly result in a dismissal on the merits or a withdrawal of the petition
31 with prejudice;

32 § 13. Paragraph (e) of subdivision 1 of section 424-a of the social
33 services law, as amended by chapter 634 of the laws of 1988, subpara-
34 graphs (i), (ii) and (iii) as amended by chapter 12 of the laws of 1996,
35 are amended to read as follows:

36 (e) (i) Subject to the provisions of subparagraph (ii) of this para-
37 graph, the ~~[department]~~ office of children and family services shall
38 inform the provider or licensing agency, or child care resource and
39 referral ~~[programs]~~ program pursuant to subdivision six of this section
40 whether or not the person is the subject of an indicated child abuse and
41 maltreatment report ~~[only if: (a) the time for]~~ if the subject of the
42 report ~~[to request]~~ requested an amendment of the record of the report
43 pursuant to subdivision eight of section four hundred twenty-two ~~[has~~
44 ~~expired without any such request having been made, or (b) such request~~
45 ~~was made]~~ of this title within ~~[such]~~ the time limits specified in such
46 subdivision and at a fair hearing regarding the request it has been
47 finally determined by the commissioner ~~[and the record of the report has~~
48 ~~not been amended to unfound the report or delete the person as a]~~ of
49 children and family services that there is a fair preponderance of the
50 evidence of the abuse or maltreatment, and that such act or acts of
51 abuse or maltreatment are relevant and reasonably related to the employ-
52 ment of the subject of the report by a provider agency or provision of
53 care by a licensing agency.

54 (ii) If the subject of an indicated report of child abuse or maltreat-
55 ment has not requested an amendment of the record of the report within
56 the time specified in subdivision eight of section four hundred twenty-

1 two of this title or [~~if the subject had a fair hearing pursuant to such~~
2 ~~section prior to January first, nineteen hundred eighty six~~] otherwise
3 has not had an administrative review or hearing to determine whether the
4 allegations of abuse or maltreatment are supported by a fair preponder-
5 ance of the evidence and an inquiry is made to the [~~department~~] office
6 of children and family services pursuant to this subdivision concerning
7 the subject of the report, [~~the department~~] such office shall, as expe-
8 ditiously as possible but within no more than ten working days of
9 receipt of the inquiry, determine whether, in fact, the person about
10 whom an inquiry is made is the subject of an indicated report. Upon
11 making a determination that the person about whom the inquiry is made is
12 the subject of an indicated report of child abuse and maltreatment, the
13 [~~department~~] office of children and family services shall immediately
14 send a written request to the child protective service or state agency
15 which was responsible for investigating the allegations of abuse or
16 maltreatment for all records, reports and other information maintained
17 by the service or state agency on the subject. The service or state
18 agency shall, as expeditiously as possible but within no more than twen-
19 ty working days of receiving such request, forward all records, reports
20 and other information it maintains on the indicated report to [~~the~~
21 ~~department~~] such office. The [~~department~~] office of children and family
22 services shall, within fifteen working days of receiving such records,
23 reports and other information from the child protective service or state
24 agency, review all records, reports and other information in its
25 possession concerning the subject and determine whether there is [~~some~~
26 ~~credible~~] a fair preponderance of the evidence to find that the subject
27 had committed the act or acts of child abuse or maltreatment giving rise
28 to the indicated report.

29 (iii) If it is determined, after affording such service or state
30 agency a reasonable opportunity to present its views, that there is [~~no~~
31 ~~credible~~] not a fair preponderance of the evidence in the record to find
32 that the subject committed such act or acts, the [~~department~~] office of
33 children and family services shall amend the record to indicate that the
34 report was unfounded and notify the inquiring party that the person
35 about whom the inquiry is made is not the subject of an indicated
36 report. [~~If the subject of the report had a fair hearing pursuant to~~
37 ~~subdivision eight of section four hundred twenty two of this title prior~~
38 ~~to January first, nineteen hundred eighty six and the fair hearing had~~
39 ~~been finally determined by the commissioner and the record of the report~~
40 ~~had not been amended to unfound the report or delete the person as a~~
41 ~~subject of the report, then the department shall determine that there is~~
42 ~~some credible evidence to find that the subject had committed the act or~~
43 ~~acts of child abuse or maltreatment giving rise to the indicated~~
44 ~~report.~~]

45 (iv) If it is determined after a review by the [~~department~~] office of
46 children and family services of all records, reports and information in
47 its possession concerning the subject of the report that there is [~~some~~
48 ~~credible~~] a fair preponderance of the evidence to find that the subject
49 committed the act or acts of abuse or maltreatment giving rise to the
50 indicated report, the [~~department~~] office of children and family
51 services shall also determine whether such act or acts are relevant and
52 reasonably related to issues concerning the employment of the subject by
53 a provider agency or the subject being allowed to have regular and
54 substantial contact with children cared for by a provider agency or the
55 approval or disapproval of an application which has been submitted by
56 the subject to a licensing agency, based on guidelines developed pursu-

1 ant to subdivision five of this section [~~four hundred twenty-four a of~~
2 ~~this chapter~~]. If it is determined that such act or acts are not rele-
3 vant and related to such issues, the [~~department~~] office of children and
4 family services shall be precluded from informing the provider or
5 licensing agency which made the inquiry to [~~the department~~] such office
6 pursuant to this section that the person about whom the inquiry is made
7 is the subject of an indicated report of child abuse or maltreatment.

8 (v) If it is determined after a review by the [~~department~~] office of
9 children and family services of all records, reports and information in
10 its possession concerning the subject of the report that there is [~~some~~
11 ~~credible~~] a fair preponderance of the evidence to prove that the subject
12 committed the act or acts of abuse or maltreatment giving rise to the
13 indicated report and that such act or acts are relevant and reasonably
14 related to issues concerning the employment of the subject by a provider
15 agency or to the subject being allowed to have regular and substantial
16 contact with children cared for by a provider agency or the approval or
17 disapproval of an application which has been submitted by the subject to
18 a licensing agency, [~~the department~~] such office shall not inform the
19 inquiring party that the person about whom the inquiry is made is the
20 subject of an indicated report of child abuse and maltreatment[~~, the~~
21 ~~department shall also notify the subject of the inquiry of his or her~~
22 ~~fair hearing rights granted pursuant to paragraph (c) of subdivision two~~
23 ~~of this section~~] until the provisions of this paragraph have been met.

24 (A) Upon such determination that a fair preponderance of the evidence
25 supports the finding of abuse or maltreatment, the office of children
26 and family services shall cause a notice to be sent to the subject of
27 the report about whom an inquiry has been made, advising the subject
28 that a fair hearing has been scheduled. The subject of the report shall
29 be advised that he or she has the burden of proof at such hearing to
30 show that the act or acts of abuse or maltreatment could not be relevant
31 and reasonably related to any employment of the subject by a provider
32 agency, or to the subject being allowed to have regular and substantial
33 contact with children cared for by a provider agency, or the approval or
34 disapproval of an application which could be submitted by the subject to
35 a licensing agency.

36 (B) If the subject of a report about whom an inquiry has been made
37 fails to appear at such scheduled hearing or request an adjournment, the
38 office of children and family services shall inform the inquiring party
39 that the person about whom the inquiry is made is the subject of an
40 indicated report of child abuse or maltreatment.

41 (C) Such hearing shall be held in accordance with the procedures set
42 forth in paragraphs (b) and (c) of subdivision eight of section four
43 hundred twenty-two of this title. At such hearing, the burden of proof
44 on the issue of whether there is a fair preponderance of the evidence in
45 the record to prove that the subject committed an act or acts of child
46 abuse or maltreatment shall be on the local child protective service or
47 the state agency that investigated the report, as the case may be. The
48 failure to sustain the burden of proof at such hearing held pursuant to
49 this section shall result in the unfounding of the report. The burden of
50 proof in such hearing shall be on the subject of the report to show that
51 the act or acts of abuse or maltreatment could not be relevant and
52 reasonably related to the employment of the subject by a provider agency
53 or to the subject being allowed to have regular and substantial contact
54 with children cared for by a provider agency or the approval or disap-
55 proval of an application which could be submitted by the subject to a
56 licensing agency.

1 (D) At a hearing held pursuant to this section, a family court finding
2 of abuse or neglect against the subject in regard to an allegation also
3 contained in the indicated report shall create an irrebuttable presump-
4 tion that said allegation is substantiated by a fair preponderance of
5 the evidence. A dismissal of a child abuse or neglect petition on the
6 merits with respect to an allegation against the subject of the indi-
7 cated report or a withdrawal with prejudice of a petition with respect
8 to an allegation against the subject of the indicated report shall
9 create an irrebuttable presumption that said allegation in the report is
10 not substantiated by a fair preponderance of the evidence. The child
11 protective service shall be required to produce at such a hearing a copy
12 of the petition and order of the family court where there was a finding
13 of abuse or neglect or a dismissal on the merits.

14 § 14. Paragraphs (b), (c), (d) and (e) of subdivision 2 of section
15 424-a of the social services law are REPEALED.

16 § 15. Paragraph (a) of subdivision 2 of section 424-a of the social
17 services law, as amended by chapter 441 of the laws of 1993, is amended
18 to read as follows:

19 [~~(a)~~] Upon notification by the [~~department~~] office of children and
20 family services or by a child care resource and referral program in
21 accordance with subdivision six of this section that any person who has
22 applied to a licensing agency for a license, certificate or permit or
23 who seeks to become an employee of a provider agency, or to accept a
24 child for adoptive placement or who will be hired as a consultant or
25 used as a volunteer by a provider agency, or that any other person about
26 whom an inquiry is made to [~~the department~~] such office pursuant to the
27 provisions of this section is the subject of an indicated report the
28 licensing or provider agency shall determine on the basis of information
29 it has available whether to approve such application or retain the
30 employee or hire the consultant or use the volunteer or permit an
31 employee of another person, corporation, partnership or association to
32 have access to the children cared for by the provider agency, provided,
33 however, that if such application is approved, or such employee is
34 retained or consultant hired or volunteer used or person permitted to
35 have access to the children cared for by such agency the licensing or
36 provider agency shall maintain a written record, as part of the applica-
37 tion file or employment record, of the specific reasons why such person
38 was determined to be appropriate to receive a foster care or adoption
39 placement or to provide day care services, to be the director of a camp
40 subject to the provisions of article thirteen-A, thirteen-B or thir-
41 teen-C of the public health law, to be employed, to be retained as an
42 employee, to be hired as a consultant, used as a volunteer or to have
43 access to the children cared for by the agency.

44 § 16. Section 424-a of the social services law is amended by adding a
45 new subdivision 7 to read as follows:

46 7. Where a person who has been screened pursuant to this section was
47 the subject of an indicated report which was subsequently unfounded as
48 the result of a proceeding under article ten of the family court act
49 having been dismissed on the merits, and a licensing or provider agency
50 was advised pursuant to this section that such person was not the
51 subject of an indicated report of child abuse or maltreatment, and as a
52 result of an appeal of the dismissal of the family court proceeding by
53 the petitioning child protective service or any subsequent family court
54 proceedings resulting from the appeal there is ultimately a finding of
55 abuse or neglect against such person, the person who was the subject of
56 the report shall be required to advise the licensing or provider agency

1 of the finding of abuse or neglect if such person is still licensed or
 2 otherwise approved by the licensing agency or is still employed or
 3 otherwise associated with the provider agency.

4 § 17. This act shall take effect on the ninetieth day after it shall
 5 have become a law.

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

BILL NUMBER: S5142

SPONSOR: KRUGER

TITLE OF BILL: An act to amend the family court act and the social services law, in relation to the responsibilities of the statewide central register of child abuse and maltreatment; and to repeal paragraphs (b), (c), (d) and (e) of subdivision 2 of section 424-a of the social services law relating to post notification fair hearings

PURPOSE: The bill would revise the procedures related to reports of suspected child abuse and maltreatment to reflect court decisions, and to enhance coordination between the determinations in family court and in administrative proceedings under the Social Services Law (SSL).

SUMMARY OF PROVISIONS: Section 1 of the bill adds a new Family Court Act (FCA) § 1051(g) to require that the petitioning child protective agency alleging abuse or neglect of a child must notify the Office of Children and Family Services (OCFS) when the petition is dismissed on the merits or with prejudice. Where OCFS finds sufficient commonality between the subjects and substance of the report of abuse or maltreatment and the respondents and facts in the dismissed Family Court proceeding, OCFS shall amend the Statewide Central Register of Child Abuse and Maltreatment (SCR) report to indicate that it is unfounded.

In addition, the petitioning child protective service must notify OCFS when a family court finding of child abuse or neglect is sustained so that OCFS may so note in the record for the purposes of any administrative review or fair hearing concerning the underlying report of abuse or maltreatment. Where OCFS finds sufficient commonality between the subjects and substance of the report of abuse or maltreatment and the respondents and facts in the family court proceeding, the finding by the Family Court constitutes an irrebuttable presumption that the allegation of abuse or maltreatment is sustained by a fair preponderance of the evidence.

Where the child protective service successfully appeals the dismissal of a petition and the proceeding results in a finding of abuse or neglect, the child protective service is required to make a new report of child abuse or maltreatment to the SCR based on the findings of the Family Court. The SCR is required to accept the report. Conversely, where there is a successful appeal of a Family Court finding of child abuse or

maltreatment resulting in a dismissal or withdrawal of the petition, the child protective service is required to notify OCFS. Where OCFS finds sufficient commonality between the subjects and substance of the report of abuse or maltreatment and the respondents and facts in the dismissed Family Court proceeding, OCFS shall amend the SCR report to indicate that it is unfounded.

Section 2 of the bill amends SSL § 20(5) to divide a child fatality report into two sections: a factual section and a findings section. At the time that OCFS issues a fatality report, OCFS would determine whether disclosure of the factual section of the report would be contrary to the best interests of the deceased child's siblings or other children in the household. If OCFS determines disclosure would be contrary to the best interests of the deceased child's siblings or other children in the household, only the findings section of the fatality report would be released to the public.

Section 3 of the bill adds a new SSL § 22(4)(c) to require that a hearing being held pursuant to SSL § 422(8) seeking to overturn an indicated report be stayed when OCFS is advised that there is a child protective proceeding pending in Family Court involving the same subject/respondent and the same issues. It also provides that a finding in Family Court on the merits in regard to a particular allegation would create an irrebuttable presumption concerning such allegation in the hearing

Sections 4 and 5 of the bill amend the definition of "child" in subdivisions one and two of SSL § 412 so that the provisions of Title 6 of Article 6 of the SSL apply to children in residential care up to the age of 21 instead of up to 18 years old. A child in residential care with a handicapping condition would continue to be covered by these protections after turning 21 through the end of the school year or the end of the summer program in which he or she is enrolled.

Section 6 of the bill adds a new SSL § 422(2)(e) to require that where the child protective service successfully appeals the dismissal of a petition and the proceeding results in a finding of abuse or neglect, the child protective service is required to make a new report of child abuse or maltreatment to the SCR based on the findings of the family court. The SCR is required to accept the report.

Section 7 of the bill corrects erroneous references to Penal Law (PL) § 240.50(4) in SSL § 422(5) pertaining to the misdemeanor crime of filing a false report with the SCR.

Section 8 of the bill amends SSL § 422(8) to require that the child protective service provide OCFS with a copy of any petition in a child protective proceeding based on the indicated report as part of the material provided to OCFS for an administrative review on such report. Under the bill, the standard of proof at an administrative review or fair hearing is a fair preponderance of the evidence, to reflect current practice based on the court decisions in *Valmaute v. Bane*, 18 F.3d 992 (2d Cir. 1994) and *Matter of Lee T T*, 87 N.Y 699 (1996). The subject of the report must be advised that he or she is responsible for proving that the act or acts of abuse or maltreatment are not relevant or reasonably related to employment of the subject by a provider agency or any application submitted by the subject to a licensing agency.

This bill section also adds an irrebuttable presumption that there is not a preponderance of the evidence substantiating the report if the child protective court proceeding based on the report is dismissed on the merits or withdrawn with prejudice.

The section also clarifies the existing irrebuttable presumption that the report is sustained if the court proceeding finds that the child is abuse or neglected. The child protective service must produce a copy of the petition and court order at the administrative hearing. Obsolete language is deleted in SSL § 422 pertaining to fair hearings held prior to January 1, 1986.

Section 9 of the bill adds a new SSL § 422(8)(f). The new paragraph requires OCFS to stay the fair hearing pending a determination on a child protective proceeding with the same subject/respondent and the same issues. The bill adds an irrebuttable presumption that the report is substantiated by a preponderance of the evidence if the court proceeding determines that the child is abused or neglected. The child protective service is required to notify OCFS if the petition is dismissed on the merits and if the petition is withdrawn with prejudice. In either case, the report must then be amended to indicate that it is "unfounded" and legally sealed. The subject, the child protective service and the hearing officer, where the fair hearing was stayed, are notified of the action taken.

Section 10 of the bill amends SSL §422(10)&(i 1) to change references to the former Department of Social Services (DSS) to OCFS and to delete an unnecessary reference to the former Division for Youth (DFY).

Section 11 of the bill corrects an erroneous reference to PL § 240.50(4) in SSL § 422(1 4) pertaining to the misdemeanor crime of filing a false report with the SCR.

Section 12 of the bill renumbers SSL § 424(13)&(14) as subdivisions 14 and 15 and adds a new subdivision 13 to require that the child protective service notify OCFS where a family court petition alleging that a child is an abused or neglected child is dismissed on the merits, withdrawn with prejudice or the court makes a finding of abuse or neglect. This notification enables OCFS to take the appropriate action to either amend an unfound indicated report that formed the basis for the petition or note for the record that the petition was sustained. Where the dismissal of a petition is successfully appealed resulting in a finding of abuse or neglect, the child protective service must make a new report to the SCR based on the family court finding. The child protective service may indicate the report without further investigation based on the court's finding.

Section 13 of the bill amends SSL § 424-a(1) to provide that the standard of proof is a fair preponderance of the evidence for an administrative review or fair hearing, in accordance with the Valmonie and Lee T T court decisions. Where the determination at the administrative review is that there is a preponderance of the evidence showing abuse or maltreatment, the subject of the report must be advised that a fair hearing has been scheduled and that he or she is responsible for proving that the act or acts of abuse or maltreatment are not relevant or reasonably related to employment of the subject by a provider agency or any application submitted by the subject to a licensing agency. The failure of the subject to appear at the hearing or request an adjournment would

result in OCFS advising the inquiring party that the person about whom the inquiry was made is the subject of an indicated report. The proposal also adds an irrebuttable presumption that there is a preponderance of the evidence substantiating the report if the determination by the Family Court on a child protective proceeding with the same subject/respondent and the same issues determine that the child is abused or neglected, and an irrebuttable presumption that an allegation is not supported by a preponderance of the evidence where there has been a dismissal on the merits by a Family Court or a withdrawal with prejudice by the child protective service. The child protective services must produce a copy of the petition and court order at the administrative hearing. Obsolete language is deleted in SSL § 424-a pertaining to fair hearings held prior to January 1, 1986.

Section 14 of the bill amends SSL § 424-a(2) to correct outdated references to the former DSS and to repeal paragraphs (b), (c), (d) and (e) of subdivision two pertaining to procedures for a subject to request a fair hearing after the SCR has notified the inquiring provider or licensing agency about an indicated report, as these hearings would occur prior to such notification.

Section 15 of the bill adds a new subdivision six to SSL § 424-a(6) to require the subject of a report to correct misinformation shared with a provider or licensing agency regarding a report that is subsequently indicated as a result of an appeal of a family court proceeding, where the subject is still approved or employed by the provider or licensing agency.

Section 16 of the bill provides for an effective date of 90 days after enactment.

EXISTING LAW: FCA § 1051 governs the steps to be taken by the court upon sustaining or dismissing the petition in a child protective proceeding.

SST § 20(5) sets forth provisions on the responsibilities of OCFS to investigate and report on child fatalities.

SSL § 22 sets forth general provisions governing the fair hearing process, including hearings conducted pursuant to SSL §§ 422 and 424-a. SSL § 412 defines terms used throughout Title 6 of Article 6 of the SSL including "abused child", "maltreated child" and "residential care". SSL § 422 governs the operation of the SCR and the maintenance of both indicated and unfounded reports. SSL § 422 permits a district attorney or other law enforcement agency to access information from the SCR in order to investigate a person who is alleged to have made an intentionally false report to the SCR. SSL § 422 also requires a subject seeking an administrative review of his or her case to make such request within 90 days of receipt of the SCR notification that the report is indicated. A fair hearing is automatically scheduled if the administrative review retains the indicated report. The standard of proof in the statute remains "some credible evidence" although, in practice, the standard of proof at the administrative review and fair hearing is a "fair preponderance of the evidence" in compliance with the court rulings in Valmonte and Lee T.T. The statute has not been changed to reflect these court cases.

SSL § 424 sets forth the responsibilities of the local child protective service with respect to reports of child abuse or maltreatment.

SSL § 424-a governs the operation of the SCR with respect to inquiries by licensing and provider agencies screening applicants for licensing or

employment, SSL § 424-a also sets forth the procedure for an applicant who is denied a license or employment because of an indicated report to request an administrative review and fair hearing. In practice, an administrative review is completed by OCFS and the subject of the report is offered the opportunity for a fair hearing prior to release of information about an indicated report to the licensing or provider agency as required by the decision in Matter of Walter W, 651 N.Y S.2d 726 (3d Dep't 1997) and the Court of Appeals decision in Lee TT The statute has not been changed to reflect these court cases.

LEGISLATIVE HISTORY: This is a new bill.

STATEMENT IN SUPPORT: This proposal offers several amendments to update and clarify the functions and responsibilities of OCFS pertaining to the SCR and to provide better safeguards for children. The proposal also coordinates the actions of the SCR regarding an indicated report with those of the Family Court and local child protective services where there is a child protective proceeding based on the same facts and with the same subject/respondent.

1. Disclosure of Fatality Reports

The proposal amends the current provisions regarding the disclosure of fatality reports to better balance the need to protect any surviving siblings and children in the household and the public's need to know whether the fatality resulted from any systemic issues that should be addressed to better protect children in general. Although current law provides that fatality reports must not contain details that identify the name of the deceased child, the child's parent or other persons responsible for the child, or other members of the child's household, the level of factual details in the report regarding the circumstances of the fatality often make it easy for the public to identify the family, particularly in the case of well publicized fatalities. Currently, OCFS must, with one exception, disclose all fatality reports to the public upon request. That exception is if a child specific report is requested and OCFS determines that it would be contrary to the best interests of the deceased child's siblings or other children in the household for the report to be disclosed. Over the years, there have been numerous situations where OCFS has denied the release of a fatality report to one requester who made a child specific request due to the potential harm to the surviving children but subsequently released the same report in response to a generic request for all reports within a specified time frame. Sometimes, the press has linked a fatality report it received under a generic request to the particular fatality and publicized the details of that fatality that relate to surviving children.

The proposal would address these issues by revising the current provisions to require that a child fatality report include both a factual section and a findings section. At the time that OCFS issues a fatality report, it would determine whether disclosure of the factual section of the report would be contrary to the best interests of the deceased child's siblings or other children in the household. If OCFS determined that it would be contrary to the surviving children's best interests, OCFS would release the findings section of the report to the public but not the factual section containing identifying information in response to either a child specific or a generic request. For all other cases, OCFS would release the entire report. This provision will give the public information in all cases about recommended local or state administrative or policy changes that will better protect children, even where the factual information about a particular child fatality cannot

be released in order to protect the interests of surviving, children in the household

2. Institutional Abuse Protections

The proposal extends the institutional abuse protections in Title 6 of Article 6 of the SSL by redefining "child in residential care" as being a person under the age of 21 instead of 18, to eliminate a disparity in safeguards for older teens in residential care. Under current statute, allegations of residential abuse or maltreatment of a child under the age of 18 may be accepted and investigated, but the same allegation of abuse or maltreatment of a child who is over the age of 18 but under the age of 21, cannot be accepted or investigated.

3. Notification of Family Court Determination

This proposal provides notification to OCFS and automatic sealing by the SCR of an indicated report where the related child protective proceeding is dismissed on the merits by the court or withdrawn with prejudice. Virtually all child protective proceedings in Family Court are based on an alleged act of child abuse or neglect that also resulted in an indicated SCR report. However, OCFS is not necessarily notified of the result of the Family Court proceeding. If the respondent prevails in Family Court, he or she must still request an administrative review and a fair hearing in order to amend the SCR record pertaining to the same alleged incident.

This proposal amends FCA § 1051 to require that the petitioning child protective agency notify OCFS where the court dismisses a petition on the merits and where the petition is withdrawn with prejudice. This notification enables OCFS to ascertain whether the petition and the indicated report have sufficient commonality so that the SCR could unfound and legally seal the report without the necessity of the subject requesting an administrative review or a fair hearing.

In addition, FCA § 1051, SSL §§ 22(4), 422(8) and 424-a(1) are amended to include language providing for an irrebuttable presumption based on the court determination in the child protective proceeding at an administrative review or fair hearing to amend the indicated report involving the same subject and allegations as the court proceeding. The proposal also supplies mechanisms to correct the SCR record where the result of a Family Court proceeding is reversed on appeal. These procedures are added to simplify the process for subjects of an indicated report who are vindicated in an Article 10 proceeding to have their SCR record also cleared, based upon the family court determination. Similarly, the procedures will coordinate the Family Court determination with an ultimate determination for review of an indicated report, eliminating disparate findings by the administrative review process and the Family Court proceeding.

4. Standard of Proof

This proposal amends the SSL pertaining to the standard of proof and procedures for an administrative review by the SCR or a fair hearing to conform to the court decisions in Valnionte and Lee. Although the Valmonte and Lee decisions have been implemented administratively, the statutes remain unchanged. Reading SSL §§ 422 or 424-a would not inform the subject of an indicated report of his or her rights, or a licensing or provider agency of what to expect upon making an inquiry to the SCR about an applicant. The proposal conforms the statutes to these court decisions by raising the standard of proof at an administrative review and a fair hearing to "a fair preponderance of the evidence", while maintaining "some credible evidence" as the investigatory standard of proof for reports of child abuse and maltreatment. These amendments of the SSL enable the public to understand the actual administrative review process which is currently in effect. In addition, the proposal elimi-

nates the statutory provisions in SSL § 424-a that provide SCR information to an inquiring licensing or provider agency without an opportunity for prior review at the level of proof of a "fair preponderance of the evidence". The statute, as currently written, permits the subject/applicant to request an administrative review and fair hearing only after the denial of the application because of the indicated report. This is not consistent with the court decisions in Walter W and Lee T I The current practice is to automatically schedule a fair hearing where the report is not amended after an administrative review. This practice would continue, but the statute would provide that the failure of the subject to appear at the hearing or request an adjournment would conclude the issue and result in the SCR informing the licensing or provider agency that there is a record of an indicated report on the subject, simplifying and expediting the process. The proposal also requires that at the fair hearing the subject of the report must show that the act or acts of abuse or maltreatment could not be relevant or reasonably related to employment of the subject by a provider agency or denial of the application of the subject by a licensing agency, since the subject of the report possesses the relevant information regarding the application as it relates to the circumstances of the indicated report.

Finally, the proposal corrects erroneous SSL cross-references to the Penal Law provision on filing a false report with the SCR.

BUDGET IMPLICATIONS: None are expected.

EFFECTIVE DATE: This act shall take effect on the ninetieth day after it shall have become a law
