

**Feasibility Study of
Family and Supreme Court Access to the
Statewide Central
Register of Child Abuse and
Maltreatment**

**Final Report to the Governor and
the New York State Legislature**

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Executive Summary

A. Purpose of the Feasibility Study

Chapter 595 of the Laws of 2008 requires that the New York State Office of Children and Family Services (OCFS), in conjunction with the New York State Office of Court Administration (OCA), study, evaluate, and make recommendations concerning the feasibility of using computers connected to the Statewide Central Register of Child Abuse and Maltreatment (SCR), as a means of providing the courts with information regarding parties requesting orders of custody or visitation.

Chapter 595 also requires courts, prior to issuing an order in a custody or visitation case, to review the decisions in any related child protective proceeding under Article 10 of the Family Court Act, the statewide registry of orders of protection and warrants of arrest issued by the Family Court established under the Executive Law, and the sex offender registry (hereinafter “multiple registries review”) established under the Correction Law. Chapter 595 became law on September 25, 2008 and the OCA commenced implementation of the multiple registries review on January 23, 2009.

Responding to the Legislature’s mandate, OCFS and OCA began analyzing the feasibility of connecting computers at Family and Supreme Courts to the SCR. An Interim Report was submitted to the Legislature on February 4, 2009, and this Final Report was drafted with the findings, conclusions and recommendations of the Commissioner of OCFS.

B. Brief Summary

The first phase of the feasibility study focused on the legal and technological issues associated with providing Family and Supreme Courts with access to the SCR/CONNECTIONS¹ databases. Two different models were identified to potentially connect the SCR/CONNECTIONS databases to the courts. Either model was estimated to need the capacity to accommodate at least 1.5 million additional SCR database searches, over a six hundred percent increase to the SCR’s current annual search volume.

During phase two of this study, experience gained by OCA’s implementation of the multiple registries review showed that the number of additional SCR database searches needed is between 1.5 and 2 million searches, at a potential cost of \$72.9 to \$96.9 million dollars, as well as substantial additional annual operating costs. Further study of the implementation of such a system also showed that OCA would incur staffing costs equivalent to those estimated by OCFS to duplicate the SCR’s database search method. There would also be training costs and

¹ The CONNECTIONS database is the statewide automated child welfare system that contains case records regarding children and families receiving foster care, preventive, adoption, and independent living services as well as child protective services. It also includes information about foster parents and prospective adoptive parents.

costs to set up and equip the facility needed to house the additional staff. It also became apparent that considerable differences exist between the information that OCA would be able to provide to OCFS and what OCFS requires to perform a thorough database check, resulting in an inability to electronically refine the search process.

As a result of these studies, OCFS and OCA conclude that significant legal and technical obstacles will hinder the likelihood of success of the project. Although connecting the courts to the SCR database is possible, it is an extremely expensive undertaking and will provide data of potentially equivocal value. OCFS believes that through the search of the child welfare court proceedings that the courts are already performing, the courts are obtaining information on allegations of abuse or maltreatment that meet higher evidentiary and relevancy standards than many reports present in the SCR database. In an extremely difficult fiscal time when New York State is trying to do more with less, moving ahead with this project would require the expenditure of considerable resources and time, with limited, if any, additional benefits and protections to the children and families in the State of New York.

C. Brief List of Findings

- If the Legislature requires the courts to consult the SCR/CONNECTIONS databases prior to issuing any order of custody or visitation, it would add at least 1.5 million and potentially up to 2 million new database searches to the SCR/CONNECTIONS database systems.
- The costs of this project are estimated to be between \$72.9 million and \$96.9 million dollars, as well as substantial additional annual operating costs depending upon the number of SCR database searches required, and initial technical costs of \$1 million dollars.
- Adding 1.5 million court searches, the minimum expected number, to the existing SCR database searches would increase database searches by over six hundred percent, which is likely to create significant unintended negative effects, overwhelming the SCR/CONNECTIONS computer systems' ability to handle other critical child welfare functions.
- Due to the large number of SCR reports in the existing database and the lack of unique identifiers for persons listed in such reports, verifying whether a party to a custody or visitation proceeding is the subject of a report of child abuse or maltreatment can be a time-consuming process, which could delay the timeliness of court orders in such proceedings with resulting negative impacts on the court process and the families and children involved.
- There are significant differences in the nature and quality of information regarding search subjects provided by OCA as compared to what information OCFS needs to conduct a thorough database check. These differences make it difficult to definitively conclude that an individual is known or unknown to the SCR unless a 100 percent match in name and address is obtained.
- The information in the SCR is only evaluated at the "some credible evidence" evidentiary standard, which may not provide useable information to the court in determining most custody or visitation cases.

- Although the SCR is required to maintain the written intake report and its disposition, the SCR does not contain the entire file for a child abuse or maltreatment investigation. The investigative agency retains all records, reports, and other information it maintains on the *indicated* report.
- There are significant legal challenges that may result from the courts using SCR reports in custody and visitation proceedings, including:
 - The use of pre-1997 SCR database records by the courts would create a disproportionate risk of a negative impact on mothers seeking custody and visitation and pose a significant risk that both male and female non-perpetrating parents could be falsely identified as potential abusers.
 - The use of SCR reports that are *unfounded* or that are *indicated* at the some credible evidence level may violate parents' constitutional rights, and may lead to more court appearances, expense and motion practice to address the relevancy of the data.
- The SCR/CONNECTIONS databases are not currently capable of accommodating the estimated 1.5 to 2 million additional SCR database searches required in conjunction with all custody and visitation orders. Utilizing searches that are not real-time SCR database searches and responses will diminish the effects upon the system, however, the system is not capable of handling the volume of anticipated real-time database checks.²
- This additional strain on the SCR/CONNECTIONS databases could jeopardize the provision of services and protection of children.
- Any increase in the SCR workload, should OCFS be required to conduct searches for OCA, could potentially affect OCFS' ability to comply with settlement terms for on-going litigation within the confines of current staffing patterns.

D. Brief List of Conclusions and Recommendations

- It may be possible to connect court computers to the SCR databases to provide information about whether parties requesting orders of custody or visitation are known to the SCR. However, there are significant fiscal, infrastructure, procedural, and statutory challenges to doing so.
- Through the search of the Article 10 child welfare court proceedings that the courts are already performing, the courts are obtaining information on allegations of abuse or maltreatment that meet higher evidentiary and relevancy standards than the vast majority of reports present in the SCR database.
- In light of the findings described herein, OCFS concludes that court access to the SCR database is not feasible at this time. OCFS does not recommend that the Legislature

² A “real-time” search and response is where a search request would be immediately executed as soon as it was entered, and the search requester would receive an immediate response from the database. This is how the SCR database searches currently operate. Real-time searches require intensive computer hardware resources. It is currently estimated that the existing SCR databases and servers can only accommodate approximately 10,000 additional real-time database searches. Significant expenditures would be needed to up-grade the system to accommodate any more real-time database searches. See section VI(B) below.

pursue court access to the SCR database at this time. Therefore, OCFS is not submitting legislation to provide for such access.

I. Introduction

Chapter 595 of the Laws of 2008 requires the Commissioner of the OCFS to complete the following study:

Feasibility study. The commissioner of the office of children and family services, in conjunction with the office of court administration, is hereby authorized and directed to examine, study, evaluate and make recommendations concerning the feasibility of the utilization of computers in family courts which are connected to the statewide central register of child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social services law, as a means of providing family courts with information regarding parties requesting orders of custody or visitation. Such commissioner shall make a preliminary report to the governor and the legislature of findings, conclusions and recommendations not later than January thirty-first, two thousand nine, and a final report of findings, conclusions and recommendations not later than June first, two thousand nine, and shall submit with the reports such legislative proposals as are deemed necessary to implement the commissioner's recommendations.

Responding to the Legislature's charge, OCFS and OCA established a process for analyzing the feasibility of providing direct computer access for the courts to the SCR.³ Each agency analyzed its core competencies and needs, then compared data and assumptions in a series of meetings designed to provide background and context. Having arrived upon a common knowledge platform, the agencies then worked together to outline the threshold questions underlying the feasibility of this significant expansion in the courts' data access and the SCR/CONNECTIONS databases' functions.

This report contains the findings, conclusions and recommendations of the Commissioner of OCFS.

³ Although the legislative language relating to the feasibility study only refers to the use of computers in Family Courts, OCFS and OCA decided to review the use in Supreme Courts as well as they also have jurisdiction over custody and visitation cases and must conduct the other searches required by Chapter 595 of the Laws of 2008 in relation to such cases.

II. Statutory Basis of the SCR Database

The SCR was established in 1973 to record and maintain a file on each reported instance of child abuse or maltreatment.⁴

The existence and function of the SCR is set forth in §422 of the Social Services Law (SSL). By statute, the SCR must “be capable of receiving telephone calls alleging child abuse or maltreatment and of immediately identifying prior reports of child abuse or maltreatment and capable of monitoring the provision of child protective service twenty-four hours a day, seven days a week.” SSL §422(2)(a). The law further provides that “there shall be a single statewide telephone number that all persons, whether mandated by the law or not, may use to make telephone calls alleging child abuse or maltreatment and that all persons so authorized by this title may use for determining the existence of prior reports in order to evaluate the condition or circumstances of a child.”⁵

SCR reports generally contain, but are not limited to, the subject of the report,⁶ the other persons named in the report,⁷ the institution name if the child is in residential care,⁸ the name of the reporter, and specific allegations setting forth the elements of the alleged maltreatment or abuse.⁹ Once reports have been investigated by the applicable investigative agency, the allegations are substantiated, or unsubstantiated, and the reports are separated into two categories: “indicated” and “unfounded” reports.¹⁰

The information received from the reports made to the SCR and the results of the investigations of the reports are contained in the SCR’s databases, which are required by statute to include, at a minimum, the following information:

⁴ Monroe and Onondaga counties have traditionally operated their own child abuse and maltreatment hotlines. Since 1973, both counties submit their reports electronically to the SCR for processing and inclusion in its database.

⁵ Calls are received on a “Mandated Reporter” line (1-800-635-1522); a “Public” line (1-800-342-3720); a “Mandated Reporter” fax line (1-800-635-1554); and a “Hearing Impaired TTY” line (1-800-638-5163).

⁶ Section 412 (4) of the SSL provides that the “subject of the report” includes any parent of, guardian of, and certain other individuals legally responsible for a child reported to the SCR who are allegedly responsible for causing injury, abuse or maltreatment to such child or who allegedly allowed such injury, abuse or maltreatment to be inflicted on such child.

⁷ Section 412(5) of the SSL provides that “Other persons named in the report” are specified persons who are named in a report of child abuse or maltreatment other than the subject of the report and include the child who is reported to the SCR; and such child’s parent, guardian, custodian or other person legally responsible for the child who have not been named in the report as allegedly responsible for causing injury, abuse or maltreatment to the child or as allegedly allowing such injury, abuse or maltreatment to be inflicted on such child.

⁸ The statutory provisions relating to an abused or neglected child in residential care were moved by Chapter 323 of the Laws of 2008 from section 412 of the SSL to the new section 412-a of the SSL effective January 17, 2009.

⁹ As discussed further in section IV(D)(3), the SCR’s pre-1997 database indexing did not distinguish between subjects of the report and other persons named in the report. Rather, reports were always indexed under the mother’s name irrespective of whether she was the subject of the report.

¹⁰ Sections 412(11) and (12) of the SSL provide that an “*unfounded* report” means any report made pursuant to this title [title 6 of the SSL] unless an investigation determines that some credible evidence of the alleged abuse or maltreatment exists; and an “*indicated* report” means a report made pursuant to this title [title 6 of the SSL] if an investigation determines that some credible evidence of the alleged abuse or maltreatment exists.

- all the information in the written report;
- a record of the final disposition of the report, including services offered and services accepted;
- the plan for rehabilitative treatment;
- the names and identifying data, dates, and circumstances of any person requesting or receiving information from the register; and
- any other information that OCFS believes might be helpful. SSL §422(3).

Generally, the SCR does not contain the entire investigation file.¹¹ Currently, there are over two million reports in the SCR, with over 4.3 million persons named in those reports.

¹¹ See Section IIIB(2) and footnote 14 below.

III. Child Abuse or Maltreatment Reporting and Investigations

The SCR is responsible for receiving telephone calls alleging child abuse or maltreatment, and taking action upon such telephone calls.¹² When any allegation contained in such a call could reasonably constitute a “report” of child abuse or maltreatment, the SCR registers the report and promptly transmits the report for investigation to the appropriate investigative agency. In 2009 there were 359,000 calls to the SCR¹³; 296,587 were hotline calls and 180,000 of those calls resulted in the registration of an SCR report.

Depending upon the set of circumstances alleged in a report of child abuse or maltreatment, the SCR transmits the report to one of several different agencies for investigation. Reports concerning abuse or maltreatment in a familial situation, foster homes, or day care situations, are referred to the Child Protective Service (CPS) in the county where the child is located. Reports concerning abuse or maltreatment in juvenile justice facilities, residential foster care programs, foster homes certified by OCFS, and some special act school districts and residential schools for the deaf and blind are referred to the applicable OCFS Regional Office Institutional Abuse and Neglect Unit (IAB Unit). Reports concerning abuse or maltreatment in residential facilities licensed or run by the Office of Mental Health (OMH), Office of People with Developmental Disabilities (OPWDD), or Office of Alcoholism and Substance Abuse Services (OASAS) are referred to the Commission on Quality Care and Advocacy for Persons with Disabilities (CQC). However, any stand-alone residential program certified by OMH, OPWDD or OASAS that is located on the same premises as a foster care facility licensed by OCFS is investigated by the applicable OCFS IAB Unit. OMH and OPWDD investigate reports involving children in the family care homes under their jurisdiction.

OCFS supervises the provision of child protective services by local social services districts. Each local social services district is required to establish a child protective service (CPS) to investigate allegations of child abuse or maltreatment. In New York City’s five counties, the Administration for Children’s Services (ACS) is the child protective services agency. Outside of New York City, CPS is administered by each of the 57 counties.

A. The CPS Investigation and Evidentiary Standard for “Indicated” and “Unfounded” Reports

After a report of suspected child abuse or maltreatment is transmitted to the applicable investigative agency, the report is assigned to a worker to initiate the investigation. At the conclusion of the investigation, each allegation must be substantiated or unsubstantiated. A report will then be “*indicated*” or “*unfounded*.” The investigatory agency determines whether a report is *indicated* or *unfounded* based on whether any allegation in the report is substantiated by “some credible evidence,” which is the statutory evidentiary standard applied at this stage in the process. SSL §412(11) and (12).

¹² Since the SCR also receives allegations of abuse or maltreatment by means of tele-facsimile and TTY device, the use of the phrase “telephone calls” includes such other means of communication to the SCR.

¹³ This number includes all hotline calls, electronic reports, and Service Center calls, as well as supervisory calls and calls from local districts regarding intake reports.

An *indicated report* is a report of child abuse or maltreatment where some credible evidence was found to substantiate at least one allegation against one subject -- a “confirmed subject” -- regarding at least one child. However, that an *indicated report* can have multiple confirmed subjects, multiple substantiated allegations, and/or multiple abused or neglected children. Further, an indicated report may contain the names of multiple “other persons named in the report”, i.e. persons who are connected to the situation but are not responsible for the abuse or maltreatment of a child.

Alternatively, an *unfounded report* is a report of suspected child abuse or maltreatment where no credible evidence was found to substantiate any allegation against any subject. In an *unfounded report*, there are no confirmed subjects and all allegations are unsubstantiated.

It is important to note here in the context of this study that §240(1-a) of the Domestic Relations Law (DRL) and §651-a of the Family Court Act (FCA) limit a court’s consideration of SCR reports to *indicated* reports. A plain language reading of Chapter 595 of the Laws of 2008, which established this study, however, does not reveal any such explicit limitation. Although the canons of statutory interpretation suggest that the Legislature cannot be presumed to have intended to eliminate the existing restrictions upon admissibility of SCR reports, absent specific language to that effect, the possibility that *unfounded* reports could be used by the courts should be definitively foreclosed.

B. Administrative Review of Reports of Child Abuse or Maltreatment

1. Administrative Reviews Requested by the Subject

A subject of an *indicated* report has two separate opportunities to request the SCR to amend the report from *indicated* to *unfounded*. The first opportunity to request an administrative review comes immediately after the subject is notified that the report is *indicated*. The second opportunity for amendment arises if an employment or licensing agency authorized under §424-a of the SSL requests information about the subject through a database check in relation to the subject applying for certain child caring positions.

The required standard of evidence used during these reviews is “a fair preponderance of the evidence,” which is higher than the some credible evidence standard used to indicate the original report. This higher standard of evidence was initially adopted based on litigation concerning the manner in which OCFS reviewed requests by subjects of *indicated* reports of child abuse or maltreatment to amend and seal reports. See, e.g., Valmonte v. Bane, 18 F.3d 992 (2d Cir. 1994); Lee TT v. Dowling, 87 N.Y.2d 699, 642 N.Y.S.2d 181 (1996); and Walter W. v. N. Y. State Dep’t of Social Servs., 235 A.D.2d 592, 651 N.Y.S.2d 726 (3d Dep’t 1997), app. denied, 89 N.Y.2d 813 (1997). Chapter

323 of the Laws of 2008 recently amended the statutory requirements to reflect the higher standard of evidence for reviews as required by the litigation.

2. Timing of Administrative Reviews Requested by the Subject

Within 90 days after the subject of a report of child abuse or maltreatment is notified that the report is *indicated*, the subject may request the SCR to amend and seal the report. Upon receiving such a request, the SCR confirms that the requesting person is actually the subject of an *indicated* report maintained in the SCR, and, if so, sends a letter to the subject acknowledging the SCR's receipt of the request. The SCR also sends a request to the investigative agency for all its records, reports, and other information pertaining to the *indicated* report. The investigative agency then forwards all records, reports, and other information it maintains on the *indicated* report to the SCR.¹⁴

When the SCR receives the investigative agency's documents, it prepares a package to be reviewed by an attorney in OCFS Division of Legal Affairs. This review stage uses the evidentiary standard of "fair preponderance of the evidence," which is a stricter standard than the "some credible evidence" standard used by the investigative agency in making the initial determination to *indicate* or *unfound* a report. If the review determines that there is not a fair preponderance of the evidence in the record that the subject committed an act of child abuse or maltreatment, the SCR amends the record to reflect that the allegations against the subject are *unfounded* and notifies the subject of the report and the investigating agency forthwith.

If the review determines that there is a fair preponderance of the evidence in the record that the subject committed such an act, the reviewer determines whether the act could be relevant and reasonably related to employment or licensing in the child care field. The SCR notifies the subject of the report of such determination and that the SCR will refer the matter for an administrative hearing to review whether the subject has been shown by a fair preponderance of the evidence to have committed an act of child abuse or maltreatment and whether the act is relevant and reasonably related to employment or licensing in the child care field.

In 2009, the SCR received 7,700 Administrative Review requests.

¹⁴ OCFS operates New York's child welfare information system of record, which is known as CONNECTIONS. Local CPS, OCFS, CQC, OMH, and OPWDD employees involved in SCR report investigations and other statutorily required users, use CONNECTIONS to store electronic information about reports that they investigated. CONNECTIONS data is available to the SCR without separate transmission from the investigative agency. However, non-electronic information that the investigative agency might have in support of the *indicated* report is not included in CONNECTIONS and still has to be obtained separately from the investigative agency.

3. Reviews Triggered by a Licensing or Provider Agency Inquiry

Section 424-a of the SSL requires some licensing and provider agencies to request a search of the SCR database (“SCR database check”) of certain persons applying for employment, certification, or licensure in the child care field (applicant).¹⁵

The SCR database check process has three possible alternative outcomes. First, if the SCR database check shows that the person inquired about is not the subject of an *indicated* report, the SCR sends a letter to the inquiring agency notifying it of that fact.

Alternatively, if the SCR database check identifies that the applicant has been found to be the subject of an *indicated* report at an administrative hearing where the fair preponderance of the evidence standard was applied and such act was determined to be relevant and reasonably related to employment or licensing in the child care field, the SCR sends a letter to the inquiring agency notifying it that the person inquired about is the subject of an *indicated* report.

Either of these two notifications can be made as soon as the SCR’s database check is completed.

The third alternative arises where an SCR database check identifies the applicant as a subject of an *indicated* report who has not had an administrative hearing where the fair preponderance of the evidence standard was applied. In that circumstance, the SCR sends a letter to the applicant informing the applicant of the right to an administrative hearing before the inquiring agency is notified that the applicant is the subject of an *indicated* report. The applicant is also told that she or he must reply to the SCR’s letter within 90 days to receive an SCR review and/or an administrative hearing. If the applicant responds within 90 days to the SCR’s letter, the SCR administrative review process described above in section III(B)(2) is initiated.

If, after the administrative review, the SCR determines that there is not a fair preponderance of the evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the SCR amends the record to reflect that the allegations against the subject are *unfounded* and notifies the subject and the local investigative agency forthwith. The SCR also notifies the inquiring agency that the person inquired about is not the subject of an *indicated* report.

If the SCR determines after review that there is a fair preponderance of the evidence that the subject committed an act of child abuse or maltreatment but that the act is not relevant and reasonably related to employment in the child care field, the report will remain *indicated* but the SCR will notify the inquiring agency that the person inquired about is not the subject of an *indicated* report.

¹⁵ In some circumstances, child care workers may work while results are pending, but such persons may not have unsupervised access to the children.

Alternatively, if the SCR determines after review that there is a fair preponderance of the evidence that the subject committed an act of child abuse or maltreatment and the act is relevant and reasonably related to employment in the child care field, the matter is referred for an administrative hearing.

4. The Administrative and Judicial Hearing Process

OCFS' Bureau of Special Hearings (BSH) conducts the administrative hearing. BSH is authorized to review the SCR's determinations, independently, on behalf of the Commissioner of OCFS. The administrative hearing is conducted before an administrative law judge (ALJ). After the ALJ weighs the evidence and issues a recommendation, the Commissioner of OCFS, or a duly authorized designee, reviews the record of the hearing and the recommendation of the ALJ, and issues a "Decision After Hearing" (Commissioner's Decision) based on the record created at the hearing.

If the Commissioner's Decision determines that there is not a fair preponderance of the evidence that the subject committed an act of child abuse or maltreatment, the SCR amends the record to reflect that the report against the named subject is *unfounded*, and the report is sealed. The SCR then sends a letter notifying the inquiring agency that the applicant is not a subject of an *indicated* report.

However, if the Commissioner's Decision determines that there is a fair preponderance of the evidence that the subject committed an act of child abuse or maltreatment, the SCR amends the record to reflect that the allegations were retained after an administrative hearing. Subsequently, the SCR will send a letter notifying the inquiring agency that the applicant is a subject of an *indicated* report.

If the subject of an *indicated* report is dissatisfied with the Commissioner's Decision made after an administrative hearing, he or she may seek judicial review in Supreme Court through a proceeding brought pursuant to Article 78 of the New York Civil Practice Law and Rules (Article 78 of the CPLR).

C. Child Protective Proceedings in Family Court

At times, legal intervention is necessary to protect children from abuse or maltreatment. Article 10 of the Family Court Act is "designed to establish procedures to help protect children from injury or mistreatment and to help safeguard their physical, mental and emotional well being. It is designed to provide a due process of law for determining when the state, through its Family Court, may intervene against the wishes of a parent on behalf of a child so that his needs are properly met."¹⁶

¹⁶ FCA § 1011.

Protective services may include, when appropriate, foster care or other out of home placement. Family Court intervention may become necessary at any point during a child protective investigation, such as if the family's situation worsens to the point that court intervention becomes necessary to protect the child(ren) in the home from being abused or neglected.

When a CPS worker finds evidence of child abuse or maltreatment and believes that legal intervention is necessary to protect a child, the child protective agency may file a petition under Article 10 in the Family Court. Prior to the filing of a Family Court petition, the CPS worker generally consults with their county attorney to determine if sufficient evidence exists to warrant court intervention. The CPS worker, in conjunction with the county attorney, will prepare a petition which contains facts and allegations to substantiate the worker's concern that the child is abused or maltreated. The petition may contain the same factual allegations as were contained in a report made to the SCR, or may include alternative or additional allegations.¹⁷

Once the petition is filed, CPS may seek temporary court orders to facilitate child safety. Such orders usually direct action by the adults to assist in household stability and child safety, such as an order of protection, an order for the respondent to participate in services or an order directing the respondent to undergo assessment.

Presently, during custody proceedings under Article 6 of the Family Court Act, the court is required by FCA §651(e)(i) to review any related child protective proceeding under Article 10. This serves to provide the courts with information about those instances where the applicable LDSS felt court intervention was needed to protect the children in the case. By contrast, many indicated SCR reports do not warrant court intervention because the underlying issues are resolved through the provision of non-mandated services to the families. It is questionable whether these latter types of SCR reports should be considered in custody and visitation proceedings.

¹⁷ There may be situations where there is no indicated report in the SCR, yet legal action has been commenced against an alleged subject. This may occur when the SCR report that commenced an investigation on one set of facts is unfounded, but additional facts uncovered during the investigation or subsequent contact with the family require that legal action be taken to protect the subject child(ren).

IV. Operational Requirements of the SCR

The SCR performed 223,052 database checks in 2009¹⁸. Database checks are not automated; 91 employees were required to process these searches. In order to provide an accurate search result, the SCR requires detailed information on historical addresses and household composition. The database check depends upon several computer systems which would not function properly to perform the number of searches that the court would require.

In addition to these technological challenges, there are other significant challenges associated with the courts using SCR reports in custody and visitation proceedings. Those issues include:

The use of pre-1997 SCR database records by the courts would create a disproportionate risk of a negative impact on mothers seeking custody and visitation and pose a significant risk that both male and female non-perpetrating parents could be falsely identified as potential abusers.

The use of SCR reports that are *unfounded* or that are *indicated* at the some credible evidence level may violate parents' constitutional rights. Once parties realize that SCR reports are available for use in custody and visitation proceedings, this may encourage false reporting.

Due to the large number of SCR reports and the lack of unique identifiers for persons listed in such reports, verifying whether a party to a custody or visitation proceeding is the subject of a report of child abuse or maltreatment can be a time-consuming process, which could delay the timeliness of court orders in such proceedings with resulting negative impacts on the court process and the families and children involved.

A. SCR Database Checks - Background

As discussed above in Section III(B)(3), §424-a of the SSL requires some licensing and provider agencies to request a search of the SCR database ("SCR database check") of certain applicants for employment, certification, or licensure in the child care field. Where the care of children will occur in a home-based setting, SCR database checks are also required of those individuals who are 18 years of age or older residing in the applicant's home.

In calendar year 2009, the SCR received 223,052 database check requests. These database checks were divided among the following categories:

Home Child Care Database Checks ¹⁹	22,007
Out-of-Home Child Care Database Checks ²⁰	191,682
Court Requested Database Checks	9,363

¹⁸ This number indicates a decline from the 2008 number of 245,023 database checks.

¹⁹ These checks relate to applicants for a child care field where children are cared for in a home-like setting, including foster homes, adoptive homes, family day care homes, and group family day care homes.

²⁰ These checks relate to applicants for child care field employment where children are cared for in out-of-home settings including day care centers, residential facilities, juvenile detention facilities, and summer camps.

SSL §422(4)(A)(e) specifically authorizes the family and supreme courts to check the SCR regarding certain individuals who are before the court, “upon a finding that the information in the record is necessary for the determination of an issue before the court.” These court requested database checks are separately tracked from the SCR child care database checks required under SSL §424-a. Presently, court requested database checks comprise only four percent of the total SCR database checks performed.

From 2000-2008, there has been a 62 percent overall increase in the number of SCR database checks conducted. 2009 has seen a slight decrease in the number of SCR database checks conducted, however, these numbers still represent an increase from 2007 numbers.²¹ Overall, this reflects the growing trend of annual increases in such requests.

This growth trend in the number of SCR database requests is separate and apart from the growth in requests resulting from a new mandate imposed upon the process by federal legislation. The federal Adam Walsh Act²² provided that national crime and state child abuse and neglect databases must both be used to screen all prospective foster and adoptive parents and individuals eighteen years of age and older who reside in their homes. Screening was required even for children not receiving federal foster care or adoption subsidies. The federal act also required that the child abuse and neglect registries of other states where prospective foster or adoptive parents and adults in their homes have lived during the past five years be checked before the homes were approved. In 2007, New York State changed its statutes to incorporate these requirements and allow disclosure of the required information.²³ Thus, New York State must perform SCR checks for other states and must request checks from other states for all prospective foster and adoptive parents.

The Adam Walsh Act was responsible for roughly 1,632 database checks in 2008. 2009, a total of 1,928 Adam Walsh checks were conducted. These numbers indicate approximately an eighteen percent increase in Adam Walsh checks from 2008 to 2009. It is expected that these numbers will continue to rise in future years.

B. SCR Report Analysis and Database Check Procedure

The SCR currently uses approximately 91 full-time equivalent staff (FTEs) to process these database check requests. The checks have to be conducted against the over two million reports in the SCR, which contain over 4.3 million names. The SCR is statutorily required to perform these database checks within ten working days of receipt of the inquiry.²⁴

The manner in which the checks are processed is generally as follows:

- The SCR worker receives a database check form through the mail. The form must include the name, maiden name, previous married name, aliases, gender, and date of

²¹ See Footnote 18 above.

²² Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248).

²³ See Chapter 327 of the Laws of 2007, effective Dec. 31, 2007.

²⁴ SSL§424-a(1)(e)(ii).

birth of the applicant. It also must include the names, genders and dates of birth of all other persons in the applicant's household as well as their relationships to the applicant. In addition, the form must include the applicant's current address and any other address at which the applicant resided over the last twenty-eight years. For applicants applying to be foster parents, adoptive parents, family day care providers, or group family day care providers, the form also must include the same address history for all household members who are 18 years of age or older.²⁵

- The SCR worker enters the information from the form into the Advanced Integrated Management System (AIMS),²⁶ which checks whether the data is free of errors.
- Database check forms with missing, incomplete, or illegible information are returned to the submitting entity for correction. Errors may include, for example, the applicant's failure to provide every address where he or she lived during the previous 28 years.
- Once all data entry edits have been completed, AIMS conducts a search against the SCR database, which returns a list of possible matches or "hits" to the applicant's name, and the names of other adults in the household.
- Potential matches are then analyzed by an SCR worker, to see if the person is "known to the SCR database" – that is, is the subject of a report. In some circumstances, depending upon the type of search, the worker also analyzes other adults in the household (e.g., spouses, "significant others," non-minor children, etc.) to see if they are "known" to the SCR database.
- If there is no *indicated* report involving the person being screened or any other adult household member, then a "No Hit" letter is communicated to the relevant party(ies) or entity(ies); if an *indicated* report involving the person being screened or any other adult household members is found, then the database check request or report is routed to a second level of review.
- The second level review involves the manual check of all the individual SCR reports which might involve the person being screened or any other adult household members to determine whether the person being screened is actually the subject of an *indicated* report. It can be a time-consuming and labor intensive process because individuals are listed in the SCR by their names, addresses and dates of birth as reported at the time a particular report is made and investigated, instead of by a unique identifier. In addition, some records may contain misspellings or inaccurate information, which may further slow down the review process.²⁷
- If a second level review confirms the individual being screened is the subject of an *indicated* report, then the administrative review process described in Section III(B)(4) above would commence.

²⁵ When the courts request a database check, the request is submitted on the standard OCFS database check form and must include the same information that is required for all database checks.

²⁶ AIMS is the SCR's front-end application for using the data contained in New York's child welfare database, CONNECTIONS. As previously indicated, the CONNECTIONS database is the statewide automated child welfare system that contains case records regarding children and families receiving foster care, preventive, adoption, and independent living services as well as child protective services. It also includes information about foster parents and prospective adoptive parents.

²⁷ If the reviewer cannot definitively exclude or include an individual as the possible subject of a report, they may contact the investigative agency to obtain additional information from the investigation file about the subject of the report.

During the summer of 2010, OCFS began to pilot an on-line clearance system, which enables electronic submission of a clearance request. Statewide rollout of this initiative has been completed and the application is now available to local districts, voluntary agencies, other state agencies and all child care providers. It is anticipated that about 4,400 users will have begun using the system or have that capability. Currently, about 20% of the clearance requests are coming in through the on-line system. OCFS will be taking steps to encourage higher levels of participation. The on-line clearance system cannot currently process fee-based requests (new and prospective employees other than day care); that operability is expected in late 2011. The impact of the on-line clearance system on the SCR workload is thus far negligible and does not affect the estimates set forth in this report.

C. Technical Challenges to Expanding the Number of SCR Database Checks

There are a number of technical challenges to expanding the current volume of SCR database checks. The current SCR database check system depends upon several different inter-connected computer hardware systems and software systems. They are:

- The AIMS software application, which is a front-end data entry and search query launching program that connects directly into the CONNECTIONS database, launches a search application, then displays a search result on any potential “hit” to an SCR worker’s computer screen.
- The Identity Systems (IDS) person search application, which is triggered by AIMS, conducts searches, and then allocates response weightings to arrive at a frequency distribution of potential hits for AIMS to display.
- Stand-alone computer “servers” that host the AIMS and IDS applications, and the CONNECTIONS database.
- A storage area network that is linked to CONNECTIONS and AIMS, which allows searches of pre-1997 CPS reports.

Each of these applications, and the computer servers, were developed and sized for the SCR’s current database check volume, plus a reasonable annual increase. None of these inter-related programs and the computers upon which they run could continue to work properly if the volume of database checks were to expand as dramatically as OCA estimates would require to process database searches for all custody and visitation orders. Furthermore, the AIMS application links to the CONNECTIONS database²⁸ on a “real-time” basis. That is, data entered into AIMS is directly entered into the CONNECTIONS’ database. This means that AIMS users at the SCR are part of the significant demands made on the CONNECTIONS database and the application’s connectivity by the many thousands of simultaneous users statewide. Any significant increase in use of real-time AIMS searches adds to the burden on CONNECTIONS’ servers, which already run close

²⁸ The exception is that when CONNECTIONS is unreachable or briefly offline for maintenance reasons or during one of CONNECTIONS’ quarterly upgrades, the SCR can enter its “intake data” – reports and clearance requests – into a computer program called the Business Continuity Application (BCA). The BCA’s function is to store the SCR’s data and upload it to CONNECTIONS in a manner that allows the SCR to operate without pause.

enough to their maximum capacities that they will need to be replaced soon even without adding any additional database searches to their current loads.

D. Legal Challenges and Considerations Associated with the Courts Using SCR Reports in Custody and Visitation Cases

There are several substantive issues associated with the courts using SCR reports in custody and visitation. These derive from the statutory confidentiality and record retention requirements for SCR reports, historical practices of the SCR and local social services districts (LSSD), the low evidentiary standards for indicating a report of child abuse or maltreatment, and the constitutional and procedural issues raised in the *Valmonte* case. See, e.g., *Valmonte v. NYS Dept. of Soc. Svcs.*, 18 F.3d 992. In addition, the implementation of the multiple registries review may limit or negate the utility of the courts also accessing SCR reports.

1. Confidentiality of SCR Reports

One crucial underpinning to encouraging individuals to report suspected child abuse or maltreatment is maintaining the anonymity of the “reporters” (a/k/a “sources”) of the SCR reports. Another key requirement is exercising vigilance in protecting the confidentiality and/or privacy of the identity of individuals who are named in SCR reports but are not the subjects of an *indicated* report including individuals who were the alleged subjects of reports determined to be *unfounded*.²⁹ Consequently, the Legislature created a complicated statutory scheme for sealing SCR reports, maintaining their confidentiality, and disposing of such reports after the end of their useful life (a “record retention” schedule).³⁰

Because the SCR was not fully automated until 1997, it has approximately three million scanned images of pre-1997 reports and supporting documentation on an aging optical storage/retrieval system. These older records represent 424,036 reports, or almost 25% of all SCR reports. To provide SCR database access to the courts, those images would have to be accessible as part of the vast number of new search requests that the courts anticipate.³¹ Unfortunately, however, use of these older records could conceivably be problematic for the reasons cited below.

²⁹ See, generally, §422(4), (5) and (12) of the SSL.

³⁰ See, e.g., §422(5)-(8) of the SSL. Additional confidentiality provisions relating to CONNECTIONS are set forth at 18 New York Codes, Rules and Regulations (NYCRR) 466.4 and 466.5, and at 45 Code of Federal Regulations (CFR) 95.621.

³¹ See section V below.

2. Record Retention Schedules

There are two different record retention schedules for SCR reports: one for *indicated reports* and one for *unfounded reports*.

If an SCR report is determined to be *indicated*, the records of the report and investigation will remain in the SCR database until the youngest child named in the report of child abuse or maltreatment is 28 years old. SSL §422(6). If, however, a report is determined to be *unfounded*, then the records of the report and investigation remain in the SCR database for ten years from the date the case was called into the SCR. SSL §422(5)(b). However, the subject of an *unfounded* report can ask OCFS to expunge the report prior to the lapse of the ten-year period if the source of the report was convicted of making a false report or if the subject of the report presents *clear and convincing* evidence that affirmatively refutes the allegations of abuse or maltreatment. SSL §422(5)(c). If OCFS receives such a request, it conducts an administrative review of the records. If the administrative review determination upholds the request, the record is expunged. If not, the *unfounded* record is retained for the remainder of the ten-year retention period, unless the subject prevails in a proceeding brought under Article 78 of the CPLR requesting expungement.

Under the existing record retention requirements, SCR records may be retained for as little as ten years or less or for as long as twenty-eight years.³² Therefore, the SCR must maintain and search through an enormous backlog of aging reports when it conducts database searches, which can slow down the searches and shorten the effective life of the computer search and retention hardware.

OCFS has questioned whether it is necessary to retain SCR records for such lengthy periods of time. Furthermore, there has been little attention paid to the differences between abuse and maltreatment, and whether there might be a reasonable argument for shorter retention periods for *indicated* reports of maltreatment, as opposed to *indicated* reports of abuse.

However, further study has shown that there is no way to retrofit existing SCR records to create differential retention periods for prior indicated reports of maltreatment and abuse. Historically, the determination of whether the allegations of a report are abuse or maltreatment is initially set by the SCR at the time that the report is made to the SCR. The intake report is generally designated as a report of maltreatment or abuse based upon the most serious allegation made in the report. In the past, system errors prevented designating a case as abuse unless sex abuse, physical abuse or fatality allegations were present.³³ The system also prevented the investigator in the district from changing the designation entered by the SCR, even at the conclusion of the investigation. Thus, the

³² Reports whose retention time has expired are generally purged from the system on a quarterly basis. However, OCFS is presently subject to a discovery order which prevents OCFS from purging these records. One consequence of this is that OCFS must currently retain records which should have been expunged or destroyed.

³³ The following categories of allegations are treated as physical abuse: Burns/Scalding, Choking/ Twisting / Shaking, Internal Injuries, Lacerations/ Bruises / Welts, Swelling/ Dislocation / Sprains, Poisoning/ Noxious substances, Fractures, and Excessive Corporal Punishment.

SCR report may reflect that a case is indicated for abuse but a review of the investigation report may only reflect an indication for maltreatment. Although it is possible to build functionality to capture the distinction between abuse and maltreatment for future investigations, the data is not sufficiently reliable to do this properly for older reports.

OCFS concludes that although differential retention periods may be considered prospectively, there is no effective means to retroactively use differential retention periods to limit the scope of older records which must be searched when conducting an SCR database check.

3. Historical Practice Challenges

Prior to 1997, the general practice of the SCR and LDSS was to name all adults living in a household in the narrative section of SCR reports regardless of whether they were suspected of abuse or maltreatment. Because of the manner in which these older reports were maintained, there is a serious risk that some parents may be flagged, during SCR database checks, as potentially having abused or maltreated a child even though they never were alleged to have done so. This risk is greater for women because many cases were historically listed by the mother's name regardless of whether she was alleged to have committed the abuse or maltreatment.

OCFS and the Office for the Prevention of Domestic Violence (OPDV) remain concerned that the use of pre-1997 SCR records by the courts creates a disproportionate risk of a negative impact on mothers seeking custody and visitation and that both male and female non-perpetrating parents could be flagged as potential abusers by an SCR check where the search is conducted by an individual without the necessary understanding of these historical practices.

There is also a concern that allowing courts to have access to the SCR database could increase the number of false reports made to the SCR as parents seek to gain an advantage in custody or visitation proceedings.

4. Evidentiary Standards

As previously discussed, a report is *indicated* or *unfounded* at the end of an investigation based on whether there is some credible evidence of child abuse or maltreatment, which is an extremely low evidentiary standard. The United States Court of Appeals for the Second Circuit has held that there are constitutional liberty interests associated with the use of indicated reports in the SCR in relation to employment. See, e.g., Valmonte. The court held that the subject of an indicated report is entitled to a fair hearing using a fair preponderance of the evidence standard before potential employers are informed that the individual was the subject of a report. The liberty interest that parents possess regarding their fundamental right to raise their children is certainly as strong, if not stronger, than the liberty interest associated with access to employment.

Consequently, OCFS and OPDV conclude that providing a court with SCR records indicated on the basis of the some credible evidence standard may violate a parent's constitutional right to raise his or her children.³⁴ One way to remedy this may be to limit court access to reports that have been subject to an administrative review or administrative hearing under the fair preponderance of the evidence standard. This would provide the court with access to all reports that meet the *Valmonte* standard. However, the courts may find this information too limiting, since information contained in indicated reports that have not yet undergone the administrative review process may be germane to an issue before the court.

5. Procedural Issues

Another factor counterbalancing the potential utility of SCR database checks to custody and visitation determinations is that they may unnecessarily delay custody and visitation proceedings to the detriment of children and families. Because SCR records are kept by name, addresses and dates of birth, rather than by a unique identifier, confirming the identity of a person listed in an SCR report can be a time-consuming process that involves matching address histories and may result in errors.³⁵ The required confirmation process could delay custody and visitation proceedings, even where abuse or neglect has never been raised as an issue in the proceedings. Due to the potential for inaccurate identification of individuals as subjects of indicated reports and the low evidentiary standard, parties may make additional motions or request additional hearings regarding whether a particular report is relevant to the custody or visitation proceeding. The need for a court to rule on additional motions and hold additional hearings on the relevance and evidentiary weight of SCR information in the underlying custody or visitation proceeding could delay the court's decisions in such cases and also increase the costs to the courts, the parties, and the investigative agency that investigated the report. Delays in custody and visitation decisions can be detrimental to a child by postponing important services such as school enrollment and access to medical care. In addition, if there are SCR reports involving both parties to a custody proceeding, the court may determine that it is necessary to place the children in foster care pending the resolution of the SCR information, which could result in increased costs to social services districts for such placements.

6. Other Information Available to the Courts

The multiple registries review provides the courts with additional information about the parties that they previously may not have had at the time they made custody or visitation

³⁴ OCA does not take a position concerning whether there may be a constitutional issue at stake. Rather, OCA notes that if the issue of constitutionality as applied to a custody or visitation order were litigated, it would be heard and decided by the judge presiding over that case.

³⁵ The process would be the same whether OCFS (Model 1) or OCA (Model 2) performs the search.

orders. Effective September 28, 2008, the courts must review the decision in any related child protective proceeding under FCA Article 10, the statewide computerized registry of orders of protection and warrants of arrest, and the sex offender registry. For example, reviewing any related child protective proceeding under FCA Article 10 provides the courts with information about those SCR reports where the applicable LDSS felt court intervention was needed to protect the children in the case. By contrast, many *indicated* SCR reports do not warrant court intervention because the underlying issues are resolved through the provision of services to the families. It is questionable whether these latter types of SCR reports should be considered in custody and visitation proceedings.

The courts have already identified some issues with the breadth of the records that must be reviewed and with delays to proceedings resulting from these new requirements. These issues are similar to some of the issues identified above regarding the use of SCR records in custody and visitation proceedings.

Therefore, OCFS questions whether providing the courts with access to the SCR would provide sufficient additional useful information to the courts to warrant the potential costs and delays in those proceedings associated with such access.

V. Operational Requirements of OCA

The estimated number of SCR database searches that the courts would require will be at least 1.5 million checks and may be closer to 2 million checks.

A. Court Database Search Needs

In 2009, there were 742,365 filings in New York State Family Court,³⁶ and 730,620 dispositions.³⁷ Of those cases, 193,232 were dispositions of custody or visitation filings.³⁸ In addition to the cases handled by the Family Court, in many parts of New York, Supreme Courts act as Family Courts for a portion of their court calendar. Supreme Courts also hear matrimonial cases, which often involve custody and visitation decisions.

Early data generated in 2007 by OCA's Universal Case Management System (UCMS), estimated there would be an annual need for 883,339 SCR database checks for cases filed in Family Court, and 141,000 SCR database searches for cases filed in Supreme Court acting on matrimonial matters concerning child custody and visitation. Of those matrimonial cases concerning child custody or visitation, roughly fifty percent occurred in New York City and fifty percent were located in the remainder of NYS.

OCA commenced the multiple registries reviews in January 23, 2009. Since then, they have performed 1,977,323 multiple registries reviews. When OCA commenced the multiple registries reviews in January 23, 2009, Chapter 595 of the Laws of 2008 required that a new search be conducted prior to the issuance of any order of custody or visitation where more than one month had passed. On August 11, 2009, the Legislature passed Chapter 295 of the Laws of 2009, which amended Chapter 595 of the Laws of 2008 to reduce the frequency of such reviews, requiring a review prior to the issuance of a permanent or initial temporary order of custody or visitation, and thereafter requiring a new review before the issuance of an order after ninety days since the last review. Therefore, based upon this data from OCA, the interim report estimate of at least one million additional SCR database checks annually was significantly underestimated.

³⁶ State of New York Report of the Chief Administrator of the Courts for the Calendar Year January 1, 2009 – December 31, 2009, last accessed on December 3, 2010 at

<http://www.nycourts.gov/reports/annual/pdfs/UCSAnnualreport2009.pdf> at p.20

³⁷ Id.

³⁸ Id.

B. Parameters of Court Searches of the SCR Database

New York's court computers and local area networks are connected on a "wide-area-network" called CourtNet.³⁹ CourtNet connects all courts and many other OCA locations -- totaling more than 250 locations statewide -- and is continually growing, as is shown by the addition of high-speed data access at 20 court facilities in Albany, Rensselaer, Schenectady and Saratoga counties in 2006.⁴⁰

Under the web-based SCR search model discussed in section VII(B), OCA would need to conduct SCR database checks from 150 locations statewide, with an average of five staff at each location, resulting in 750 court personnel needing access. Connection to the SCR database for the estimated 750 court personnel would be possible over CourtNet's existing Internet access. At this point, it is not anticipated that any judges would need or seek access directly. It is thought that court clerks and administrative personnel would conduct the searches, as they have been conducting the searches being performed pursuant to the multiple registries review.

Given the sensitive and confidential data in the SCR/CONNECTIONS databases, security issues are paramount. The proper function of the SCR/CPS intake system requires protection of the privacy of source information and the subjects of the *unfounded* reports, as well as the confidentiality of all SCR records. Analysis by the Information Technology departments of OCFS and OCA confirms that each entity's network and servers are sufficiently secure to allow the courts to connect to the SCR/CONNECTIONS databases. There would also need to be a security process for establishing and closing accounts and passwords so that as users left the courts' employ, their access would be removed. It is concluded that the existing security on CourtNet should be sufficient to protect data confidentiality on the connection from the courts to the SCR database.

However, securing the information while it is transferred between the court and OCFS networks would be a bit more challenging, but appears possible by use of web-browser based industry standard virtual private network software (SSL-VPNs) and access control measures.

Additionally, procedures would need to be established to protect the confidentiality of shared data, safeguards against redisclosure, and agreements between OCFS and the courts concerning responses to Freedom of Information Law (FOIL) requests and litigation. In addition, further discussions need to occur between OCFS and OCA regarding whether the courts would maintain SCR data on their local computers. If the courts wish to maintain SCR data on their local computers, then there would need to be a way to protect the confidentiality of such information in conformance with the SCR confidentiality statutes as well as a need to coordinate the amendment and/or destruction of SCR reports between OCFS and the courts. Should this project move forward, OCFS and OCA will need to address whether the courts should retain SCR data on their local computers as well as whether such data should become

³⁹ State of New York Report of the Chief Administrator of the Courts for the Calendar Year January 1, 2006 – December 31, 2006, last accessed on November 5, 2010 at <http://www.nycourts.gov/reports/annual/pdfs/2006annualreport.pdf> at p. 24.

⁴⁰ *Id.*

part of the court's record. Any SCR data kept on the court computers needs to be subject to the same record retention schedules and statutory confidentiality requirements afforded to records maintained by the SCR.⁴¹

Due to the wide extent of CourtNet connectivity, and absent a careful study,⁴² it is anticipated that no additional network hardware or fiber-backbone would need to be deployed for the courts to be able to access the SCR databases. Similarly, the court system computers are anticipated to be capable of using the software necessary to search the SCR database.

However, given the unfamiliarity of court personnel with the search application, and with the SCR databases' results and function, it is anticipated that the court personnel doing the SCR database checks would need training and "help desk" support from both the New York State Enterprise Help Desk operated by the New York State Office for Technology (OFT), and from OCFS information technology or SCR staff.

⁴¹ It is also very likely that statutory changes would be necessary to §422 of the SSL, and there might need to be a Memorandum of Understanding between OCA and OCFS with regard to the data and process involved.

⁴² An actual deployment study, with carefully designed load-balancing tests, would be part of the planning for a deployment.

VI. Impact of Search Requests Made by the Court System

The addition of over 1.5 million searches to the existing workload of the SCR/CONNECTIONS databases is unmanageable with the SCR's current resources and system capabilities. The anticipated need for 1,700 real-time searches per day is vastly beyond the number that the system may be able to handle. Even with anticipated system changes, it would not be possible to meet the courts' needs for real-time searches.

A. Volume of Requests

One of the questions that must be quantified is the extent of the impact upon the SCR/CONNECTIONS databases that would be generated by the courts directly accessing the SCR databases to run checks for custody and visitation orders. Based upon data obtained from OCA in performing the multiple registries review, OCFS has estimated that giving direct SCR access to courts will result in at least an additional 1.5 million database searches being conducted annually, with the possibility of up to 2 million database searches annually. Presently, the SCR conducts an annual average of 245,000 database checks⁴³.

The addition of 1.5 to 2 million searches to the existing workload of the SCR/CONNECTIONS databases is unmanageable with the SCR's current resources and system capabilities. However, it is worth examining the statistics. At the human level, it implies that roughly 30,375 database checks will be run each week by the courts alone. Alternatively, expressed another way, giving desktop SCR access to the courts will result in roughly 760 additional database checks per hour, for a normal 40-hour workweek.

B. Timing of Requests

A key issue in determining the impact of these additional database searches on the SCR is the issue of the timing of the entry of, and the responses to, the searches submitted by the courts. The addition of the court's searches to the existing SCR database searches and the increase in database searches by more than 600 percent could have significant negative effects upon other areas of New York's child welfare system. The reasons are set forth below.

All SCR database checks are carried out against the CONNECTIONS database. CONNECTIONS was designed to create a single, statewide, integrated system for the collection and recording of child protective, preventive, foster care, adoption, and independent living services information as well as information about foster parents and prospective adoptive parents. CONNECTIONS' primary task is to document information and casework activity concerning families and children for New York State's child welfare system. This statewide system of record for child welfare has approximately 22,000 users. Up to 5,000 users may be logged into the database simultaneously via either direct network connections or

⁴³ The SCR based its calculations upon statistics from the 2008 calendar year.

SSL-VPNs. Because of its centrality to the provision of services to, and the protection of, children and families, any challenges to CONNECTIONS' stability are extremely problematic. The increased usage caused by the courts conducting SCR database checks in relation to all custody and visitation orders would pose such a challenge. It would be complicated further by the timing issues associated with when the court requests are made and how quickly the SCR needs to respond to such requests.

As currently constructed, CONNECTIONS is incapable of accommodating the 1.5 million additional SCR database searches that OCA believes the courts would initiate if the searches were real-time SCR database searches and responses. Therefore, it would be necessary for the courts to prioritize their searches, so that only "emergency" searches were done on a real-time basis, and all other searches were deferred for 24 hours or longer and queued for overnight and/or "off-hour" processing.⁴⁴ The decision of the number of real-time response searches and deferred searches must strike a balance between speed, cost of system upgrades,⁴⁵ and potential risk to CONNECTIONS' stability. It is also necessary to note here that the courts might need an application analogous to the SCR's business continuity application, so that the submission of SCR database searches could continue during periods of CONNECTIONS downtime.⁴⁶

Based upon information OCA has gathered from the multiple registries review, roughly 20 percent of the courts' database searches would require immediate answers, and the other 80 percent could be performed on an overnight basis. Therefore, the courts have been conducting approximately 320,000 real-time searches per year, or roughly 1,280 real-time searches per day (based on the court system's 250-day average work year). Conducting these 320,000 real-time searches per year will cripple CONNECTIONS' current capabilities as the current CONNECTIONS system may be able to safely accommodate only an additional 10,000 annual real-time SCR database searches and responses, without significant hardware and other upgrades. This is only a miniscule portion of the anticipated searches. Even with some prudent investment in CONNECTIONS' infrastructure,⁴⁷ it would still not be possible to meet the courts' requirements for 320,000 real-time searches and responses.

C. Estimated Modifications Needed to the Existing SCR/CONNECTIONS Systems

As noted above, based on the roughly 1.5 million additional searches that OCA research suggests will be necessary, and the forecast of 1,280 additional real-time searches per day, the existing AIMS/IDS/CONNECTIONS/SCR database infrastructure would need to be upgraded to support the increased usage. Testing carried out as part of the process of gathering data for this Report indicated a significant potential performance impact upon the SCR's function, and upon CONNECTIONS. An analysis of the existing databases showed a degradation in

⁴⁴ For this Final Report, the estimate is a split of 20% of real-time searches versus 80% of queued searches.

⁴⁵ As the search burden increases, OCFS theoretically could meet the demand by procuring and deploying additional processor cores, memory, and disk space for the systems at a substantial cost as discussed in section VII below.

⁴⁶ See footnote 18 in section III(C) above.

⁴⁷ See section VII for preliminary cost estimates.

services and an increase in failures within ten minutes during an initial load test with as few as 400 additional concurrent users. Such problems are unavoidable without sweeping alterations and expensive modifications to the existing architecture.

Should the Legislature choose to move forward with this project, there are three areas of change to the SCR/CONNECTIONS systems that would be necessary to meet OCA's needs and limit the negative impact upon CONNECTIONS. First, a number of additional heavy-duty server computers would need to be purchased, configured, and deployed. Second, to facilitate the larger amount of real-time access and real-time searches on AIMS and the CONNECTIONS database, a mechanism would need to be created to queue search requests to run on a non-real-time basis, such as overnight, or at some later date selectable by the courts' users. Third, rather than continue to implement direct access, such as that used by the current version of AIMS, a simplified web-search style interface should be created for AIMS that would submit time-delayed queries through indirect means. These proposed changes would, as noted, require modifications to the existing AIMS and CONNECTIONS systems. Initial analysis suggests changes in the following areas:

- The AIMS system's infrastructure would need to be enhanced and would require additional hardware.
- The current AIMS system software would have to be enhanced to manage the over 600 percent increase in the number of search requests.
- The current AIMS system would have to be extensively modified for the queuing mechanisms. New functionality would require alternative paths and selection processing to be added to the application.
- The CONNECTIONS database infrastructure would require enhancements to the current environment and additional hardware to support the increased number of searches; there may also be a necessity for modification of the underlying application.
- The connectivity used by and between AIMS, IDS and CONNECTIONS would need upgrading, as would various as yet unquantifiable areas of computer hardware and connections, in addition to enhanced operations, maintenance and support activity from OFT and OCFS.

D. Alternate Solution to Using the Existing SCR/CONNECTIONS Systems

As previously discussed, conducting 1.5 million database searches on the existing AIMS/IDS/CONNECTIONS systems is theorized to place an enormous additional burden upon the courts because of the need for increased court personnel, training, and technical support, and a corresponding burden upon OCFS because of the need to upgrade OCFS' servers and operating systems. OCFS has investigated the design and creation of a new web-based search application that would act as an on-line clearance submission (OCS) system, with the thought that a properly designed OCS could include many timesaving and ease-of-use features.

After some internal analysis, OCFS has determined that a database search and decision mechanism that would return only the highest-likelihood individual is not possible. With the

limited amount of information that OCA will be providing to OCFS to perform database searches, OCFS is unable to provide certainty that a search subject is not known to the SCR unless there is an exact match. Any search performed under current AIMS system would return multiple likely matches to the subject of a report and require extensive training to understand the results provided.

VII. Initial Cost Estimates to Implement SCR Desktop Database Searches by the Courts

Two different models are identified below to potentially connect the SCR/CONNECTIONS databases to the courts. Either model was estimated to need to be able to accommodate at least 1.5 million additional SCR database searches, at a potential cost of \$96.9 million dollars.

A. Model 1: Access Provided Through the Current SCR/CONNECTIONS Systems

The first potential model considered by OCFS and OCA is to provide access to the courts through the current SCR/CONNECTIONS system. The annual costs necessary to operate Model 1 to process 1.5 million database searches is estimated to be \$72.9 million in technical, staffing and facility costs. The costs would increase to almost \$96.9 million if 2 million database searches were required. Initial costs of slightly more than \$1 million dollars would also be required.

This model would require OCFS to create duplicate computer hardware, operating system, and software installation to the SCR/CONNECTIONS system the SCR currently operates. The duplicate system would be dedicated solely to SCR searches for the courts. Similarly, OCA would need to create a facility whose sole purpose would be to conduct work similar to that of the SCR's workers, but essentially five times larger.⁴⁸

At this stage in the study, OCFS estimates that the costs of the computer hardware, operating system, and software upgrades initially theorized to be required for the courts to have access to SCR databases using the current SCR/CONNECTIONS system would most likely be allocated as follows.⁴⁹

⁴⁸ Because the existing SCR workers were not trained simultaneously, generating an estimate of the costs of providing 953 court personnel with ten business days' worth of training, at a ratio of one trainer to each fifteen workers, is beyond the scope of this Report. Similarly, estimates of the cost of establishing a facility approximately five times the size of the existing SCR were based upon calculated the ratio of the SCR's current yearly lease per employee. However, costs for each worker such as office equipment, connectivity and support, have not been established.

⁴⁹ These are estimates based on currently available NYS Office of General Services (OGS) contracts, contractor pricing, OFT pricing, and current availability within the OFT-managed collection of OCFS servers and applications. These estimates do not include any hardware or software costs that would be incurred by OCA for this deployment.

Upgrade of Existing AIMS System

Servers – ESX with VMware ⁵⁰ (2 at \$31,704 each)	\$63,408.00
Tivoli Licenses for new servers ⁵¹ (2 at \$2,456 each)	\$4,912.00
OS Licenses for new servers ⁵² (19 at \$450.20 each)	\$8,554.56
SAN Initial Cost ⁵³ (19 at \$962.10 each) · NOTE: This is an Annual Recurring Amount	\$18,279.90
SAN Backup Cost ⁵⁴ (19 at \$1,068.39 each) · NOTE: This is an Annual Recurring Amount	\$20,299.41
DC Support Cost ⁵⁵ (4.9/wu at \$24,772.92 each) · NOTE: This is an Annual Recurring Amount	\$121,387.31
SSL Certificates ⁵⁶ (7 two year VeriSign certificates at \$493.51 each)	\$3,454.57
ScaleOut Licenses ⁵⁷ (6 Enterprise state server licenses)	\$8,995.00
24x7 Support costs – OFT	TBD
First Year Costs	\$249,290.75
Annual Recurring AIMS Costs	\$159,966.62

⁵⁰ VMware is software that allows one computer to function as if it were several separate “virtual computers. The ESX version can be installed directly on servers without an operating system on the server such as Unix or Windows.

⁵¹ IBM’s Tivoli product is a remote computer resource and security management tool.

⁵² Each “virtual computer” will need an operating system license, as well as each new server.

⁵³ A SAN is a storage area network, which provides additional data storage for computers on the network.

⁵⁴ The SAN will require backup services to protect against data loss.

⁵⁵ These are data center costs allocated to OCFS by OFT.

⁵⁶ SSL certificates are used by computers and web services to identify each other as part of a security solution.

⁵⁷ The ScaleOut software tool is used to manage one of the types of storage area networks.

Upgrade of Existing Database

UNIX Server	\$520,000.00
Oracle · NOTE: This is an Annual Recurring Amount for Maintenance/Support and Licensing	\$60,000.00
OFT Maintenance · NOTE: This is an Annual Recurring Amount for Maintenance/Support and Licensing	\$80,000.00
IDS · NOTE: This is an Annual Recurring Amount for Maintenance/Support and Licensing	\$60,000.00
HP · NOTE: This is an Annual Recurring Amount for maintenance/support and licensing	\$40,000.00
Contract Staff to manage (1 FTE for 12 months) · NOTE: This is an Annual Recurring Amount	\$170,000.00
First Year Costs	\$930,000.00
Annual Recurring Database Costs	\$410,000.00

Staffing Costs – Maintenance

Maintenance · NOTE: This is an Annual Recurring Amount for maintenance	3 FTE annually =	\$450,000.00
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Network Access – SSLVPN and HSEN Accounts

SSLVPN Annual Costs	\$3.38/user/month =	\$30,420.00
HSEN Annual Costs	\$3.54/user/month =	\$31,860.00
<i>*Based on 750 users</i>	Total =	\$62,280.00

Total Costs

First Year Technical Costs	\$1,179,290.75
Annual Recurring Technical Costs	\$1,082,246.62

OCFS' initial analysis suggests that for the courts to staff a facility able to process 1.5 million SCR database searches in a timely manner, they would need approximately 955 additional staff as follows:

Process	Percent of Cases in Process	Additional FTE Needed to Process 1.5 million searches
Log and Batch Requests	100%	9
Data Enter into AIMS	100%	122
Send backs (16%)	16%	9
Potential Matches are Analyzed	100%	139.5
Generate "No Hit" Letter	25%	4.5
Second Level of Review	75%	366
Compile Case information and Generate "Hit Letter"	37.5%	183
Generate "No Hit" Letter after Second Level Review	12.5%	1.5

Additional FTEs Required⁵⁸	1.5 million Court Requests	2 million Court Requests
Grade 6	145	194
Grade 9	139	186
Grade 14	550	733
Grade 11 (Supervise 12 Gr 9)	12	15
Grade 18 (Supervise 7 Gr 14)	79	105
Grade 23 (Supervise 4 Gr 18)	20	26
Grade 27 (Supervise 4 Gr 23)	5	7
Chief of Operations	2	2
Director	2	2
Associate Commissioner	1	1
Total FTE	955⁵⁹	1271

⁵⁸ The process chart above identifies 834 employees in Grades 6, 9, and 14 who would perform the tasks to process the additional database checks. An additional 121 employees in Grades 11, 18, 23 and 27, and three executive level positions would be necessary to provide oversight of the 834 employees.

⁵⁹ This number [955] is proportionately higher than the 91 employees who were required to process 223,052 database checks in 2009. This is because a higher proportion of the data base checks in response to requests emanating from the courts do not contain the same level of address history and other demographic information, and require additional staff time to process. Thus, performing these estimated 1,500,000 data base checks would require the estimated 955 FTEs. In addition, database checks emanating from courts may require some of the processes associated with fair hearing rights.

Total Annual Recurring Costs

	1.5 million Court Requests	2 million Court Requests
Annual Recurring Staffing Costs	\$37,935,941	\$45,416,589
Annual Recurring Staff and Non-personal services Costs	\$5,690,391	\$7,562,488
Lease Costs	\$2,193,100	\$2,923,300
Fringe Benefits	\$19,552,184	\$25,984,710
Systems Connectivity Costs ⁶⁰	\$7,500,000	\$10,000,000
Annual Recurring Aims, Database and Technical Costs	\$1,082,246.62	\$1,082,246.62

Initial Costs	\$1,179,290.75	\$1,179,290.75
Total Annual Recurring Costs	\$72,871,617	\$96,887,087

As reflected above, OCFS estimates that the annual associated costs for these staff would be approximately \$73 million: \$44 million would be attributable to staff and non-personal services costs, an additional \$19.6 would be attributable to fringe benefits costs, lease costs of \$2 million, \$7.5 million would be attributable to connectivity costs and the cost for CONNECTIONS' access and security requirements and \$1 million in technical costs. The annual recurring costs would increase to \$96.9 million if the total number of searches needed was 2 million.

The costs for the equipment needed for the facility that would house the staff and the costs of providing necessary "help-desk" support and training to the staff have not been calculated.

⁶⁰ This estimate of the costs of CONNECTIONS upgrades to allow proper communication with CourtNet is based upon \$7,900 per FTE.

B. Model 2: Access Provided Through OCA’s Existing Web-based System⁶¹

The second potential model considered by OCFS and OCA would be to provide the courts access to the SCR/CONNECTIONS databases through a web-based enhancement to the AIMS system, whereby the courts would provide OCFS with a batch file consisting of the name and current address of the litigant. OCFS would then run an overnight search and return the raw data to OCA. OCA would then perform the search function as described in Section III(B). Since this would essentially require OCA to replicate the OCFS database search function, OCFS costs estimates for Model 1 above are used.⁶²

OCFS estimates that the costs of the systemic changes initially theorized to be required for a simplified web-based solution would most likely be allocated as follows:⁶³

Upgrade of Existing AIMS System

Servers – ESX with VMware (2 at \$31,704 each)	\$63,408.00
Tivoli Licenses for new servers (2 at \$2,456 each)	\$4,912.00
OS Licenses for new servers (19 at \$450.20 each)	\$8,553.80
SAN Initial Cost (19 at \$962.10 each) · NOTE: This is an Annual Recurring Amount	\$18,279.90
SAN Backup Cost (19 at \$1,068.39 each) · NOTE: This is an Annual Recurring Amount	\$20,299.41
DC Support Cost (4.9/wu at \$24,772.92 each) · NOTE: This is an Annual Recurring Amount	\$121,387.31
SSL Certificates (7 two year VeriSign certificates at \$493.51 each)	\$3,454.57
ScaleOut Licenses (6 Enterprise state server licenses)	\$8,995.00
24x7 Support costs – OFT	TBD
Total Cost - First Year	\$249,289.99
Total Annual Recurring Costs	\$159,966.62

⁶¹The mechanism for the transfer of data for “Model Two” as described in this Final report differs from the Model Two envisioned in the Interim Report.

⁶² The staffing estimates use OCFS Civil Service Grades. The OCA utilizes a different Grade and supervisory structure for its employees, however, for purposes of this Feasibility Study, the estimate provided by OCFS is a ballpark figure of the costs OCA would incur to perform the search function.

⁶³ These are estimates based on available OGS contracts, contractor pricing, and OFT pricing as well as the current availability upon the OFT-managed OCFS servers and applications. These estimates do not include any costs that would be incurred by OCA for this deployment.

Upgrade of Existing Database

UNIX Server	\$520,000.00
Oracle · NOTE: This is an Annual Recurring Amount for Maintenance/Support and Licensing	\$60,000.00
OFT Maintenance · NOTE: This is an Annual Recurring Amount for Maintenance/Support and Licensing	\$80,000.00
IDS · NOTE: This is an Annual Recurring Amount for Maintenance/Support and Licensing	\$60,000.00
HP · NOTE: This is an Annual Recurring Amount for maintenance/support and licensing	\$40,000.00
Contract Staff to manage (1 FTE for 12 months) · NOTE: This is an Annual Recurring Amount	\$170,000.00
Total Cost - First Year	\$930,000.00
Total Annual Recurring Costs	\$410,000.00

Staffing Costs – Development

*User Interface – for immediate verses queued response	8 FTE for 6 months =	\$600,000.00
*AIMS rework for queuing and new responses for OCA	7 FTE for 9 months =	\$787,500.00
**IDS – more robust web service and search mechanisms	2 FTE for 6 months =	\$200,004.00
*Integration and Deployment	6 FTE for 3 months =	\$225,000.00
<i>**Based on \$75/hour, 40 hours/week, 50 wks/yr = \$12,500/month</i>		
<i>**Based on \$100/hour, 40 hours/week, 50 wks/yr = \$16,667/month</i>		
	Total =	\$1,812,504.00

Staffing Costs – Maintenance

Maintenance · NOTE: This is an Annual Recurring Amount for maintenance	3 FTE annually =	\$450,000.00
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Network Access - SSLVPN and HSEN Accounts

SSLVPN Annual Costs	\$3.38/user/month =	\$30,420.00
HSEN Annual Costs	\$3.54/user/month =	\$31,860.00
<i>*Based on 750 users</i>	Total =	\$62,280.00

Total Costs

First Year Technical Costs	\$2,421,828.13
Annual Recurring Costs	\$1,082,246.62

As noted above, after further study, OCFS also estimates that OCA staffing costs to conduct searches using Model 2 will be substantially similar to those represented in Model 1. Although OCA would not need to perform certain data entry functions and generate notices that OCFS SCR employees perform, any costs saved in this area would likely be offset by the expected increase in time necessary to perform the analysis of potential matches.

Annual Recurring Staffing Costs	\$37,935,941	\$450,416,589
Annual Recurring Staff and Non-personal services Costs	\$5,690,391	\$7,562,488
Lease Costs	\$2,193,100	\$2,923,300
Fringe Benefits	\$19,552,184	\$25,984,3710
Systems Connectivity Costs	\$7,500,000	\$10,000,000
Annual Recurring Aims, Database and Technical Costs	\$1,082,246.62	\$1,082,246.62

Initial Costs	\$1,179,290.75	\$1,179,290.75
Total Annual Recurring Costs	\$72,871,616	\$96,887,087

As previously discussed, there also would be costs associated with providing “help desk” support to the court personnel in using the SCR databases. Because neither OCFS nor OCA has investigated the likely volume of help desk calls, this report will use the estimate ordinarily used by OFT for help desk services that ten percent of users ordinarily seek help in an average month. This would result in roughly 75 help desk calls per month by 750 OCA staff conducting SCR database searches, at an average annual cost preliminarily estimated at \$10,687 solely for the cost of the calls, without factoring in additional costs.⁶⁴

⁶⁴ Help desk support costs roughly \$25 per call. OCFS estimates there will be 427.5 help desk calls in the first fiscal year.

VIII. Estimated Time Necessary to Develop, Procure, and Deploy Desktop SCR Database Access for the Courts

Should the Legislature decide to move forward with this project, listed below is a snapshot of the processes that would need to be developed to deploy court access to the SCR database.

A. Deployment of Upgraded Server Infrastructure

If it were possible to procure the necessary new heavy-duty servers, database upgrades, software and operating system licenses from existing statewide contracts, then the deployment may only take roughly six months. If, however, it were necessary to procure the hardware, software and licenses through a Request for Proposals (RFP) process, then it could take as long as twelve to eighteen months. Neither of these timeframes includes the amount of time that would be allocated to testing the newly purchased system(s) and software before deploying it in a “production environment.”

B. Development of Expertise in “Translating” SCR Search Results

Once a specific search result has been created, determining if there is a possible match requires a level of analysis that goes well beyond a simple review of the list of potential matches returned by the SCR/CONNECTIONS systems. Therefore, for the courts to be able to make effective use of an SCR database search result requires some additional analytical expertise that would need to be taught to court personnel. A brief list of the challenges in interpreting search results includes:

- Verifying whether a search result is a match requires the worker to analyze cases and reports on the databases using a navigational path that is complex, cumbersome, and time consuming.
- Historical address information is needed to help rule in or out a potential match on the databases.
- Maiden and alias names need to be searched.
- Simply searching on the respondent, the petitioner, and the child is not sufficient to ensure a thorough search of the database. Household members need to be searched as some matches on the child or petitioner may only be found through additional searches on the other household members.

There are no clear rules on how to analyze the search results. Unfortunately, the process is idiosyncratic and proficiency comes with a combination of training and practice. Consequently, court personnel would require additional training and practical experience, and judges may also require training in the interpretation of the SCR database search results so that they will accurately assess the probative value of such searches.

IX. Statement of Findings, Conclusions and Recommendations

A. Findings

- If the Legislature requires the courts to consult the SCR/CONNECTIONS databases prior to issuing any order of custody or visitation, it would add at least 1.5 million and potentially up to 2 million new database searches to the SCR/CONNECTIONS database systems.
- Preliminary technological and staffing costs for these changes are estimated to range from \$72.9 million to \$96.9 million depending on the model used to provide access and the number of required searches. There also would be start-up costs of \$1 million dollars and additional costs that have not yet been fully determined.
- Adding 1.5 million court searches to the existing SCR database searches would increase database searches by six hundred percent, which is likely to create significant unintended negative effects upon the SCR/CONNECTIONS computer systems' ability to handle other critical child welfare functions.
- The SCR/CONNECTIONS databases are not currently capable of accommodating the estimated 1.5 million additional SCR database searches required in conjunction with all custody and visitation orders.
- Even if the courts prioritize their searches, so that only "emergency" and very high-priority searches would be done on a real-time basis, the demand for real-time searches is beyond the capacity of the SCR/CONNECTIONS databases.
- This additional strain on the SCR/CONNECTIONS databases could jeopardize the provision of services and protection of children.
- There are significant differences in the nature and quality of information regarding search subjects provided by OCA as compared to what information OCFS needs to conduct a thorough database check. These differences make it difficult to definitively conclude that an individual is known or unknown to the SCR unless a 100 percent match in name and address is obtained.
- Due to the large number of SCR reports in the existing database and the lack of unique identifiers for persons listed in such reports, verifying whether a party to a custody or visitation proceeding is the subject of a report of child abuse or maltreatment can be a time-consuming process, which could delay the timeliness of court orders in such proceedings with resulting negative impacts on the court process and the families and children involved.
- There are significant legal challenges that may result from the courts using SCR reports in custody and visitation proceedings, including:
 - The use of pre-1997 SCR database records by the courts would create a disproportionate risk of a negative impact on mothers seeking custody and visitation and pose a significant risk that both male and female non-perpetrating parents could be falsely identified as potential abusers.
 - The use of SCR reports that are *unfounded* or that are *indicated* at the some credible evidence level may violate parents' constitutional rights.

- Although the SCR is required to maintain the written intake report and its disposition, the SCR does not contain the entire file for a child abuse or maltreatment investigation. The investigative agency retains all records, reports, and other information it maintains on the *indicated* report.

B. Conclusions and Recommendations

OCFS draws the following Conclusions and Recommendations:

- It may be possible to connect court computers to the SCR databases to provide information concerning parties requesting orders of custody or visitation, however, there are significant fiscal, infrastructure, procedural, and statutory challenges to doing so.
- Through the search of the Article 10 child welfare court proceedings that the courts are already performing, the courts are obtaining information on allegations of abuse or maltreatment that meet higher evidentiary and relevancy standards than most reports present in the SCR database.
- In light of the findings described herein, OCFS concludes that court access to the SCR is not feasible at this time. OCFS does not recommend that the Legislature pursue court access to the SCR database at this time. Therefore, OCFS is not submitting legislation to provide for such access.

X. Appendices

Appendix A: Legislative Language Enacting the Study

LAWS OF NEW YORK, 2008

CHAPTER 595

AN ACT to amend the domestic relations law, the family court act, the executive law and the correction law, in relation to the issuance of orders of custody and visitation

Became a law September 25, 2008, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

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

Section 1. Subdivision 1 of section 240 of the domestic relations law is amended by adding a new paragraph (a-1) to read as follows:

(a-1)(1) Permanent, temporary or successive temporary orders of custody or visitation. Prior to the issuance of any permanent, temporary or successive temporary order of custody or visitation where more than one month has passed since the issuance of the previous temporary order, the court shall conduct a review of the following:

(i) related decisions in court proceedings initiated pursuant to article ten of the family court act; and
(ii) reports of the statewide computerized registry of orders of protection and warrants of arrest established and maintained pursuant to section two hundred twenty-one-a of the executive law, and reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law.

(2) Notifying counsel and issuing orders. Upon consideration of decisions pursuant to article ten of the family court act, and registry reports and notifying counsel involved in the proceeding, or in the event of a party appearing pro se, notifying such party of the results thereof, including any court appointed law guardian, the court may issue a temporary, successive temporary or final order of custody or visitation.

(3) Temporary emergency order. Notwithstanding any other provision of the law, upon emergency situations, to serve the best interest of the child, the court may issue a temporary emergency order for custody or visitation in the event that it is not possible to timely review decisions and reports on registries as required pursuant to items (i) and (ii) of subparagraph one of this paragraph.

(4) After issuing a temporary emergency order. After issuing a temporary emergency order of custody or visitation, the court shall conduct reviews of the decisions and reports on registries as required pursuant to items (i) and (ii) of subparagraph one of this paragraph within twenty-four hours of the issuance of such temporary emergency order. Upon reviewing decisions and reports the court shall notify associated counsel pursuant to subparagraph two of this paragraph and may issue temporary or permanent custody or visitation orders.

(5) Feasibility study. The commissioner of the office of children and family services, in conjunction with the office of court administration, is hereby authorized and directed to examine, study, evaluate and make recommendations concerning the feasibility of the utilization of computers in courts which are connected to the statewide central register of child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social services law, as a means of providing courts with information regarding parties requesting orders of custody or visitation. Such commissioner shall make a preliminary report to the governor and the legislature of findings, conclusions and recommendations not later than January first, two thousand nine, and a

final report of findings, conclusions and recommendations not later than June first, two thousand nine, and shall submit with the reports such legislative proposals as are deemed necessary to implement the commissioner's recommendations.

§ 2. Section 651 of the family court act is amended by adding a new subdivision (e) to read as follows:

(e) 1. Permanent, temporary or successive temporary orders of custody or visitation. Prior to the issuance of any permanent, temporary or successive temporary order of custody or visitation where more than one month has passed since the issuance of the previous temporary order, the court shall conduct a review of the following:

(i) related decisions in court proceedings initiated pursuant to article ten of this act; and

(ii) reports of the statewide computerized registry of orders of protection and warrants of arrest established and maintained pursuant to section two hundred twenty-one-a of the executive law, and reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law.

2. Notifying counsel and issuing orders. Upon consideration of decisions pursuant to article ten of this act, and registry reports and notifying counsel involved in the proceeding, or in the event of a party appearing pro se, notifying such party of the results thereof, including any court appointed law guardian, the court may issue a temporary, successive temporary or final order of custody or visitation.

3. Temporary emergency order. Notwithstanding any other provision of the law, upon emergency situations, to serve the best interest of the child, the court may issue a temporary emergency order for custody or visitation in the event that it is not possible to timely review decisions and reports on registries as required pursuant to subparagraphs (i) and (ii) of paragraph one of this subdivision.

4. After issuing a temporary emergency order. After issuing a temporary emergency order of custody or visitation, the court shall conduct reviews of the decisions and reports on registries as required pursuant to subparagraphs (i) and (ii) of paragraph one of this subdivision within twenty-four hours of the issuance of such temporary emergency order.

Upon reviewing decisions and reports the court shall notify associated counsel pursuant to paragraph two of this subdivision and may issue temporary or permanent custody or visitation orders.

5. Feasibility study. The commissioner of the office of children and family services, in conjunction with the office of court administration, is hereby authorized and directed to examine, study, evaluate and make recommendations concerning the feasibility of the utilization of computers in family courts which are connected to the statewide central register of child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social services law, as a means of providing family courts with information regarding parties requesting orders of custody or visitation. Such commissioner shall make a preliminary report to the governor and the legislature of findings, conclusions and recommendations not later than January thirty-first, two thousand nine, and a final report of findings, conclusions and recommendations not later than June first, two thousand nine, and shall submit with the reports such legislative proposals as are deemed necessary to implement the commissioner's recommendations.

§ 3. Subdivision 6 of section 221-a of the executive law, as amended by chapter 107 of the laws of 2004, is amended to read as follows:

6. The superintendent shall establish procedures for the prompt removal of orders of protection and special orders of conditions from the active files of the registry upon their expiration. The superintendent shall establish procedures for prompt disclosure of such orders and warrants consistent with the purposes of paragraph (a-1) of subdivision one of section two hundred forty of the domestic relations law and subdivision (e) of section six hundred fifty-one of the family court act.

§ 4. Paragraph b of subdivision 2 of section 168-b of the correction law, as added by chapter 645 of the laws of 2005, is amended to read as follows:

b. The division shall also make registry information available to: (i) the department of health, to enable such department to identify persons ineligible to receive reimbursement or coverage for drugs, procedures or supplies pursuant to subdivision seven of section twenty-five hundred ten of the public health law, paragraph (e) of subdivision four of section three hundred sixty-five-a of the social services law, paragraph (e-1) of subdivision one of section three hundred sixty-nine-ee of the social services law, and subdivision one of section two hundred forty-one of the elder law; ~~and~~ (ii) the department of insurance to enable such department to identify persons ineligible to receive reimbursement or coverage for drugs, procedures or supplies pursuant to ~~[subdivision]~~ subsection (b-1) of section four thousand three hundred twenty-two and ~~[subdivision]~~ subsection (d-1) of section four thousand three hundred twenty-six of the insurance law; and (iii) a court, to enable the court to promptly comply with the provisions of paragraph (a-1) of subdivision one of section two hundred forty of the domestic relations law and subdivision (e) of section six hundred fifty-one of the family court act.

§ 5. This act shall take effect on the one hundred twentieth day after it shall have become a law, and shall apply to orders of custody and visitation issued on or after such date. Effective immediately the office of court administration may promulgate any rules or regulations necessary for the timely implementation of this act on its effective date.

The Legislature of the STATE OF NEW YORK ss:

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

DEAN G. SKELOS
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

LAWS OF NEW YORK, 2009

CHAPTER 295

AN ACT to amend the domestic relations law and the family court act, in relation to review of reports of the statewide computerized registry of orders of protection and warrants of arrest prior to issuing an order of custody or visitation

Became a law August 11, 2009, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

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

Section 1. Paragraph (a-1) of subdivision 1 of section 240 of the domestic relations law, as added by chapter 595 of the laws of 2008, is amended to read as follows:

(a-1)(1) Permanent~~[, temporary or successive]~~ and initial temporary orders of custody or visitation. Prior to the issuance of any permanent~~[, temporary]~~ or ~~[successive]~~ initial temporary order of custody or visitation ~~[where more than one month has passed since the issuance of the previous temporary order]~~, the court shall conduct a review of the decisions and reports listed in subparagraph three of this paragraph.

(2) Successive temporary orders of custody or visitation. Prior to the issuance of any successive temporary order of custody or visitation, the court shall conduct a review of the decisions and reports listed in

subparagraph three of this paragraph, unless such a review has been conducted within ninety days prior to the issuance of such order.

(3) Decisions and reports for review. The court shall conduct a review of the following:

(i) related decisions in court proceedings initiated pursuant to article ten of the family court act, and all warrants issued under the family court act; and

(ii) reports of the statewide computerized registry of orders of protection [~~and warrants of arrest~~] established and maintained pursuant to section two hundred twenty-one-a of the executive law, and reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law.

~~[-2]~~ (4) Notifying counsel and issuing orders. Upon consideration of decisions pursuant to article ten of the family court act, and registry reports and notifying counsel involved in the proceeding, or in the event of a self-represented party [~~appearing pro se~~], notifying such party of the results thereof, including any court appointed [~~law guardian~~] attorney for children, the court may issue a temporary, successive temporary or final order of custody or visitation.

~~[-3]~~ (5) Temporary emergency order. Notwithstanding any other provision of the law, upon emergency situations, including computer malfunctions, to serve the best interest of the child, the court may issue a temporary emergency order for custody or visitation in the event that it is not possible to timely review decisions and reports on registries as required pursuant to [~~items (i) and (ii) of~~] subparagraph [~~one~~] three of this paragraph.

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

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~~[-4]~~ (6) After issuing a temporary emergency order. After issuing a temporary emergency order of custody or visitation, the court shall conduct reviews of the decisions and reports on registries as required pursuant to [~~items (i) and (ii) of~~] subparagraph [~~one~~] three of this paragraph within twenty-four hours of the issuance of such temporary emergency order. Should such twenty-four hour period fall on a day when court is not in session, then the required reviews shall take place the next day the court is in session. Upon reviewing decisions and reports the court shall notify associated counsel, self-represented parties and attorneys for children pursuant to subparagraph [~~two~~] four of this paragraph and may issue temporary or permanent custody or visitation orders.

~~[-5]~~ (7) Feasibility study. The commissioner of the office of children and family services, in conjunction with the office of court administration, is hereby authorized and directed to examine, study, evaluate and make recommendations concerning the feasibility of the utilization of computers in courts which are connected to the statewide central register of child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social services law, as a means of providing courts with information regarding parties requesting orders of custody or visitation. Such commissioner shall make a preliminary report to the governor and the legislature of findings, conclusions and recommendations not later than January first, two thousand nine, and a final report of findings, conclusions and recommendations not later than June first, two thousand nine, and shall submit with the reports such legislative proposals as are deemed necessary to implement the commissioner's recommendations.

§ 2. Subdivision (e) of section 651 of the family court act, as added by chapter 595 of the laws of 2008, is amended to read as follows:

(e) 1. Permanent~~[, temporary or successive]~~ **and initial** temporary orders of custody or visitation. Prior to the issuance of any permanent~~[, temporary]~~ or ~~[successive]~~ **initial** temporary order of custody or visitation ~~[where more than one month has passed since the issuance of the previous temporary order]~~, the court shall conduct a review of **the decisions and reports listed in paragraph three of this subdivision.**

2. Successive temporary orders of custody or visitation. Prior to the issuance of any successive temporary order of custody or visitation, the court shall conduct a review of the decisions and reports listed in paragraph three of this subdivision, unless such a review has been conducted within ninety days prior to the issuance of such order.

3. Decisions and reports for review. The court shall conduct a review of the following:

(i) related decisions in court proceedings initiated pursuant to article ten of this act, **and all warrants issued under this act;** and

(ii) reports of the statewide computerized registry of orders of protection ~~[and warrants of arrest]~~ established and maintained pursuant to section two hundred twenty-one-a of the executive law, and reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law.

~~[2-]~~ **4. Notifying counsel and issuing orders.** Upon consideration of decisions pursuant to article ten of this act, and registry reports and notifying counsel involved in the proceeding, or in the event of a **self-represented** party ~~[appearing pro se]~~, notifying such party of the results thereof, including any court appointed ~~[law guardian]~~ **attorney for children,** the court may issue a temporary, successive temporary or final order of custody or visitation.

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~~[3-]~~ **5. Temporary emergency order.** Notwithstanding any other provision of the law, upon emergency situations, **including computer malfunctions,** to serve the best interest of the child, the court may issue a temporary emergency order for custody or visitation in the event that it is not possible to timely review decisions and reports on registries as required pursuant to ~~[subparagraphs (i) and (ii) of]~~ paragraph ~~[one]~~ **three** of this subdivision.

~~[4-]~~ **6. After issuing a temporary emergency order.** After issuing a temporary emergency order of custody or visitation, the court shall conduct reviews of the decisions and reports on registries as required pursuant to ~~[subparagraphs (i) and (ii) of]~~ paragraph ~~[one]~~ **three** of this subdivision within twenty-four hours of the issuance of such temporary emergency order. **Should such twenty-four hour period fall on a day when court is not in session, then the required reviews shall take place the next day the court is in session.** Upon reviewing decisions and reports the court shall notify associated counsel, **self-represented parties and attorneys for children** pursuant to paragraph ~~[two]~~ **four** of this subdivision and may issue temporary or permanent custody or visitation orders.

~~[5-]~~ **7. Feasibility study.** The commissioner of the office of children and family services, in conjunction with the office of court administration, is hereby authorized and directed to examine, study, evaluate and make recommendations concerning the feasibility of the utilization of computers in family courts which are connected to the statewide central register of child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social

services law, as a means of providing family courts with information regarding parties requesting orders of custody or visitation. Such commissioner shall make a preliminary report to the governor and the legislature of findings, conclusions and recommendations not later than January thirty-first, two thousand nine, and a final report of findings, conclusions and recommendations not later than June first, two thousand nine, and shall submit with the reports such legislative proposals as are deemed necessary to implement the commissioner's recommendations.

§ 3. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK **ss:**

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

MALCOLM A. SMITH
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

Appendix B: Statutory Basis of the SCR

§ 422. Statewide central register of child abuse and maltreatment

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

2. (a) The central register shall be capable of receiving telephone calls alleging child abuse or maltreatment and of immediately identifying prior reports of child abuse or maltreatment and capable of monitoring the provision of child protective service twenty-four hours a day, seven days a week. To effectuate this purpose, but subject to the provisions of the appropriate local plan for the provision of child protective services, there shall be a single statewide telephone number that all persons, whether mandated by the law or not, may use to make telephone calls alleging child abuse or maltreatment and that all persons so authorized by this title may use for determining the existence of prior reports in order to evaluate the condition or circumstances of a child. In addition to the single statewide telephone number, there shall be a special unlisted express telephone number and a telephone facsimile number for use only by persons mandated by law to make telephone calls, or to transmit telephone facsimile information on a form provided by the commissioner, alleging child abuse or maltreatment, and for use by all persons so authorized by this title for determining the existence of prior reports in order to evaluate the condition or circumstances of a child. When any allegations contained in such telephone calls could reasonably constitute a report of child abuse or maltreatment, such allegations shall be immediately transmitted orally or electronically by the department to the appropriate local child protective service for investigation. The inability of the person calling the register to identify the alleged perpetrator shall, in no circumstance, constitute the sole cause for the register to reject such allegation or fail to transmit such allegation for investigation. If the records indicate a previous report concerning a subject of the report, the child alleged to be abused or maltreated, a sibling, other children in the household, other persons named in the report or other pertinent information, the appropriate local child protective service shall be immediately notified of the fact, except as provided in subdivision eleven of this section. If the report involves either (i) suspected physical injury as described in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act or sexual abuse of a child or the death of a child or (ii) suspected maltreatment which alleges any physical harm when the report is made by a person required to report pursuant to section four hundred thirteen of this title within six months of any other two reports that were *indicated*, or may still be pending, involving the same child, sibling, or other children in the household or the subject of the report, the department shall identify the report as such and note any prior reports when transmitting the report to the local child protective services for investigation.

(b) Any telephone call made by a person required to report cases of suspected child abuse or maltreatment pursuant to section four hundred thirteen of this chapter containing allegations, which if true would constitute child abuse or maltreatment shall constitute a report and shall be immediately transmitted orally or electronically by the department to the appropriate local child protective service for investigation.

(c) Whenever a telephone call to the statewide central register described in this section is received by the department, and the department finds that the person allegedly responsible for abuse or maltreatment of a child cannot be a subject of a report as defined in subdivision four of section four hundred twelve of this chapter, but believes that the alleged acts or circumstances against a child described in the telephone call may constitute a crime or an immediate threat to the child's health or safety, the department shall convey by the most expedient means available the information contained in such telephone call to the appropriate law enforcement agency, district attorney or other public official empowered to provide necessary aid or assistance.

(d) A telephone call made to the statewide central register described in this section alleging facts that support a finding of the institutional neglect of a child in residential care pursuant to subdivision ten of section four hundred twelve of this article and that, if true, clearly could not support a finding that the child is an abused or neglected child in residential care, shall not constitute a report, and shall immediately be transmitted to the state agency responsible for the operation or supervision of the residential facility or program and, in the case of a facility operated or certified by an office of the state department of mental hygiene, to the state commission on quality of care for the mentally disabled, for appropriate action.

3. The central register shall include but not be limited to the following information: all the information in the written report; a record of the final disposition of the report, including services offered and services accepted; the plan for rehabilitative treatment; the names and identifying data, dates and circumstances of any person requesting or receiving information from the register; and any other information which the commissioner believes might be helpful in the furtherance of the purposes of this chapter.

4. (A) Reports made pursuant to this title as well as any other information obtained, reports written or photographs taken concerning such reports in the possession of the department, local departments, or the commission on quality of care for the mentally disabled, shall be confidential and shall only be made available to:

(a) a physician who has before him or her a child whom he or she reasonably suspects may be abused or maltreated;

(b) a person authorized to place a child in protective custody when such person has before him or her a child whom he or she reasonably suspects may be abused or maltreated and such person requires the information in the record to determine whether to place the child in protective custody;

(c) a duly authorized agency having the responsibility for the care or supervision of a child who is reported to the central register of abuse and maltreatment;

(d) any person who is the subject of the report or other persons named in the report;

(e) a court, upon a finding that the information in the record is necessary for the determination of an issue before the court;

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

(g) any appropriate state legislative committee responsible for child protective legislation;

(h) any person engaged in a bona fide research purpose provided, however, that no information identifying the subjects of the report or other persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and the department gives prior approval;

(i) a provider agency as defined by subdivision three of section four hundred twenty-four-a of this chapter, or a licensing agency as defined by subdivision four of section four hundred twenty-four-a of this chapter, subject to the provisions of such section;

(j) the state commission on quality of care for the mentally disabled in connection with an investigation being conducted by the commission pursuant to article forty-five of the mental hygiene law;

(k) a probation service conducting an investigation pursuant to article three or seven or section six hundred fifty-three of the family court act where there is reason to suspect the child or the child's sibling may have been abused or maltreated and such child or sibling, parent, guardian or other person legally responsible for the child is a person named in an *indicated* report of child abuse or maltreatment and that such information is necessary for the making of a determination or recommendation to the court; or a probation service regarding a person about whom it is conducting an investigation pursuant to article three hundred ninety of the criminal procedure law, or a probation service or the state division of parole regarding a person to whom the service or division is providing supervision pursuant to article sixty of the penal law or section two hundred fifty-nine-a of the executive law, where the subject of investigation or supervision has been convicted of a felony under article one hundred twenty, one hundred twenty-five or one hundred thirty-five of the penal law or any felony or misdemeanor under article one hundred thirty, two hundred thirty-five, two hundred forty-five, two hundred sixty or two hundred sixty-three of the penal law, or has been indicted for any such felony and, as a result, has been convicted of a crime under the penal law, where the service or division requests the information upon a certification that such information is necessary to conduct its investigation, that there is reasonable cause to believe that the subject of an investigation is the subject of an *indicated* report and that there is reasonable cause to believe that such records are necessary to the investigation by the probation service or the state division of parole, provided, however, that only *indicated* reports shall be furnished pursuant to this subdivision;

(l) a district attorney, an assistant district attorney or investigator employed in the office of a district attorney, a sworn officer of the division of state police, of the regional state park police, of a city police department, or of a county, town or village police department or county sheriff's office or department when such official requests such information stating that such information is necessary to conduct a criminal investigation or criminal prosecution of a person, that there is reasonable cause to believe that such person is the subject of a report, and that it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such person is the subject of a report, and that it is reasonable to believe that due to that nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution;

(m) the New York city department of investigation provided however, that no information identifying the subjects of the report or other persons named in the report shall be made available to the department of investigation unless such

information is essential to an investigation within the legal authority of the department of investigation and the state department of social services gives prior approval;

(n) chief executive officers of authorized agencies, directors of day care centers and directors of facilities operated or supervised by the department of education, the division for youth, the office of mental health or the office of mental retardation and developmental disabilities, in connection with a disciplinary investigation, action, or administrative or judicial proceeding instituted by any of such officers or directors against an employee of any such agency, center or facility who is the subject of an *indicated* report when the incident of abuse or maltreatment contained in the report occurred in the agency, center, facility or program, and the purpose of such proceeding is to determine whether the employee should be retained or discharged; provided, however, a person given access to information pursuant to this subparagraph (n) shall, notwithstanding any inconsistent provision of law, be authorized to redisclose such information only if the purpose of such redisclosure is to initiate or present evidence in a disciplinary, administrative or judicial proceeding concerning the continued employment or the terms of employment of an employee of such agency, center or facility who has been named as a subject of an *indicated* report and, in addition, a person or agency given access to information pursuant to this subparagraph (n) shall also be given information not otherwise provided concerning the subject of an *indicated* report where the commission of an act or acts by such subject has been determined in proceedings pursuant to article ten of the family court act to constitute abuse or neglect;

(o) a provider or coordinator of services to which a child protective service or social services district has referred a child or a child's family or to whom the child or the child's family have referred themselves at the request of the child protective service or social services district, where said child is reported to the register when the records, reports or other information are necessary to enable the provider or coordinator to establish and implement a plan of service for the child or the child's family, or to monitor the provision and coordination of services and the circumstances of the child and the child's family, or to directly provide services; provided, however, that a provider of services may include appropriate health care or school district personnel, as such terms shall be defined by the department; provided however, a provider or coordinator of services given access to information concerning a child pursuant to this subparagraph (o) shall, notwithstanding any inconsistent provision of law, be authorized to redisclose such information to other persons or agencies which also provide services to the child or the child's family only if the consolidated services plan prepared and approved pursuant to section thirty-four-a of this chapter describes the agreement that has been or will be reached between the provider or coordinator of service and the local district. An agreement entered into pursuant to this subparagraph shall include the specific agencies and categories of individuals to whom redisclosure by the provider or coordinator of services is authorized. Persons or agencies given access to information pursuant to this subparagraph may exchange such information in order to facilitate the provision or coordination of services to the child or the child's family;

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

(q) a criminal justice agency conducting an investigation of a missing child where there is reason to suspect such child or such child's sibling, parent, guardian or other person legally responsible for such child is a person named in an *indicated* report of child abuse or maltreatment and that such information is needed to further such investigation;

(r) in relation to a report involving a child in residential care, the director or operator of the residential facility or program and, as appropriate, the local social services commissioner or school district placing the child, the division for youth, the department of education, the commission on quality of care for the mentally disabled, the office of mental health, the office of mental retardation and developmental disabilities, and any law guardian appointed to represent the child whose appointment has been continued by a family court judge during the term of the placement, subject to the limitations contained in subdivisions nine and ten of this section and subdivision five of section four hundred twenty-four-c of this title;

(s) a child protective service of another state when such service certifies that the records and reports are necessary in order to conduct a child abuse or maltreatment investigation within its jurisdiction of the subject of the report and shall be used only for purposes of conducting such investigation and will not be redisclosed to any other person or agency;

(t) a law guardian, appointed pursuant to the provisions of section ten hundred sixteen of the family court act, at any time such appointment is in effect, in relation to any report in which the respondent in the proceeding in which the law guardian has been appointed is the subject or another person named in the report, pursuant to sections ten hundred thirty-nine-a and ten hundred fifty-two-a of the family court act;

(u) a child care resource and referral program subject to the provisions of subdivision six of section four hundred twenty-four-a of this title;

(v)(i) 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 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 and that appropriate controls and prohibitions are imposed on the dissemination of client-identifiable information contained 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 office of children and family services. The office of children and family services 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 subparagraph shall be construed as limiting the powers of such comptroller or officer to access records which he or she is otherwise authorized to audit or obtain under any other applicable provision of law. Any person given access to information pursuant to this subparagraph who releases data or information to persons or agencies not authorized to receive such information shall be guilty of a class A misdemeanor;

(w) members of a local or regional fatality review team approved by the office of children and family services in accordance with section four hundred twenty-two-b of this title;

(x) members of a local or regional multidisciplinary investigative team as established pursuant to subdivision six of section four hundred twenty-three of this title;

(y) members of a citizen review panel as established pursuant to section three hundred seventy-one-b of this article; provided, however, members of a citizen review panel shall not disclose to any person or government official any identifying information which the panel has been provided and shall not make public other information unless otherwise authorized by statute; and

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

After a child, other than a child in residential care, who is reported to the central register of abuse or maltreatment reaches the age of eighteen years, access to a child's record under subparagraphs (a) and (b) of this paragraph shall be permitted only if a sibling or off-spring of such child is before such person and is a suspected victim of child abuse or maltreatment. In addition, a person or official required to make a report of suspected child abuse or maltreatment pursuant to section four hundred thirteen of this chapter shall receive, upon request, the findings of an investigation made pursuant to this title or section 45.07 of the mental hygiene law. However, no information may be released unless the person or official's identity is confirmed by the department. If the request for such information is made prior to the completion of an investigation of a report, the released information shall be limited to whether the report is "*indicated*", "*unfounded*" or "*under investigation*", whichever the case may be. If the request for such information is made after the completion of an investigation of a report, the released information shall be limited to whether the report is "*indicated*" or "*unfounded*", whichever the case may be. A person given access to the names or other information identifying the subjects of the report, or other persons named in the report, except the subject of the report or other persons named in the report, shall not divulge or make public such identifying information unless he or she is a district attorney or other law enforcement official and the purpose is to initiate court action or the disclosure is necessary in connection with the investigation or prosecution of the subject of the report for a crime alleged to have been committed by the subject against another person named in the report. Nothing in this section shall be construed to permit any release, disclosure or identification of the names or identifying descriptions of persons who have reported suspected child abuse or maltreatment to the statewide central register or the agency, institution, organization, program or other entity where such persons are employed or the agency, institution, organization or program with which they are associated without such persons' written permission except to persons, officials, and agencies enumerated in subparagraphs (e), (f), (h), (j), (l), (m) and (v) of this paragraph.

To the extent that persons or agencies are given access to information pursuant to subparagraphs (a), (b), (c), (j), (k), (l), (m), (o) and (q) of this paragraph, such persons or agencies may give and receive such information to each other in order to facilitate an investigation conducted by such persons or agencies.

(B) Notwithstanding any inconsistent provision of law to the contrary, a city or county social services commissioner may withhold, in whole or in part, the release of any information which he or she is authorized to make available to persons or agencies identified in subparagraphs (a), (k), (l), (m), (n), (o), (p) and (q) of paragraph (A) of this subdivision if such commissioner determines that such information is not related to the purposes for which such information is requested or when such disclosure will be detrimental to the child named in the report.

(C) A city or county social services commissioner who denies access by persons or agencies identified in subparagraphs (a), (k), (l), (m), (n), (o), (p) and (q) of paragraph (A) of this subdivision to records, reports or other information or parts thereof maintained by such commissioner in accordance with this title shall, within ten days from the date of receipt of the request fully explain in writing to the person requesting the records, reports or other information the reasons for the denial.

(D) A person or agency identified in subparagraphs (a), (k), (l), (m), (n), (o), (p) and (q) of paragraph (A) of this subdivision who is denied access to records, reports or other information or parts thereof maintained by a local department pursuant to this title may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules.

5. (a) Unless an investigation of a report conducted pursuant to this title or subdivision (c) of section 45.07 of the mental hygiene law determines that there is some credible evidence of the alleged abuse or maltreatment, all information identifying the subjects of the report and other persons named in the report shall be legally sealed forthwith by the central register and any local child protective services or the state agency which investigated the report. Such *unfounded* reports may only be unsealed and made available:

- (i) to the office of children and family services for the purpose of supervising a social services district;
- (ii) to the office of children and family services and local or regional fatality review team members for the purpose of preparing a fatality report pursuant to section twenty or four hundred twenty-two-b of this chapter;
- (iii) to a local child protective service, the office of children and family services, all members of a local or regional multidisciplinary investigative team, the commission on quality of care for the mentally disabled, or the department of mental hygiene, when investigating a subsequent report of suspected abuse or maltreatment involving a subject of the *unfounded* report, a child named in the *unfounded* report, or a child's sibling named in the *unfounded* report;
- (iv) to the subject of the report; and
- (v) to a district attorney, an assistant district attorney, an investigator employed in the office of a district attorney, or to a sworn officer of the division of state police, of a city, county, town or village police department or of a county sheriff's office when such official verifies that the report is necessary to conduct an active investigation or prosecution of a violation of subdivision three of section 240.55 of the penal law.

(b) Persons given access to *unfounded* reports pursuant to subparagraph (v) of paragraph (a) of this subdivision shall not redisclose such reports except as necessary to conduct such appropriate investigation or prosecution and shall request of the court that any copies of such reports produced in any court proceeding be redacted to remove the names of the subjects and other persons named in the reports or that the court issue an order protecting the names of the subjects and other persons named in the reports from public disclosure. The local child protective service or state agency shall not indicate the subsequent report solely based upon the existence of the prior *unfounded* report or reports. Notwithstanding section four hundred fifteen of this title, section one thousand forty-six of the family court act, or, except as set forth herein, any other provision of law to the contrary, an *unfounded* report shall not be admissible in any judicial or administrative proceeding or action; provided, however, an *unfounded* report may be introduced into evidence: (i) by the subject of the report where such subject is a respondent in a proceeding under article ten of the family court act or is a plaintiff or petitioner in a civil action or proceeding alleging the false reporting of child abuse or maltreatment; or (ii) in a criminal court for the purpose of prosecuting a violation of subdivision three of section 240.55 of the penal law. Legally sealed *unfounded* reports shall be expunged ten years after the receipt of the report. Whenever the office of children and family services determines that there is some credible evidence of abuse or maltreatment as a result of an investigation of a report conducted pursuant to subdivision (c) of section 45.07 of the mental hygiene law, the office of children and family services shall notify the commission on quality of care for the mentally disabled.

(c) Notwithstanding any other provision of law, the office of children and family services may, in its discretion, grant a request to expunge an *unfounded* report where: (i) the source of the report was convicted of a violation of subdivision three of section 240.55 of the penal law in regard to such report; or (ii) the subject of the report presents clear and convincing evidence that affirmatively refutes the allegation of abuse or maltreatment; provided however, that the absence of credible evidence supporting the allegation of abuse or maltreatment shall not be the sole basis to

expunge the report. Nothing in this paragraph shall require the office of children and family services to hold an administrative hearing in deciding whether to expunge a report. Such office shall make its determination upon reviewing the written evidence submitted by the subject of the report and any records or information obtained from the state or local agency which investigated the allegations of abuse or maltreatment.

5-a. [Expires and deemed repealed June 1, 2011, pursuant to L.2007, c. 452, § 3.] Upon notification from a local social services district, that a report is part of the family assessment and services track pursuant to subparagraph (i) of paragraph (c) of subdivision four of section four hundred twenty-seven-a of this title, the central register shall forthwith identify the report as an assessment track case and legally seal such report.

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

7. At any time, a subject of a report and other persons named in the report may receive, upon request, a copy of all information contained in the central register; provided, however, that the commissioner is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation or the agency, institution, organization, program or other entity where such person is employed or with which he is associated, which he reasonably finds will be detrimental to the safety or interests of such person.

8. (a)(i) At any time subsequent to the completion of the investigation but in no event later than ninety days after the subject of the report is notified that the report is *indicated* the subject may request the commissioner to amend the record of the report. If the commissioner does not amend the report in accordance with such request within ninety days of receiving the request, the subject shall have the right to a fair hearing, held in accordance with paragraph (b) of this subdivision, to determine whether the record of the report in the central register should be amended on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this title.

(ii) Upon receipt of a request to amend the record of a child abuse and maltreatment report the department shall immediately send a written request to the child protective service or the state agency which was responsible for investigating the allegations of abuse or maltreatment for all records, reports and other information maintained by the service or state agency pertaining to such *indicated* report. The service or state agency shall as expeditiously as possible but within no more than twenty working days of receiving such request, forward all records, reports and other information it maintains on such *indicated* report to the department. The department shall as expeditiously as possible but within no more than fifteen working days of receiving such materials from the child protective service or state agency, review all such materials in its possession concerning the *indicated* report and determine, after affording such service or state agency a reasonable opportunity to present its views, whether there is some credible evidence to find that the subject committed the act or acts of child abuse or maltreatment giving rise to the *indicated* report and whether, based on guidelines developed by the department pursuant to subdivision five of section four hundred twenty-four-a of this title, such act or acts could be relevant and reasonably related to employment of the subject of the report by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject of the report being allowed to have regular and substantial contact with children who are cared for by a provider agency, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject of the report to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title.

(iii) If it is determined at the review held pursuant to this paragraph (a) that there is no credible evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the department shall amend the record to indicate that the report is "*unfounded*" and notify the subject forthwith.

(iv) If it is determined at the review held pursuant to this paragraph (a) that there is some credible evidence in the record to find that the subject committed such act or acts but that such act or acts could not be relevant and reasonably related to the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or disapproval of an application which could be submitted by the subject to a licensing agency, the department shall be precluded from informing a provider or licensing agency which makes an inquiry to the department pursuant to the provisions of section four hundred twenty-four-a of this title concerning the subject that the person about whom the inquiry is made is the subject of an *indicated* report of child abuse or maltreatment. The department shall notify forthwith the subject of the report of such determinations and that a fair hearing has been scheduled pursuant to paragraph (b) of this subdivision. The sole issue at such hearing shall be whether the subject has been shown by some credible evidence to have committed the act or acts of child abuse or maltreatment giving rise to the *indicated* report.

(v) If it is determined at the review held pursuant to this paragraph (a) that there is some credible evidence in the record to prove that the subject committed an act or acts of child abuse or maltreatment and that such act or acts could be relevant and reasonably related to the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children cared for by a provider agency or the approval or disapproval of an application which could be submitted by the subject to a licensing agency, the department shall notify forthwith the subject of the report of such determinations and that a fair hearing has been scheduled pursuant to paragraph (b) of this subdivision.

(b)(i) If the department, within ninety days of receiving a request from the subject that the record of a report be amended, does not amend the record in accordance with such request, the department shall schedule a fair hearing and shall provide notice of the scheduled hearing date to the subject, the statewide central register and, as appropriate, to the child protective service or the state agency which investigated the report.

(ii) The burden of proof in such a hearing shall be on the child protective service or the state agency which investigated the report, as the case may be. In such a hearing, the fact that there is a family court finding of abuse or neglect against the subject in regard to an allegation contained in the report shall create an irrebuttable presumption that said allegation is substantiated by some credible evidence.

(c)(i) If it is determined at the fair hearing that there is no credible evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the department shall amend the record to reflect that such a finding was made at the administrative hearing, order any child protective service or state agency which investigated the report to similarly amend its records of the report, and shall notify the subject forthwith of the determination.

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

Upon a determination made at a fair hearing that the act or acts of abuse or maltreatment are relevant and reasonably related to employment of the subject by a provider agency or the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or denial of an application submitted by the subject to a licensing agency, the department shall notify the subject forthwith. The department shall inform a provider or licensing agency which makes an inquiry to the department pursuant to the provisions of section four hundred twenty-four-a of this title concerning the subject that the person about whom the inquiry is made is the subject of an *indicated* child abuse or maltreatment report.

The failure to determine at the fair hearing that the act or acts of abuse and maltreatment are relevant and reasonably related to the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or denial of an application submitted by the subject to a licensing agency shall preclude the department from informing a provider or licensing agency which makes an inquiry to the department pursuant to the provisions of section four hundred twenty-four-a of this title concerning the subject that the person about whom the inquiry is made is the subject of an *indicated* child abuse or maltreatment report.

(d) The commissioner or his or her designated agent is hereby authorized and empowered to make any appropriate order respecting the amendment of a record to make it accurate or consistent with the requirements of this title.

(e) Should the department grant the request of the subject of the report pursuant to this subdivision either through an administrative review or fair hearing to amend an *indicated* report to an *unfounded* report. Such report shall be legally sealed and shall be released and expunged in accordance with the standards set forth in subdivision five of this section.

9. Written notice of any expungement or amendment of any record, made pursuant to the provisions of this title, shall be served forthwith upon each subject of such record, other persons named in the report, the commissioner, and, as appropriate, the applicable local child protective service, the commission on quality of care for the mentally disabled, the division for youth, department of education, office of mental health, office of mental retardation and developmental disabilities, the local social services commissioner or school district placing the child, any law guardian appointed to represent the child whose appointment has been continued by a family court judge during the term of a child's placement, and the director or operator of a residential care facility or program. The local child

protective service or the state agency which investigated the report, upon receipt of such notice, shall take the appropriate similar action in regard to its child abuse and maltreatment register and records and inform, for the same purpose, any other agency which received such record.

10. Whenever the department determines that there is some credible evidence of abuse or maltreatment as a result of an investigation of a report conducted pursuant to this title or section 45.07 of the mental hygiene law concerning a child in residential care, the department shall notify the child's parent or guardian and transmit copies of reports made pursuant to this title to the director or operator of the residential facility or program and, as applicable, the local social services commissioner or school district placing the child, division for youth, department of education, commission on quality of care for the mentally disabled, office of mental health, office of mental retardation and developmental disabilities, and any law guardian appointed to represent the child whose appointment has been continued by a family court judge during the term of a child's placement.

11. (a) Reports and records made pursuant to this title, including any previous report concerning a subject of the report, other persons named in the report or other pertinent information, involving children who reside in residential facilities or programs enumerated in paragraphs (a), (b), (c), (d), (e), (f) and (h) of subdivision seven of section four hundred twelve of this chapter, shall be transmitted immediately by the central register to the commissioner who shall commence an appropriate investigation consistent with the terms and conditions set forth in section four hundred twenty-four-c of this title. If an investigation determines that some credible evidence of alleged abuse or maltreatment exists, the commissioner shall recommend to the local social services department, the state education department or the division for youth, as the case may be, that appropriate preventive and remedial action including legal action, consistent with applicable collective bargaining agreements and applicable provisions of the civil service law, pursuant to standards and regulations of the department promulgated pursuant to section four hundred sixty-two of this chapter and standards and regulations of the division for youth and the department of education promulgated pursuant to section five hundred one of the executive law, sections forty-four hundred three, forty-three hundred fourteen, forty-three hundred fifty-eight and forty-two hundred twelve of the education law and other applicable provisions of law, be taken with respect to the residential facility or program and/or the subject of the report. However, nothing in this paragraph shall prevent the commissioner from making recommendations, as provided for by this paragraph, even though the investigation may fail to result in a determination that there is some credible evidence of the alleged abuse or maltreatment.

(b) The department shall establish standards for the provision of training to its employees charged with the investigation of reports of child abuse and maltreatment in residential care in at least the following: (a) basic training in the principles and techniques of investigation, including relationships with other investigative bodies, (b) legal issues in child protection including the legal rights of children, employees and volunteers, (c) methods of identification, remediation, treatment and prevention, (d) safety and security procedures, and (e) the principles of child development, the characteristics of children in care, and techniques of group and child management including crisis intervention. The department shall take all reasonable and necessary actions to assure that its employees are kept apprised on a current basis of all department policies and procedures relating to the protection of children from abuse and maltreatment.

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

12. Any person who willfully permits and any person who encourages the release of any data and information contained in the central register to persons or agencies not permitted by this title shall be guilty of a class A misdemeanor.

13. There shall be a single statewide telephone number for use by all persons seeking general information about child abuse, maltreatment or welfare other than for the purpose of making a report of child abuse or maltreatment.

14. The department shall refer suspected cases of falsely reporting child abuse and maltreatment in violation of subdivision three of section 240.55 of the penal law to the appropriate law enforcement agency or district attorney.

Appendix C: Statutory Underpinnings for Court Use of SCR Reports and Database Searches

Section 240 (1-a) of the SSL

§ 240. Custody and child support; orders of protection.

1-a. In any proceeding brought pursuant to this section to determine the custody or visitation of minors, a report made to the statewide central register of child abuse and maltreatment, pursuant to title six of article six of the social services law, or a portion thereof, which is otherwise admissible as a business record pursuant to rule forty-five hundred eighteen of the civil practice law and rules shall not be admissible in evidence, notwithstanding such rule, unless an investigation of such report conducted pursuant to title six of article six of the social services law has determined that there is some credible evidence of the alleged abuse or maltreatment and that the subject of the report has been notified that the report is indicated. In addition, if such report has been reviewed by the state commissioner of social services or his designee and has been determined to be unfounded, it shall not be admissible in evidence. If such report has been so reviewed and has been amended to delete any finding, each such deleted finding shall not be admissible. If the state commissioner of social services or his designee has amended the report to add any new finding, each such new finding, together with any portion of the original report not deleted by the commissioner or his designee, shall be admissible if it meets the other requirements of this subdivision and is otherwise admissible as a business record. If such a report, or portion thereof, is admissible in evidence but is uncorroborated, it shall not be sufficient to make a fact finding of abuse or maltreatment in such proceeding. Any other evidence tending to support the reliability of such report shall be sufficient corroboration.