CLEARING YOUR NAME

A step-by-step guide through the New York State Central Register of Child Abuse & Maltreatment
INTRODUCTION

This is a step-by-step guide on how to find out if there are records of child abuse, neglect, or maltreatment against you in the New York State Central Register (SCR), whether that information is available to future employers or licensing agencies that deal with the care of children, and how to get those records sealed. If you were ever investigated by the Administration of Children's Services (ACS) or any other child protective services -- even if your child was not taken away from you and the case was closed -- there may be a report against you in the SCR. If you apply for a job with children, want to be a foster parent, want to adopt, or want custody of your own children, you need to find out your SCR status and clear your name.

Reports of child abuse and neglect in New York State are made to the SCR. The SCR staff decide whether a report should be investigated. If so, they forward the report to the local child protective service. In New York City, this is ACS, previously called the Child Welfare Administration (CWA), Special Services for Children (SSC), and the Bureau of Child Welfare (BCW). ACS has sixty days to complete the investigation of the report, which may include interviewing the children, making home visits, and speaking with family, friends, doctors, and teachers. The result of the investigation will be that the SCR report is either "indicated," "substantiated" (some believable evidence of child abuse or neglect), or "unfounded" (not enough evidence that the report was true).

Indicated or substantiated reports. If ACS finds some believable evidence that the report is true, ACS will mark the report as "indicated" or "substantiated." Indicated or substantiated reports are kept at the SCR until the youngest child named in the report is 28 years old. Then they are expunged (erased from SCR records). Child care employers, foster care and adoption agencies may be notified of indicated reports. Thus, an indicated report may affect your ability to get a job in child care, to volunteer to work with children, to become a foster parent, or to adopt a child. In addition, the police, district attorneys, child welfare agencies, and the judges will have access to this information (for example when custody issues are decided).

Unfounded reports. If ACS finds that there is no believable evidence that the report is true, it will mark the report as "unfounded". The report will be kept at the SCR but it will be sealed. It is only available to the police or to ACS or other child protective services. A sealed report is not available to employers or licensing agencies that deal with the care of children. A sealed case will be expunged (erased from SCR records) 10 years after it was made.

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STEP ONE - Get your records

The first step is to find out if you have a record of child neglect or maltreatment in the SCR. If you have ever been investigated by the Administration of Children’s Services (ACS), there is a good chance that you have a record. This is true even if ACS did not take your children away from you and even if you won your case in Family Court.

To find out, you must write to the SCR and ask if the SCR has any records about you. [Letter 1 is a form letter.] In addition to asking if there are any records about you, you should request that the SCR seal or expunge (erase) the records. You should also request a hearing if OCFS denies your request to seal or expunge the records. Send this letter Return Receipt Requested so that you have a record of your request, and be sure to keep a copy of the letter.

You also need to get the case record of ACS’s investigation of you. The case record will tell you what ACS discovered in investigating you, and will tell you ACS's reasons for its decision. You should send a letter to ACS that you have signed in the presence of a notary public requesting all records regarding you and your family. [Letter 2 is a form letter.]

You should also get your records from any hospital, clinic, or doctor that concerns your case. For example, you should request medical records from any place where you received treatment or are presently receiving treatment for drugs, alcohol, or mental health issues. You might need to show your progress in treatment at the hearing and you should request these documents now so you are prepared. You should also request any medical records regarding the child listed in the report. It is usually best to request these records in person. You need to request the records right away because it can take a long time to receive them. You should keep copies of your letters so that you have a complete record.

STEP TWO - What if OCFS Says That Your Request is Too Late?

You might receive a letter from OCFS informing you that your request is untimely (too late). People who want to clear their names must start the process within ninety days of receiving a letter saying that their names are in the SCR. Perhaps you received that letter many months after ACS placed your name in the SCR. Perhaps you never received that letter at all. If the SCR sends you a letter that says your request is late, you must write to OCFS and explain those facts. [Letter 3 is a form letter.]

You should also attach to your letter to OCFS a copy of the memo from OCFS dated September 27, 1988. [A copy is with this document.] The memo is a policy notice that OCFS should not deny late requests because ACS has to prove that they sent the notice within ninety days. This might help to convince OCFS to consider your request. Remember to keep a copy of your letter that you mail to OCFS.

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STEP THREE - You Receive Your Records

You have received a letter from OCFS with your records from the SCR. The letter will tell you that OCFS has given you copies of their documents in response to your request. You need to examine your records to determine what they say. The records will tell you if you have any reports against you and whether each report has been marked “indicated” or “substantiated” or “unfounded.” You might have more than one report. Each report will have a separate case number. You will have one overall CASE ID NUMBER. You need to use this number on all of your letters and communications with OCFS and ACS.

If your report is “unfounded,” go to STEP FOUR. If your report is “indicated,” go to STEP FIVE.

STEP FOUR - You Have An Unfounded Report Against You

You now have a letter that there are no indicated reports about you in the SCR. Congratulations! Your name is clear. You should keep a copy of the letter. [Letter 4 is an example.]

STEP FIVE - You Have An Indicated or Substantiated Report Against You

You have received your records from the SCR. The records say that you were the subject of a report of child abuse and neglect and that the report was determined to be “indicated” or “substantiated.” [Letter 5 is an example.] Your name will be kept on the SCR until the youngest child listed is 28 years old. The SCR will tell child care employers and foster care and adoption agencies about all “indicated” and “substantiated” reports against you. A report may harm your chances of getting a job in child care, becoming a foster parent, or adopting children. Law enforcement agencies, child welfare agencies, and judges will have access to this information (for example, in making custody decisions.)

Go to STEP SIX.

STEP SIX - Administrative Review

You have an “indicated” report of abuse against you and you have requested that it be expunged or amended (erased or changed). When you first made your request, OCFS automatically initiated an administrative review of the report and the basis for the finding.

For the administrative review, OCFS will look at ACS's records of its investigation of your
family. You should have a copy of the written materials from ACS because you requested them. (If you have not yet received a copy, write to ACS again.) The records will give OCFS only ACS’s side of what happened. You have a right to submit additional information. You should send any information that shows that ACS is wrong. For example, you can submit letters from friends, family members, doctors, teachers, clergy, or other witnesses. You should send this information as soon as possible because the review will be done quickly and you want to make sure that OCFS considers it.

If you do not submit written materials for OCFS to consider, OCFS will consider only the ACS records at the administrative review.

At the administrative review, OCFS may decide the report is unfounded. If so, OCFS will then change its records and seal them. You will no longer have an indicated report of child abuse or neglect against you. Your name will be clear. CONGRATULATIONS!

However, at the administrative review, OCFS may decide not to seal your records. If that happens, OCFS will automatically schedule a hearing for you.

Remember to keep copies of everything you send to OCFS and everything that you receive from OCFS.

Go to STEP SEVEN.

**STEP SEVEN - Scheduling The Hearing**

You will get a hearing with an Administrative Law Judge at the Bureau of Special Hearings if OCFS does not amend and seal your records within 90 days. OCFS will send you a letter telling you the time and place of the hearing. If you do not receive the letter, you should contact OCFS to follow up and schedule a date for the hearing.

If you cannot attend the hearing on the date it is scheduled, you have the right to ask for a different date. You should make this request in writing if there is time. [Letter 6 is a form letter.] Otherwise, you should call the number written on the letter. Remember to keep copies of your letters to OCFS and ACS requesting to adjourn the hearing!

Go to STEP EIGHT.

**STEP EIGHT - The Hearing**

The hearing is like a trial. ACS will present witnesses who will testify against you, and you or your lawyer have the right to cross-examine those witnesses. You have the right to testify and present witnesses who will support you. The ACS lawyer will cross-examine you and your witnesses.
There are two issues at the hearing: 1) did you abuse or neglect your children; and 2) whether the abuse or neglect is “relevant and reasonably related” to working with children or caring for children.

1) ACS will present evidence that you did abuse or neglect your child. You must have evidence that either ACS was wrong. General definitions of “child abuse” and “child maltreatment” can be found on the New York State Office of Children & Family Services website (http://ocfs.ny.gov/main/cps/critical.asp).

2) If the inquiry is whether the act or acts are relevant and reasonably related to a job, the Administrative Law Judge will consider all evidence that, even though you had problems in the past, you are now rehabilitated. Rehabilitation is a successful effort to fix a problem which caused you to mistreat your children. Examples of rehabilitation include parenting classes, therapy, drug or alcohol treatment, job training, and separation from an abusive partner.

At the hearing you can bring witnesses who can testify about what really happened or how you have changed. You can also present any written information that supports your case. You have the right to be represented by a lawyer. However, you must find your own lawyer to represent you.

The Administrative Law Judge will make a decision after the hearing. You will receive the decision in writing. You should keep a copy of the decision by the Administrative Law Judge for your records. If you win, CONGRATULATIONS!

If you lose, go to STEP NINE.

STEP NINE - The Appeal

If you lose your hearing, you have the right to file a lawsuit in New York Supreme Court against ACS and OCFS. You will need a lawyer to do this.

Consult a lawyer immediately. You have only four months from the date of the decision to start the court case.
Ms. Sheila McBain, Director  
New York State Central Register of Child Abuse  
New York State Office of Children and Family Services  
PO Box 4480  
Albany, New York 12204-0480

Re: Case ID Number _____________

Dear Ms. McBain,

My name is _________ and my date of birth is________. My children's names and birthdates are ______________________________. I am writing to ask if I am the subject of a report of suspected child abuse or maltreatment. I request that pursuant to Social Services Law § 422(7), you provide me with a copy of all records in your file regarding me and my family.

I also request, pursuant to Social Services Law § 422(8), that if I am the subject of an indicated report of suspected child abuse or maltreatment that you expunge, or amend and seal, all records of this report. If you decide not to expunge, or amend and seal, the report, I request that you provide me with a fair hearing to clear my name and to expunge or amend and seal the report.

Thank you for your consideration.

Very truly yours,

[YOUR NAME]
Dear Ms. Harris:

My name is ________ and my date of birth is ___________ . My children's names and birthdates are ______________________________________. I request copies of any and all records that ACS has regarding me and my children.

Thank you for your prompt assistance in this matter.

Very truly yours,

[Your Name]
Re: Case ID Number __________

Dear Ms. McBain,

My name is __________________ and my date of birth is ___________. My children's names and birthdates are _____________________________________. I am the subject of a report of suspected child abuse or maltreatment. On [DATE OF LETTER], I wrote to you and requested a copy of all records regarding my family. I also requested expungement, administrative review, and a fair hearing. I received from you a letter dated [DATE OF LETTER] informing me that my request was too late.

I am writing to again request all records regarding my family and that you seal or expunge my records, or schedule a hearing. I never received a notice that there was an indicated report against me. I didn't know about the report until I got the letter from you. I have enclosed a memorandum which says that you should give people like me the benefit of the doubt.

Thank you.

Very truly yours,

[YOUR NAME]
MEMORANDUM
DSS-524E.

TO: Mary Skidmore

DATE: September 27, 1988

FROM: Charles Carson (\underline{\text{X}})

SUBJECT: Expungement Request over 90 Days from Indication Notice

In order to deny a request for amendment or expungement based on the apparent failure of the subject to request amendment or expungement within 90 days of receipt of notice of indication, we need to know three things:

1. When did the subject receive the notice of indication?

2. What did that notice say regarding their right to request amendment or expungement (i.e. did the notice contain the 90 day limit and did it imply that they must request copies of the reports before they could request amendment or expungement)?

3. When did the subject first contact the SCR, what did they request at that time and when did they request amendment or expungement?

In regard to point (1) above, we must depend on the investigating agency (local CPS, SPCC, Dept. Regional Office or CQC) to provide proof that the subject received notification. The best ways to do this would be: sending the notice registered or certified mail; having it hand delivered and documenting this in the case record; or sending it regular mail and contacting the subject later to ensure that they received it. Lacking any clear proof on this point, we should not deny the request for amendment or expungement out of hand because we must be able to show (1) that the subject in fact received their notice and (2) when they received it.

In regard to point (2) above, we must again rely on the investigating agency to provide us with a copy of the notice letter so we can see what the subject was told. The letter (1) must say that they have 90 days from the date they receive the notice of indication to request amendment or expungement and (2) must not imply anything to the contrary. The most common problem here will be the form notice letter that has been in use which contains the 90 day statement but also says that amendment or expungement cannot be requested until copies have been received. What the notice says will determine whether the request received was timely and appropriate.

In regard to point (3) above, we will need to examine the letters sent by the subject to the SCR in light of the notice letter. If the notice letter contains the ambiguity about receiving copies before amendment or expungement can be requested, then the date they first requested copies or expungement
would be the date used to determine if their request was timely. If the notice letter is not clear that they must request within 90 days of receipt of the notice letter, we would be precluded from raising the timeliness-argument against the subject.

In summary, what it comes down to is that the subject must have been afforded appropriate procedural due process before we can deny a request based on lack of timeliness. This means that they must have received adequate and timely notice of indication and have clearly failed to act within 90 days of receipt of such notice. We should have a solid basis to believe this is the case before we deny requests for amendment or expungement based on lack of timeliness.

Concerning the case you mention in your 9/15/88 memo, I note that the county told us the notice letter was not certified. Our next question should be, what evidence do we have that the subject received it? Regarding the letter itself, do we know what it said and does it contain any ambiguities? Did the subject make any requests of the SCR prior to 7/28/88? With the answers to these questions, we can determine if it is legitimate to deny the subject's request based on lack of timeliness. Without this information, I don't believe we have enough to go on to deny the subject on such basis.

cc: Mary Jo Walsh
Dear [Name]

This letter is to give you the results of the investigation into a report of suspected child abuse or maltreatment investigated by your local child protective services (CPS) office. The report was determined to be "unfounded." This means that CPS did not find believable proof (credible evidence) that you abused or maltreated a child.

Unfounded reports are legally sealed by the New York Statewide Central Register of Child Abuse and Maltreatment (SCR). This means that the SCR will keep a record of your unfounded report, but all the information will be kept confidential and not shared with any person or organization except for the very few circumstances that State law allows. For example, you may request a copy of the sealed report. A sealed report may also be made available to CPS or a State agency investigating a new report of child abuse or maltreatment involving you, the child, or the child's sibling. A sealed unfounded report is not available to employers or licensing agencies.

Sealed reports will be expunged, which means destroyed, ten years after the date of the report and will not be available to anyone in any circumstances. This will happen automatically and does not require any action by you.

Please note that each report is treated separately and the sealing of this particular report will not affect any other reports in which you may have been named as a subject or other person. Therefore, if you were previously advised that a different report had been "indicated," then that report will remain in the SCR and will not be sealed. If you are receiving services as the result of a different report, the result of finding this particular report unfounded will not change those services.

If you have any questions regarding this letter, please contact 1-844-337-6298 between 8 AM - 5 PM Monday through Friday, excluding holidays, or write to the Statewide Central Register and include a copy of this letter or the Case ID and Stage ID in your letter. Those ID numbers are located in the upper right-hand corner of this letter.

Sincerely,

Linda A. Joyce, Director
State Central Register
Division of Child Welfare
and Community Services

LETTER 4

#111
Dear Benjamin Biffis:

This will acknowledge your request for amendment of a record on file in the SCR in which your client(s) are named as a subject(s). We have acted on this request by initiating an Administrative Review of the report and the basis for the findings. The enclosed documents are provided so that you can review them. You may submit additional information to support your contention that the record is inaccurate and should be amended. An amendment to the record may result in a change from the indicated finding to Unfounded Legally Sealed, expunged, or may modify the contents of the indicated record. Please feel free to send such information to: New York State Child Abuse and Maltreatment Register, PO Box 4480, Albany, New York 12204.

Upon completion of the Administrative Review, you will be notified in writing of the review decision and the reasons therefor. If your request is denied after the administrative review, your request will be forwarded to the Bureau of Special Hearings for scheduling of a fair hearing. Also enclosed for your information are the guidelines for determining whether indicated instances of child abuse and maltreatment are relevant and reasonably related to employment or licensure.

As requested, we are providing you with a copy of all information currently in the SCR. Any deletion that may appear has been made pursuant to Section 422(4) of the Social Services Law, which prohibits any release, disclosure or identification of the names or identifying descriptions of persons who have reported suspected child abuse or maltreatment unless written authorization has been given. Additionally, Section 422(7) of the Social Services Law allows the Commissioner to prohibit the release of any information where it is found that the release of that information would be detrimental to the safety or interests of a person who has cooperated in the subsequent investigation.

Sincerely,
Sheila McBain, Director
State Central Register
Division of Child Welfare
and Community Services

Enclosures:

SM/LL

Request ID: 
Subject Name: 
Case ID: 
Intake Stage ID: 

State Central Register | P.O. Box 4480 Albany, NY 12204 | odfs.ny.gov # 370 - Page 1 / 3

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Honorable [NAME OF JUDGE]
Administrative Law Judge
NYS Office of Children and Family Services
Adam Clayton Powell State Office Building
163d West 125th Street
New York, NY 10027

Re: [YOUR NAME]
Case ID Number ____________

Dear Judge [NAME OF JUDGE]:

I am writing to request an adjournment of the fair hearing which is scheduled for [TIME] on [DATE]. This is my first request for an adjournment. The reason I am asking for an adjournment is ________________________________.

I am unavailable on [DATES UNAVAILABLE]. Thank you for your consideration.

Respectfully,

[YOUR NAME]

cc: [ACS ATTORNEY]

LETTER 6
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SCR Initiative:
CHALLENGING RECORDS IN THE STATE CENTRAL REGISTER OF
CHILD ABUSE AND MALTREATMENT

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¹Note that portions of SSL §§ 422 and 424-a have been struck down by case law and do not
accurately describe all aspects of the current administrative challenge process. Please see the
PowerPoint.
²Id.
Roadmap for Challenging SCR Findings:
An overview on what to do with your pro bono client.

⇒ Step 1. Receive and review case file.

1. Review client contact information, paperwork, and case history.

2. Identify pressing deadlines – *i.e.*, upcoming expiration of the 90-day deadline to request a hearing; need to adjourn an upcoming hearing.

⇒ Step 2. Phone call with mentor.

1. Raise any concerns based on your review of the file; discuss strategy for meeting all deadlines; begin developing theory of your case.

⇒ Step 3. Client meeting

1. Call, e-mail, or text your client to introduce yourself, and schedule an in-person meeting.

2. At the meeting:
   a. Review engagement letter and explain your role on the case.
   b. Explain the SCR process.
   c. Review documents from client, and determine right away whether a hearing has been requested, and if so which kind.
   d. Determine whether there is a finding in Family Court that would estop the client from litigating to amend the SCR record. If necessary, have client sign release to obtain Family Court file.
   e. Work with the client to identify documents that are necessary to support their case and decide who will obtain them.
   f. If the client does not have case records, have client sign releases. Request case records from OCFS and from ACS.


1. If no hearing has been requested, determine whether to submit a simple (form) letter or an advocacy letter.
   a. If time is short, it is most important to get a simple letter in. *No matter what, be sure to submit a challenge letter before the 90-day deadline passes.*
   b. If you have more time, an advocacy letter is often preferable. Talk with your mentor about which to do.
2. Where possible, convert § 424-a hearings (or hearing requests) to § 422 hearings.

**Step 5. Gather evidence and monitor OCFS.**

1. Gather supporting documents, and ensure the most compelling letters of support possible.
   a. May need to follow up on requests to obtain case records from ACS and OCFS, Family Court files, and compelling support letters.
2. Follow up obtaining any other records you may need: police, hospital, etc.
3. If it has been 45 days since the initial challenge letter went in, and there is no response, follow up to determine status/request a hearing date.

**Step 6. Preliminary appearance & settlement.**

1. If the initial challenge letter does not result in amending and sealing, you should receive notice of a preliminary appearance within 90 days from when that letter was submitted.
   a. If the client's job is pending and this is mentioned in letter to SCR, Administrative Review should occur in 30 days and Fair Hearing should be scheduled within 45 days.
2. Approximately two weeks prior to the preliminary appearance, reach out to the ACS attorney and attempt to settle.
   b. Either an email or phone call; have supporting documents available. (Generally these records will end up in the administrative record, so be careful.)
3. Preliminary appearance: appear with your client, exchange evidence, name intended witnesses, potentially discuss settlement, schedule the hearing.
4. May need to follow up repeatedly with opposing counsel to get an answer on settlement.

**Step 7. Hearing, decision, & appeal.**

1. Prepare for the hearing. In particular, prepare the client to testify; review and finalize supporting documents; consider calling other witnesses; and prepare cross examination if ACS intends to call witnesses.
2. Hearing itself will generally be completed in one day; rare to submit follow-up papers.
3. Decision should arrive within about 45 days.
4. Immediately advise the client & your mentor of the outcome.
5. If you were not successful, consider an Article 78 proceeding. Explain to the client their rights and your recommendation. Consult with mentor before making recommendation. Make sure the client understands the deadline for an Article 78.
Step 8. Concluding the case.

1. Speak with your client to conclude your representation, and ensure that the client fully understands the outcome.

2. Send a closing letter to your client, include any steps the client may want to take, e.g., asking a job to reconsider them, filing an Article 78.

3. Ensure that your mentor is fully apprised of the outcome of the case.

Please remember to contact your mentor with questions at any time.
Exhibit 2
SCR Initiative:
CHALLENGING RECORDS IN THE STATE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT

A partnership between the New York County Lawyers’ Association, Legal Services NYC, and the NYU Law School Family Defense Clinic.
THE NY STATE CENTRAL REGISTER (SCR)

- Statewide hotline for calls reporting suspected child abuse and maltreatment
- SCR maintains records of these calls, the allegations, and the results of investigations
- SCR records are not public, but certain employers and agencies are required to check the SCR before hiring, certifying, or accepting volunteers for certain positions
- An “indicated” case in the SCR significantly limits employment opportunities and opportunities to be a foster or adoptive parent
IMPACT ON EMPLOYMENT & FOSTER/ADOPTIVE PARENTHOOD

• The law does not prohibit people with indicated cases from any job or being certified as a foster or adoptive parent.

• The law requires the employer or agency to consider the indicated case before hiring/certifying.
NYS HAS A PURPOSELY OVER-INCLUSIVE POLICY (1)

Mandated reporters (e.g., teachers, doctors, many others who have contact with children) are required to report signs of possible child maltreatment.

Anyone can report allegations to the hotline

- Can be anonymous
- Leads to abuses; harassment through false reporting

All cases must be investigated if they make allegations that if true could constitute maltreatment.
NYS HAS A PURPOSELY OVER-INCLUSIVE POLICY (2)

All reports of possible maltreatment must be investigated and determined either “indicated” or “unfounded”

- Indicated cases remain in the SCR until the youngest child named turns 28
- Unfounded cases remain in the SCR for 10 years

Extremely low standard: indicated if “some credible evidence”

Estimated that millions of New Yorkers have indicated cases in the SCR
DISPROPORTIONALITY

Minorities and the poor are significantly over represented in the SCR

Most recent data available from the State shows:

- Black families are 2.1 times as likely to be reported to the SCR as white families
- Of reports made to the hotline, reports on black families are 2.6 times as likely to be indicated as reports on white families
GOVERNING LAW (1)

Social Services Law §§ 412, 422 and 424-a

Case law has struck parts of the Social Service Law as unconstitutional

- Case law:
  - Raises standard from some credible evidence to preponderance of the evidence
  - Requires pre-deprivation hearing (before employers informed of record)

- Valmonte v. Bane
- Matter of Lee TT

18 NYCRR 434.1-11
GOVERNING LAW (2)

- Social Services Law § 412 says maltreatment = neglect as defined in Family Court Act 1012(f)
- Because maltreatment = neglect, all case law on neglect is relevant
- *Nicholson v. Scoppetta* is the most important case explaining what is required to prove neglect in NY
DEFINITION OF NEGLECT/MALTREATMENT

A child’s “physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care.” FCA § 1012(f)
ELEMENTS OF NEGLECT/MALTREATMENT

Harm/impairment

- includes actual harm and risk of imminent harm
- harm must be "serious"
- imminent harm "must be near or impending, not merely possible"

Caused By

Failure to exercise a minimum degree of care

- court is not a surrogate parent; the question is not whether the court would have made the same decision as the parent
- purpose is not to penalize "undesirable parental behavior"
- "minimum degree of care—not maximum, not best, not ideal"
- "the failure must be actual, not threatened"
TWO WINDOWS TO CHALLENGE

1. Within 90 days of notice → “422 Hearing”

2. After applying for a position that requires an SCR screening → “424-a Hearing”
**422 HEARINGS ARE BETTER!**

The first window to challenge (within 90 days of notice) is better for clients because allows opportunity to seal record even if it is not amended.

Therefore

Ensure that a challenge letter is sent as early as reasonably possible.
422 HEARINGS ARE FAR BETTER FOR CLIENTS

422 Hearing addresses two questions

1) Preponderance of evidence that maltreatment occurred?
   If NO → amended to unfounded and sealed
   If YES → proceed to second question

2) Is maltreatment relevant to working with kids?
   • Inquiry allows evidence of rehabilitation and remorse, character evidence, consideration of circumstances
   • ALJ must consider the relevancy factors established by OCFS
     If NO → report sealed

424-a Hearing addresses only one question

• Preponderance of Evidence that maltreatment occurred?
  If NO → report sealed
INITIATING A CHALLENGING TO THE LISTING

All you need to do to initiate the entire challenge process is send a letter to the Office of Children and Family Services (OCFS).

- Can be a simple (form) letter
- Or can be a letter with substantive argument and supporting documents
90 DAYS ONLY STARTS WITH ACTUAL NOTICE

If State says client is time-barred, should challenge if client did not receive letter notifying of indicated case and right to hearing

- Notice must be in writing
- Notice must have been actually received
- May be able to challenge if letter is not in language in which client is literate
SEALED CASES

- No information provided to potential employers or foster or adoptive agencies
- Child protective services and law enforcement can access sealed records
- For most clients, sealing records ensures the records will have no practical negative consequences for the client
A NOTE ON TERMINOLOGY

• What many refer to as “expunging” is now more accurately referred to as “amending and sealing” an SCR report.

• Can only get true expungement if person who made report convicted for false report or subject presents clear and convincing evidence that affirmatively refutes the allegation.

• NO RIGHT TO A HEARING on expungement.
REVIEW STRUCTURE

Administrative Review
- On papers only
- Client can submit documents for consideration
- If denied at administrative review, automatically get fair hearing

Fair Hearing
- In-person evidentiary hearing
- State is represented by counsel
- Appellant can have counsel, but no right to appointed counsel

Article 78 Court Review
PRE-HEARING STEPS

1. Submit letter brief and supporting documents for administrative review – Optional
2. Discovery
3. Pre-hearing negotiations with ACS
4. Preliminary Appearance
PRE-HEARING STEPS

CONTACT INFO

• If you don't have the name and contact information for the ACS attorney assigned to your case (the person you will contact for discovery and pre-hearing negotiations), you can obtain that from:

  Mary Anne Szabó
  ACS Associate General Counsel/
  Supervising Attorney for Fair Hearings
  MaryAnne.Szabo@acs.nyc.gov
  212-442-8711

• For adjournments contact:
  Fair Hearing Office
  212-961-4408
  212-961-5898 (fax)
FAIR HEARINGS

- Quasi-judicial proceeding
  - Administrative Law Judge
  - Proceeding is taped
  - Counsel or other advocate permitted
  - Right to cross examination
- Burden on the State
- Preponderance of the evidence standard
- Hearsay is allowed
- Typically no opening statement
- Typically there are closing statements
- Decision will be issued by mail, not at fair hearing
PROSECUTION’S CASE

- Sometimes rely solely on the case records (investigation notes)
- Often ACS investigating caseworker testifies
- Expert or other witnesses -- RARE
DEFENSE’S CASE

• Difficult to win if client doesn’t testify
  ○ ALJ can draw negative inference from failure to testify
• Percipient Witnesses
• Expert witnesses
• Records (e.g., medical, educational)
RELEVANCY REVIEW

- State does not have burden in this inquiry
- ALJ required to consider relevancy factors established by OCFS
- Frequent key factors:
  - Client testimony
  - Documentation of Rehabilitation
  - Insight/remorse -- assurance “it won’t happen again”
ESTOPPEL EFFECT OF FAMILY COURT CASES

- Findings of neglect in Family Court based on the same allegations that led to an indicated case may estop client from amending the indicated case in the SCR.
- If estopped from amending, can still seek to seal the record in the SCR by showing not relevant to working with children.
  - Only possible at a 422 Hearing!
- If a related case is pending in Family Court, the fair hearing is typically adjourned to await Court decision.
A WIN IN FAMILY COURT IS NOT ENOUGH!

- Must still go through administrative challenge process to clear SCR record
- Family Court dismissal not binding, but highly persuasive in administrative challenge process
- Key is to provide the positive information
  - Letter to SCR
  - Contact ACS lawyer handling SCR case (not FCLS)
  - Provide documents to ALJ
CHEAT SHEET: EFFECTS OF SETTLEMENTS ON RELATED SCR RECORDS (1)

Admission to Neglect or Abuse
- Precludes amending SCR record
- Can still argue to seal SCR record if challenged timely

1051a Submission with Finding
- Likely precludes amending SCR record (though depends on specifics of the finding)
- Can still argue to seal SCR record if challenged timely
CHEAT SHEET: EFFECTS OF SETTLEMENTS ON RELATED SCR RECORDS (2)

ACD

- Does not preclude amending SCR record
- Successful completion of ACD period and dismissal does not guarantee amendment and sealing of SCR record, but makes it likely if challenge sent timely

Suspended Judgment

- Cannot say with certainty what effects on SCR will be
- If finding is vacated at end of suspended judgment period, that makes it likely (though does not guarantee) amendment of SCR record if challenge sent timely
- If finding is not vacated, likely (not definitely) precludes amending SCR record, though can argue to seal the SCR record if challenge sent timely
SCR CONTACT INFO

Fair Hearing Office: 212-961-4408
212-961-5898 (fax)

Mary Anne Szabó
ACS Associate General Counsel/
Supervising Attorney for Fair Hearings
212-442-8711
MaryAnne.Szabo@acs.nyc.gov

NYS OCFS SCR 844-337-6298
(To follow up on status of Fair Hearing)
FOR MORE INFORMATION

Chris Gottlieb
NYU Family Defense Clinic
gottlieb@mercury.law.nyu.edu
212-998-6693

Maxine Ketcher
Bronx Legal Services
Legal Services NYC
mketcher@lsnyc.org
718-928-3762
### KEY CONTACTS

<table>
<thead>
<tr>
<th><strong>Christine Gottlieb</strong></th>
<th><strong>NYS OCFS SCR</strong></th>
</tr>
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<tbody>
<tr>
<td>NYU Family Defense Clinic</td>
<td>Phone: (844) 337-6298</td>
</tr>
<tr>
<td>245 Sullivan Street, 5th Floor</td>
<td>(To follow up on status of Fair Hearing)</td>
</tr>
<tr>
<td>New York, NY 10012</td>
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<tr>
<td>Phone: (212) 998-6693</td>
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<tr>
<td>Email: <a href="mailto:gottlieb@mercury.law.nyu.edu">gottlieb@mercury.law.nyu.edu</a></td>
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<tr>
<th><strong>Maxine Ketcher</strong></th>
<th><strong>State Central Register Office</strong></th>
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<tr>
<td>Senior Family Law Attorney and Community Outreach Specialist</td>
<td></td>
</tr>
<tr>
<td>Legal Services NYC</td>
<td></td>
</tr>
<tr>
<td>349 E. 149th St., 10th Fl., Bronx, NY 10451</td>
<td>P.O. Box 4480</td>
</tr>
<tr>
<td>Phone: (718) 928-3700</td>
<td>Albany, New York 12204</td>
</tr>
<tr>
<td>Email: <a href="mailto:mktcher@lsnyc.org">mktcher@lsnyc.org</a></td>
<td>Phone: (518) 473-7793</td>
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<tr>
<th><strong>Bureau of Special Hearings</strong></th>
<th><strong>Mary Anne Szabó</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of Children and Family Services (OCFS) 163 West 125th St., 14th Fl.</td>
<td>ACS Associate General Counsel/Supervising Attorney for Fair Hearings</td>
</tr>
<tr>
<td>New York, NY 10027</td>
<td></td>
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<tr>
<td>Phone: (212) 961-4128</td>
<td>Phone: (212) 442-8711</td>
</tr>
<tr>
<td>Fax: (212) 961-5898</td>
<td>Email: <a href="mailto:MaryAnne.Szabo@acs.nyc.gov">MaryAnne.Szabo@acs.nyc.gov</a></td>
</tr>
</tbody>
</table>
Overview to
Challenging Indicated Cases in the SCR

The New York State Central Register (SCR) is a statewide hotline for calls reporting suspected child abuse and maltreatment. The Administration for Children’s Services (ACS) is the New York City agency that investigates these allegations. Whenever ACS investigates an allegation of child neglect or abuse, a record of the outcome of the investigation (indicated or unfounded) is maintained in the New York State Central Register of Child Abuse and Maltreatment (SCR), which is administered in Albany by the Office of Children and Family Services (OCFS). There is an extremely low standard for finding that a case is indicated: “some credible evidence.” Partly due to this very low evidentiary threshold, it is estimated that millions of New Yorkers have indicated cases in the SCR.

- **Significance of SCR Reports**
  Having an indicated case in the SCR has significant effects on employment prospects and the ability to become a foster or adoptive parent. Indicated reports remain in the SCR until the youngest child named in the report is 28 years old. Many employers are required to inquire with the SCR to determine if job applicants have any indicated reports. This requirement applies not only to jobs that obviously entail work with children, but to a broader array of jobs than lay people might assume (e.g., some positions as secretaries or janitors at hospitals). Although these employers may still legally hire individuals with an indicated report in the SCR, as a practical matter, most of them have policies of not hiring anyone with an indicated report. Similarly, although not required by law, foster care and adoption agencies will generally preclude individuals with indicated cases from becoming foster (including kinship foster) or adoptive parents. Indicated reports may also be used against individuals in custody proceedings. Thus, clients should be advised that indicated cases in the SCR may have significant effects on them in the future in ways it can be difficult to predict.

- **Expungement, Amending and Sealing B Understanding the Terminology**
  The term “expungement” is widely used to refer to clearing indicated records, but the term has been largely displaced in the relevant statute. Generally, those challenging records in the SCR under current law are seeking to “amend and seal” their record (OCFS continues to have discretion to expunge reports under certain, uncommon circumstances). Successful challengers now have their records amended from “indicated” to “unfounded” and sealed, meaning that such records will not be disclosed to prospective employers or foster care or adoption agencies. While previously all unfounded reports were expunged, unfounded reports are now sealed instead, so
that only child protective services and law enforcement investigating subsequent allegations have access to them.

- **First Steps to Challenge a Record in the SCR**
  Individuals begin the challenge process by sending a letter to OCFS, the state agency that administers the SCR. The client should keep a copy of the letter. Letters should be sent to: State Central Register, P.O. Box 4480, Albany, NY 12204. OCFS is then required to conduct an administrative review of the case to determine whether to amend and seal the record. The client does not have the opportunity to appear at this phase, but is allowed to submit documentation for consideration at the administrative review. If the individual does not prevail at the administrative review, the matter is supposed to be set down for a fair hearing, at which the individual does have a right to appear.

- **Preserve Full Rights to Review by Challenging Indicated Cases ASAP**
  To ensure full rights to a hearing, the individual should send a letter to OCFS within 90 days of notice of an indicated case, requesting the record be amended and sealed. Because Family Court cases are not usually resolved that quickly, clients should be advised to send the letter to OCFS as early as possible and not wait for the outcome of the court case. Individuals have rights to challenge indicated reports prior to their disclosure, even if the challenge was not made within 90 days, but OCFS generally takes the position that they are entitled then only to a narrower inquiry (see the section below on Two Questions Addressed at Fair Hearings). Even if it is beyond the 90 days, it is often in clients’ interests to request the fuller hearing (known as a “422 hearing”). Individuals may be entitled to the fuller hearing based on arguments about when they received official notice and based on constitutional arguments that they have a right to the broader inquiry.

- **How Family Court Cases Affect Challenges to Indicated Cases in the SCR**
  The administrative process for challenging records in the SCR is distinct from, but related to, the Family Court process. Even if a client prevails in Family Court and has a case dismissed, she needs to separately challenge the indicated report to clear her record in the SCR. A finding of neglect or abuse in Family Court stops OCFS from amending an indicated report to unfounded if the report is based on the same allegations that led to the Family Court finding. Thus, clients who are considering settlements should be advised of the potential consequences of settlements and contested fact-findings on SCR records. A dismissal or an ACD that has not been violated provide quite strong arguments that an SCR report should be amended to unfounded, but is not necessarily dispositive. Even if there is a finding of neglect or abuse in Family Court, the client may still be able to have the SCR report sealed (see the section below on Two Questions Addressed at Fair Hearings). Thus, even in cases in which a finding is expected, it is in the client’s interests to preserve her full right to review in the administrative process.

- **Basics of Fair Hearing Procedure**
  Fair Hearings are run by Administrative Law Judges. Individuals have a right to bring representatives, but are not provided counsel. Although, technically, OCFS is the prosecutor, it
has delegated this role to ACS in New York City. Hearsay is allowed. Consequently, ACS may rely wholly on uncertified records to establish its case. ACS has the burden of proof and must substantiate the allegations by a preponderance of the evidence. Individuals are entitled upon request to a copy of all records concerning them in the SCR prior to the hearing. Typically, a preliminary appearance is scheduled first and the fair hearing is held at the second appearance (individuals should check the letter informing them of the date to see whether they are scheduled for a preliminary appearance or hearing). Adjournments can sometimes be obtained. If one loses a fair hearing, there is a right to appeal through an Article 78 petition in Supreme Court, but the legal standard generally makes it quite difficult to prevail at that stage.

- **Two Questions Addressed at Fair Hearings**
  Every fair hearing challenging a report in the SCR addresses the question of whether there is a preponderance of evidence to support the allegations. Some hearings also address a second question: whether the indicated case is relevant to employment or becoming a foster or adoptive parent. If reports are not found to be relevant to employment or becoming a foster or adoptive parent, the reports are sealed, meaning they cannot be disclosed to employers or foster or adoptive agencies. Thus, for many individuals, the practical effects of having a record determined irrelevant to employment are as beneficial as having a report amended to unfounded. There are two types of fair hearings: those requested within 90 days of notice of an indicated case and those requested when a person is notified that an employer has made an inquiry to the SCR about the person (the former are sometimes referred to as “422 hearings” and the latter as “424-a hearings.”) Under OCFS’s interpretation of the law, individuals are only entitled to the second inquiry, regarding relevance to employment, if they seek review within 90 days. Consequently, rights are generally best protected by requesting review sooner, rather than later. There are arguments to be made, however, that individuals have a right to the relevancy inquiry regardless of when the hearing is requested. Thus, it is often advisable for clients to request a 422 hearing, to include the review of relevancy, regardless of when they do so.

- **Evidence.**
  It is important to present compelling evidence to OCFS. This may include documentary evidence, such as favorable court orders or letters from services providers or others familiar with the family. Clients will also likely testify, and should prepare to present their case in the best possible light. If you are challenging the allegations, the most effective testimony is generally that which directly and concisely addresses the claims made against your client in the SCR records. If clients have a finding of neglect or abuse against them in Family Court, you cannot amend or expunge the indicated record, and should focus instead on rehabilitation and other factors that could lead to sealing the record.

- **Governing Law**
  The right to challenge indicated cases in the SCR is covered by Social Services Law §§ 422 and 424-a, and 18 NYCRR §§ 434.1-434.11. Note that there have been important changes made through case law that are not reflected in the statute. The most important cases are *Valmonte v. Bane*, 18 F.3d 992 (2d Cir. 1994) and *Matter of Lee TT.*, 87 N.Y.2d 699 (1996).
Most notably, these cases raise the standard of proof required at all fair hearings from some credible evidence to a preponderance of the evidence, and require that hearings be provided prior to disclosure of records to potential employers.
CHART OF SCR CHALLENGE PROCESS

Send challenge letter to SCR requesting record be amended and sealed

§422 Administrative Review

(1) Abuse/maltreatment analysis
(2) Relevancy analysis

Win Administrative Review: Finding amended and sealed
Lose Administrative Review: Automatic §422 Fair Hearing

(1) Abuse/maltreatment analysis

Win Administrative Review: Finding amended and sealed
Lose Administrative Review: §424-a Fair Hearing

Abuse/maltreatment analysis only

Win Abuse/maltreatment analysis: Finding amended and sealed
Lose Abuse/maltreatment analysis: (2) Relevancy Analysis

Win Fair Hearing: Finding is sealed
Lose Fair Hearing: Indicated finding remains and is made available to certain employers and agencies

Win Relevancy Analysis: Indicated finding remains but is sealed
Lose Relevancy Analysis: Indicated finding remains and is made available to certain employers and agencies
NYU Family Defense Clinic
Using Social Work and the Law to Keep Families Together

Co-Directors Martin Guggenheim and Chris Gottlieb
Washington Square Legal Services, Inc.
245 Sullivan Street, 5th Floor
New York, NY 10012
Telephone: (212) 998-6430

CHEAT SHEET

Effects of Family Court Settlements on Related SCR Records

Admission to Neglect or Abuse ➔ Precludes amending SCR record
Can still argue to seal SCR record if challenged timely

1051a Submission with Finding ➔ Likely precludes amending SCR record (though depends on specifics of the finding)
Can still argue to seal SCR record if challenged timely

ACD ➔ Does not preclude amending SCR record
Successful completion of ACD period and dismissal does not guarantee amendment and sealing of SCR record, but makes it likely if challenge sent timely

Suspended Judgment ➔ Cannot say with certainty what effects on SCR will be
If finding is vacated at end of suspended judgment period, that makes it likely (though does not guarantee) amendment of SCR record if challenge sent timely
If finding is not vacated, likely (not definitely) precludes amending SCR record, though can argue to seal the SCR record if challenge sent timely

Please note: this document provides general information about legal matters. This information is not legal advice and should not be treated as such. This document is intended to be used in conjunction with a training that explains the terms herein and the process for challenging indicated cases in the SCR. If you are interested in arranging a training for your organization, please contact the NYU Family Defense Clinic.
FOR ALL ARTICLE 10 CASES, PRACTITIONERS SHOULD KEEP IN MIND:

❖ Rights to amend and seal SCR records are only fully protected if challenge is sent within 90 days of written notice of an indicated case. Though there are rights that can be asserted beyond 90 days, there is significant legal risk to waiting beyond the 90 days. Thus, it is generally best practice to start the challenge process by sending a letter to the SCR within the 90 days. Once started, the SCR proceeding can usually be adjourned pending the outcome of the court case.

❖ On any outcome of a related Family Court case, a person can argue to seal the record (using broad range of mitigation evidence, including evidence of rehabilitation) if they make the challenge within 90 days of notice.

❖ It is generally very helpful to SCR challenges for defense advocates to provide copies of any relevant court orders (e.g., ACD, suspended judgment, or dismissal orders) and any positive reports on the client to both the ACS attorney handling the SCR case (different from the ACS Family Court attorney) and the client.
State Central Register  
P.O. Box 4480  
Albany, New York 12204

To Whom It May Concern:

I am requesting that the indicated report(s) against me in the State Central Register be amended to unfounded and legally sealed. Additionally, I request that the indicated report(s) against me be determined not relevant and reasonably related to employment, adoption, or the provision of foster care.

The name(s) and date(s) of birth of my child(dren) are:

____________________________________________________________________

____________________________________________________________________

Further, pursuant to Section 422(7) of the Social Services Law, I am requesting a copy of all information concerning me in the State Central Register.

Sincerely,

________________________________________
Name

________________________________________
Date of Birth

________________________________________
Address

________________________________________
Case I.D. (if known)
Exhibit 8
New York State Office of Children and Family Services  
State Central Register  
P.O. Box 4480  
Albany, New York 12204-0480  

March 20, 2012

Case number: xxxxxxxxxx  
Children’s names:  
L.T. (dob xxxxxxx)  
S.T. (dob: xxxxxxx)

To Whom It May Concern:

We write to request that all indicated reports in the State Central Register against our client Gloria T. (dob xxxxxxx) be amended to unfounded and legally sealed. An attorney authorization is enclosed.

On November 22, 2011, our client received a letter from the Office of Children and Family Services erroneously declining her initial request to amend and seal her SCR report(s) as time barred although she had never received notification of the report. Copies of that correspondence are enclosed. Ms. T.’s request is not time barred because she never received notice of any reports in the SCR. Thus, pursuant to Social Services Law 422(8)(a), OCFS is required to conduct an administrative review of her record(s) and, if that review does not result in amending and sealing the record(s), OCFS is required to set the matter down for a fair hearing.

Enclosed please find an affidavit from Ms. T. outlining the circumstances under which she arrived in New York not long before the SCR report was called in, and explaining that she did not have a stable residence at which to receive mail in the months following the report. If notice was sent, it was likely sent to an outdated address. In any event, as documented in the affidavit, notice was never received.

Ms. T. has thus been wrongfully denied an opportunity to challenge her indicated report(s) and to have the accusations against her proven by a preponderance of the evidence as required under the governing case law. See Valmonte v. Bane, 18 F.3d 992, (2d. Cir. 1994), Lee TT v. Dowling, 664 N.E.2d 1243 (N.Y. 1996). As Valmonte v. Bane
and *Lee TT v. Dowling* make clear, such a denial constitutes a deprivation of Ms. T.'s liberty interest under the Fourteenth Amendment.

We ask that during the administrative review of the indicated case(s), OCFS consider the positive outcome of the associated neglect case that was filed in Kings County Family Court. On December 19, 2011, ACS agreed to dismiss all allegations relating to Ms. T.'s son L.T. and to consent to a three-month adjournment in contemplation of dismissal relating to her son S.T. (no allegations were ever filed regarding Ms. T.'s third child). Copies of the dismissal and ACD orders are enclosed. In addition, Ms. T. has cooperated fully with all service referrals made by ACS, including parenting classes, job training services and early intervention services for her children.

Please be aware that Ms. T. intends to file an Article 78 petition with the New York Supreme Court within the applicable time limit. We hope that it will not be necessary to pursue this litigation and, for the reasons discussed above, believe it would result in Ms. T. receiving a fair hearing, after an expenditure of unnecessary resources on both sides.

Finally, we reiterate Ms. T.'s request for a copy of all information concerning her in the State Central Register. Ms. T. is, of course, entitled to those records pursuant to section 44(7) of the Social Services Law regardless of OCFS's position on the request to amend and seal.

Please feel free to contact us to discuss this matter. We may be reached at (212) 998-6693.

Sincerely,

Chris Gottlieb, Esq.

Lucy Joffe, Law Intern
March 20, 2007

The Honorable Robert Lederman  
Office of Children and Family Services  
Bureau of Special Hearings  
Adam Clayton Powell Building  
163 West 125th Street, 18th Floor  
New York, NY 10027

Re: The Appeal of Jasmine L.  
Case ID xxxxxxxxxxx; Intake Stage ID xxxxxxxxxxx

Dear Judge Lederman:

We represent Jasmine L. in her request to amend and seal her indicated report in the New York State Central Register of Child Abuse and Maltreatment (SCR). We are writing to respectfully request that Ms. L’s March 28th fair hearing be postponed until November or December of 2007. We had scheduled the current SCR fair hearing date with the expectation that Ms. L’s Family Court case would have reached a settlement by that date. As of today, those discussions are still ongoing and we do not expect that they will be concluded by March 28, 2007.

As you can understand, it is important to our client to have reached a resolution of her Article 10 case in Family Court before a fair hearing, or even settlement discussions, can begin with respect to her request to amend and seal the report in the SCR.

We are hopeful that we will reach a resolution of Ms. L’s Article 10 case by the end of the summer. In light of this projected time line, we respectfully request an adjournment of the SCR administrative hearing until November or December of 2007.

We would, of course, be happy to provide additional information if that would be helpful. We may be reached at 212-998-6430.

Sincerely,

Ani Mason  
Legal Intern  

Zabrina Aleguire  
Staff Attorney

cc: ACS attorney
To Whom It May Concern:

The New York University School of Law Family Defense Clinic has been retained to represent Ms. L. regarding the above indicated report in the State Central Register. I, Regina Hsu, am a student at NYU Law and am under the supervision of Christine Gottlieb, Esquire, Co-Director of the Clinic. A signed Attorney Authorization form is enclosed.

We are writing this letter on behalf of Ms. L. in order to enlarge the issues at her pending Fair Hearing to include whether the report is relevant and reasonably related to employment and child care opportunities. Ms. L.’s Fair Hearing is currently scheduled for November 29, 2016 pursuant to Social Services Law § 424-a.

As explained in the enclosed affidavit, Ms. L. never received notice of the indicated report against her prior to the letter she received on July 12, 2016 notifying her that her employer had made an inquiry to the SCR regarding the existence of any indicated reports against her. As Ms. L. did not receive the initial notification of an indicated report against her, her time to request a Fair Hearing pursuant to Social Services Law § 422(8)(a)(i) had not expired when she responded to the July 12, 2016 letter.

As Valmonte v. Bane instructs, Ms. L. has a protected liberty interest in securing future employment in her chosen field. 18 F.3d 992 (2d Cir. 1994). She cannot be deprived of this constitutional right without being afforded appropriate due process. Id. Ms. L. would be wrongfully denied an opportunity to fully challenge the indicated report as required under the governing law if she is not allowed the opportunity to contest the issue of relevancy to working with children in accordance with Social Services Law § 422(8)(a)(i).

Ms. L. will be able to show at a § 422 Fair Hearing that she has taken steps to address the concerns that were raised during the ACS investigation. Ms. L. has cooperated with ACS,
completed all recommended services and attended all appointments and Child Safety
Conferences. On August 4, 2016, the related neglect petition filed against Ms. L. in Family Court
was dismissed.

I would be happy to provide additional information if that would be helpful. I may be
reached via phone at (832) 555-55555, via email at rjh422@nyu.edu, or the address listed in this
letter.

Sincerely,

Regina Hsu
Dear Ms. Montanez:

As you know, the NYU Family Defense Clinic is representing Ms. Camille R in her upcoming consolidated 422 and 424-a hearing. We are writing to share information about services Ms. R has completed over the last eleven years since her 2005 indicated case, letters from Ms. R’s therapist and former employer, and certificates, honors, and awards she has received for her service to New York’s children and families over the years.

We hope that after reviewing these materials, you come to the conclusion—as we have—that Ms. R has undergone meaningful personal growth over the last eleven years. Moreover, we hope you will agree, given the significant time that has elapsed since the incident of child maltreatment, and the substantial evidence of Ms. R’s rehabilitation, the 2005 case is no longer relevant and reasonably related to employment.

Eleven years ago, Ms. R made a mistake that she has acknowledged, actively addressed, and never repeated. Ms. R deeply regrets having used corporal punishment to discipline her children in 2005 and has taken full responsibility for her actions. As a result, she lost custody of her children for two years. In order to regain her children and be the mother they deserved, Ms. R accepted the help ACS offered her, followed all of their recommendations carefully, and even sought additional support of her own volition. By 2007, she regained custody of all of her children.

As the enclosed documents attest, following reunification with her children, Ms. R voluntarily and independently sought continued support to be the best caregiver she could be. She regularly attends therapy to this day and has developed effective strategies to cope with frustration and stress. She has worked to ensure that her children receive the best education possible. This includes pursuing an individualized education plan (IEP) and psychiatric and psychotherapy services for her youngest son, Kyle.
In the eleven years since her indicated case, Ms. R has helped her four children grow up to become strong and capable adults, and she has helped to raise two godsons for the last several years. There have been no indicated cases regarding Ms. R since the 2005 case. In fact, she has proven a loving mother to all of the children in her care and, more recently, a doting grandmother.

We have attached the following documents:

- Letter from Ms. R’s therapist, Jane Smith, MS, LMFT (November 4, 2016)
- Letter from Michael Arsham, former Director of the Child Welfare Organizing Project, who was Ms. R’s employer for four years (October 26, 2016)
- Letter from the New York Institution for Special Education commending Ms. R for the care she provided to her godson, Calvin D, and expressing strong support of a decision to make Ms. R his temporary legal guardian (July 16, 2003)
- Certificate from ACS’s Office of Community Partnerships honoring Ms. R’s dedicated service to the City of New York, which helped “make the quality of life better for the children and families of our city” (October 12, 2011)
- Certificate of Participation for St. Christopher-Ottilie Services for Children and Families’ The Parent Training Group (June 29, 2006)
- Homeward Bound Certificate of Graduation for completion of St. Christopher-Ottilie Services for Children and Families’ Weekend Retreat and 24-week Parenting Journey (April 26, 2006)
- Letter from Ms. R’s current employer, xxxxxxx (November 7, 2016)
- Award of Thanks and Appreciation from Southeast Neighborhood Centers, Inc.’s Minds Unlimited Afterschool Program (June 17, 2016)
- Letter from John Smith, President of the xxxxx Houses Tenant Association, of which Ms. R is a member (November 7, 2016)
- Diploma awarded by the Child Welfare Organizing Project in recognition of exemplary participation and completion of the CWOP Parent Leadership curriculum (August 9, 2009)
• Community Recognition Award from the Human Services Corporation of East Harlem (December 15, 2011)

In conclusion, we hope that these documents will allow you to agree Ms. R has grown significantly as a mother and person, and that her case should be sealed. We would welcome a conversation about settling this case.

Thanks so much in advance,

Sincerely,

Viviana Bonilla López
Eric Phillips
Student Advocates
Exhibit 12
AUTHORIZATION AND CONSENT FOR
RELEASE OF INFORMATION

I, __________________________, do hereby authorize any employee of [Law Firm/Organization] and/or any attorney, or other representatives associated with or designated by her or him or them to represent me and to do all things necessary or desirable in connection with:

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

Please release to my representative any documents, reports, files, case records, and administrative files, any other information in whosoever’s custody related to me or any matter or things in which I am involved or in which I have or had an interest.

Dated: __________ day of ____________, 20__

________________________
SIGNATURE

________________________
ADDRESS

________________________
CITY STATE ZIP CODE
AUTHORIZATION FOR INFORMATION

I, ____________________________, currently residing at ____________________________, hereby authorize the New York Statewide Central Register of Child Abuse and Maltreatment to furnish all information which may be contained within the New York Statewide Central Register of Child Abuse and Maltreatment to ____________________________, affiliated with ____________________________, (agency), on my behalf in accordance with the Child Protective Services Act of 1973.

The names and birth dates of the children belonging to the individual listed on the first line of this form as well as previous addresses of this individual are necessary to conduct a thorough and accurate search of the Statewide Central Register database. Please furnish this information below:

Names and birth dates of children:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Previous addresses starting with most recent:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Signature

On this _____ day of ____________, 20___, before me personally came ____________________________, (individual) to me known and known to be the same person described in and who executed the within statement, and he/she duly acknowledged to me that he/she executed the same.

Notary Public
Exhibit 13
January 31, 2017
Re: Case ID
Intake Stage ID
Date of Intake 07/27/2011

Dear

On 7/27/2011, you were notified that you were the subject or other person named in a report of suspected child abuse or maltreatment received by the New York State Child Abuse and Maltreatment Register (State Central Register). At that time, you were informed of the investigation process conducted by the BRONX County Child Protective Service and your rights in regard to this matter.

We must now inform you that this report has been “indicated” and that you are the subject of the report. This means that some credible evidence has been found to support the determination that you maltreated or abused the child(ren) named in the report. In addition to this letter, I, the undersigned caseworker, am willing to discuss in more depth the reasons for this determination and your feelings concerning this matter. Services may also be offered to assist you and your family.

Since this report has been determined to be indicated, it will remain in the New York State Child Abuse and Maltreatment Register. As you were previously informed in your notification letter, you are entitled to request a copy of all information regarding the report contained in the State Central Register. However, the Commissioner of the New York State Office of Children and Family Services and social services district official must withhold information identifying the person who made the report unless that person has consented in writing to the release of such information. In addition, the Commissioner and social services district official may withhold information identifying a person who cooperated in the investigation of the report if the Commissioner reasonably determines that the release of the information would be detrimental to that person’s safety or interest.

As a subject of a report, that is a person determined to be responsible for causing or allowing to be inflicted injury, abuse or maltreatment to the child(ren) named in the report, you have the right to request the Commissioner of the New York State Office of Children and Family Services to amend (change) the record of the report if you believe that the information in the report is inaccurate. Such a request could include a request that the report be amended from being “indicated” to being “unfounded”. This request must be made by you within 90 days of receiving this notice. Do not wait to receive copies of the information contained in the State Central Register if you wish to request an amendment. As a result of your request, a complete review of the record and the factors upon which an “indicated” determination was made will take place. Upon completion of this review, you will be notified by the New York State Office of Children and Family Services, in writing, of the decision made in response to your request. If the Office does not amend the record in accordance with your request or if the Commissioner does not act upon your request for an amendment of the report within 90 days of receiving this request, you will
be notified of the date when a fair hearing on your request will be held.

If you fail to request that the report be amended within 90 days, or, if upon your request, the report is not amended to be "unfounded", the information will remain in the Register until your youngest child's 28th birthday. An indicated report in the Register may be disclosed to an inquiring licensing or provider agency, pursuant to Section 424-a of the Social Services Law, if the substance of the report is found to be both supported by a fair preponderance of the evidence and relevant and reasonably related to employment or licensure in the child caring area for which you have applied. Such an indicated report may affect your ability to work or be licensed in the child care field or adopt a child or become a foster parent. The Office has developed guidelines regarding whether indicated instances of child abuse and maltreatment are relevant and reasonably related to such employment or licensure. You have the right to request these "Guidelines of Relevant and Reasonably Related" at any time. You will automatically receive them if you request amendment of the report.

If you have not yet requested a copy of the information contained within the State Central Register and desire such information, and/or if you wish to request amendment of the information regarding the report contained in the State Central Register, you may do so by sending a written request to:

New York State Office of Children and Family Services
Child Abuse and Maltreatment Register
P.O. Box 4480
Albany, New York 12204-0480

This written request should include your full name, the full name(s) of the child(ren) named in the report, your address and children's address, if different, and the Case ID and Intake Stage ID given in the upper right-hand corner of this letter.

Lydia McEachin  
Caseworker  
(718) 933-5610  
Telephone number

Jean Rollan  
Caseworker's Supervisor  

DO NOT IGNORE THIS LETTER IT IS VERY IMPORTANT.
YOU MAY SEEK ADVICE, INCLUDING LEGAL ADVICE, IF YOU DO NOT UNDERSTAND THIS LETTER.

Request ID: 
Case ID: 
Intake Stage ID: 
Requesting Agency: OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

Dear 

The agency named above has asked if the New York Statewide Central Register of Child Abuse and Maltreatment (SCR) have any report in which you were found to be a person who abused or maltreated a child.

You have the right to a hearing on the finding in the SCR report before we tell the agency about the report(s).

You have only 90 days from the date you get this letter to ask for a hearing.

**How Do I Ask For A Hearing?**
If you want to ask for a hearing write to:

Statewide Central Register
P. O. Box 4480
Albany, New York 12204-0480

Your request must include a copy of the first page of this letter so we may properly identify you.

**Can I Get Information About My Report?**
Yes. You may get a copy of the SCR's record at any time by making a written request to the PO Box address above. You may include that request in with your request for a hearing. You may also contact the agency that investigated the report(s) and request a copy of their record of the investigation.
What Happens If I Do Not Ask For A Hearing Now?
If you do not ask for a hearing within 90 days of getting this letter, you lose your rights to a hearing. The report will remain indicated and maintained by the SCR until the 28th birthday of the youngest child named in the report. Additionally, the above named agency and other such requesting agencies will be told that there is a report showing you abused or maltreated a child.

What Happens If I Do Ask For A Hearing?
If you ask for a hearing, we will first conduct an administrative review. An administrative review is a review by The Office and Children and Family Services (OCFS) of the investigation records and any information you send to the SCR.

The administrative review answers two possible questions regarding your report.

First, OCFS will answer the question: Is there a fair preponderance of evidence to substantiate the allegations in the report? To answer the question, the OCFS will review the evidence submitted by the investigative agency and any information provided by you. A fair preponderance means that there is more evidence to show you did the thing you are accused of doing than there is evidence showing you did not do it.

Second, if OCFS decides that there is a fair preponderance of evidence that you abused or maltreated a child, then the administrative review will also answer the question: Are the allegations in the report relevant and reasonably related to you having a job working with or around children or to you being a foster or adoptive parent? In deciding if a report is relevant and reasonably related, OCFS looks at a variety of factors. These factors are listed below and on the OCFS website at http://www.ocfs.state.ny.us/main/forms/cps

What Happens After Administrative Review?
If the administrative review decides there is not enough proof that you abused or maltreated a child, then the allegations against you will be unsubstantiated and the SCR will not tell the agency about the report.

If the administrative review decides there is enough proof that you abused or maltreated a child, your request for review of the report will be referred to the Bureau of Special Hearings (BSH) for a hearing. If the administrative review decides that the act of abuse or maltreatment is not relevant and reasonably related, the SCR will not tell the agency that there is a SCR report about you. Nevertheless, the SCR will refer your report to the BSH for a hearing on whether there is enough proof that you abused or maltreated a child.

The only question the hearing will look at is whether there is more proof that you abused or maltreated a child, than there is proof that you did not do so. The hearing will NOT answer the question whether such acts are relevant and reasonably related to employment, licensure or certification in the child care field. For that reason it is important that you submit information about relevancy now.

What Can I Provide To Show That The Allegations Even If True Are Not Relevant And Reasonably Related To Having A Job Working With Or Around Children Or To Being A Foster Or Adoptive Parent?
Even if the allegations are true, you may show they are not relevant to working with children. You may provide to the SCR any documents or evidence that supports your claim that the allegations are not relevant to working with children. Among those documents could be certificates of successful completion of programs, letters, statements, or affidavits from, medical providers, neighbors, teachers, or fellow employees showing:
• The nature of any injury to the child;
• The affect of the actions on the child;
• The events of circumstances surrounding what you did or did not do;
• Your age and the child's age at the time of the event and those ages now;
• The number of SCR reports that list you as abusing or maltreating a child;
• How many years have passed since the last report;
• Whether you have successfully held a job working with or around children since the last report;
• Any steps you have taken to fix the problems that led to you abusing or maltreating a child including any professional treatment you sought, such as counseling or substance abuse treatment;
• Any information that explains why it is unlikely you will abuse or maltreat a child again.

When And Where Should I Provide This Information?
You may send any information with your letter asking for a hearing. This address to request a hearing is the P. O. Box address provided on the first page of this letter.

May I Have An Attorney At My Hearing?
Yes, you may hire an attorney to help you at the hearing. You may seek such help from any legal resources available to you including legal aid, private counsel, or the county bar association. An attorney will not be appointed to represent you.

What Happens After The Hearing?
If the hearing finds there is not enough proof that you abused or maltreated a child, the SCR will record the report as unfounded and legally sealed. Legally sealed reports are kept in the SCR for 10 years past the date of the report and may only be released for very limited reasons. An unfounded report is NOT revealed to any employer or other agency that may inquire about you as part of the employment, licensure or certification process.

If the hearing decides that there is enough proof that the allegations against you are true, the SCR will record the report as indicated. The fact that you are named in an indicated report will be revealed to any employer or other agency that may inquire about you with the SCR as part of the employment, licensure or certification process. The SCR will continue to keep the report on file until 10 years past the 18th birthday of the youngest child named in the report.

If you do not agree with the hearing decision, you may appeal the decision to the NYS Supreme Court for the county in which you reside. Your appeal would be based on the provisions of Article 78 of the Civil Practice Law and Rules. Upon appeal, you may address any decision by the hearing officer that a fair preponderance of evidence exists to support an allegation in the report. Your appeal after hearing may also address any decision after administrative review that the allegations are relevant and reasonably related to employment, licensure or certification in child care, foster care, or adoption. If you have any questions concerning this letter, please call 1-844-337-6298 between 8 AM - 5 PM, Monday through Friday, excluding holidays.

Sincerely,

Statewide Central Register
Division of Child Welfare
and Community Services
Dear Mr. Kottas and Ms. Gotlieb:

In response to your request to challenge the above-referenced indicated report(s) on file with the New York Statewide Central Register of Child Abuse and Maltreatment (State Central Register), and as a result of the State Central Register having received a SCR Database check request regarding your application for child care employment or to be a foster or adoptive parent, a hearing will be held at:

New York State Office of Children and Family Services
163 West 125th Street, 14th FL
New York, NY 10027
Monday, November 21, 2016 at 1:00 PM
Judge: Glenn Harris

If you are not able to appear on the above scheduled date and time and wish to have the matter moved to a future date, please call 212-961-4408 and explain the reason. For your request for a new date to be considered, you must also write to the address below and request a new date for your hearing and explain the reason you need the date moved. Please include a copy of the first page of this letter. Your letter should be sent no later than five days prior to the scheduled hearing date.

If you do not appear at the above date and time and you have not written requesting the scheduled date to be moved, you will be deemed to be in default, which means you will lose your right to a hearing and the report will remain indicated. If you wish to withdraw your request for a hearing you need to do so in writing prior to the scheduled date or do so orally on the record at the hearing. Please note that a withdrawal of your request will result in the indicated report(s) remaining on file with the State Central Register. If you fail to appear at the hearing or if you withdraw your request to have a hearing, the existence of the report(s) will be disclosed to licensing and provider agencies authorized to inquire pursuant to Section 424-a of the Social Services Law.
Any written response to this letter such as a request to move the date or time, or telling us you do not wish to have a hearing should be faxed to 212-961-5898 or mailed to:

Office of Children and Family Services  
Bureau of Special Hearings  
163 West 125th Street, 14th Fl  
New York, NY 10027  

Please bring to your hearing this letter, any witnesses you have and the original and two copies of all documents that you will be asking the Administrative Law Judge to consider as evidence. At the hearing, you have a right to ask the Administrative Law Judge to consider your documents as evidence and have people testify on your behalf. You also have the right to ask questions of the witnesses who testify against you, and to challenge the documents being asked by the other side to be considered by the Administrative Law Judge.

You have the right to hire an attorney or bring someone with you to help you at the hearing. If you desire legal assistance and cannot afford a lawyer, you may be able to obtain free legal assistance by contacting your local legal aid organization. However, this office will not appoint or provide an attorney to represent you, nor pay for an attorney you may choose to retain.

The issues to be decided at the hearing are: (a) whether the alleged act or acts of child abuse or maltreatment were done by you, and (b) if so, whether such act or acts are relevant and reasonably related to employment by a child care agency, to the adoption of children or to the provision of foster care. See Social Services Law Sections 422(8) and 424-a, Valmonte v. Bane, 18 F.3d 992 (2nd Cir. 1994), and Lee "TT" v. Dowling, 87 N.Y.2d 699, 642 N.Y.S.2d 181 (1996).

For reports received by the Central Register prior to February 12, 1996, if it is decided that child abuse or maltreatment was not committed, the report will be expunged. For reports received by the Central Register on or after February 12, 1996, if it is decided that child abuse or maltreatment was not committed, the report will be amended to reflect that decision and the report will be sealed.

Please be advised that this hearing may be conducted in person or by use of video-conferencing equipment whereby the parties will appear at the above address but the Administrative Law Judge appears by video.

Sincerely,

John Franklin Udoch
Supervising Hearing Officer
BRONX, NY

Re: Child Care Application Hearing

SC#: 
Hearing ID: 
Intake Stage ID: 
Oral Report Date

Dear 

In response to your request for an administrative hearing to challenge the above-referenced indicated report(s) on file with the New York Statewide Central Register of Child Abuse and Maltreatment (State Central Register), your hearing will be held at:

New York State Office of Children and Family Services
163 West 125th Street, 14th FL
New York, NY 10027
Wednesday, March 29, 2017 at 10:00 AM
Judge: Janet Pitter

If you are not able to appear on the above scheduled date and time and wish to have the matter moved to a future date, please call 212-961-4408 and explain the reason. For your request for a new date to be considered, you must also write to the address below and request a new date for your hearing and explain the reason you need the date moved. Please include a copy of the first page of this letter. Your letter should be sent no later than five days prior to the scheduled hearing date.

If you do not appear at the above date and time and have not written requesting the scheduled date to be moved, you will be deemed to be in default which means you will lose your right to a hearing and the report will remain indicated. If you wish to withdraw your request for a hearing you need to do so in writing prior to scheduled date or do so orally on the record at the hearing. Please note that a withdrawal of your request will result in the indicated report(s) remaining on file with the State Central Register. If you fail to appear at the hearing or if you withdraw your request to have a hearing, the existence of the report(s) will be disclosed to licensing and provider agencies authorized to inquire pursuant to Section 424-a of the Social Services Law.

Any written response to this letter such as a request to move the date or time, or telling us you do not wish to have a hearing should be faxed to 212-961-5898 or mailed to:

Office of Children and Family Services
Bureau Of Special Hearings
163 West 125th Street, 14th FL
New York, NY 10027
Please bring to your hearing this letter, any witnesses you have and the original and two copies of all documents that you will be asking the Administrative Law Judge to consider as evidence. At the hearing, you have a right to ask the Administrative Law Judge to consider your documents as evidence and have people testify on your behalf. You also have the right to ask questions of the witnesses who testify against you, and to challenge the documents being asked by the other side to be considered by the Administrative Law Judge.

You have the right to hire an attorney or bring someone with you to help you at the hearing. If you desire legal assistance and cannot afford a lawyer, you may be able to obtain free legal assistance by contacting your local legal aid organization. However, this office will not appoint or provide an attorney to represent you, nor pay for an attorney you may choose to retain.

Since the State Central Register has received a SCR Database check request regarding your application for child care employment or to be a foster or adoptive parent, the only issue to be addressed at the hearing is whether it has been shown by a fair preponderance of the evidence that you did the act or acts of child abuse or maltreatment on which the indicated report is based. (See Social Services Law Section 424-a and Valmonte v. Bane, 18 F.3d 992 [2nd Cir. 1994].)

If it shown by the investigating agency, that the child abuse or maltreatment was done by you, the existence of the report(s) may be kept on file with the State Central Register and disclosed to licensing and provider agencies authorized to inquire pursuant to Section 424-a of the Social Services Law. For reports received by the State Central Register prior to February 12, 1996, if it is decided that child abuse or maltreatment was not done by you, the report will be expunged or amended. For reports received by the State Central Register on or after February 12, 1996, if it is decided that child abuse or maltreatment was not done by you, the report will be amended to reflect that decision.

Sincerely,

John Franklin Udoch
Supervising Hearing Officer

cc: Mary Anne Szabo, Esq.
Donna Markessinis
Janet Pitter
FREQUENTLY ASKED QUESTION REGARDING HEARINGS
PURSUANT TO SSL §§ 422 AND 424

Why did I get a letter asking me to show up for an initial appearance or hearing?
A: You are considered to be the Appellant(s) in this matter and have been scheduled for either an initial appearance or a full hearing pursuant to section 422 and/or 424-a of the Social Services Law (SSL). If the letter you receive from the New York State Office of Children and Family Services Bureau of Special Hearings (BSH) tells you that you are to appear for an initial appearance, it means you are not having your full hearing that day. You will meet with the Administrative Law Judge (ALJ) and the other side to discuss what will happen at the hearing and how you can prepare for the hearing. At this initial appearance, you will be given a date by the ALJ to come back for a full hearing. You should not bring any witnesses to the initial appearance because the hearing will not begin on that date. If the letter that you received from BSH tells you that you are to appear for a full hearing, see the answer to next question.

Q: What should I bring to the Hearing?
A: If the letter you receive from BSH tells you to appear for a hearing, you must bring with you to the hearing, a copy of the letter, as well as three copies of all documents you want the ALJ to consider as evidence. You should also bring any witnesses you want to have testify for you at the hearing. You must not bring young children or infants to the hearing as they will not be permitted in the hearing room, and there is no one at the location to watch the children while you are in the hearing.

Q: May I be represented by an attorney at the hearing?
A: Yes. You may hire an attorney but this office will not appoint or provide an attorney to represent you, nor pay for any attorney you may choose to hire. If you desire legal assistance and cannot afford an attorney, you may be able to obtain free legal assistance by contacting your local legal aid organization.

*Note: If the report(s) stem from employment where you were a member of a union at the time of the report, check with your union to see if they will assist you with legal representation. BSH does not provide attorney’s to Appellants.

Q: May I represent myself at the hearing?
A: Yes. This is known as “Pro se” representation.

Q: May I have someone who is not an attorney assist me at the hearing?
A: Yes. However, that person cannot also be a witness on your behalf.

Q: Will I be provided a translator at my hearing if I have difficulty understanding English?
A: Yes. You or someone on your behalf will need to call the phone number on your scheduling notice and advise what language you speak. A translator for that language will be present at the hearing at no cost to you.

Q: What if I need to adjourn my hearing?
A: Adjournment requests must be made, in writing to the assigned ALJ at least five days prior to the scheduled hearing date. Requests made by phone and/or in less than five days prior MAY be granted under extraordinary circumstances. The adjournment reason must be stated and, where possible, supported by documentation.

Q: What happens if I fail to appear at my initial appearance and/or hearing?
A: You will be deemed to be in default. The report will be retained by the State Central Register until ten years after the 18th birthday of the youngest child named in the report, whether or not that child was
Q: What is the evidence standard at the hearing?
A: The investigating agency must show that the indicated findings are supported by a “fair preponderance of the evidence” defined as “evidence which outweighs other evidence offered to oppose it.” 18 NYCRR 424.10.

Q: What issues are decided at the hearing?
A: If your hearing is held pursuant to SSL §§ 422 or 424-a, the investigating agency has the burden of proving by a fair preponderance of the evidence that the abuse or maltreatment alleged occurred. If your hearing is held pursuant to SSL § 422, you have the burden of proving whether the abuse or maltreatment, if proven, is no longer relevant and reasonably related to child care issues (see “Guidelines For Determining Whether Indicated Instances of Child Abuse And Maltreatment Are Relevant And Reasonably Related to Employment Or Licensure” in the SCR Packet).

Q: What is a hearing via video conference:
A: Any hearing may be held using video-conference equipment. The proceedings will be conducted in a manner that is similar to when all parties are in the same room. Participants will be required to sit in front of a television monitor and can see the ALJ at the other location. The ALJ will be able to see, hear and speak with you and the other side. Documents the parties want to show the ALJ can be sent to the Judge using a scanner in the hearing room.

The ALJ will be in charge of the proceedings. Parties will be sworn in and testimony taken as in a courtroom proceeding. The entire proceeding will be recorded using audio means only. Only one person shall talk at a time as directed by the ALJ.

Q: How will the investigating agency present its evidence?
A: The investigating agency may present evidence in the form of witness testimony or documents they prepared or obtained during the course of its investigation.

Q: When can I review what will be offered into evidence by the investigating agency?
A: Pursuant to OCFS regulations regarding your hearing, you are entitled to a copy of all documentary evidence the investigating agency intends to introduce as exhibits at the hearing. These documents will be provided to you at the initial appearance or mailed to you provided to the start of your hearing.

Q: Can I challenge the evidence offered by the investigating agency?
A: Yes. You may object to the documents being introduced at the hearing and the ALJ will decide if the documents are allowed into evidence. You will also be given the opportunity to question any witnesses who testify for the investigating agency: this is known as cross-examination. The investigating agency will also have an opportunity to challenge the evidence offered by you and to ask questions of you and any witnesses you call to testify.

Q: What is the State Central Register (SCR) Packet?
A: Prior to your first appearance, you should receive a packet of information from the New York State Central Register of Child Abuse and Maltreatment. This will be referred to as the SCR packet. Please advise the ALJ at your first appearance if you have not received this packet. The SCR Packet is entered into evidence at the hearing. It is not, however, entered into evidence to prove the allegations against you.
It is presented to establish what information is on file at the State Central Register that you are seeking to have amended.

Q: How can I present my evidence?
A: First, you can testify. Your own testimony is considered to be “evidence.” You have the right to not testify, but unlike criminal proceedings, your silence may be held against you. Second, you can submit any evidentiary documentation that directly relates to the findings contained in the indicated report(s). Please bring to the hearing an original and two copies of any document or photograph that you wish to present. Audio or video recordings will be retained by the ALJ. If your hearing is being held pursuant to SSL § 422, you should also be prepared to present evidence regarding any efforts at rehabilitation since the time the report was made. For example, if you and/or your child or children have completed counseling, treatment, educational or training programs you should bring documentation to establish successful completion. This evidence will be considered in determining if the report is no longer relevant and reasonably related to child care issues. For a more detailed description of guidelines regarding this issue you can review the SCR Stip Packet which has that information.

Q: May I present witnesses to testify on my behalf?
A: Yes. Your witness testimony should directly relate to the findings contained in the indicated report(s) or to the issue of whether the report is still relevant and reasonably related to child care.

Q: What should I do if my witness is unable to appear in person?
A: You may present statements, sworn affidavits or letters from witnesses who cannot appear in person. Letters should be dated, signed and, if possible, acknowledged before a Notary Public. Please be advised that the ALJ can give less weight to such statements, affidavits, or letters because they are not subject to cross-examination.

Q: Is the hearing recorded?
A: Yes. Speak loudly and clearly. Avoid gestures as they will not be picked up by the recording device.

Q: How will the outcome of my hearing be communicated to me?
A: Once the hearing is over, a written decision will be mailed to you and to your attorney or other representative if you have one. It is your responsibility to keep our office informed of any change of address.

Q: What happens if the decision says I won my hearing?
A: The decision will explain that the indicated report or reports will be amended to reflect that you did not do the acts of abuse or maltreatment. The report or reports will not be disclosed to agencies who ask about them.

Q: What happens if the decision says I lost my hearing?
A: If the decision states that the report or reports will remain indicated against you because the investigating agency proved the abuse or maltreatment, you may bring a lawsuit in accordance with Article 78 of the Civil Practice Law and Rules. If you wish to do so and no not know how, you may contact the legal resources available to you such as County Bar Association, Legal Aid, Legal Services, etc... You must start such a lawsuit within four months after the date of the decision.
March 12, 2015

Re: Case ID: •
Intake Stage ID:
Date of Intake: 03/10/2015

Apt
Bronx, New York

Dear

This is to inform you that you are the subject of a report of suspected child abuse or maltreatment received by the New York State Child Abuse and Maltreatment Register (State Central Register) on 03/10/2015. This means that you have been identified as the person(s) who is responsible for causing or allowing to be inflicted injury, abuse, or maltreatment to the child(ren). This report has been transmitted to Office of Special Investigations County Child Protective Service for commencement of an investigation and evaluation of the report as required by the New York State Child Protective Services Act.

The Law allows the local child protective service 60 days from the time of the receipt of the report to complete a full investigation of the allegations contained within the report as well as an evaluation of the care being provided to your child(ren). You will be notified in writing of the findings of the investigation. Where appropriate, services will be offered to assist you and your family.

If the report is determined to be "unfounded" meaning that there is no credible evidence (i.e., evidence worthy of belief) of abuse or maltreatment, all information which would identify the subject(s) or other persons named in the report will be legally sealed by the State Central Register and the local child protective service. An "unfounded" report is confidential and may only be unsealed and made available under limited circumstances, including: to a local child protective service or State agency investigating a subsequent report of abuse or maltreatment involving the same subject of the report, or child named in the legally sealed, unfounded report, or the child's sibling; or to the subject of the report where the subject requests access to the "unfounded" report. If the report is determined to be "Indicated" (i.e. there is some credible evidence of abuse or maltreatment to the child(ren)), the report will remain in the State Central Register and the local social services district's register.

This report is confidential and can only be released to certain authorized persons granted rights to access by State Law. As the subject of the report you have a right to request a copy of all information regarding the report contained in the State Central Register. However, the Commissioner of the New York State Office of Children and Family Services and social services district official must withhold information identifying the person who made the report unless that person has consented in writing to the release of such information. In addition, the Commissioner and social services district official may withhold information identifying a person who cooperated in the investigation of the report if the Commissioner reasonably determines that the release of this information would be detrimental to that person's safety or interest.

After the investigation is completed, if the report is determined to be "indicated" and if you are determined to be a subject of the report, you have the right to request the Commissioner of the New York State Office of Children and Family Services to amend (change) the record of the report if you believe that the report
is inaccurate. This request must be made by you within 90 days of being notified that the report is indicated.

If you wish to receive a copy of the information contained in the State Central Register, please write to:

New York State Office of Children and Family Services
Child Abuse and Maltreatment Register
P.O. Box 4480
Albany, New York 12204-0480

This written request should include your full name, the full name(s) of the child(ren) named in the report, your address and children's address, if different, and the Case ID and Intake Stage ID given in the upper right-hand corner of this letter.

D Ellison
Caseworker
(212) 442-7275
Telephone number

N Christian
Caseworker's Supervisor
Dear Maxine Ketcher:

Pursuant to Social Services Law 424a, an administrative review of the below referenced record was completed. The decision has been made to deny your client's request to legally seal or expunge the report. It was determined that the report is supported by a fair preponderance of the evidence. Therefore, the report will remain on file in the State Central Register.

All information retained in the State Central Register is maintained in the strictest confidence according to the requirements of the Social Services Law. It would only be utilized in the event that there was a subsequent report received regarding the subject(s) of this report, and/or in those circumstances set forth in Sections 422 and 424-a of the Social Services Law.

We have referred your request to the Bureau of Special Hearings of the New York State Department of Family Assistance for an administrative hearing to be scheduled. At a hearing, the local Child Protective Service will be required to produce evidence to support the finding(s). You or your representative will also be permitted to produce evidence to refute the finding(s). The Bureau of Special Hearings will notify you of the time and place for the hearing. The only question to be addressed at such a hearing is whether it has been shown by a fair preponderance of the evidence that your client committed the act or acts of child abuse or maltreatment on which the indicated report is based.

If you are successful at the hearing and it is determined that a fair preponderance of the evidence does not exist, the Office will notify provider agencies and licensing agencies which inquire pursuant to Section 424-a of the Social Services Law, that no record in the SCR names your client as the subject of an indicated report. The record will be amended to unfounded legally sealed or expunged from the SCR.

The Office will notify provider and licensing agencies inquiring that your client is the subject of an indicated report of child abuse or maltreatment if your client is not successful at the hearing. The SCR will continue to keep a legally sealed report on file and may release it only pursuant to Social Services Law 422.5.

Sincerely,

Linda A. Joyce, Director
State Central Register
Division of Child Welfare
and Community Services
State Central Register  
P.O. Box 4480  
Albany, New York 12204  

To Whom It May Concern:  

I am writing to request a copy of all information concerning me in the State Central Register, as I am entitled to under Section 422(7) of the Social Services Law.  

The name(s) and date(s) of birth of my child(ren) are:  

________________________________________  

________________________________________  

Sincerely,  

________________________________________  

Name  

________________________________________  

Date of Birth  

________________________________________  

Address  

________________________________________  

Phone Number  

________________________________________  

Case I.D. (if known)
Exhibit 15
Guidelines for Determining Whether Indicated Instances of Child Abuse and Maltreatment Are Relevant and Reasonably Related To Employment or Licensure
Provided to Subjects of Indicated Reports Requesting Expungement or Amendment

Factors to Consider in Assessing an Applicant’s or Employee’s Risk to Children

The agency must determine, on the basis of the available information, whether to approve an application of a person or retain a person who is the subject of an indicated report. In making such a determination, the following factors should be considered, although not all factors will be relevant to each particular case:

1) the seriousness of the incident(s) cited in the indicated report(s);
2) the seriousness and extent of any injury sustained by the child(ren) named in the indicated report(s);
3) any detrimental or harmful effect on the child as a result of the applicant’s or employee’s actions or inactions and relevant events and circumstances surrounding these actions and inactions as these relate to the indicated report(s);
4) the age of the subject and child at the time of the incident(s) of child abuse and maltreatment;
5) the time which has elapsed since the most recent incident of child abuse and maltreatment;
6) the number of indicated incidents of abuse and maltreatment; (Where there is more than one substantiated incident, you should evaluate each incident separately. You should also evaluate the total effect of all indicated incidents when assessing the risk the person might pose to the safety and well-being of the children.)
7) the degree to which the position entails supervision of, interaction with, and/or opportunity to be with a child or children on a regular and substantial basis and whether the position may involve being alone with a child or children or in the presence of other adults;
8) any information produced by the applicant or employee or produced on his behalf in regard to his rehabilitation. Rehabilitation is a showing by the applicant or employee of positive and successful efforts to rectify a problem which resulted in child abuse or maltreatment so that children under his or her care will not be in danger. In finding rehabilitation it should be shown:
   a) that acts of child abuse and maltreatment apparently have not been repeated;
   b) that evidence exists of actions taken by the person which show that he or she is now able to deal positively with a situation or problem that gave rise to the previous incident(s) of child abuse and maltreatment; and
   c) when relevant, that professional treatment (e.g., counseling or self help groups) has been successful.
9) that employment or practice in child care field has been successful.
10) although, as earlier stated, each report must be carefully reviewed extra weight and scrutiny must be given to a report(s) where the abuse or maltreatment resulted in a fatality, sexual abuse, subdural hematoma, internal injuries, extensive lacerations, bruises, welts, burns, scalding, malnutrition or failure to thrive.

Application or Employment Decision

The decision of whether to approve an application of a person or retain a person who is the subject of an indicate SCR report(s) should be made on a case by case basis utilizing the above guidelines. Before approving an application of a person or retaining a person who is the subject of an indicated SCR report(s), the agency should carefully analyze whether the relevant facts demonstrably justify approving the application of a person or retaining an employee.
When an agency's decision is to approve an application or retain an employee, the agency is to prepare a written analysis which becomes part of the agency personnel or applicant file. The analysis must include:

1) relevant information as to each of the guideline factors contained in this document; and
2) an explanation of why such person was determined to be appropriate and acceptable to have regular and substantial contact with children being cared for by the agency or determined appropriate and acceptable to be licensed by the agency.

If the decision after the agency review is not to approve an application of a person or retain an employee, then the process set forth in Section C(2)(a) of these guidelines is to be followed. [refers to furnishing the applicant or employee with a written statement setting forth whether the detail was based in whole or part, on such indicated report(s), and if so, the reason for the denial. The applicant or employee must be informed that he/she has a right to request a fair hearing before the Department regarding the record maintained by the State Central Register.]

It must be recognized that the Child Abuse and Maltreatment Register screening process is just one component of the inquiry and evaluation which must occur during the application process. The clearance procedures should therefore be viewed as an aid in making the best possible decision regarding an application or employee and not as the solution in preventing the abuse or maltreatment of children in your care. Just as the Child Abuse Prevention Act of 1985 requires these guidelines to be implemented to assist licensing and provider agencies in evaluating applicants with indicate reports of child abuse and maltreatment, these agencies must also review and evaluate an applicant’s background and any information supplied by the applicant. The agency must review the applicant’s employment history, personal and employment references, and must obtain a signed sworn statement indicating whether to the best of the applicant’s knowledge, the applicant has ever been convicted of a crime in this state or any other jurisdiction.

All information regarding an individual’s indicated report of child abuse and maltreatment is confidential and must be maintained in a secure manner. Such information is only to be shared with the individual(s) it relates to, and those persons involved in the employment or licensing decision-making process. According to Section 422.4 of the Social Service Law “…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…”

Decisions concerning the approval of applicants and the retention of employees rest with you, and the knowledge that an applicant or employee is the subject of an indicated child abuse or maltreatment report(s) needs to be carefully weighed in making such decisions. The safety and well-being of the children should be the primary concern in the decision making process but the rights of applicants and employees to fair decisions should also receive consideration.

This guideline is effective January 1, 1986. Additionally, as provided in Section 424.a(5)(b) of the Social Services Law, this guideline shall not supersede similar guidelines developed by local governmental agencies prior to January 1, 1986.
New York Social Services Law § 412
§ 412. General definitions

When used in this title and unless the specific context indicates otherwise:

1. An "abused child" means a child under eighteen years of age and who is defined as an abused child by the family court act;
2. A "maltreated child" includes a child under eighteen years of age:
   (a) defined as a neglected child by the family court act, or
   (b) who has had serious physical injury inflicted upon him or her by other than accidental means;
3. "Person legally responsible" for a child means a person legally responsible as defined by the family court act;
4. "Subject of the report" means any parent of, guardian of, or other person eighteen years of age or older legally responsible for, as defined in subdivision (g) of section one thousand twelve of the family court act, a child reported to the statewide central register of child abuse and maltreatment who is allegedly responsible for causing injury, abuse or maltreatment to such child or who allegedly allows such injury, abuse or maltreatment to be inflicted on such child; or a director or an operator of, or employee or volunteer in, a home operated or supervised by an authorized agency, the office of children and family services, or in a family day-care home, a day-care center, a group family day care home, a school-age child care program or a day-services program who is allegedly responsible for causing injury, abuse or maltreatment to a child who is reported to the statewide central register of child abuse or maltreatment or who allegedly allows such injury, abuse or maltreatment to be inflicted on such child;
5. "Other persons named in the report" shall mean and be limited to the following persons who are named in a report of child abuse or maltreatment other than the subject of the report: the child who is reported to the statewide central register of child abuse and maltreatment; and such child's parent, guardian, or other person legally responsible for the child who has not been named in the report as allegedly responsible for causing injury, abuse or maltreatment to the child or as allegedly allowing such injury, abuse or maltreatment to be inflicted on such child;
6. An "unfounded report" means any report made pursuant to this title unless an investigation determines that some credible evidence of the alleged abuse or maltreatment exists;
7. An "indicated report" means a report made pursuant to this title if an investigation determines that some credible evidence of the alleged abuse or maltreatment exists.
8. "Substance abuse counselor" or "alcoholism counselor" means any person who has been issued a credential therefor by the office of alcoholism and substance abuse services, pursuant to paragraphs one and two of subdivision (d) of section 19.07 of the mental hygiene law.

9. [Eff. July 19, 2017.] A "publicly-funded emergency shelter for families with children" means any facility with overnight sleeping accommodations and that is used to house recipients of temporary housing assistance and which houses or may house children and families with children.


*Note that portions of SSL §§ 422 and 424-a have been struck down by case law and do not accurately describe all aspects of the current administrative challenge process. Please see the PowerPoint.
New York Social Services Law

§ 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 capable 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 of children and family services, 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 and any previous reports to the central registry involving the subject of such report or children named in such report, including any previous report containing allegations of child abuse and maltreatment alleged to have occurred in other counties and districts in New York state shall be immediately transmitted orally or electronically by the office of children and family services 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. If the report involves either (i) an allegation of an abused child described in paragraph (i), (ii) or (iii) of subdivision (e) of section one thousand 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 office of children and family services 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.


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 office or local departments 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 justice center for the protection of people with special needs or a delegate investigatory entity in connection with an investigation being conducted under article eleven of this chapter;

(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 department of corrections and community supervision regarding a person to whom the service or department is providing supervision pursuant to article sixty of the penal law or article eight of the correction 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 department 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 department, provided, however, that only indicated reports shall be furnished pursuant to this subdivision;

(l) a criminal justice agency, which for the purposes of this subdivision shall mean a district attorney, an assistant district attorney or an 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 county department of
parks, of a city police department, or of a county, town or village police department or county sheriff's office or department; or an Indian police officer, when:

(i) such criminal justice agency 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; or

(ii) such criminal justice agency requests such information stating that such agency is conducting an investigation of a missing child; such agency has reason to suspect such child's parent, guardian or other person legally responsible for such child is or may be the subject of a report, or, such child or such child's sibling is or may be another person named in a report of child abuse or maltreatment and that any such information is or may be needed to further such investigation;

(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 office of children and family services, the office of mental health or the office for people with 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 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 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;


(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) an attorney for a child, appointed pursuant to the provisions of section one thousand 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 attorney for a child has been appointed is the subject or another person named in the report, pursuant to sections one thousand thirty-nine-a and one thousand 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;

(z) an entity with appropriate legal authority in another state to license, certify or otherwise approve
prospective foster parents, prospective adoptive parents, prospective relative guardians or
prospective successor guardians where disclosure of information regarding such prospective foster
or prospective adoptive parents or prospective relative or prospective successor guardians and other
persons over the age of eighteen residing in the home of such persons is required under title IV-E of
the federal social security act; and
(aa) a social services official who is investigating whether an adult is in need of protective services in accordance with the provisions of section four hundred seventy-three of this chapter, when such official has reasonable cause to believe such adult may be in need of protective services due to the conduct of an individual or individuals who had access to such adult when such adult was a child and that such reports and information are needed to further the present investigation.

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. However, no information may be released unless the person or official's identity is confirmed by the office. 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 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, or all members of a local or regional multidisciplinary investigative team or the justice center for the protection of people with special needs when investigating a subsequent report of suspected abuse, neglect 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 pursuant to this article or article eleven of this chapter;

(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 four of section 240.50 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 four of section 240.50 of the penal law. Legally sealed unfounded reports shall be expunged ten years after the receipt of the report.

(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. 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. Access to reports assigned to, and records created under the family assessment and services track and information concerning such reports and records is governed by paragraph (d) of subdivision five of section four hundred twenty-seven-a of this title.
6. In all other cases, the record of the report to the statewide central register shall be expunged ten years after the eighteenth birthday of the youngest child named in the report. In the case of a child in residential care the record of the report to the statewide central register shall be expunged ten years after the reported child's eighteenth birthday. In any case and at any time, the commissioner of the office of children and family services may amend any record upon good cause shown and notice to the subjects of the report and other persons named in the report.

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

(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 a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the hearing officer shall determine, based on guidelines developed by the office of children and family services pursuant to subdivision five of section four hundred twenty-four-a of this title, whether such act or acts are relevant and reasonably related to employment of the subject by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title.

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 justice center for the protection of people with special needs, department of education, office of mental health, office for people with developmental disabilities, the local social services commissioner or school district placing the child, any attorney for the child 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.


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 office shall refer suspected cases of falsely reporting child abuse and maltreatment in violation of subdivision four of section 240.50 of the penal law to the appropriate law enforcement agency or district attorney.
*Note that portions of SSL §§ 422 and 424-a have been struck down by case law and do not accurately describe all aspects of the current administrative challenge process. Please see the PowerPoint.
Social Services Law § 424-a

§ 424-a. Access to information contained in the statewide central register of child abuse and maltreatment

1. (a) A licensing agency shall inquire of the department and the department shall, subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether an applicant for a certificate, license or permit, assistants to group family day care providers, the director of a camp subject to the provisions of article thirteen-B of the public health law, a prospective successor guardian when a clearance is conducted pursuant to paragraph (d) of subdivision two of section four hundred fifty-eight-b of this article, and any person over the age of eighteen who resides in the home of a person who has applied to become an adoptive parent or a foster parent or to operate a family day care home or group family day care home or any person over the age of eighteen residing in the home of a prospective successor guardian when a clearance is conducted of a prospective successor guardian pursuant to this paragraph, has been or is currently the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(b) (i) Subject to the provisions of subdivision seven of this section, a provider agency shall inquire of the office and the office shall, subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether any person who is actively being considered for employment and who will have the potential for regular and substantial contact with individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment prior to permitting such person to have unsupervised contact with such individuals. Such agency may inquire of the office and the office shall inform such agency and the subject of the inquiry whether any person who is currently employed and who has the potential for regular and substantial contact with individuals who are cared for by such agency is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment. A provider agency shall also inquire of the office and the office shall inform such agency and the subject of the inquiry whether any person who is employed by an individual, corporation, partnership or association which provides goods or services to such agency who has the potential for regular and substantial contact with individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment prior to permitting such person to have unsupervised contact with such individuals. Inquiries made to the
office pursuant to this subparagraph by a provider agency on current employees shall be made no more often than once in any six month period.

(ii) A provider agency may inquire of the office and the office shall, upon receipt of such inquiry and subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether any person who is to be hired as a consultant by such agency who has the potential for regular and substantial contact with individuals who are cared for by the agency is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(iii) A provider agency may inquire of the office and the office shall, upon receipt of such inquiry and subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether any person who has volunteered his or her services to such agency and who will have the potential for regular and substantial contact with individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(iv) The office shall promulgate regulations which effectuate the provisions of this paragraph.

(c) An authorized agency shall inquire of the department and the department shall inform such agency and the subject of the inquiry, whether any person who has applied to adopt a child is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(d) Any person who has applied to a licensing agency for a certificate, license or permit or who has applied to be an employee of a provider agency or who has applied to an authorized agency to adopt a child, or who may be hired as a consultant or used as a volunteer by a provider agency and any other person about whom an inquiry is made to the department pursuant to the provisions of this section shall be notified by such agency at the time of application or prior to the time that a person may be hired as a consultant or used as a volunteer that the agency will or may inquire of the department whether such person is the subject of an indicated child abuse and maltreatment report. All employees of a provider agency shall be notified by their employers that an inquiry may be made to the department pursuant to this section and no such inquiry shall be made regarding any employee until such notice has been made.

(d-1) A law enforcement agency pursuant to section eight hundred thirty-seven-k of the executive law may inquire of the department and the department may inform such agency and the subject of the inquiry, whether any person who has applied for a symbol provided for in section eight hundred thirty-seven-k of the executive law or persons residing or regularly visiting said location are the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.
(e)(i) Subject to the provisions of subparagraph (ii) of this paragraph, the department shall inform the provider or licensing agency, or child care resource and referral programs pursuant to subdivision six of this section whether or not the person is the subject of an indicated child abuse and maltreatment report only if: (a) the time for the subject of the report to request an amendment of the record of the report pursuant to subdivision eight of section four hundred twenty-two has expired without any such request having been made; or (b) such request was made within such time and a fair hearing regarding the request has been finally determined by the commissioner and the record of the report has not been amended to unfound the report or delete the person as a subject of the report.

(ii) If the subject of an indicated report of child abuse or maltreatment has not requested an amendment of the record of the report within the time specified in subdivision eight of section four hundred twenty-two of this title or if the subject had a fair hearing pursuant to such section prior to January first, nineteen hundred eighty-six and an inquiry is made to the department pursuant to this subdivision concerning the subject of the report, the department shall, as expeditiously as possible but within no more than ten working days of receipt of the inquiry, determine whether, in fact, the person about whom an inquiry is made is the subject of an indicated report. Upon making a determination that the person about whom the inquiry is made is the subject of an indicated report of child abuse and maltreatment, the department shall immediately send a written request to the child protective service or 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 on the subject. 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 the indicated report to the department. The department shall, within fifteen working days of receiving such records, reports and other information from the child protective service or state agency, review all records, reports and other information in its possession concerning the subject and determine whether there is some credible evidence to find that the subject had committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

(iii) If it is determined, after affording such service or state agency a reasonable opportunity to present its views, that there is no credible evidence in the record to find that the subject committed such act or acts, the department shall amend the record to indicate that the report was unfounded and notify the inquiring party that the person about whom the inquiry is made is not the subject of an indicated report. If the subject of the report had a fair hearing pursuant to subdivision eight of section four hundred twenty-two of this title prior to January first, nineteen hundred eighty-six and the fair hearing had been finally determined by the commissioner and the record of the report had not been amended to unfound the report or delete the person as a subject of the report, then the department
shall determine that there is some credible evidence to find that the subject had committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

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

(v) If it is determined after a review by the department of all records, reports and information in its possession concerning the subject of the report that there is some credible evidence to prove that the subject committed the act or acts of abuse or maltreatment giving rise to the indicated report and that such act or acts are relevant and reasonably related to issues concerning 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 has been submitted by the subject to a licensing agency, the department shall inform the inquiring party that the person about whom the inquiry is made is the subject of an indicated report of child abuse and maltreatment; the department shall also notify the subject of the inquiry of his or her fair hearing rights granted pursuant to paragraph (c) of subdivision two of this section.

(f) The office of children and family services shall charge a fee of twenty-five dollars when it conducts a search of its records within the statewide central register for child abuse or maltreatment in accordance with this section or regulations of the office to determine whether an applicant for employment is the subject of an indicated child abuse or maltreatment report including an applicant to be a child day care provider and a request made pursuant to subdivision six of this section. Such fees shall be deposited in a special revenue—other account and shall be made available to the office for costs incurred in the implementation of this section.

(g) The office shall determine actions necessary to develop an automated search, available for the use of the office, of records at the statewide central registry of child abuse and maltreatment.

2. (a) Upon notification by the office or by a child care resource and referral program in accordance with subdivision six of this section that any person who has applied to a licensing agency for a license, certificate or permit or who seeks to become an employee of a provider agency, or to accept
a child for adoptive placement or who will be hired as a consultant or used as a volunteer by a provider agency, or that any other person about whom an inquiry is made to the office pursuant to the provisions of this section is the subject of an indicated report, the licensing or provider agency shall determine on the basis of information it has available whether to approve such application or retain the employee or hire the consultant or use the volunteer or permit an employee of another person, corporation, partnership or association to have access to the individuals cared for by the provider agency, provided, however, that if such application is approved, or such employee is retained or consultant hired or volunteer used or person permitted to have access to the children cared for by such agency the licensing or provider agency shall maintain a written record, as part of the application file or employment record, of the specific reasons why such person was determined to be appropriate to receive a foster care or adoption placement or to provide day care services, to be the director of a camp subject to the provisions of article thirteen-B of the public health law, to be approved as a successor guardian in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, to be employed, to be retained as an employee, to be hired as a consultant, used as a volunteer or to have access to the individuals cared for by the agency.

(b)(i) Upon denial of such application by a licensing or a provider agency or failure to hire the consultant or use the volunteer, or denial of access by a person to the children cared for by the agency, or failure to approve a successor guardian in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, such agency shall furnish the applicant, prospective consultant, volunteer or person who is denied access to the children cared for by the agency with a written statement setting forth whether its denial, failure to hire or failure to use was based, in whole or in part, on such indicated report, and if so, its reasons for the denial or failure to hire or failure to use.

(ii) Upon the termination of employment of an employee of a provider agency, who is the subject of an indicated report of child abuse or maltreatment on file with the statewide central register of child abuse and maltreatment, the agency shall furnish the employee with a written statement setting forth whether such termination was based, in whole or in part, on such indicated report and, if so, the reasons for the termination of employment.

(c) If the reasons for such denial or termination or failure to hire a consultant or use a volunteer or failure to approve a successor guardian in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article include the fact that the person is the subject of an indicated child abuse or maltreatment report, such person may request from the department within ninety days of receipt of notice of such denial, termination, failure to hire a consultant or use a volunteer and shall be granted a hearing in accordance with the procedures set forth in section twenty-two of this chapter relating to fair hearings. All hearings held pursuant to the
provisions of this subdivision shall be held within thirty days of a request for the hearing unless the hearing is adjourned for good cause shown. Any subsequent adjournment for good cause shown shall be granted only upon consent of the person who requested the hearing. The hearing decision shall be rendered not later than sixty days after the conclusion of the hearing.

(d) At any such hearing, the sole question before the department shall be whether the applicant, employee, prospective consultant, volunteer, prospective successor guardian or person who was denied access to the children cared for by a provider agency has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report. In such hearing, the burden of proof on the issue of whether an act of child abuse or maltreatment was committed shall be upon the local child protective service or the state agency which investigated the report, as the case may be. The failure to sustain the burden of proof at a hearing held pursuant to this section shall not result in the expungement or unfounding of an indicated report but shall be noted on the report maintained by the state central register and shall preclude the department from notifying a party which subsequently makes an inquiry to the department pursuant to this section that the person about whom the inquiry is made is the subject of an indicated report.

(e) Upon the failure, at the fair hearing held pursuant to this section, to prove by a fair preponderance of the evidence that the applicant committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the department shall notify the provider or licensing agency which made the inquiry pursuant to this section that it should reconsider any decision to discharge an employee, or to deny the subject's application for employment, or to become an adoptive parent, or to become a successor guardian, or for a certificate, license or permit; or not to hire a consultant, use a volunteer, or allow access to children cared for by the agency.

3. [Eff. until July 19, 2017. See, also, subd. 3, below.] For purposes of this section, the term “provider” or “provider agency” shall mean an authorized agency, the office of children and family services, juvenile detention facilities subject to the certification of such office, programs established pursuant to article nineteen-H of the executive law, non-residential or residential programs or facilities licensed or operated by the office of mental health or the office for people with developmental disabilities except family care homes, licensed child day care centers, including head start programs which are funded pursuant to title V of the federal economic opportunity act of nineteen hundred sixty-four,¹ as amended, early intervention service established pursuant to section twenty-five hundred forty of the public health law, preschool services established pursuant to section forty-four hundred ten of the education law, school-age child care programs, special act school districts as enumerated in chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, as amended, programs and facilities licensed by the office of alcoholism and substance abuse services, residential schools which are operated, supervised or approved by the education
department, and any other facility or provider agency, as defined in subdivision four of section four hundred eighty-eight of this chapter, in regard to the employment of staff, or use of providers of goods and services and staff of such providers, consultants, interns and volunteers.

3. [Eff. July 19, 2017. See, also, subd. 3, above.] For purposes of this section, the term “provider” or “provider agency” shall mean: an authorized agency; the office of children and family services; juvenile detention facilities subject to the certification of the office of children and family services; programs established pursuant to article nineteen-H of the executive law; non-residential or residential programs or facilities licensed or operated by the office of mental health or the office for people with developmental disabilities except family care homes; licensed child day care centers, including head start programs which are funded pursuant to title V of the federal economic opportunity act of nineteen hundred sixty-four, as amended; early intervention service established pursuant to section twenty-five hundred forty of the public health law; preschool services established pursuant to section forty-four hundred ten of the education law; school-age child care programs; special act school districts as enumerated in chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, as amended; programs and facilities licensed by the office of alcoholism and substance abuse services; residential schools which are operated, supervised or approved by the education department; publicly-funded emergency shelters for families with children; provided, however, for purposes of this section, when the provider or provider agency is a publicly-funded emergency shelter for families with children, then all references in this section to the “potential for regular and substantial contact with individuals who are cared for by the agency” shall mean the potential for regular and substantial contact with children who are served by such shelter; and any other facility or provider agency, as defined in subdivision four of section four hundred eighty-eight of this chapter, in regard to the employment of staff, or use of providers of goods and services and staff of such providers, consultants, interns and volunteers.

4. For purposes of this section, the term “licensing agency” shall mean an authorized agency which has received an application to become an adoptive parent or an authorized agency which has received an application for a certificate or license to receive, board or keep any child pursuant to the provisions of section three hundred seventy-six or three hundred seventy-seven of this article or an authorized agency which has received an application from a relative within the second degree or third degree of consanguinity of the parent of a child or a relative within the second degree or third degree of consanguinity of the step-parent of a child or children, or the child's legal guardian for approval to receive, board or keep such child, or an authorized agency that conducts a clearance pursuant to paragraph (d) of subdivision two of section four hundred fifty-eight-b of this article, or a state or local governmental agency which receives an application to provide child day care services in a child day care center, school-age child care program, family day care home or group family day care home pursuant to the provisions of section three hundred ninety of this article, or the
department of health and mental hygiene of the city of New York, when such department receives an application for a certificate of approval to provide child day care services in a child day care center pursuant to the provisions of the health code of the city of New York, or the office of mental health or the office for people with developmental disabilities when such office receives an application for an operating certificate pursuant to the provisions of the mental hygiene law to operate a family care home, or a state or local governmental official who receives an application for a permit to operate a camp which is subject to the provisions of article thirteen-B of the public health law or the office of children and family services which has received an application for a certificate to receive, board or keep any child at a foster family home pursuant to articles nineteen-G and nineteen-H of the executive law or any other facility or provider agency, as defined in subdivision four of section four hundred eighty-eight of this chapter, in regard to any licensing or certification function carried out by such facility or agency.

5. (a) The office of children and family services, after consultation with the justice center for the protection of people with special needs, the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services, the department of health, and the state education department shall develop guidelines to be utilized by a provider agency, as defined by subdivision three of this section, and a licensing agency, as defined by subdivision four of this section, in evaluating persons about whom inquiries are made to the office pursuant to this section who are the subjects of indicated reports of child abuse and maltreatment, as defined by subdivision four of section four hundred twelve of this chapter. (b) The guidelines developed pursuant to subdivision one of this section shall not supersede similar guidelines developed by local governmental agencies prior to January first, nineteen hundred eighty-six.

6. A child care resource and referral program as defined in subdivision two of section four hundred ten-p of this article may inquire of the office of children and family services and the office shall, upon receipt of such inquiry and subject to the provisions of paragraph (e) of subdivision one of this section, inform such program and the subject of such inquiry whether any person who has requested and agreed to be included in a list of substitute child day care caregivers for employment by registered or licensed day care providers maintained by such program in accordance with regulations promulgated by the office, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment. Inquiries made to the office by such programs pursuant to this subdivision shall be made no more often than once in any six month period and no less often than once in any twelve month period. Notwithstanding any provision of law to the contrary, a child care resource and referral program may redisclose such information only if the purpose of such redisclosure is to respond to a request for such information by a registered or licensed provider and only if after an individual included in the list of substitute child
day care caregivers for employment by registered or licensed day care providers has consented to be referred for employment to such inquiring agency. Upon such referral, the provisions related to notice and fair hearing rights of this section shall otherwise apply. Inquiries made pursuant to this subdivision shall be in lieu of the inquiry requirements set forth in paragraph (b) of subdivision one of this section.

7. Any facility, provider agency, or program that is required to conduct an inquiry pursuant to section four hundred ninety-five of this chapter shall first conduct the inquiry required under such section. If the result of the inquiry under section four hundred ninety-five of this chapter is that the person about whom the inquiry is made is on the register of substantiated category one cases of abuse or neglect and the facility or provider agency is required to deny the application in accordance with article eleven of this chapter, the facility or provider agency shall not be required to make an inquiry of the office under this section.
When used in this article and unless the specific context indicates otherwise:
(a) "Respondent" includes any parent or other person legally responsible for a child's care who is alleged to have abused or neglected such child;
(b) "Child" means any person or persons alleged to have been abused or neglected, whichever the case may be;
(c) "A case involving abuse" means any proceeding under this article in which there are allegations that one or more of the children of, or the legal responsibility of, the respondent are abused children;
(d) "Drug" means any substance defined as a controlled substance in section thirty-three hundred six of the public health law;
(e) "Abused child" means a child less than eighteen years of age whose parent or other person legally responsible for his care
(i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or
(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or
(iii)(A) commits, or allows to be committed an offense against such child defined in article one hundred thirty of the penal law; (B) allows, permits or encourages such child to engage in any act described in sections 230.25, 230.30 and 230.32 of the penal law; (C) commits any of the acts described in sections 255.25, 255.26 and 255.27 of the penal law; (D) allows such child to engage in acts or conduct described in article two hundred sixty-three of the penal law; or (E) permits or encourages such child to engage in any act or commits or allows to be committed against such child any offense that would render such child either a victim of sex trafficking or a victim of severe forms of trafficking in persons pursuant to 22 U.S.C. 7102 as enacted by public law 106-386 or any successor federal statute; (F) provided, however, that (1) the corroboration requirements contained in the penal law and (2) the age requirement for the application of article two hundred sixty-three of such law shall not apply to proceedings under this article.
(f) "Neglected child" means a child less than eighteen years of age
(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

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

(ii) who has been abandoned, in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b of the social services law, by his parents or other person legally responsible for his care.

(g) "Person legally responsible" includes the child's custodian, guardian, any other person responsible for the child's care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child.

(h) "Impairment of emotional health" and "impairment of mental or emotional condition" includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior, including incorrigibility, ungovernability or habitual truancy; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child.

(i) "Child protective agency" means the child protective service of the appropriate local department of social services or such other agencies with whom the local department has arranged for the provision of child protective services under the local plan for child protective services or an Indian tribe that has entered into an agreement with the state department of social services pursuant to section thirty-nine of the social services law to provide child protective services.
(j) "Aggravated circumstances" means where a child has been either severely or repeatedly abused, as defined in subdivision eight of section three hundred eighty-four-b of the social services law; or where a child has subsequently been found to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of this section, provided that the respondent or respondents in each of the foregoing proceedings was the same; or where the court finds by clear and convincing evidence that the parent of a child in foster care has refused and has failed completely, over a period of at least six months from the date of removal, to engage in services necessary to eliminate the risk of abuse or neglect if returned to the parent, and has failed to secure services on his or her own or otherwise adequately prepare for the return home and, after being informed by the court that such an admission could eliminate the requirement that the local department of social services provide reunification services to the parent, the parent has stated in court under oath that he or she intends to continue to refuse such necessary services and is unwilling to secure such services independently or otherwise prepare for the child's return home; provided, however, that if the court finds that adequate justification exists for the failure to engage in or secure such services, including but not limited to a lack of child care, a lack of transportation, and an inability to attend services that conflict with the parent's work schedule, such failure shall not constitute an aggravated circumstance; or where a court has determined a child five days old or younger was abandoned by a parent with an intent to wholly abandon such child and with the intent that the child be safe from physical injury and cared for in an appropriate manner.

(k) "Permanency hearing" means a hearing held in accordance with section one thousand eighty-nine of this act for the purpose of reviewing the foster care status of the child and the appropriateness of the permanency plan developed by the social services district or agency.

(l) "Parent" means a person who is recognized under the laws of the state of New York to be the child's legal parent.

(m) "Relative" means any person who is related to the child by blood, marriage or adoption and who is not a parent, putative parent or relative of a putative parent of the child.

(n) "Suitable person" means any person who plays or has played a significant positive role in the child's life or in the life of the child's family.
Exhibit 20
18 NYCRR 434.1
Section 434.1. Scope

The provisions of this Part apply to the following hearings:
(a) Hearings held pursuant to section 422 of the Social Services Law to determine by a fair preponderance of the evidence whether the record of a report maintained in the State Central Register of Child Abuse and Maltreatment should be amended or expunged and, if such report is indicated, whether the act or acts of child abuse or maltreatment described in such report could be relevant and reasonably related to the appropriateness of the subject to engage in child care employment or to become an adoptive parent, a foster parent or a day care provider.
(b) Hearings held pursuant to section 424-a of the Social Services Law to determine whether the subject of a report of child abuse or maltreatment has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

18 NYCRR 434.2
Section 434.2. Definitions

For purposes of this Part, the following definitions apply:
(a) Abused child means a child as defined in section 412.1 of the Social Services Law.
(b) Appellant means (1) a subject of an indicated report of child abuse or maltreatment who has requested a hearing pursuant to section 422 of the Social Services Law to determine whether the subject has been shown by a fair preponderance of the evidence, as such term is defined in section 434.10(i) of this Part, to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report and whether such act or acts could be relevant and reasonably related to the appropriateness of the subject to engage in child care employment or to become an adoptive parent, a foster parent, or a day care provider, or (2) a subject of an indicated report who has requested a hearing pursuant to section 424-a of the Social Services Law to determine whether the subject has been shown by a fair preponderance of the evidence, as such term is defined in section 434.10(i) of this Part, to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report.
(c) Authorized agency means an agency as defined in section 371.10 of the Social Services Law.
(d) Commissioner means the Commissioner of the New York State Office of Children and Family Services.
(e) Department or office means the New York State Office of Children and Family Services.
(f) **Hearing** means a proceeding at which (1) a subject of a report of child abuse and maltreatment may seek relief from a decision of the department to deny a request to amend an indicated report of child abuse or maltreatment maintained by the State Central Register of Child Abuse and Maltreatment, or, for reports received prior to February 12, 1996, amend or expunge an indicated report of child abuse or maltreatment maintained by the State Central Register of Child Abuse and Maltreatment, or (2) it is determined whether a subject committed the act or acts of child abuse or maltreatment giving rise to an indicated report and if so whether such act or acts are relevant and reasonably related to the appropriateness of the subject to engage in child care employment or to become an adoptive parent, foster parent or a day care provider.

(g) **Hearing officer** means an attorney who is employed by the department and designated and authorized by the commissioner to preside at hearings.

(h) **Indicated report** means a report of child abuse or maltreatment in which an investigation conducted by the local social services district, the department, or the Commission on the Quality of Care for the Mentally Disabled has determined that some credible evidence of the alleged child abuse or maltreatment exists.

(i) **Licensing agency** means an authorized agency which has received an application to become an adoptive parent or an authorized agency which has received an application for a certificate or license to receive, board or keep any child pursuant to the provisions of section 376 or 377 of the Social Services Law or an authorized agency which has received an application from a relative within the third degree of the parent or stepparent of a child or the child's legal guardian for approval to receive, board or keep such child or an authorized agency or State or local governmental agency which receives an application to provide day care services in a day care center, family day care home or group family day care home pursuant to the provisions of section 390 of the Social Services Law, or the Department of Health of the City of New York when such department receives an application for a certificate of approval to provide family day care pursuant to the provision of the health code of such city, or a State or local governmental official who receives an application for a permit to operate a camp which is subject to the provisions of article 13-A, 13-B or 13-C of the Public Health Law or the Division for Youth which has received an application for a certificate to receive board or keep any child at a foster family home pursuant to the provisions of section 501(7), 502, or 532-a(3) of the Executive Law.

(j) **Maltreated child** means a child as defined in section 412(2) of the Social Services Law.

(k) **Parties to a hearing** means the appellant, the State Central Register of Child Abuse and Maltreatment, the local child protective service, the Commission on Quality of Care for the Mentally Disabled, and the department.

(l) **Provider agency** means an authorized agency, the Division for Youth, juvenile detention facilities subject to the certification of such division, programs established pursuant to article 19-H of the
Executive Law, and licensed day care centers, including head start programs which are funded pursuant to title V of the Federal Economic Opportunity Act of 1964, as amended, special act school districts as enumerated in chapter 566 of the Laws of 1967, as amended, and residential schools which are operated, supervised or approved by the Education Department.

(m) Subject of a report means any parent of, guardian of, custodian of or other person 18 years of age or older legally responsible for, as defined in section 1012(g) of the Family Court Act, a child reported to the State Central Register of Child Abuse and Maltreatment, who is allegedly responsible for causing abuse or maltreatment to such child or who allegedly allows such abuse or maltreatment to be inflicted on such child, or a director of or an operator of or employee or volunteer in a home operated or supervised by an authorized agency, the Division for Youth, or an office of the Department of Mental Hygiene or in a family day care home, a day care center, a group family day care home or a day services program, or a consultant or any person who is an employee of or a volunteer in a corporation, partnership, organization or any governmental entity which provides goods or services and has regular and substantial contact with children in residential care who is allegedly responsible for causing abuse or maltreatment or who allegedly allows such abuse or maltreatment to be inflicted on such child.

18 NYCRR 434.3
Section 434.3. Persons entitled to a hearing

(a) A subject of a report of child abuse or maltreatment has a right to a hearing pursuant to section 422 of the Social Services Law to determine whether the record of the report in the Statewide Central Register of Child Abuse and Maltreatment should be amended or, if the report was received by the Statewide Central Register of Child Abuse and Maltreatment prior to February 12, 1996, amended or expunged on the grounds that it is inaccurate or is being maintained in a manner inconsistent with title 6 of article 6 of the Social Services Law. The burden of proof at such hearing is on the office, appropriate local child protective service or the Commission on Quality of Care and Advocacy for Persons with Disabilities, as the case may be. The issues at the hearing are:

(1) whether the subject has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report, where it has been determined at the administrative review that the act or acts of child abuse or maltreatment giving rise to the indicated report would not be relevant and reasonably related to the employment of the subject by provider agencies or the approval or disapproval of applications which would be submitted by the subject to licensing agencies; or
(2) whether the subject has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report and, if there is a finding of a fair preponderance of the evidence, whether such act or acts are, based on guidelines developed by the office, relevant and reasonably related to the employment of the subject by provider agencies, or the approval or disapproval of applications which would be submitted by the subject to licensing agencies.

(b) Any person who has been informed by a licensing or provider agency that he or she has been denied employment, discharged from employment, not used as a volunteer or not hired as a consultant or informed that an application for a permit or license has been denied based in whole or in part on the fact that such person is the subject of an indicated report of child abuse or maltreatment may request a hearing pursuant to section 424-a of the Social Services Law. The request for a hearing must be made within 90 days of the receipt of notice of denial of an application by a provider or licensing agency which indicates that the denial was based in whole or in part on the existence of the indicated report. Any hearing requested under this paragraph must be held within 30 days of the request unless the hearing is adjourned for good cause shown. Any subsequent adjournment for good cause shown must be granted only upon consent of the person who requested the hearing. At any such hearing, the sole question to be decided is whether the subject has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report. In such hearings the burden of proof on the issue of whether an act of child abuse or maltreatment was committed is upon the department.

18 NYCRR 434.4
Section 434.4. Time and place of the hearing

The hearing must be held at a time and place convenient to the appellant as far as practicable, taking into account circumstances such as the physical inability of the appellant to travel.

18 NYCRR 434.5
Section 434.5. Notice of the hearing

All hearings held pursuant to this Part will be scheduled by means of a written notice issued to the appellant and his or her representative, if known, by the department. The notice must include:
(a) the date, time and location of the hearing and a statement informing the appellant of his or her right to a change in the date and place of the hearing where necessary;
(b) a statement of the issues which will be decided at the hearing;
(c) a statement of the manner in which the hearing will be conducted;
(d) a statement of the right of the appellant to be represented by an attorney or other representative;
(e) a statement of the right of the appellant to present evidence on his or her behalf and to produce witnesses;
(f) a statement of the right of the appellant to cross-examine witnesses;
(g) a statement that a verbatim record of the hearing will be maintained;
(h) a statement of the method by which adjournments may be requested and granted; and
(i) a statement of the right of the appellant to review the documents maintained by the State Central Register of Child Abuse and Maltreatment.

18 NYCRR 434.6

Section 434.6. Hearing officer

(a) The hearing must be conducted by an impartial hearing officer who is employed by the department for that purpose and who has not been involved in any way with the action in question. The hearing officer has all the powers conferred by law and the regulations of the department to administer oaths, issue subpoenas, require the attendance of witnesses and the production of books and records, rule upon requests for adjournment, rule upon evidentiary matters and to otherwise regulate the hearing, preserve requirements of due process and effectuate the purpose and provisions of applicable law.
(b) A party to a hearing may make a request to a hearing officer that the hearing officer remove himself or herself from presiding at the hearing.
(1) The grounds for removing a hearing officer are that such hearing officer has:
   (i) previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of hearing officer; or
   (ii) any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer; or
   (iii) displayed bias or partiality to any party to the hearing.
(2) The hearing officer may independently determine to remove himself or herself from presiding at a hearing on the grounds set forth in paragraph (1) of this subdivision.
(3) The request for removal made by a party must:
(i) be made in good faith; and
(ii) be made at the hearing in writing or orally on the record; and
(iii) describe in detail the grounds for requesting that the hearing officer be removed.

(4) Upon receipt of a request for removal, the hearing officer must determine on the record whether to remove himself or herself from the hearing.

(5) If the hearing officer determines not to remove himself or herself from presiding at the hearing, the hearing officer must advise the party requesting removal that the hearing will continue but the request for removal will automatically be reviewed by the general counsel or the general counsel's designee.

(6) The determination of the hearing officer not to remove himself or herself will be reviewed by the general counsel or the general counsel's designee. Such review will include review of written documents submitted by the parties and the transcript of the hearing.

(7) The general counsel or the general counsel's designee must issue a written determination of whether the hearing officer should be removed from presiding at the hearing within 15 business days of the close of the hearing.

(8) The written determination of the general counsel or the general counsel's designee will be made part of the record.

18 NYCRR 434.7

Section 434.7. Persons who may be present at a hearing; authorization of representative

(a) The parties to a hearing, their attorneys or representatives, their witnesses and any witness called by the hearing officer may be present at the hearing. Other persons may be admitted upon the hearing officer's discretion. Upon the hearing officer's motion, or upon the motion of either party, potential witnesses may be excluded from the hearing during the testimony of other witnesses.

(b) An individual representing the appellant must have a written authorization signed by the appellant if the appellant is not present.
18 NYCRR 434.8
Section 434.8. Conduct of the hearing

(a) A hearing officer must preside at the hearing and must make all procedural rulings. He or she may make an opening statement describing the nature of the proceedings, the issues to be decided and the manner in which the hearing will be conducted.

(b) The hearing officer must exclude testimony or other evidence which is irrelevant or unduly repetitious.

(c) All testimony must be given under oath or affirmation unless the testimony is given by a young child who is unable to understand the meaning of oath or affirmation.

(d) Each party is entitled to be represented by an attorney or other representative of his or her choice, to have witnesses give testimony and to otherwise have relevant and material evidence presented on his or her behalf, to cross-examine opposing witnesses, to offer rebuttal evidence and to examine any document or item offered into evidence.

(e) Technical rules of evidence followed in a court of law will not apply but evidence introduced must be relevant and material.

(f) Copies of the documentary evidence which a social services official, the State Central Register of Child Abuse and Maltreatment or the Commission on Quality of Care for the Mentally Disabled plan to use at the hearing must be provided, if requested, to the appellant or his or her representative who has appropriate written authorization from the appellant for the examination, at a reasonable time before the date of the hearing and at a place accessible to the appellant or the appellant's representative.

18 NYCRR 434.9
Section 434.9. The record

(a) The record of the hearing, including the recommendations of the hearing officer, is confidential, but the record may be examined by either party or their representatives at a place accessible to them and at a reasonable time.

(b) The record must include:

(1) all notices, intermediate rulings and all records maintained in the State Central Register of Child Abuse and Maltreatment;

(2) the transcript or recording of the hearing and the exhibits received into evidence;

(3) matters officially noticed;

(4) questions and offers of proof, objections thereto and rulings thereon;
(5) proposed findings and exceptions, if any;
(6) any report rendered by the hearing officer;
(7) any request for disqualification of a hearing officer; and
(8) the hearing decision.

(c) The forms and documents contained in the State Central Register of Child Abuse and Maltreatment relating to an indicated report of child abuse or maltreatment are admissible into evidence at the hearing. A certification by the director of the State Central Register of Child Abuse and Maltreatment or his or her designee that the forms and documents are true and accurate copies of the complete record of the indicated report of child abuse or maltreatment at issue, and that the State Central Register of Child Abuse and Maltreatment is required by law to receive reports of alleged child abuse and maltreatment, is prima facie evidence that such forms and documents comprise the complete record of the indicated report of child abuse or maltreatment at issue. Such forms and documents must be admitted into evidence upon the submission of the required certification to the hearing officer. The admission of such forms and documents must be for the purpose of showing that the forms and documents are those presently maintained at the State Central Register of Child Abuse and Maltreatment in relation to the indicated report of child abuse or maltreatment at issue in the hearing. The admission of such forms and documents will be without regard to the truth or falsity of the contents of any such forms and documents and no implication as to the truth or falsity of the contents of any such forms or documents may be made by the hearing officer solely on the basis of such forms or documents having been admitted into evidence pursuant to this subdivision. Nothing in this subdivision will be construed to require the State Central Register of Child Abuse and Maltreatment to submit into evidence forms and documents not maintained by or at the State Central Register of Child Abuse and Maltreatment at the time of the hearing.

18 NYCRR 434.10
Section 434.10. Evidence

In any hearing under this Part:
(a) Proof that the appellant abused or maltreated one child is admissible evidence on the issue of whether the appellant abused or maltreated any other child.
(b) Proof of injuries sustained by a child or proof of the condition of a child which is of such a nature as would ordinarily not have occurred except by reason of the acts or omissions of the appellant is prima facie evidence that the child was abused or maltreated by the appellant.
(c) Any writing, record or photograph, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a child in a child abuse or maltreatment proceeding by any hospital or any other public or private agency is admissible in evidence as proof of that condition, act, transaction, occurrence or event, if the hearing officer finds that it was made in the regular course of business of any hospital or any other public or private agency and that it was made in the regular course of such business at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter.

(d) Previous statements made by the child relating to any allegations of abuse or maltreatment are admissible in evidence. The testimony of the child during the hearing is not necessary to support a finding of abuse or maltreatment.

(e) Proof of the impairment of emotional health or impairment of mental or emotional condition as a result of the unwillingness or inability of the appellant to exercise a minimum degree of care toward a child may include competent opinion or expert testimony and may include proof that such impairment lessened during a period when the child was in the care, custody or supervision of a person or agency other than the appellant.

(f) A Family Court finding, in a proceeding brought pursuant to article 10 of the Family Court Act, that a child has been abused or neglected is presumptive evidence that the report of child abuse and maltreatment maintained by the Statewide Central Register of Child Abuse and Maltreatment concerning such child is substantiated by a fair preponderance of the evidence if the allegations are the same; however, dismissal or withdrawal of a Family Court petition does not create a presumption that there is a lack of a fair preponderance of the evidence to prove that a child has been abused or maltreated for purposes of this Part.

(g) An appellant may introduce evidence to rebut any presumptions contained in this section.

(h) Some credible evidence is evidence that is worthy and capable of being believed.

(i) Fair preponderance of evidence is evidence which outweighs other evidence which is offered to oppose it.

(j) Relevant evidence is evidence having any tendency to make the existence of any fact that is at issue more or less probable than it would be without the evidence.

18 NYCRR 434.11
Section 434.11. Decision after the hearing

(a) Hearing decisions must be made and issued by the commissioner or by a member of his or her staff who is designated by the commissioner to consider the record of the hearing. The decision
must be based exclusively on the record of the hearing. The decision must be in writing and must describe the issues, recite the relevant facts and the pertinent provisions of law and department regulations, make appropriate findings, determine the issues, state reasons for the determination, and when appropriate, direct specific action to be taken by any of the parties to the hearing.

(b) For hearings held pursuant to section 424-a of the Social Services Law, a copy of the decision must be mailed to the appellant and his or her attorney or other designated representative within 60 days after the record is closed.

(c) For hearings held pursuant to section 422 of the Social Services Law, a copy of the decision must be mailed to the appellant and his or her attorney or other designated representative within 90 days after the record is closed.

(d) The failure of the department to issue a decision within the time period specified in subdivision (b) or (c) of this section or to mail a copy of the decision to the appellant and/or his or her attorney or other designated representative within such time period will not result in the sealing or expungement of the report maintained in the State Central Register of Child Abuse and Maltreatment.
Person whose name was placed on state's central register of suspected child abusers sued Commissioner of New York State Department of Social Services and county Department of Social Services under § 1983 alleging violation of her due process rights. The United States District Court for the Southern District of New York, Kenneth Conboy, J., 788 F.Supp. 745, granted state's motion to dismiss in part and denied it in part. Subsequently, the District Court, 812 F.Supp. 423, sua sponte reconsidered motion to dismiss and dismissed all claims. Plaintiff appealed. The Court of Appeals, Altimari, Circuit Judge, held that: (1) claim was ripe even though plaintiff had not actually been deprived of employment or suffered any other injuries as result of her name being placed on list; (2) fact that defamation occurred precisely in conjunction with plaintiff's attempt to obtain employment within child care field and was coupled with statutory impediment mandating that employers justify hiring individual on list was enough to compel finding that protectible liberty interest was implicated; and (3) procedures provided by Department of Social Services to remove names from list contained unacceptable high risk of error and violated due process.

Reversed and remanded.

Attorneys and Law Firms

*994 Carolyn A. Kubitschek, Lansner & Kubitschek, New York, NY, for plaintiff-appellant.


Stephen Toole, Senior Assistant County Attorney, Orange County, NY (Stephen Hunter, County Attorney, Orange County, NY, of counsel), for defendant-appellee J. Daniel Bloomer.

Before FEINBERG, CARDAMONE, and ALTIMARI, Circuit Judges.
Opinion

ALTIMARI, Circuit Judge:

Plaintiff-appellant Anna Valmonte appeals from a judgment of the United States District Court for the Southern District of New York (Conboy, J.) dismissing under Fed.R.Civ.P. 12(b)(6) her claim brought under 42 U.S.C. § 1983. Valmonte brought her claim against the Commissioner of the New York State Department of Social Services and the Commissioner of the Orange County Department of Social Services (collectively “the appellees” or “the state”) alleging that their inclusion of her name on the New York State Central Register of Child Abuse and Maltreatment (“the Central Register” or “the list”) violated her Fourteenth Amendment right of due process. Valmonte’s amended complaint raised numerous challenges to the statutory scheme of the Central Register.

Following a motion to dismiss, the district court granted the motion in part and denied it in part, dismissing most of Valmonte’s claims. Valmonte v. Perales, 788 F.Supp. 745, 755 (S.D.N.Y.1992) (summarizing holding) (“Valmonte I”). The district court denied the motion with respect principally to Valmonte’s claim that she had stated a cause of action alleging that the state’s publication of Valmonte’s status on the Central Register to prospective employers violated her due process rights. See id. at 752–53. Subsequently, the district court sua sponte reconsidered the motion to dismiss, and dismissed all of the claims. See Valmonte v. Bane, 812 F.Supp. 423, 426 (S.D.N.Y.1993). Valmonte has now appealed.

The major issue presented in this appeal is whether the state’s maintenance of a Central Register that identifies individuals accused of child abuse or neglect, and its communication of the names of those on the list to potential employers in the child care field, implicates a protectible liberty interest under the Fourteenth Amendment. If so, we must also determine whether the state’s statutory procedures established to protect the liberty interest are constitutionally adequate.

For the reasons stated below, we hold that the dissemination of information from the Central Register to potential child care employers, coupled with the defamatory nature of inclusion on the list, does implicate a liberty interest. We also hold that the procedures established violate due process, primarily because the risk of error in evaluating the allegations against those included on the list is too great. Accordingly, we reverse the judgment of the district court, and remand for further proceedings not inconsistent with this opinion.

BACKGROUND

Valmonte is attempting to represent a class of individuals whose names are listed on the state’s Central Register as a result of a finding by state or county Departments of Social Services (“DSS” or “the department”) that they are in some way abusive or neglectful with regard to children. A full explanation of the nature of the statutory scheme establishing the Central Register is necessary for an understanding of the issues in this case.

I. Statutory Scheme
Valmonte is challenging the state’s system for collecting and storing information about allegedly abusive and neglectful individuals. Article 6, Title 6 of the New York Social Services Law governs the recording and investigation of reports of suspected maltreatment of children, and the administrative review process by which substantiated reports may be reviewed. See N.Y. Soc.Serv. Law § 411–428 (McKinney 1992) (as amended 1993) ("SSL"). The Central Register maintains reports of child abuse as part of a larger system to ensure the safety of children in New York, SSL § 411, and is maintained by both the state and various county departments of social services. SSL §§ 422(1), 423(1), 424(2).

A. Reporting and Initial Placement on Register

The Central Register procedures are triggered by reports to the Central Register of suspected child abuse. See generally SSL § 415. The state DSS maintains a telephone hotline with a toll-free telephone number that is staffed full-time in order to receive complaints. SSL § 422(2)(a). State law places an affirmative duty on designated individuals such as health care workers, social workers, law enforcement agents, judicial officers, and education employees to report to the Central Register whenever they have reasonable cause to suspect that a child is maltreated. SSL § 413. Calls to the hotline can be made, however, by any individuals, not only those with affirmative duties of reporting.

Upon receiving a complaint of suspected child abuse, hotline operators must determine whether the allegations, if true, would be legally sufficient to constitute child abuse. SSL § 422(2)(a). If so, the operator records the complaint on paper and relays it to the appropriate county or local DSS. Id. The local DSS is responsible for investigating all complaints of suspected child maltreatment, SSL § 423(1), and must investigate the truth of the charges and complete an investigation within 60 days. SSL § 424(7).

At the conclusion of the investigation, the local department must determine whether the complaint is "unfounded" or "indicated." Id. Unfounded reports are expunged from the Central Register and all records destroyed. SSL § 422(5). If the local DSS finds that there is "some credible evidence" to support the complaint, the complaint is marked "indicated" and the individual who is the subject of the report is listed on the Central Register. Id.; SSL § 412(12). The Central Register accepts the findings of the county department, without making an independent determination.

B. Confidentiality of Central Register Determinations

As noted earlier, the information in the Central Register is generally confidential. SSL § 422(12). The names of individuals on the Central Register are not publicly available, although there are numerous exceptions for, among others, public agencies, law enforcement personnel, and judicial officers. SSL § 422(4)(A).

More significant, for purposes of this case, are the statutory provisions requiring certain employers in the child care field to make inquiries to the Central Register to determine whether potential employees are among those listed. The purpose of these provisions is to ensure that individuals on the Central Register do not become or stay employed or licensed in positions that allow substantial contact with children, unless the licensing or hiring agency or business is aware of the applicant's status. Numerous
state agencies, private businesses, and licensing agencies related to child care, adoption, and foster care are required by law to inquire whether potential employees or applicants are on the Central Register. SSL § 424-a(1). For purposes of simplicity, this group will be referred to as “employers,” even though licensing agencies are included within that designation.

When such employers make an inquiry, the state DSS will inform the potential employer if the individual is the subject of an indicated report on the Central Register. SSL § 424-a(1)(e). The state DSS will not inform the employer of the nature of the indicated report, but only that the report exists. If the potential employee is on the list, the employer can only hire the individual if the employer “maintain[s] a written record, as part of the application file or employment record, of the specific reasons why such person was determined to be appropriate” for working in the child or health care field. SSL § 424-a(2)(a).

C. Procedures for Appealing Initial Listing

There are certain procedures established by the statutory scheme to allow individuals included on the Central Register to appeal their designation. When a local DSS finds that a report is “indicated,” the subject of the report is notified and has 90 days to request that the report be expunged. SSL § 422(8)(a)(i). If a request is made, the state DSS is required to gather the material pertinent to the indicated report and conduct a two-step review. First, the state DSS must determine whether there is “some credible evidence” that the subject committed the acts charged. SSL § 422(8)(a)(ii). In the second step of the review, the state DSS must also ascertain whether the acts alleged could be “relevant and reasonably related” to the subject’s employment in any child care provider area. Id.

If there is no credible evidence of child abuse or maltreatment, the state DSS must expunge the record and notify the subject. SSL § 422(8)(a)(iii). If there is some credible evidence, and the department finds that the allegations are reasonably related to child care, the department must deny the expungement request. SSL § 422(8)(a)(v). Finally, if there is some credible evidence of the act, but a finding by the department that the allegations are not reasonably related to child care, the report will not be expunged, but it will also not be disclosed to potential child care employers and licensing agencies. SSL § 422(8)(a)(iv).

If the expungement request is denied, an administrative hearing before the state DSS commissioner’s office is scheduled (the “non-deprivation hearing”). SSL § 422(8)(a)(v). The burden of proof at this hearing is placed on the “child protective service or the state agency which investigated the report.” SSL § 422(8)(b)(ii). The nature of the proof required at this hearing is functionally identical to that required for the initial expungement request: the local DSS must prove to the commissioner the allegations against the subject by some credible evidence, SSL § 422(8)(c)(1), and then must prove that the allegations are reasonably related to employment in the child care field. SSL § 422(8)(c)(ii).

The consequences of the hearing are substantially similar to those at the expungement hearing: if there is no credible evidence substantiating the allegation, the record is expunged, SSL § 422(8)(c)(i); if there is credible evidence, but the acts alleged are not reasonably related to child care, the department is precluded from notifying potential employers in the child care field of the complaint, SSL § 422(8)(c)(ii);
finally, if there is some credible evidence and a finding that the acts are related to child care, the record will be maintained and will be available to child care provider agencies and employers. Id.

In this initial hearing, any state family court finding of abuse or neglect against the subject with regard to the allegations in the report creates “an irrefutable presumption” that the allegations are supported by some credible evidence. SSL § 422(8)(b)(ii). The inverse, however, is not true: the fact that a case brought against the subject in state family court has been dismissed is not considered conclusive proof that there is no credible evidence of the allegations.

If the report is not expunged after the hearing, the subject of the report can commence a proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules to challenge the decision. The court’s determination of such a proceeding is made under *997 the “arbitrary and capricious” standard usually applied to state agency determinations.

D. Post-Deprivation Hearing

As noted earlier, certain employers and licensing agencies are required to ascertain whether potential employees or applicants are listed on the Central Register, and can only hire or license such applicants if they maintain a written record of their reasons for doing so. If the agency decides not to hire or license the individual, it must provide the individual with “a written statement setting forth whether its denial, failure to hire or failure to use was based, in whole or in part, on such indicated report, and if so, its reasons for the denial or failure to hire or failure to use.” SSL § 424–a(2)(b)(i). Similarly, the termination of an employee who is the subject of an indicated report must be accompanied with a written statement setting forth whether the termination was based on the report. SSL § 424–a(2)(b)(ii).

If the reasons for the termination or refusal to hire include the fact that the applicant was the subject of an indicated report, that subject has the right to a post-deprivation hearing before the state DSS. At this hearing:

the sole question before the department shall be whether the applicant ... who was denied access to the children cared for by a provider agency has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report.... The failure to sustain the burden of proof at a hearing held pursuant to this section shall not result in the expungement of an indicated report but shall be noted on the report maintained by the state central register and shall preclude the department from notifying a party which subsequently makes an inquiry to the department pursuant to this section that the person about whom the inquiry is made is the subject of an indicated report.

SSL § 424–a(2)(d) (emphasis added). At this post-deprivation hearing, therefore, the DSS bears the burden of proving the allegations not by “some credible evidence”—the standard for the initial determination by the local DSS, the initial expungement request, and the non-deprivation hearing—but by a “fair preponderance of the evidence.” The failure to reach that level of proof will not result in expungement, but will prevent potential employers or licensing agencies from knowing that the applicant is the subject of an indicated report.
Unless expunged earlier, an indicated report is finally expunged 10 years after the youngest child referred to in the report turns 18. SSL § 422(6).

II. Valmonte's Case

Valmonte became entangled in this system on November 30, 1989, when she slapped her eleven-year-old daughter Vanessa on the side of her face with an open hand. Valmonte states in her complaint that she slapped Vanessa because Vanessa had been caught stealing and other forms of discipline had not been successful. An unidentified employee at Vanessa's school made a complaint to the child abuse hotline that Valmonte had mistreated her daughter. Subsequently, child abuse investigators working for the Orange County DSS concluded that Valmonte had engaged in “excessive corporal punishment,” marked the complaint against her as “indicated,” and commenced child protective proceedings against her.

The New York state family court subsequently dismissed the child protective proceedings against Valmonte on the condition that the Valmonte family receive counselling. This dismissal, however, had no impact on Valmonte's inclusion on the Central Register.

During this time, Valmonte requested expungement of her indicated report from the state DSS. This request was denied. Valmonte then exercised her right to an administrative hearing before an agent of the state DSS. The state DSS again denied expungement, finding some credible evidence to support the allegations.

Subsequently, Valmonte brought an action in the district court challenging the constitutionality of the Central Register statutory scheme under 42 U.S.C. § 1983. The complaint contained numerous procedural due process claims, substantive due process *998 claims, and appended related state law claims. The defendant commissioners of the state and local departments of social services moved under Fed.R.Civ.P. 12(b)(6) to dismiss Valmonte's action for failure to state a claim upon which relief could be granted, principally because Valmonte failed to adequately show that she had a protected liberty interest that was implicated by the procedures of the Central Register.

On March 31, 1992, the district court granted in part and denied in part the defendants' motion to dismiss. See Valmonte I, 788 F.Supp. at 755. The court dismissed most of Valmonte's state law and federal claims, but declined to dismiss the claim that the publication of Valmonte's status on the Central Register to prospective employers implicated a liberty interest, and that the procedures set up to protect that interest were inadequate. See id. at 752–53. The court found that Valmonte had a liberty interest implicated in the stigma associated with her status on the list, and that the procedures established were not adequate, since the “some credible evidence” standard used at the first hearing left open the real possibility of error. See id. at 753.

Subsequently, the district court reversed itself sua sponte and dismissed all of Valmonte's claims. Valmonte II, 812 F.Supp. at 425. The reason for the reversal was the court's realization that the only persons who would have access to the Central Register were potential child care employers or a limited number of others statutorily authorized to receive the information. See id. The court noted that it had
assumed in Valmonte I that there was a danger of public dissemination. See id. Without that danger, the court did not perceive the possibility of a liberty interest being implicated, and accordingly dismissed all claims. See id.

Valmonte now appeals, arguing principally that the state has deprived her of a legitimate liberty interest by disseminating to potential employers her placement on the Central Register list, and that the procedures established to allow her to challenge her designation are constitutionally inadequate.

DISCUSSION

I. Does Disclosure Violate a Liberty Interest?

Valmonte primarily argues that the state government has stigmatized her as a child abuser while simultaneously depriving her of her ability to seek employment. In reviewing the district court's dismissal of Valmonte's claim on a motion under Fed.R.Civ.P. 12(b), we accept the material facts alleged in the complaint as true. See Cooper v. Pate, 378 U.S. 546, 84 S.Ct. 1733, 12 L.Ed.2d 1030 (1964) (per curiam). A court should only dismiss a suit under Rule 12(b)(6) if “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80 (1957). The present question is whether Valmonte has a cognizable claim under the facts alleged in her complaint.

To formulate a claim under the Due Process Clause of the Fourteenth Amendment, a plaintiff must demonstrate that he or she possesses a constitutionally protected interest in life, liberty, or property, and that state action has deprived him or her of that interest. See U.S. Const. amend. XIV, § 1. The Supreme Court has established that “[w]e examine procedural due process questions in two steps: the first asks whether there exists a liberty or property interest which has been interfered with by the State; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 460, 109 S.Ct. 1904, 1908, 104 L.Ed.2d 506 (1989) (citation omitted). We will undertake this examination following a discussion of the appellees' contention that Valmonte's claim is not ripe.

A. Ripeness

1. The appellees contend that Valmonte's claim is not ripe, because Valmonte has not actually been deprived of employment or suffered any other injury. They argue that Valmonte has not made a showing that she has even looked for a job in the field of child care, and that she has only alleged that she had been a “paraprofessional in the school system” in the past.

2. As Valmonte responds, however, it is not necessary that she wait until she is actually injured to file this suit. Valmonte does not need to “await the consummation of threatened injury to obtain preventative relief.” Pennsylvania v. West Virginia, 262 U.S. 553, 593, 43 S.Ct. 658, 664, 67 L.Ed. 1117 (1923); see Berger v. Heckler, 771 F.2d 1556, 1563 (2d Cir.1985) (plaintiff need not wait until “consummation” of threatened injury in order to sustain suit). Her claim is ripe if the perceived threat due to the putatively
illegal conduct of the appellees is sufficiently real and immediate to constitute an existing controversy. See Blum v. Yaretsky, 457 U.S. 991, 1000, 102 S.Ct. 2777, 2783, 73 L.Ed.2d 534 (1982).

In this case, Valmonte has sufficiently alleged facts that give rise to an existing controversy. We must accept as true Valmonte's assertions that she would look for a position in the child care field but for her presence on the Central Register. Should she apply for a position within the child care field, her chosen field, her potential employer will by operation of law automatically find out that she is named on the Central Register. If that happens, she will suffer at the very least the injury caused by the stigma of being placed on the list, and it is also likely that the employer will choose not to hire her due to her status.

Her presence on the Central Register, therefore, is a direct threat not only to her reputation but to her employment prospects. Under these facts, we agree with the district court that Valmonte's claim is ripe.

B. Whether Valmonte has a Liberty Interest

The central issue in this case is whether Valmonte has sufficiently alleged the deprivation of a protected liberty interest. Valmonte's strongest argument on this issue is that the state's dissemination of information from the list to potential employers in the child care field not only stigmatizes those on the list but also denies them employment in their chosen field.

The question of whether one's good name and standing, and the interest in protecting that reputation, constitutes a protectible liberty interest has been considered in a string of Supreme Court and Second Circuit cases. The Supreme Court held in 1971 that a protectible liberty interest may be implicated “where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him.” Wisconsin v. Constantineau, 400 U.S. 433, 437, 91 S.Ct. 507, 510, 27 L.Ed.2d 515 (1971). A year later, the Court held that a government employee's liberty interest would be implicated if he were dismissed based on charges that imposed “on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities.” Board of Regents v. Roth, 408 U.S. 564, 573, 92 S.Ct. 2701, 2707, 33 L.Ed.2d 548 (1972).

Constantineau and Roth were followed a few years later by the Court's decision in Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976), in which the Court held that damage to one's reputation is not “by itself sufficient to invoke the procedural protection of the Due Process Clause.” Id. at 701, 96 S.Ct. at 1161. Rather, the Court held, loss of reputation must be coupled with some other tangible element in order to rise to the level of a protectible liberty interest. Id. We have previously interpreted this holding to mean that “stigma plus” is required to establish a constitutional deprivation. See Neu v. Corcoran, 869 F.2d 662, 667 (2d Cir.), cert. denied, 493 U.S. 816, 110 S.Ct. 66, 107 L.Ed.2d 33 (1989). Consequently, we will examine Valmonte's claim first to determine whether inclusion on the Central Register constitutes “stigma,” and then to determine whether the “plus” requirement has been satisfied.

1. Stigma

Valmonte first must prove that her inclusion on the Central Register will result in stigma, that is, in “public opprobrium” and damage to her reputation. See *1000 Bohn v. County of Dakota, 772 F.2d
1433, 1436 n. 4 (8th Cir.1985), cert. denied, 475 U.S. 1014, 106 S.Ct. 1192, 89 L.Ed.2d 307 (1986). The
district court found in both decisions that the disclosure of Valmonte's status on the list to prospective
employers was enough publication to implicate her reputation. Valmonte II, 812 F.Supp. at 425 n. 1.

There is no dispute that Valmonte's inclusion on the list potentially damages her reputation by branding
her as a child abuser, which certainly calls into question her “good name, reputation, honor, or
integrity.” Roth, 408 U.S. at 573, 92 S.Ct. at 2707 (quoting Constantineau, 400 U.S. at 437, 91 S.Ct. at
510). The state contends, however, that there is no “stigma” attached to her inclusion because there is
no disclosure of information on the Central Register except to authorized state agencies or potential
employers in the child care field.

Dissemination to potential employers, however, is the precise conduct that gives rise to stigmatization.
See Brandt v. Board of Cooperative Education Services, 820 F.2d 41, 44 (2d Cir.1987). In Brandt, we
stated that if a plaintiff “is able to show that prospective employers are likely to gain access to his
personnel file and decide not to hire him, then the presence of the charges in his file has a damaging
effect on his future job opportunities.” Id. at 45. In the instant situation, although Valmonte's presence
on the Central Register will not be disclosed to the public, it will be disclosed to any employer statutorily
required to consult the Central Register. Since Valmonte states that she will be applying for child care
positions, her status will automatically be disclosed to her potential employers. Under Brandt, that
dissemination satisfies the “stigma” requirement.

2. “Plus”

5 Because Valmonte has sufficiently alleged the defamation prong of the “stigma plus” test, we must
now determine whether the second part of that test is met. As we have noted in the past, “it is not
entirely clear what the ’plus’ is.” Neu, 869 F.2d at 667. Moreover, “[a]lthough Paul is the foundation for
all subsequent cases dealing with governmental defamation, its meaning is not unambiguous.” Id. at
667.

In a long line of cases, summarized thoroughly in Neu, we have attempted to clarify the ambiguities left
in the Paul v. Davis “stigma plus” requirement. See Neu, 869 F.2d at 667–69. We concluded in Neu that
Paul v. Davis “strongly suggests” that defamation is not by itself a deprivation of a liberty interest unless
coupled with the termination of government employment “or deprivation of some other legal right or
status.” Id. at 667. We did not clarify what that legal right or status might be, and it is worth noting that
in Neu we were only called upon to determine, for purposes of deciding if qualified immunity applied,
whether public officials had violated a clearly established constitutional due process right in allegedly
defaming a businessman. See id. at 665.

The reasoning employed in Neu has been supported and reiterated by subsequent decisions by this
Court. See White Plains Towing Corp. v. Patterson, 991 F.2d 1049, 1063 (2d Cir.), cert. denied, 510 U.S.
865, 114 S.Ct. 185, 126 L.Ed.2d 144 (1993); Easton v. Sundram, 947 F.2d 1011, 1016 (2d Cir.1991), cert.
denied, 504 U.S. 911, 112 S.Ct. 1943, 118 L.Ed.2d 548 (1992). Both cases were decided on qualified
immunity grounds, see White Plains Towing, 991 F.2d at 1063–64; Easton, 947 F.2d at 1015–16, but
both reaffirmed Neu ’s holding that we have not previously clearly established that defamation
occurring outside of the context of dismissal from government employment or termination of some other right or status constitutes a deprivation of a liberty interest. See White Plains Towing, 991 F.2d at 1063; Easton, 947 F.2d at 1016.

The appellees rely on these cases to support their argument that Valmonte has not sufficiently alleged the deprivation of a liberty interest. They argue that Valmonte was not terminated from government employment, or in any other way deprived of a legal right or status. Rather, they contend, Valmonte is simply asserting that she is unable to secure employment in the child care field because of her damaged reputation, which is precisely the sort of claim precluded by Paul v. Davis.

*1001 We agree that our prior decisions indicate, as does Paul v. Davis, that defamation is simply not enough to support a cognizable liberty interest. It therefore follows that the deleterious effects which flow directly from a sullied reputation would normally also be insufficient. These would normally include the impact that defamation might have on job prospects, or, for that matter, romantic aspirations, friendships, self-esteem, or any other typical consequence of a bad reputation. When the Supreme Court stated in Paul v. Davis that injury to reputation was not by itself a deprivation of a liberty interest, we presume that the Court included the normal repercussions of a poor reputation within that characterization. As the Supreme Court stated in a later case:

Most defamation plaintiffs attempt to show some sort of special damage and out-of-pocket loss which flows from the injury to their reputation. But so long as such damage flows from injury caused by the defendant to a plaintiff’s reputation, it may be recoverable under state tort law but it is not recoverable in a Biven action.


The instant case, however, presents an entirely different situation. Valmonte alleges much more than a loss of employment flowing from the effects of simple defamation. The Central Register does not simply defame Valmonte, it places a tangible burden on her employment prospects. Valmonte has alleged that because of her inclusion on the Central Register, and because all child care providers must consult that list, she will not be able to get a job in the child-care field. In other words, by operation of law, her potential employers will be informed specifically about her inclusion on the Central Register and will therefore choose not to hire her. Moreover, if they do wish to hire her, those employers are required by law to explain the reasons why in writing.

This is not just the intangible deleterious effect that flows from a bad reputation. Rather, it is a specific deprivation of her opportunity to seek employment caused by a statutory impediment established by the state. Valmonte is not going to be refused employment because of her reputation; she will be refused employment simply because her inclusion on the list results in an added burden on employers who will therefore be reluctant to hire her.

*7 We do not believe that this holding is in any way inconsistent with our previous holdings in Neu, White Plains Towing, or Easton. In those cases, the plaintiff averred only that simple defamation by public officials had resulted in a poor reputation that made it less likely that he would be hired in the future.
See White Plains Towing, 991 F.2d at 1063 (characterizing plaintiff’s argument as seeking to prove “stigma plus” for potential injury to reputation combined with status as contractor for state); Easton, 947 F.2d at 1015 (stating that plaintiff’s argument was that “he was fired from his job and defamed in a way that will interfere with future job possibilities”); Neu, 869 F.2d at 664 (summarizing allegations by plaintiff that officials “foreclosed a range of career opportunities and deprived him of the ability to engage in his occupation”). Under Paul v. Davis, this is not enough to support the finding of a liberty interest. Moreover, we note that the posture of those cases—in which we were only called upon to determine whether the law clearly established a deprivation of liberty due to defamation—was such that we never actually decided whether a loss of employment opportunity due to defamation by public officials constituted a deprivation of a liberty interest. See Easton, 947 F.2d at 1015 (stating that “[w]e need not decide the issue of whether or not Easton adequately alleged deprivation of a liberty interest”); Neu, 869 F.2d at 665 (stating that “we do not decide” matter of deprivation of liberty interest). Those cases present very different situations from this one, since in those cases there was no statutory impediment to the plaintiffs being hired in the future.

Those three cases recognized that defamation in conjunction with termination of government employment is the clear situation that satisfies the “stigma plus” test, mainly because that was the situation recognized in Roth, prior to the decision in Paul v. Davis. *1002 See, e.g., Neu, 869 F.2d at 667. None of those cases, however, foreclosed the possibility that the “plus” could come from some other independent deprivation. Here, the fact that the defamation occurs precisely in conjunction with an individual’s attempt to attain employment within the child care field, and is coupled with a statutory impediment mandating that employers justify hiring the individual, is enough to compel a finding that there is a liberty interest implicated.

Here, the injury associated with the Central Register is not simply that it exists, or that the list is available to potential employers. The deprivation stems from the fact that employers must consult the list before hiring Valmonte, and if they choose to hire her must state the reasons in writing to the state.

We recognize that this is a unique situation, not previously considered in the case law. We also recognize that the Supreme Court has given indications that perhaps only those who are defamed while in the course of being terminated from government employment can state a cause of action for deprivation of a liberty interest. See Siegert, 500 U.S. at 241–42, 111 S.Ct. at 1798 (Marshall, J., dissenting) (criticizing majority opinion for suggesting that “reputational injury deprives a person of liberty only when combined with loss of present employment, not future employment”). This statutory scheme is unique, however, in that there will be no question in most cases whether the individual’s inclusion on the Central Register was a causal factor in the individual’s failure to secure employment, because SSL § 424–a(2)(b)(i) requires that employers notify potential employees if they have been denied employment because of their presence on the list. Therefore, individuals on the Central Register who lose employment opportunities would have received offers but for their inclusion on the list. We do not, in such a case, see much of a difference in the distinction between losing one’s established position in government employment because of defamation, and losing one’s prospective position in government or a government-regulated field precisely because of the defamation.
We hold that Valmonte has adequately stated a cause of action for deprivation of a liberty interest not merely because of the defamatory aspect of the Central Register, but because that defamation occurs in conjunction with a statutory impediment to employment. In this case, we find that the requirement that puts burdens on employers wishing to hire individuals on the list results in a change of that individual's status significant enough to satisfy the “plus” requirement of the “stigma plus” test.

II. Procedural Due Process

Even though the Central Register implicates Valmonte's liberty interest, Valmonte still must show that the procedural safeguards of her interest established by the state are insufficient to protect her rights. Valmonte argues that the existing procedures violate due process by prohibiting expungement of a subject's indicated record if there is “any credible evidence” to support the allegation and only holding the county DSS to a higher “preponderance of the evidence” standard after a subject loses an opportunity for employment.

To summarize, the statutory framework for the Central Register sets out the following procedural steps for the placement of an individual's name on the list:

1. Hotline

Phone call to Central Register hotline, which requires the operator to make a determination on the complaint about whether to pass it on to the appropriate county DSS.

2. Investigation

County DSS investigation, which must be completed in 60 days, and must determine whether a complaint is “unfounded” or “indicated” based on “some credible evidence.”

3. State DSS Review Upon Request

If “indicated,” the subject of the report has 90 days to request that the report be expunged. If a request is made, the state DSS has to conduct a review, determining whether there is “some credible evidence” for the allegations.

4. Administrative Hearing

If the expungement request is denied, an administrative hearing is held where the local DSS must prove the allegations by “some credible evidence.”

5. Article 78 Proceeding

If the expungement request is again denied, the subject can commence an Article 78 proceeding, under the “arbitrary and capricious” standard.

6. Second Administrative Hearing
This is only for those who are denied employment based on their placement on the list. The hearing is to determine whether the person's record will be sealed in the future, although the name would still be on the list. The standard of proof in this hearing is "Fair preponderance of the evidence."

8 The standards for evaluating the constitutionality of these procedures are clear. In Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976), the Supreme Court articulated a three-factor test for evaluating administrative procedures, requiring examination of: (1) the nature of the private interest affected by the official action; (2) the risk of error and the effect of additional procedural safeguards; and (3) the governmental interest. We must balance these factors to determine "when, under our constitutional system, judicial-type procedures must be imposed upon administrative action to assure fairness." Id. at 348, 96 S.Ct. at 909. The Mathews v. Eldridge factors relating to personal and government interest will be considered initially, followed by the more pertinent discussion of the risk of error caused by the procedures established by the state.

A. Private Interest

9 Valmonte's argument in support of her private interest at stake is basically her argument in support of her liberty interest; that is, her interest in securing future employment in the child care field free from the defamatory label placed upon her by the state. She also asserts that her interest in the raising of her children is an implicated liberty interest, even though nothing in the Central Register impacts directly on her role as a parent, rather than her potential role as a child care worker. Although we disagree that her interest in child-rearing is implicated, Valmonte does have a legitimate interest in pursuing her chosen occupation. See generally Greene v. McElroy, 360 U.S. 474, 492, 79 S.Ct. 1400, 1411, 3 L.Ed.2d 1377 (1959).

B. Countervailing State Interest

10 Valmonte does not seriously challenge that the state, as parens patriae, has a significant interest in protecting children from abuse and maltreatment. We need not discuss at length the unfortunate reality that children are often victimized, and that the state has a strong interest in protecting them from the infliction of physical harm by those charged with their care. See Santosky v. Kramer, 455 U.S. 745, 766, 102 S.Ct. 1388, 1401, 71 L.Ed.2d 599 (1982) (noting state's interest in protection of children). We agree with the appellees that there is a significant interest on the part of the state in maintaining the existence of the Central Register.

C. Risk of Erroneous Deprivation

11 The deciding factor in this case, the one that clearly shows the inadequacy of the procedural protections established by the state, is the enormous risk of error that has been alleged by Valmonte and acknowledged by the appellees. As noted earlier, the state only requires that the local DSS meet the "some credible evidence" standard in order to initially include a subject on the Central Register or to keep the subject on the list at the non-deprivation administrative hearing. It is only later, at the post-deprivation hearing, when the subject has already been denied employment due to his or her inclusion
on the Central Register, that the local DSS is required to prove the allegations against the subject by a “fair preponderance of the evidence.”

The distinction between the two standards is significant. Valmonte points out that, according to her figures, nearly 75% of those who seek expungement of their names from the list are ultimately successful. Half of that number obtain expungement only after they have lost employment or prospective employment because of their inclusion on the *1004 Central Register. This means that roughly one-third of those initially placed on the Central Register are eventually removed once the local DSS is required to prove the charges against the subject by a fair preponderance of the evidence. The fact that only 25% of those on the list remain after all administrative proceedings have been concluded indicates that the initial determination made by the local DSS is at best imperfect.

Much of this unacceptably high risk of error must be attributable to the standard of proof required at the initial determination, and at the non-deprivation hearing. The “some credible evidence” standard does not require the factfinder to weigh conflicting evidence, merely requiring the local DSS to present the bare minimum of material credible evidence to support the allegations against the subject. In contrast, the “fair preponderance” standard allows for the balancing of evidence from both sides, and gives the subject the opportunity to contest the evidence and testimony presented by the local DSS. As the Supreme Court has noted, the preponderance of the evidence standard indicates that the litigants should share the risk of error, Santosky, 455 U.S. at 755, 102 S.Ct. at 1396, rather than have one litigant bear the brunt of the risk. Under the instant statutory scheme, however, the individual, not the state, bears the risk.

The “some credible evidence” standard is especially dubious in the context of determining whether an individual has abused or neglected a child. Such determinations are inherently inflammatory, and “unusually open to the subjective values of” the factfinder. Santosky, 455 U.S. at 762, 102 S.Ct. at 1399. They are especially open to such subjectivity when the factfinder is not required to weigh evidence and judge competing versions of events, and where one side has the greater ability to assemble its case. See id. at 763, 102 S.Ct. at 1400.

Considering the minimal standard of proof, and the subjective nature of the inquiry, it is not altogether surprising 75% of those who seek expungement are ultimately successful. Another fact adduced at oral argument and noted in the record is that there are roughly 2,000,000 individuals on the rolls of the Central Register. This staggering figure has been cited to us by Valmonte, but it was not contested at oral argument. We find it difficult to fathom how such a huge percentage of New Yorkers could be included on a list of those suspected of child abuse and neglect, unless there has been a high rate of error in determinations.

The appellees, remarkably, do not challenge these figures, but argue that there is no real deprivation in cases where individuals contest the initial inclusion on the Central Register. According to the appellees, the subjects are not deprived of anything if their names are taken off the list. Moreover, they assert that the fact that reports are eventually expunged demonstrates that the state's procedures are working to correct mistakes in the original determination.
This is an inherently contradictory argument by the state. To argue that the extraordinarily high percentage of reversals supports the fairness of the system, as a desirable feature of that system, is a curious defense of administrative procedures. One does not normally purchase a car from a dealer who stresses that his repair staff routinely services and repairs the model after frequent and habitual breakdowns. If 75% of those challenging their inclusion on the list are successful, we cannot help but be skeptical of the fairness of the original determination.

D. Balancing

We hold that the high risk of error produced by the procedural protections established by New York is unacceptable. While the two interests at stake are fairly evenly balanced, the risk of error tilts the balance heavily in Valmonte's favor. The crux of the problem with the procedures is that the "some credible evidence" standard results in many individuals being placed on the list who do not belong there. Those individuals must then be deprived of an employment opportunity solely because of their inclusion on the Central Register, and subject to the concurrent defamation by state officials, in order to have the opportunity to require the local *1005 DSS to do more than merely present some credible evidence to support the allegations.

III. Valmonte's Additional Arguments

Valmonte makes numerous other arguments in support of her complaint, none of which have merit or are worth discussing at any length.

CONCLUSION

For these reasons, we reverse the judgment of the district court and remand for further proceedings not inconsistent with this opinion. Although we recognize the grave seriousness of the problems of child abuse and neglect, and the need for the state to maintain a Central Register for ensuring that those with abusive backgrounds not be inadvertently given access to children, we find the current system unacceptable.
Court of Appeals of New York.

In the Matter of LEE TT., Respondent,

v.

Michael DOWLING, as Commissioner of the New York State Department of Social Services, et al., Appellants.

In the Matter of JOEL P. et al., Respondents—Appellants,

v.

Mary Jo BANE, as Commissioner of the New York State Department of Social Services, et al., Appellants—Respondents, et al., Respondents.

April 4, 1996.

Psychologist brought Article 78 proceeding to review commissioner of Department of Social Services’ (DSS) denial of request to expunge report in State Central Register of Child Abuse and Maltreatment concerning alleged sexual abuse of petitioner’s stepdaughter. The Supreme Court, Albany County, transferred petition. The Supreme Court, Appellate Division, 211 A.D.2d 46, 624 N.Y.S.2d 648, annulled determination and remitted matter. DSS officials appealed. In unrelated case, foster parents brought Article 78 proceeding for review of decision to remove three foster children from their home and to deny their request to expunge their names from Central Register. The Supreme Court, New York County, Cohen, J., transferred petition. The Supreme Court, Appellate Division, 214 A.D.2d 506, 625 N.Y.S.2d 542, found that standard used by DSS to deny expunction request violated their due process rights. DSS officials appealed. The Court of Appeals, Simons, J., held that DSS was required to substantiate reports of child abuse by fair preponderance of the evidence before they could be disseminated to providers and licensing agencies.

Affirmed.

Attorneys and Law Firms

***183 *701 **1245 Dennis C. Vacco, Attorney—General, Albany (Lew A. Millenbach, Victoria A. Graffeo and Peter H. Schiff, of counsel), for appellants in the first above-entitled proceeding and appellants—respondents in the second above-entitled proceeding.

Kevin L. O’Brien, Albany, for respondent in the first above-entitled proceeding.
SIMONS, Judge.

These are two unrelated CPLR article 78 proceedings in which petitioners sought to have their names expunged from the New York State Central Register of Child Abuse and Maltreatment. Respondents, officials of the State and local Social Services Departments, appeal orders of the Appellate Division which, in each proceeding, declared that the statutory standard of proof sufficient to substantiate reports of abuse entered in the Central Register violates the Due Process Clause of the Federal Constitution (US Const 14th Amend) and remitted the matters for new determinations. In Matter of Joel P. petitioners cross-appeal, contending that they are entitled to a new hearing.

The orders should be affirmed and the matters remitted to the Department of Social Services for new determinations based upon the existing record.

New York, like the vast majority of other States in the Nation, maintains a Central Register listing reported incidents of child abuse received in writing or over a 24-hour telephone hotline. The Register serves three broad purposes: (1) to aid social workers in their duties of investigating, treating and preventing child abuse, (2) to compile information and statistics about the extent and nature of child abuse in the State and (3) to inform employers, licensing agencies and foster and adoptive parent agencies about child abusers for the purpose of regulating their future employment or licensure.

In an effort to reconcile the conflicting interests of the State in maintaining the Register and the interests of reported individuals who are the subject of erroneous inclusion in the Register, the Legislature has enacted an elaborate statutory scheme establishing a procedure for the receipt of reports of suspected child abuse, investigation of the reports, an opportunity for the subject of the report to seek expunction and, finally, judicial review in an article 78 proceeding of an administrative decision denying expunction. Whether the report is substantiated, and therefore retained in the Register, or not rests upon a finding that the report is supported by “some credible evidence.” It is this standard of proof which petitioners have successfully challenged in the courts below.

We conclude that the statutory scheme regulating the Central Register violates constitutional standards and we therefore affirm both orders. A report of abuse must be substantiated by a fair preponderance of the evidence before information regarding the subject may be disseminated to employers in certain child care agencies or provider agencies in which the subject would have regular and substantial contact with children cared for by the agency, licensing agencies or foster and adoptive care agencies (hereinafter providers and licensing agencies) (see, Social Services Law § 424–a). Our result is consistent
with the interpretation of the Federal Constitution made by the United States Court of Appeals for the Second Circuit (see, Valmonte v. Bane, 18 F.3d 992) * and with decisions by the two other departments of the Appellate Division who also have found the statute wanting (see, Matter of Smith v. Perales, 208 A.D.2d 752, 617 N.Y.S.2d 806 [2d Dept.], appeal dismissed 86 N.Y.2d 837, 634 N.Y.S.2d 445, 658 N.E.2d 223; Matter of Janice A.M.P. v. Bane, 216 A.D.2d 937, 629 N.Y.S.2d 702 [4th Dept.]).

The statutes involved are found in article 6, title 6 of the New York Social Services Law. They govern the reporting, investigation and recording of reports of suspected abuse or maltreatment of children and the administrative process by which “indicated”, i.e., substantiated, reports may be reviewed and a determination made whether they 185 1247 should be maintained in the Central Register or expunged.

*704 The Central Register is one part of a larger system designed to protect the safety of children in New York State and its procedures are triggered by receipt of a report of suspected abuse or maltreatment. The reports may be mandated (physicians, school authorities, etc.) or permissive (see, Social Services Law §§ 413, 414). If the allegations contained in the report “could reasonably constitute a report of child abuse or maltreatment”, or “if true would constitute child abuse or maltreatment”, the report must be transmitted to the appropriate local child protective agency for investigation (Social Services Law § 422[2][a], [b]). The local agency then determines whether the report is “indicated” or “unfounded” (Social Services Law § 424[7]). Indicated reports are maintained in the Central Register. Unfounded reports are deleted and all records and reports are destroyed (Social Services Law § 422[5], [8][a][ii][i]; [c][i]). A report is indicated if there is “some credible evidence” that the subject committed the act and the act constitutes abuse or maltreatment (Social Services Law § 412[12]). When a report is indicated, the subject is notified and may request that the report be expunged (Social Services Law § 422[8]).

If a subject requests expunction, the State Department of Social Services conducts a review of the report. It first determines whether there is some credible evidence that the subject committed the act and that the act constitutes abuse or maltreatment (Social Services Law § 422[8][a][ii]). If there is no such evidence, the report is expunged. However, if the Department finds some credible evidence of abuse, it must then decide whether the act could be relevant and reasonably related to: (a) employment with certain child care agencies as defined in Social Services Law § 424–a(3); (b) the subject having regular and substantial contact with children cared for by a provider agency; or (c) approval of an application to a licensing, adoption or foster care agency as defined in Social Services Law § 424–a(4) (Social Services Law § 422[8][a][ii]). If the Department concludes that the act is not or could not be relevant and reasonably related to those matters, the report is not expunged, but it is not disclosed to provider or licensing agencies upon an inquiry to the Central Register about the subject of the report (Social Services Law § 422[8][a][iv]).

If the expunction request is denied, an administrative hearing is scheduled (Social Services Law § 422[8][a][v]; [b][i]). At the hearing, the investigating agency must prove by some credible evidence that
the subject committed the act or acts of abuse or maltreatment indicated in the report (Social Services Law § 422[8][b][iii]). If the investigating agency satisfies that burden, the report is not expunged and the hearing officer must then make findings on relevancy similar to the analysis of relevancy performed by the Commissioner (see, Social Services Law § 422[8][c][ii]; § 424–a).

Finally, if the report is not expunged after the hearing, the subject of the report may commence a proceeding pursuant to CPLR article 78 to challenge the decision.

The information in the Central Register is confidential and unlawful disclosure constitutes a misdemeanor (Social Services Law § 422[4], [12]). However, Central Register reports are available to a number of law enforcement and child care agencies (see, Social Services Law § 422[4][A]) and must be disclosed under certain circumstances (Social Services Law § 424–a). For example, if a person applies for a certificate or license to be a foster parent or applies to adopt a child, the agency must inquire of the Central Register whether there is an indicated report on the applicant (Social Services Law § 424–a[1]). Similarly, an employer must inquire of the Central Register whether there is an indicated report on an applicant who seeks employment in a job that would involve “regular and substantial contact with children” (Social Services Law § 424–a[1][b][ii]). Under the terms of the statute, if, after inquiry, the subject of the indicated report is denied a license or employment due to the existence of the report, the subject is entitled to a postdeprivation hearing at which the investigating agency must prove by a “fair preponderance of the evidence” that the abuse or maltreatment occurred (Social Services Law § 424–a[2][d]). The failure to sustain this burden does not result in expungement of an indicated report, however, but is noted on the report and precludes disclosure to provider and licensing agencies (Social Services Law § 424–a[2][d]). If the investigating agency does sustain this burden, the subject’s name stays on the Central Register and is subject to disclosure upon inquiry. If the provider or licensing agency should hire or license the applicant, notwithstanding an indicated report of child abuse, it must specify the reasons for doing so in writing (Social Services Law § 424–a[2][a]).

Unless expunged earlier pursuant to these procedures, an indicated report must be expunged from the Central Register 10 years after the youngest child referred to in the report turns 18 (Social Services Law § 422[6]).

*706 II

These statutory provisions were applied in the two appeals before us.

Matter of Lee TT. v. Dowling: on July 30, 1991, petitioner Lee TT. was the subject of a telephone hotline report to the Central Register. The report alleged that petitioner, a child psychologist, had sexually abused his 16–year–old stepdaughter. The Central Register transmitted the report to the local County Department of Social Services, and notified petitioner that the report was under investigation to determine whether it was unfounded or should be marked indicated and kept on file.
Following an investigation, the County Department marked the report indicated, concluding that some credible evidence existed to support the allegation of abuse. Petitioner requested the State Commissioner to expunge the record, but following an expunction conference, the request was denied. Thereafter, the petitioner sought a fair hearing. At the conclusion of the hearing, at which petitioner and his stepdaughter both testified, the Administrative Law Judge (ALJ) denied expunction, stating that there was some credible evidence supporting the allegations of sexual abuse or maltreatment and, further, that such acts were relevant and reasonably related to petitioner's employment by a child care agency. The State Commissioner adopted the recommendation of the ALJ.

Petitioner then instituted an article 78 proceeding asserting that the Commissioner's determination violated due process guarantees of the Federal Constitution (U.S. Const. 14th Amend.). Upon transfer to the Third Department, the Appellate Division annulled the determination and remitted the matter to the State Commissioner for a new determination. The Court held that the statutory standard of proof did not afford adequate due process protection, and that the higher “fair preponderance of the evidence” standard was required at the administrative fair hearing stage conducted pursuant to Social Services Law § 422(8)(b). This appeal followed.


A month later, another report concerning the petitioners was filed with the Central Register. The Mount Sinai Hospital reported that Jennifer had made statements during a psychiatric examination that her foster father had touched her sexually. OCI investigated and determined that the reports on Michelle and Jennifer should be marked “indicated”. George “Joey” S. was subsequently removed from petitioner's home.

Petitioners requested that the records be expunged from the Central Register, but their request was denied. At the administrative fair hearing which followed, the Administrative Law Judge concluded that “some credible evidence” of sexual abuse and inadequate guardianship existed, and it was reasonably related to petitioners' fitness to be employed in child care or to become foster or adoptive parents. The motion for expunction was denied.

Petitioners instituted this article 78 proceeding seeking to review that determination. Supreme Court transferred the proceeding to the Appellate Division, First Department, which unanimously granted the petition, annulled the determination of the State Commissioner and remanded the matter to the Department of Social Services for a new determination on the original record using a fair preponderance of the evidence standard of proof.
Analysis begins by determining if the State has impaired any constitutionally protected right of petitioners and, if so, what process is due them.

A

1 The Due Process Clause of the Fourteenth Amendment to the United States Constitution and the similar provision contained in our State Constitution prohibit the government from depriving a person of “life, liberty or property without due process of law” (U.S. Const. 14th Amend; N.Y. Const., art. I, § 6). Whether the constitutional guarantee applies depends on whether the government’s actions impair a protected liberty or property interest. In these proceedings, petitioners contend *708 that the State’s action impairs a protected liberty interest in reputation and their concomitant ability to secure employment in their chosen fields.

2 There is no constitutional prohibition against the State maintaining a list of suspected abusers. It may receive, index and investigate reports of maltreatment of children to assist it in discharging its responsibilities to protect and care for the subjects of the abuse or to enforce the penal laws. The Central Register provides important aids in meeting those tasks. Damaging though the information it contains may be to the subject’s reputation if revealed publicly, keeping it is a legitimate exercise of the State’s police powers and does not implicate constitutional concerns (see, Whalen v. Roe, 429 U.S. 589, 598, 97 S.Ct. 869, 875–76, 51 L.Ed.2d 64; Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405; see generally, Moore, Charting a Course Between Scylla and Charybdis: Child Abuse Registries and Procedural Due Process, 73 NC L Rev 2063; Phillips, The Constitutionality of Employer-Accessible Child Abuse Registries: Due Process Implications of Governmental Occupational Blacklisting, 92 Mich L Rev 139, 150–163).

3 Moreover, such information may be disseminated to others under some circumstances: government agencies commonly share information for law enforcement and investigative purposes. The consequent damage to a subject’s good name resulting from inaccuracies is not a matter of constitutional magnitude but must be addressed by the tort laws regulating defamation. Indeed, the Supreme Court has held that the police can publish the fact that an individual has been arrested, even though the charges were subsequently dismissed, without violating the subject’s constitutional rights (see, Paul v. Davis, supra). The stigma which results from the publication of such defamatory material is not constitutionally protected. A loss of liberty results only if some more “tangible” interest is affected or a legal right is altered (Paul v. Davis, supra, at 701, 708–709, 96 S.Ct. at 1160–61, 1164; cf., Siegert v. Gilley, 500 U.S. 226, 111 S.Ct. 1789, 114 L.Ed.2d 277). In the commonly accepted phrase, there must be “stigma plus” (see, Colaizzi v. Walker, 542 F.2d 969, 973; see also, Valmonte v. Bane, 18 F.3d 992, 1000, supra; Neu v. Corcoran, 869 F.2d 662, 667; cf., Smith v. Organization of Foster Families, 431 U.S. 816, 97 S.Ct. 2094, 53 L.Ed.2d 14 [no constitutionally protected privacy interest in foster family relationship] ). The additional injury may be found in the loss of employment or the foreclosure of future employment opportunities (Paul v. Davis, supra, at 701, 96 S.Ct. at 1160–61; Valmonte v. Bane, 18 F.3d 992, supra; Doe v. United States Dept. of Justice, 753 F.2d 1092, 1106–1107).
Most certainly there was stigma here. Branding petitioners child abusers called into question their "good name, reputation, honor, *709 or integrity" (Board of Regents v. Roth, 408 U.S. 564, 573, 92 S.Ct. 2701, 2707, 33 L.Ed.2d 548). The question is whether the State's action resulted in the additional damage sufficient to constitute a constitutional deprivation as defined by the holding in Paul v. Davis (supra).

7 Petitioner Lee TT. was employed as a psychologist in the Child Care Center at a State Psychiatric Center. Following his listing he was transferred out of his unit. It is not clear that his transfer resulted from the report to the Central Register, but it is clear that petitioner's listing has severely jeopardized future employment prospects in his chosen field. Not only is the information that he is the subject of an indicated report available to all child care providers, future employers must consult the list before hiring petitioner and if they choose to hire him they are required by law to state in writing their specific reasons for doing so (Social Services Law § 424–a[2][a]).

8 The liberty interests of Joel P. and Aracelis P. are similarly injured. Foster parents are licensed by the State or an authorized foster care agency (Social Services Law §§ 376, 377). They provide care under a contractual agreement and are compensated for their services (18 NYCRR 427.2, 427.6). As a consequence of their listing in the Central Register, the foster children petitioners had cared for were removed from their home. The benefits available to them as foster parents, including the recognized right to be compensated for supplying foster care have been foreclosed (Social Services Law § 398). Moreover, the statutory preference they enjoyed to adopt George "Joey" S. has been lost (see, Social Services Law § 383[3]) and their efforts to adopt him have been terminated. Manifestly, they will not be employed as foster parents or regarded as suitable adoptive parents in the future. Any agency which attempted to do so would be required by statute to justify its action in writing before hiring them (Social Services Law § 424–a[2][a]).

In sum, the inclusion of petitioners in the Central Register not only harmed their personal reputations, it affected their present employment and effectively foreclosed them from any future employment in the child care area. It signified not that petitioners had performed poorly in their prior jobs or suffered from personal inadequacies but that they presented a potential danger to children or, worse, that they might be capable of criminal conduct toward them. If a future provider or licensing agency did not accept that as so, it had to specify in writing why it believed the subject should be employed or licensed, the information in the Central Register notwithstanding.

*710 B

9 Having determined that petitioners have a protected interest, we turn next to a consideration of whether the procedures the statute provides protect individuals from an improper deprivation of that interest. That inquiry involves a consideration of three factors: (1) the private interest affected by the State's action, (2) the risk of an erroneous deprivation of that interest through the procedures used and the probable value, if any, of additional safeguards and (3) a consideration of the government's interest (Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18).
The potential loss of employment as either a child psychologist or a foster parent, or of the right to pursue adoption of a child are substantial interests. The government’s characterization of petitioners as child abusers affects not only their present employment in the child care field or as foster parents; it effectively bars them from obtaining similar employment or benefits in the future. Moreover, the characterizations of Joel and Araceli as child abusers has cost them the care of a child they were in the process of adopting and, realistically, it has foreclosed any possibility of future adoption. Thus, for these petitioners the State’s action has compromised some of life’s most important interests, earning a livelihood in one’s chosen field and establishing a family. Indeed, the stigma of being branded a child abuser may extend well beyond employment in the child care field to prevent employment in any field.

The State has at least two identifiable interests in maintaining the Central Register. First, it has a parens patriae interest. It is an unfortunate reality of modern life that children are often victimized and that the State has a strong interest in preserving and promoting their health and welfare and protecting them from abuse (see, Santosky v. Kramer, 455 U.S. 745, 766, 102 S.Ct. 1388, 1401-1402, 71 L.Ed.2d 599). Indeed, the laws against child abuse and child neglect are an implicit recognition that even the rights of parents are not absolute and that society through its courts and social service agencies should intervene to protect endangered children.

Minimal procedural safeguards facilitate the State’s efforts to limit children’s exposure to abuse because they allow the State to respond quickly to isolate children from potentially dangerous contact with adults on the first indication of possible maltreatment and forewarn providers and licensing agencies of possible future harm. Enhancing procedural protections to protect private interests necessarily impedes these efforts by the State, though it may serve the State’s interest in other ways by reducing the number of false negative findings.

Second, the State has a clear interest in controlling the expense involved in maintaining the Central Register (see, Santosky v. Kramer, supra). Stricter procedures may increase costs in investigating and defending the maintenance of the Register. Though such increases properly may be weighed against the potential benefits to protected private interests (see, Mathews v. Eldridge, supra, at 347–348, 96 S.Ct. at 908–909), the State has not submitted evidence that a change of procedure would increase costs or how much the increase might be and thus, it is not a consideration in the matters before us.

Manifestly, both the State and private interests involved in these matters are weighty and compelling. The balance must be struck by assessing the risk of error.

Complaints of suspected child abuse are required not only from doctors, teachers and others similarly employed, but may be received from anyone, whether under a duty to report or not and whether identified or anonymous. The statute provides that those reports may be indicated if they are supported by “some credible evidence.” The standard is defined in the Department's manual as “evidence worthy of being believed” (Dept of Social Servs Child Protective Servs Manual, Appendix B, at 7 [Aug. 1989]). One commentator has observed that this standard safeguards only against bad faith or entirely
unfounded reports of child abuse: it provides no assurance that reports sounding reasonable are, nevertheless, erroneous because the same evidence motivating the report will provide the basis for confirming it (Phillips, The Constitutionality of Employer–Accessible Child Abuse Registries: Due Process Implications of Governmental Occupational Blacklisting, 92 Mich L Rev 139, 188–189). Petitioners characterize the “some credible evidence” standard as requiring little more than rumor to substantiate a report.

However the standard is viewed, it assuredly permits a “bare minimum” of evidence to support the allegations against the subject (Valmonte v. Bane, supra, at 1004). It imposes no duty on the fact finder to weigh conflicting evidence, no matter how substantial, and allows a report to be indicated if only one out of several believable items of evidence supports it.

The dangers of such a minimal standard of proof are evident. Abuse frequently involves private conduct and is based upon the reports of minors or actions of a minor observed and interpreted by others. There may be no supporting eyewitness testimony or objective evidence to support the report and therefore the evaluation of it may involve, to a large degree, subjective determinations of credibility. Under the present standard a fact finder in such cases may be tempted to rely on an intuitive determination, ignoring any contrary evidence. The risk of error is placed entirely on the subject of the report for there is no requirement that the fact finder must consider, let alone evaluate, evidence favorable to the subject.

***190 **1252 Not surprisingly this process results in a disturbingly high number of false positive findings of abuse. In Valmonte v. Bane (supra ), plaintiffs asserted, without contradiction by the State, that 75% of the challenged reports of abuse were successfully expunged (id., at 1003–1004). While the State now questions that figure, the margin of error is unquestionably significant and results in substantial injury to constitutionally protected private interests (see generally, Besharov, “Doing Something” about Child Abuse: The Need to Narrow the Grounds for State Intervention, 8 Harv J Law & Pub Policy 539). The most practical method of safeguarding subjects reported to the Central Register is to require a higher standard of proof before reports are substantiated. The degree of proof appropriate to the circumstances is the kind of question that has been traditionally resolved by the courts (Santosky v. Kramer, 455 U.S. 745, 755–756, 102 S.Ct. 1388, 1395–1396, supra). It should reflect not only the weight of the public and private interests affected, but also a judgment about how the risks of error should be distributed (id.).

1314 We conclude that the Due Process Clause of the Federal Constitution requires the Department to substantiate reports of child abuse by a fair preponderance of the evidence before they may be disseminated to providers and licensing agencies as a screening device for future employment. During the investigative process the information may be retained on the strength of some credible evidence supporting it and released to those health care and law enforcement agencies under the terms and conditions listed in section 422(4)(A). No report shall be released to providers or licensing agencies, however, until a fact finder determines after a hearing that the report is substantiated by a fair preponderance of the evidence or the subject’s time to move for expunction has expired.
The Department maintains that the risk of error is sufficiently minimized by the statute’s provision for a postdeprivation hearing at which the sufficiency of the abuse must be established by a fair preponderance of the evidence (Social Services Law § 424–a[2][a], [d]).

1516 *713 Due process requires that a person whose constitutional rights are affected by government action is entitled to be heard and it makes obvious sense in most cases “to minimize substantially unfair or mistaken deprivations” by insisting that the hearing be granted at a time when the deprivation can still be prevented (see, Fuentes v. Shevin, 407 U.S. 67, 79–82, 92 S.Ct. 1983, 1993–1995, 32 L.Ed.2d 556). That is particularly so in cases involving reputational injuries. The deprivation of a constitutionally protected property interest may be remedied post hoc by monetary damages but the injury inflicted on one’s reputation cannot be so easily overcome. The damage to the subject following publication of an unsubstantiated report of child abuse may be irreversible. Moreover, even where the facts that abuse occurred are clear, the appropriateness of disclosing that finding may not be (see, Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 543, 105 S.Ct. 1487, 1493–1494, 84 L.Ed.2d 494). Indeed, the statute provides that substantiated reports may not be disclosed unless relevant and reasonably related to employment (see, Social Services Law § 422[8][a][ii]; § 424–a).

In the absence of any evidence from the State that a predeprivation hearing will involve excessive costs or be unduly burdensome when compared to a postdeprivation hearing, subjects are entitled to a predeprivation hearing to determine by a fair preponderance of the evidence whether reports of abuse can be substantiated and relevant to future employment or licensure.

V

Petitioners Joel P. and Araceli P. contend that the Due Process Clause of the State Constitution also requires a higher standard of proof at the hearing stage (N.Y. Const., art. I, § 6). Their claim rests on recognized principles of federalism which hold that State courts are bound by Supreme Court decisions defining Federal constitutional rights but that those rulings establish a minimum standard which State courts may surpass when interpreting their State constitution so long as their decisions do not conflict with Federal law (see generally, Matter of Town of Islip v. Caviglia, 73 N.Y.2d 544, 556, 542 N.Y.S.2d 139, 540 N.E.2d 215; People v. P.J. Video, 68 N.Y.2d 296, 301–302, 508 N.Y.S.2d 907, 501 N.E.2d 556; cf., Sharrock v. Dell Buick–Cadillac, 45 N.Y.2d 152, 408 N.Y.S.2d 39, 379 N.E.2d 1169).

Inasmuch as we conclude that the relief petitioners requested is warranted under Federal constitutional principles, we have no occasion to consider whether the Due Process Clause of the State Constitution guarantees even broader protections.

Accordingly, in Matter of Lee TT. v. Dowling the order of the Appellate Division should be affirmed, with costs, and in Matter *714 of Joel P. v. Bane the order of the Appellate Division should be affirmed, without costs.
KAYE, C.J., and TITONE, BELLACOSA, SMITH, LEVINE and CIPARICK, JJ., concur.

In Matter of Lee TT. v. Dowling: Order affirmed, with costs.

In Matter of Joel P. v. Bane: Order affirmed, without costs.

All Citations

87 N.Y.2d 699, 664 N.E.2d 1243, 642 N.Y.S.2d 181

Footnotes

* Respondents maintain that they have, since the Valmonte decision, formulated new rules which implement a system adequately protecting the interests of subjects. Those rules were not applied in the matters before us and we have no occasion to consider them or pass on their validity.
3 N.Y.3d 357

Court of Appeals of New York

Sharwline NICHOLSON, on Behalf of Herself, Her Infant Children, Destinee B. and Another, and All Others Similarly Situated, et al., Respondents,

v.

Nicholas SCOPPETTA, Individually and as Commissioner of Administration for Children's Services, et al., Appellants, et al., Defendants.

Oct. 26, 2004

Synopsis


Holdings: The Court of Appeals, Kaye, Chief Judge, held that:

1 evidence that caretaker allowed child to witness domestic abuse against caretaker is insufficient, without more, to satisfy statutory definition of "neglected child," and

2 emotional injury from witnessing domestic violence can rise to level that justifies removal of child, but witnessing does not, by itself, give rise to any presumption of injury.

Attorneys and Law Firms


*360 Lansner & Kubitschek, New York City (David J. Lansner and Carolyn A. Kubitschek of counsel), and Sanctuary for Families, Center for Battered Women's Legal Services (Jill M. Zuccardy of counsel), for Subclass A respondents.
In this federal class action, the United States Court of Appeals for the Second Circuit has certified three questions centered on New York’s statutory scheme for child protective proceedings. The action is brought on behalf of mothers and their children who were separated because the mother had suffered domestic violence, to which the children were exposed, and the children were for that reason deemed neglected by her.
In April 2000, Sharwline Nicholson, on behalf of herself and her two children, brought an action pursuant to 42 USC § 1983 against the New York City Administration for Children’s Services (ACS). The action was later consolidated with similar complaints by Sharlene Tillet and Ekaete Udoh—the three named plaintiff mothers. Plaintiffs alleged that ACS, as a matter of policy, removed children from mothers who were victims of domestic violence because, as victims, they “engaged in domestic violence” and that defendants removed and detained children without probable cause and without due process of law. That policy, and its implementation—according to plaintiff mothers—constituted, among other wrongs, an unlawful interference with their liberty interest in the care and custody of their children in violation of the United States Constitution.

In August 2001, the United States District Court for the Eastern District of New York certified two subclasses: battered custodial parents (Subclass A) and their children (Subclass B) (Nicholson v. Williams, 205 F.R.D. 92, 95, 100 [E.D.N.Y.2001]). For each plaintiff, at least one ground for removal was that the custodial mother had been assaulted by an intimate partner and failed to protect the child or children from exposure to that domestic violence.

In January 2002, the District Court granted a preliminary injunction, concluding that the City “may not penalize a mother, not otherwise unfit, who is battered by her partner, by separating her from her children; nor may children be separated from the mother, in effect visiting upon them the sins of their mother’s batterer” (In re Nicholson, 181 F.Supp.2d 182, 188 [E.D.N.Y.2002]; see also Nicholson v. Williams, 203 F.Supp.2d 153 [E.D.N.Y.2002] [108-page elaboration of grounds for injunction]).

The court found that ACS unnecessarily, routinely charged mothers with neglect and removed their children where the mothers—who had engaged in no violence themselves—had been the victims of domestic violence; that ACS did so without ensuring that the mother had access to the services she needed, without a court order, and without returning these children promptly after being ordered to do so by the court; that ACS caseworkers and case managers lacked adequate training about domestic violence, and their practice was to separate mother and child when less harmful alternatives were available; that the agency’s written policies offered contradictory guidance or no guidance at all on these issues; and that none of the reform plans submitted by ACS could reasonably have been expected to resolve the problems within the next year (203 F.Supp.2d at 228–229).

The District Court concluded that ACS’s practices and policies violated both the substantive due process rights of mothers and children not to be separated by the government unless the parent is unfit to care for the child, and their procedural due process rights (181 F.Supp.2d at 185).

The injunction, in relevant part, “prohibit[ed] ACS from carrying out ex parte removals ‘solely because the mother is the victim of domestic violence,’ or from filing an Article Ten petition seeking removal on that *367 basis” (Nicholson v. Scoppetta, 344 F.3d 154, 164 [2d Cir.2003] [internal citations omitted]).

On appeal, the Second Circuit held that the District Court had not abused its discretion in concluding that ACS’s practice of effecting removals based on a parent’s failure to prevent his or her child from witnessing domestic violence against the ***200 **844 parent amounted to a policy or custom of ACS, that in some circumstances the removals may raise serious questions of federal constitutional law, and
that the alleged constitutional violations, if any, were at least plausibly attributable to the City (344 F.3d at 165–167, 171–176). The court hesitated, however, before reaching the constitutional questions, believing that resolution of uncertain issues of New York statutory law would avoid, or significantly modify, the substantial federal constitutional issues presented (id. at 176).

Given the strong preference for avoiding unnecessary constitutional adjudication, the importance of child protection to New York State and the integral part New York courts play in the removal process, the Second Circuit, by three certified questions, chose to put the open state statutory law issues to us for resolution. We accepted certification (1 N.Y.3d 538, 775 N.Y.S.2d 233, 807 N.E.2d 283 [2003]), and now proceed to answer those questions.

Certified Question No. 1: Neglect

"Does the definition of a 'neglected child' under N.Y. Family Ct. Act § 1012(f), (h) include instances in which the sole allegation of neglect is that the parent or other person legally responsible for the child's care allows the child to witness domestic abuse against the caretaker?" (344 F.3d at 176.)

We understand this question to ask whether a court reviewing a Family Court Act article 10 petition may find a respondent parent responsible for neglect based on evidence of two facts only: that the parent has been the victim of domestic violence, and that the child has been exposed to that violence. That question must be answered in the negative. Plainly, more is required for a showing of neglect under New York law than the fact that a child was exposed to domestic abuse against the caretaker. Answering the question in the affirmative, moreover, would read an unacceptable presumption into the statute, contrary to its plain language.

Family Court Act § 1012(f) is explicit in identifying the elements that must be shown to support a finding of neglect. As relevant here, it defines a "neglected child" to mean:

"a child less than eighteen years of age

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

"(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court."

Thus, a party seeking to establish neglect must show, by a preponderance of the evidence (see Family Ct. Act § 1046[b] [i]), first, that a child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired and second, that the actual or threatened harm to the child is a consequence of the failure of the parent or caretaker to exercise a minimum degree of care in providing the child with proper supervision or guardianship. The drafters of
article 10 were “deeply concerned” that an imprecise definition of child neglect might result in “unwarranted state intervention into private family life” (Besharov, Practice Commentaries, McKinney’s Cons. Laws of N.Y., Book 29A, Family Ct. Act § 1012, at 320 [1999 ed]).

The first statutory element requires proof of actual (or imminent danger of) physical, emotional or mental impairment to the child (see Matter of Nassau County Dept. of Social Servs. [Dante M.] v. Denise J., 87 N.Y.2d 73, 78-79, 637 N.Y.S.2d 666, 661 N.E.2d 138 [1995]). This prerequisite to a finding of neglect ensures that the Family Court, in deciding whether to authorize state intervention, will focus on serious harm or potential harm to the child, not just on what might be deemed undesirable parental behavior. “Imminent danger” reflects the Legislature’s judgment that a finding of neglect may be appropriate even when a child has not actually been harmed; “imminent danger of impairment to a child is an independent and separate ground on which a neglect finding may be based” (Dante M., 87 N.Y.2d at 79, 637 N.Y.S.2d 666, 661 N.E.2d 138). Imminent danger, however, must be near or impending, not merely possible.

In each case, additionally, there must be a link or causal connection between the basis for the neglect petition and the circumstances that allegedly produce the child’s impairment or imminent danger of impairment. In Dante M., for example, we held that the Family Court erred in concluding that a newborn’s positive toxicology for a controlled substance alone was sufficient to support a finding of neglect because the report, in and of itself, did not prove that the child was impaired or in imminent danger of becoming impaired (87 N.Y.2d at 79, 637 N.Y.S.2d 666, 661 N.E.2d 138). We reasoned, “[r]elying solely on a positive toxicology result for a neglect determination fails to make the necessary causative connection to all the surrounding circumstances that may or may not produce impairment or imminent risk of impairment in the newborn child” (id.). The positive toxicology report, in conjunction with other evidence—such as the mother’s history of inability to care for her children because of her drug use, testimony of relatives that she was high on cocaine during her pregnancy and the mother’s failure to testify at the neglect hearing—supported a finding of neglect and established a link between the report and physical impairment.

The cases at bar concern, in particular, alleged threats to the child’s emotional, or mental, health. The statute specifically defines “[i]mpairment of emotional health” and “impairment of mental or emotional condition” to include

“a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior, including incorrigibility, ungovernability or habitual truancy” (Family Ct. Act § 1012 [h]).

Under New York law, “such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward ***202 **846 the child” (id.). Here, the Legislature recognized that the source of emotional or mental impairment—unlike physical injury—may be murky, and that it is unjust to fault a parent too readily. The Legislature therefore specified that such impairment be “clearly attributable” to the parent’s failure to exercise the requisite degree of care.
Assuming that actual or imminent danger to the child has been shown, “neglect” also requires proof of the parent’s failure to exercise a minimum degree of care. As the Second Circuit observed, “a fundamental interpretive question is what conduct satisfies the broad, tort-like phrase, ‘a minimum degree of care.’ The Court of Appeals has not yet addressed that question, which would be critical to defining appropriate parental behavior” (344 F.3d at 169).

“[M]inimum degree of care” is a “baseline of proper care for children that all parents, regardless of lifestyle or social or economic position, must meet” (Besharov at 326). Notably, the statutory test is “minimum degree of care”—not maximum, not best, not ideal—and the failure must be actual, not threatened (see e.g. Matter of Hofbauer, 47 N.Y.2d 648, 656, 419 N.Y.S.2d 936, 393 N.E.2d 1009 [1979] [recognizing, in the context of medical neglect, the court’s role is not as surrogate parent and the inquiry is not posed in absolute terms of whether the parent has made the “right” or “wrong” decision]).

4 Courts must evaluate parental behavior objectively: would a reasonable and prudent parent have so acted, or failed to act, under the circumstances then and there existing (see Matter of Jessica YY., 258 A.D.2d 743, 744, 685 N.Y.S.2d 489 [3d Dept.1999] ). The standard takes into account the special vulnerabilities of the child, even where general physical health is not implicated (see Matter of Sayeh R., 91 N.Y.2d 306, 315, 317, 670 N.Y.S.2d 377, 693 N.E.2d 724 [1997] [mother’s decision to demand immediate return of her traumatized children without regard to their need for counseling and related services “could well be found to represent precisely the kind of failure ‘to exercise a minimum degree of care’ that our neglect statute contemplates”] ). Thus, when the inquiry is whether a mother—and domestic violence victim—failed to exercise a minimum *371 degree of care, the focus must be on whether she has met the standard of the reasonable and prudent person in similar circumstances.

5 As the Subclass A members point out, for a battered mother—and ultimately for a court—what course of action constitutes a parent’s exercise of a “minimum degree of care” may include such considerations as: risks attendant to leaving, if the batterer has threatened to kill her if she does; risks attendant to staying and suffering continued abuse; risks attendant to seeking assistance through government channels, potentially increasing the danger to herself and her children; risks attendant to criminal prosecution against the abuser; and risks attendant to relocation.6 Whether a particular mother in these circumstances has actually failed to exercise a minimum degree of care is necessarily dependent on facts such as the severity and frequency of the violence, and the resources and options available to her (see ***203 **847 Matter of Melissa U., 148 A.D.2d 862, 538 N.Y.S.2d 958 [3d Dept.1989]; Matter of James MM. v. June OO., 294 A.D.2d 630, 740 N.Y.S.2d 730 [3d Dept.2002] ).

Only when a petitioner demonstrates, by a preponderance of evidence, that both elements of section 1012(f) are satisfied may a child be deemed neglected under the statute. When “the sole allegation” is that the mother has been abused and the child has witnessed the abuse, such a showing has not been made. This does not mean, however, that a child can never be “neglected” when living in a household plagued by domestic violence. Conceivably, neglect might be found where a record establishes that, for example, the mother acknowledged that the children knew of repeated domestic violence by her paramour and had reason to be afraid of him, yet nonetheless allowed him several times to return to her home, and lacked awareness of any impact of the violence on the children, as in Matter of James
MM., 294 A.D.2d at 632, 740 N.Y.S.2d 730; or where the children were exposed to regular and continuous extremely violent conduct between their parents, several times requiring official intervention, and where caseworkers testified to the fear and distress the children were experiencing as a result of their long exposure to the violence (Matter of Theresa CC., 178 A.D.2d 687, 576 N.Y.S.2d 937 [3d Dept.1991]).

In such circumstances, the battered mother is charged with neglect not because she is a victim of domestic violence or because her children witnessed the abuse, but rather because a preponderance of the evidence establishes that the children were actually or imminently harmed by reason of her failure to exercise even minimal care in providing them with proper oversight.

Certified Question No. 2: Removals

Next, we are called upon to focus on removals by ACS, in answering the question:

“Can the injury or possible injury, if any, that results to a child who has witnessed domestic abuse against a parent or other caretaker constitute ‘danger’ or ‘risk’ to the child’s ‘life or health,’ as those terms are defined in the N.Y. Family Ct. Act §§ 1022, 1024, 1026–1028?” (344 F.3d at 176–177.)

The cited Family Court Act sections relate to the removal of a child from home. Thus, in essence, we are asked to decide whether emotional injury from witnessing domestic violence can rise to a level that establishes an “imminent danger” or “risk” to a child's life or health, so that removal is appropriate either in an emergency or by court order.

While we do not reach the constitutional questions, it is helpful in framing the statutory issues to note the Second Circuit's outline of the federal constitutional questions relating to removals. Their questions emerge in large measure from the District Court’s findings of an “agency-wide practice of removing children from their mother without evidence of a mother's neglect and without seeking prior judicial approval” (203 F.Supp.2d at 215), and Family Court review of removals that “often fails to provide mothers and children with an effective avenue for timely relief from ACS mistakes” (id. at 221).

Specifically, as to ex parte removals, the Circuit Court identified procedural due process and Fourth Amendment questions focused on whether danger to a child could encompass emotional trauma from witnessing domestic violence against a parent, warranting emergency removal. Discussing the procedural due process question, the court remarked that:

***204 **848 “there is a strong possibility that if New York law *373 does not authorize ex parte removals, our opinion in Tenenbaum at least arguably could weigh in favor of finding a procedural due process violation in certain circumstances. If New York law does authorize such removals, Tenenbaum likely does not prohibit us from deferring to that judgment. In either case, the underlying New York procedural rules will also be an important component of our balancing. Thus, the state-law question of statutory interpretation will either render unnecessary, or at least substantially modify, the federal constitutional question” (344 F.3d at 172).7
The court also questioned whether “in the context of the seizure of a child by a state protective agency the Fourth Amendment might impose any additional restrictions above and beyond those that apply to ordinary arrests” (id. at 173).

As to court-ordered removals, the Second Circuit recognized challenges based on substantive due process, procedural due process—the antecedent of Certified Question No. 3—and the Fourth Amendment. The substantive due process question concerned whether the City had offered a reasonable justification for the removals. The Second Circuit observed that “there is a substantial Fourth Amendment question presented if New York law does not authorize removals in the circumstances alleged” (id. at 176).

Finally, in certifying the questions to us, the court explained that:

“[t]here is ... some ambiguity in the statutory language authorizing removals pending a final determination of status. Following an emergency removal, whether ex parte or by court order, the Family Court must return a removed child to the parent’s custody absent ‘an imminent risk’ or ‘imminent danger’ to ‘the child’s life or health.’ At the same time, the Family Court must consider the ‘best interests of the child’ in assessing whether continuing removal is necessary to prevent threats to the child’s life or health. Additionally, in order to support removal, the Family Court must ‘find[] that removal is necessary to avoid imminent danger.’ How these provisions should be harmonized seems to us to be the province of the Court of Appeals” (344 F.3d at 169 [internal citations omitted]).

The Circuit Court summarized the policy challenged by plaintiffs and found by the District Court as “the alleged practice of removals based on a theory that allowing one’s child to witness ongoing domestic violence is a form of neglect, either simply because such conduct is presumptively neglectful or because in individual circumstances it is shown to threaten the child’s physical or emotional health” (id. at 166 n. 5).

It is this policy, viewed in light of the District Court’s factual findings, that informs our analysis of Certified Question No. 2. In so doing, we acknowledge the Legislature’s expressed goal of “placing increased emphasis on preventive services ***205 **849 designed to maintain family relationships rather than responding to children and families in trouble only by removing the child from the family” (see Mark G. v. Sabol, 93 N.Y.2d 710, 719, 695 N.Y.S.2d 730, 717 N.E.2d 1067 [1999] [emphasis omitted] [construing Child Welfare Reform Act of 1979 (L. 1979, chs. 610, 611)] ). We further acknowledge the legislative findings, made pursuant to the Family Protection and Domestic Violence Intervention Act of 1994, that

“[t]he corrosive effect of domestic violence is far reaching. The batterer’s violence injures children both directly and indirectly. Abuse of a parent is detrimental to children whether or not they are physically abused themselves. Children who witness domestic violence are more likely to experience delayed development, feelings of fear, depression and helplessness and are more likely to become batterers themselves” (L. 1994, ch. 222, § 1; see also People v. Wood, 95 N.Y.2d 509, 512, 719 N.Y.S.2d 639, 742 N.E.2d 114 [2000] [though involving a batterer, not a victim] ).
These legislative findings represent two fundamental—sometimes conflicting—principles. New York has long embraced a policy of keeping “biological families together” (Matter of Marino S., 100 N.Y.2d 361, 372, 763 N.Y.S.2d 796, 795 N.E.2d 21 [2003]). Yet “when a child’s best interests are endangered, such objectives must yield to the State’s paramount concern for the health and safety of the child” (id.).

As we concluded in response to Certified Question No. 1, exposing a child to domestic violence is not presumptively neglectful. Not every child exposed to domestic violence is at risk of impairment. A fortiori, exposure of a child to violence is not presumptively ground for removal, and in many instances removal may do more harm to the child than good. Part 2 of article 10 of the Family Court Act sets forth four ways in which a child may be removed from the home in response to an allegation of neglect (or abuse) related to domestic violence: (1) temporary removal with consent; (2) preliminary orders after a petition is filed; (3) preliminary orders before a petition is filed; and (4) emergency removal without a court order. The issue before us is whether emotional harm suffered by a child exposed to domestic violence, where shown, can warrant the trauma of removal under any of these provisions.

The Practice Commentaries state, and we agree, that the sections of part 2 of article 10 create a “continuum of consent and urgency and mandate a hierarchy of required review” before a child is removed from home (see Besharov, Practice Commentaries, McKinney’s Cons. Laws of N.Y., Book 29A, Family Ct. Act § 1021, at 5 [1999 ed.]).

Consent Removal

First, section 1021 provides that a child may be removed “from the place where he is residing with the written consent of his parent or other person legally responsible for his care, if the child is an abused or neglected child under this article” (Family Ct. Act § 1021; see Tenenbaum v. Williams, 193 F.3d 581, 590 n. 5 [2d Cir.1999]; Matter of Jonathan P., 283 A.D.2d 675, 724 N.Y.S.2d 213 [3d Dept.2001]). This section is significant because “many parents are willing and able to understand the need to place the child outside the home and because resort to unnecessary legal coercion can be detrimental to later treatment efforts” (Besharov at 6).

Postpetition Removal

If parental consent cannot be obtained, section 1027, at issue here, provides for preliminary orders after the filing of a neglect (or abuse) petition. Thus, according to the statutory continuum, where the circumstances are not so exigent, the agency should bring a petition and seek a hearing prior to removal of the child. In any case involving abuse—or in any case where the child has already been removed without a court order—the Family Court must hold a hearing as soon as practicable after the filing of a petition, to determine whether the child’s interests require protection pending a final order of disposition (Family Ct. Act § 1027[a]). As is relevant here, the section further provides that in any other circumstance (such as a neglect case), after the petition is filed any person originating the proceeding (or the Law Guardian) may apply for—or the court on its own may order—a hearing to determine whether the child’s interests require protection, pending a final order of disposition (id.).
For example, in Matter of Adam DD., 112 A.D.2d 493, 490 N.Y.S.2d 907 [3d Dept.1985], after filing a child neglect petition, petitioner Washington County Department of Social Services sought an order under section 1027. At a hearing, evidence demonstrated that respondent mother had told her son on several occasions that she intended to kill herself, and Family Court directed that custody be placed with petitioner on a temporary basis for two months. At the subsequent dispositional hearing, a psychiatrist testified that respondent was suffering from a type of paranoid schizophrenia that endangered the well-being of the child, and recommended the continued placement with petitioner. A second psychiatrist concurred. The Appellate Division concluded that the record afforded a basis for Family Court to find neglect because of possible impairment of the child's emotional health, and continued placement of the child with petitioner.

While not a domestic violence case, Matter of Adam DD. is instructive because it concerns steps taken in the circumstance where a child is emotionally harmed by parental behavior. The parent's repeated threats of suicide caused emotional harm that could be akin to the experience of a child who witnesses repeated episodes of domestic violence perpetrated against a parent. In this circumstance, the agency did not immediately remove the child, but proceeded with the filing of a petition and a hearing.

Upon such a hearing, if the court finds that removal is necessary to avoid imminent risk to the child's life or health, it is *377 required to remove or continue the removal and remand the child to a place approved by the agency (Family Ct Act § 1027[b][i]). In undertaking this inquiry, the statute also requires the court to consider and determine whether continuation in the child's home would be contrary to the best interests of the child (id.).

The Circuit Court has asked us to harmonize the “best interests” test with the calculus concerning “imminent risk” and “imminent danger” to “life or health” ***207 ** 851 (344 F.3d at 169). In order to justify a finding of imminent risk to life or health, the agency need not prove that the child has suffered actual injury (see Matter of Kimberly H., 242 A.D.2d 35, 38, 673 N.Y.S.2d 96 [1st Dept.1998]). Rather, the court engages in a fact-intensive inquiry to determine whether the child's emotional health is at risk. Section 1012(h), moreover, sets forth specific factors, evidence of which may demonstrate “substantially diminished psychological or intellectual functioning” (see also Matter of Sayeh R., 91 N.Y.2d 306, 314-316, 670 N.Y.S.2d 377, 693 N.E.2d 724 [1997]; Matter of Nassau County Dept. of Social Servs. [Dante M.] v. Denise J., 87 N.Y.2d 73, 78–79, 637 N.Y.S.2d 666, 661 N.E.2d 138 [1995]). As noted in our discussion of Certified Question No. 1, section 1012(h) contains the caveat that impairment of emotional health must be “clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child” (see Matter of Theresa CC., 178 A.D.2d 687, 576 N.Y.S.2d 937 [3d Dept.1991]).

Importantly, in 1988, the Legislature added the “best interests” requirement to the statute, as well as the requirement that reasonable efforts be made “to prevent or eliminate the need for removal of the child from the home” (L. 1988, ch. 478, § 5). These changes were apparently necessary to comport with federal requirements under title IV–E of the Social Security Act (42 USC §§ 670–679b), which mandated that federal “foster care maintenance payments may be made on behalf of otherwise eligible children who were removed from the home of a specified relative pursuant to a voluntary placement
agreement, or as the result of a ‘judicial determination to the effect that continuation therein would be contrary to the welfare of *378 the child and ... that reasonable efforts [to prevent the need for removal] have been made’” (Policy Interpretation Question of U.S. Dept. of Health & Human Servs., May 3, 1986, Bill Jacket, L. 1988, ch. 478, at 32–33). The measures “ensure[d] that children involved in the early stages of child protective proceedings and their families receive appropriate services to prevent the children’s removal from their homes whenever possible” (Mem. from Cesar A. Perales to Evan A. Davis, Counsel to Governor, July 27, 1988, Bill Jacket, L. 1988, ch. 478, at 14).

By contrast, the City at the time took the position that

“[t]he mixing of the standards ‘best interest of the child’ and ‘imminent risk’ is confusing. It makes no sense for a court to determine as part of an ‘imminent risk’ decision, what is in the ‘best interest of the child.’ If the child is in ‘imminent risk’, his/her ‘best interest’ is removal from the home. A ‘best interest’ determination is more appropriately made after an investigation and a report have been completed and all the facts are available” (Letter from Legis. Rep. James Brennan, City of New York Off. of Mayor, to Governor Mario M. Cuomo, July 27, 1988, Bill Jacket, L. 1988, ch. 478, at 23).

In this litigation, the City posits that the “best interests” determination is part of the Family Court’s conclusion that there is imminent risk warranting removal, and concedes that whether a child will be harmed by the removal is a relevant consideration. The City thus recognizes that the questions facing a Family Court judge in the removal context are extraordinarily complex. As the Circuit Court observed, “it could be argued that the exigencies of the moment that threaten the welfare of a ***208 **852 child justify removal. On the other hand, a blanket presumption in favor of removal may not fairly capture the nuances of each family situation” (344 F.3d at 174).

7 The plain language of the section and the legislative history supporting it establish that a blanket presumption favoring removal was never intended. The court must do more than identify the existence of a risk of serious harm. Rather, a court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal. It must balance that risk against the harm removal might bring, and it must determine factually which course is in the child’s best interests.

*379 Additionally, the court must specifically consider whether imminent risk to the child might be eliminated by other means, such as issuing a temporary order of protection or providing services to the victim (Family Ct. Act § 1027[b][iii], [iv]). The Committee Bill Memorandum supporting this legislation explains the intent that “[w]here one parent is abusive but the child may safely reside at home with the other parent, the abuser should be removed. This will spare children the trauma of removal and placement in foster care” (Mem. of Children and Families Standing Comm., Bill Jacket, L. 1989, ch. 727, at 7).

These legislative concerns were met, for example, in Matter of Naomi R., 296 A.D.2d 503, 745 N.Y.S.2d 485 [2d Dept.2002], where, following a hearing pursuant to section 1027, Family Court issued a temporary order of protection against a father, excluding him from the home, on the ground that he allegedly sexually abused one of his four children. Evidence established that the father’s return to the
home, even under the mother's supervision, would present an imminent risk to the health and safety of all of the children. Thus, pending a full fact-finding hearing, Family Court took the step of maintaining the integrity of the family unit and instead removed the abuser.

Ex Parte Removal by Court Order

8 If the agency believes that there is insufficient time to file a petition, the next step on the continuum should not be emergency removal, but ex parte removal by court order (see e.g. Matter of Nassau County Dept. of Social Servs. [Dante M.] v. Denise J., 87 N.Y.2d 73, 637 N.Y.S.2d 666, 661 N.E.2d 138 [1995]). Section 1022 of the Family Court Act provides that the court may enter an order directing the temporary removal of a child from home before the filing of a petition if three factors are met.

First, the parent must be absent or, if present, must have been asked and refused to consent to temporary removal of the child and must have been informed of an intent to apply for an order. Second, the child must appear to suffer from abuse or neglect of a parent or other person legally responsible for the child's care to the extent that immediate removal is necessary to avoid imminent danger to the child's life or health. Third, there must be insufficient time to file a petition and hold a preliminary hearing.

9 Just as in a section 1027 inquiry, the court must consider whether continuation in the child's home would be contrary to the best interests of the child; whether reasonable efforts were made prior to the application to prevent or eliminate the need for removal from the home; and whether imminent risk to the child would be eliminated by the issuance of a temporary order of protection directing the removal of the person from the child's residence. Here, the court must engage in a fact-finding inquiry into whether the child is at risk and appears to suffer from neglect.

The Practice Commentaries suggest that section 1022 may be unfamiliar, or seem unnecessary, to those in practice in New York City, "where it is common to take emergency protective action without prior court review" (Besharov, Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 29A, Family Ct. Act § 1022, at 10 [1999 ed.]). If, as the District Court's findings suggest, this was done in cases where a court order could be obtained, the practice contravenes the statute. Section 1022 ensures that in most urgent situations, there will be judicial oversight in order to prevent well-meaning but misguided removals that may harm the child more than help. As the comment to the predecessor statute stated, 

"[t]his section ... [is] designed to avoid a premature removal of a child from his home by establishing a procedure for an early judicial determination of urgent need" (Committee Comments, McKinney's Cons. Laws of N.Y., Book 29A, Family Ct. Act § 322 [1963 ed.]).

10 Whether analyzing a removal application under section 1027 or section 1022, or an application for a child's return under section 1028, a court must engage in a balancing test of the imminent risk with the best interests of the child and, where appropriate, the reasonable efforts made to avoid removal or continuing removal. The term "safer course" (see e.g. Matter of Kimberly H., 242 A.D.2d 35, 673 N.Y.S.2d 96 [1st Dept.1998]; Matter of Tantalyn TT., 115 A.D.2d 799, 495 N.Y.S.2d 740 [3d Dept.1985]) should not be used to mask a dearth of evidence or as a watered-down, impermissible presumption.
Emergency Removal Without Court Order

11 Finally, section 1024 provides for emergency removals without a court order. The section permits removal without a court order and without consent of the parent if there is reasonable cause to believe that the child is in such urgent circumstance or condition that continuing in the home or care of the parent presents an imminent danger to the child's life or health, and there is not enough time to apply for an order under section 1022 (Family Ct. Act § 1024[a]; see generally Matter of Joseph DD., 300 A.D.2d 760, 760 n. 1, 752 N.Y.S.2d 407 [3d Dept.2002] [noting that removal under such emergency circumstances requires the filing of an article 10 petition “forthwith” and prompt court review of the nonjudicial decision pursuant to Family Ct. Act § 1026(c) and § 1028]; see also Matter of Karla V., 278 A.D.2d 159, 717 N.Y.S.2d 598 [1st Dept.2000]). Thus, emergency removal is appropriate where the danger is so immediate, so urgent that the child's life or safety will be at risk before an ex parte order can be obtained. The standard obviously is a stringent one.

Section 1024 establishes an objective test, whether the child is in such circumstance or condition that remaining in the home presents imminent danger to life or health.12 In construing “imminent danger” under section 1024, it has been held that whether a child is in “imminent danger” is necessarily a fact-intensive determination. “It is not required that the child be injured in the presence of a caseworker nor is it necessary for the alleged abuser to be present at the time the child is taken from the home. It is sufficient if the officials have persuasive evidence of serious ongoing abuse and, based upon the best investigation reasonably possible under the circumstances, have reason to fear imminent recurrence” (Gottlieb v. County of Orange, 871 F.Supp. 625, 628–629 [S.D.N.Y.1994], citing Robison v. Via, 821 F.2d 913, 922 [2d Cir.1987]). The Gottlieb court added that, “since this evidence is the basis for removal of a child, it should be as reliable and thoroughly examined as possible to avoid unnecessary harm to the family unit” (871 F.Supp. at 629).

Section 1024 concerns, moreover, only the very grave circumstance of danger to life or health. While we cannot say, for all future time, that the possibility can never exist, in the case of emotional injury—or, even more remotely, the risk of emotional injury—caused by witnessing domestic violence, it must be a rare circumstance in which the time would be so fleeting and the danger so great that emergency removal would be warranted.13

Certified Question No. 3: Process

12 Finally, the Second Circuit asks us:

“Does the fact that the child witnessed such abuse suffice to demonstrate that ‘removal is necessary,’ N.Y. Family Ct. Act §§ 1022, 1024, 1027, or that ‘removal was in the child’s best interests,’ N.Y. Family Ct. Act §§ 1028, 1052(b)(i)(A), or must the child protective agency offer additional, particularized evidence to justify removal?” (344 F.3d at 177.)

The Circuit Court has before it the procedural due process question whether, if New York law permits a presumption that removal is appropriate based on the witnessing of domestic violence, that presumption would comport with Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 [1972]
[recognizing a father’s procedural due process interest in an individualized determination of fitness]. All parties maintain, however, and we concur, that under the Family Court Act, there can be no “blanket presumption” favoring removal when a child witnesses domestic violence, and that each case is fact-specific. As demonstrated in our discussion of Certified Question No. 2, when a court orders removal, particularized evidence must exist to justify that determination, including, where appropriate, evidence of efforts made to prevent or eliminate the need for removal and the impact of removal on the child.

The Circuit Court points to two cases in which removals occurred based on domestic violence without corresponding expert testimony on the appropriateness of removal in the particular circumstance (Matter of Carlos M., 293 A.D.2d 617, 741 N.Y.S.2d 82 [2d Dept. 2002]; Matter of Lonell J., 242 A.D.2d 58, 673 N.Y.S.2d 116 [1st Dept.1998]). Both cases were reviewed on the issue whether there was sufficient evidence to support a finding of neglect. In Carlos M., the evidence showed a 12-year history of domestic violence between the parents which was not only witnessed by the children but also often actually spurred their intervention.

We do not read Carlos M. or Lonell J. as supportive of a presumption that if a child has witnessed domestic violence, the child has been harmed and removal is appropriate. That presumption would be impermissible. In each case, multiple factors formed the basis for intervention and determinations of neglect. As the First Department concluded in Lonell J., moreover, “nothing in section 1012 itself requires expert testimony, as opposed to other convincing evidence of neglect” (242 A.D.2d at 61, 673 N.Y.S.2d 116). Indeed, under section 1046(a) (viii), which sets forth the evidentiary standards for abuse and neglect hearings, competent expert testimony on a child’s emotional condition may be heard. The Lonell J. court expressed concern that while older children can communicate with a psychological expert about the effects of domestic violence on their emotional state, much younger children often cannot (242 A.D.2d at 62, 673 N.Y.S.2d 116). The court believed that “[t]o require expert testimony of this type in the latter situation would be tantamount to refusing to protect the most vulnerable and impressionable children. While violence between parents adversely affects all children, younger children in particular are most likely to suffer from psychosomatic illnesses and arrested development” (id.).

Granted, in some cases, it may be difficult for an agency to show, absent expert testimony, that there is imminent risk to a child’s emotional state, and that any impairment of emotional health is “clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child” (Family Ct Act § 1012[h]). Yet nothing in the plain language of article 10 requires such testimony. The tragic reality is, as the facts of Lonell J. show, that emotional injury may be only one of the harms attributable to the chaos of domestic violence.

Accordingly, the certified questions should be answered in accordance with this opinion.


Following certification of questions by the United States Court of Appeals for the Second Circuit and acceptance of the questions by this Court pursuant to section 500.17 of the Rules of *384 Practice of the
Court of Appeals (22 NYCRR 500.17), and after hearing argument by counsel for the parties and consideration of the briefs and the record submitted, certified questions answered in accordance with the opinion herein.

Footnotes

1

"ACS" includes all named city defendants, including the City of New York. Apart from defendant John Johnson (Commissioner of the State Office of Children and Family Services, which oversees ACS), state officials are named in the complaint with respect to the assigned counsel portion of the case, which is not before us.

2

The District Court cited the testimony of a child protective manager that it was common practice in domestic violence cases for ACS to wait a few days before going to court after removing a child because “after a few days of the children being in foster care, the mother will usually agree to ACS's conditions for their return without the matter ever going to court” (203 F.Supp.2d at 170).

3

The injunction was stayed for six months to permit ACS to attempt reform on its own, free of the court's involvement, and to allow for an appeal. Thereafter, the City and ACS appealed, challenging the District Court's determination. The Second Circuit denied the City's request for an additional stay pending appeal.

4

Chief Judge Walker dissented, concluding that the injunction should be vacated because the evidence did not support the District Court's findings underpinning the injunction. In his view, the District Court's central factual finding that ACS had a policy of regularly separating battered mothers and children unnecessarily was “simply unsustainable” (id. at 177).

5

We are not asked to, nor do we, apply our answers to the trial record, though recognizing that in the inordinately complex human dilemma presented by domestic violence involving children, the law may be easier to state than apply.

6

The Legislature has recognized this “quandary” that a victim of domestic violence encounters (Senate Mem. in Support, 2002 McKinney's Session Laws of N.Y., at 1861). To avoid punitive responses from child protective services agencies, the Legislature attempted to increase awareness of child protective
agencies of the dynamics of domestic violence and its impact on child protection by amending the Social Services Law to mandate comprehensive domestic violence training for child protective services workers (id.).

7

In Tenenbaum v. Williams, 193 F.3d 581 [2d Cir.1999], a child's parents brought an action pursuant to 42 USC § 1983 challenging the New York City Child Welfare Administration's removal of their five year old from her kindergarten class—under the emergency removal provision of Family Court Act § 1024—and taking her to the emergency room where a pediatrician and a gynecologist examined her for signs of possible sexual abuse. When they found none, the child was returned to her parents. The Second Circuit reversed the District Court's judgment in pertinent part and held that a jury could have concluded that the emergency removal for the medical examination violated the parents' and child's procedural due process rights, and the child's Fourth Amendment rights.

8

Under section 1028, a parent or person legally responsible for the care of a child may petition the court for return of the child after removal, if he or she was not present or given an adequate opportunity to be present at the section 1027 hearing. The factors to be considered when returning a child removed in an emergency mirror those considered in an initial determination under sections 1027 and 1022—best interests, imminent risk, and reasonable efforts to avoid removal.

9

The order must state the court's findings which support the necessity of removal, whether the parent was present at the hearing, what notice was given to the parent of the hearing and under what circumstances the removal took place (Family Ct. Act § 1027[b][i]).

10

The Legislature added these provisions to sections 1022 and 1028 as well.

11

The order must state the court's findings concerning the necessity of removal, whether respondent was present at the hearing and what notice was given.

12

Section 1022 also requires that the child be brought immediately to a social services department, that the agency make every reasonable effort to inform the parent where the child is and that the agency give written notice to the parent of the right to apply to Family Court for return of the child.
Section 1026 permits the return of a child home, without court order, in a case involving neglect, when an agency determines in its discretion that there is no imminent risk to the child's health in so doing (Family Ct. Act § 1026[a], [b]). If the agency does not return the child for any reason, the agency must file a petition forthwith, or within three days if good cause is shown (Family Ct. Act § 1026[c]).
Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

Every State has procedures for maintaining records related to reports and investigations of child abuse and neglect. The term “central registry” is used by many States to refer to a centralized database for the statewide collection and maintenance of child abuse and neglect investigation records. For this publication, laws regarding requirements for central registries were collected across all 50 States. An analysis of the information shows that all States, the District of Columbia, American Samoa, Guam, and Puerto Rico require a system of maintaining these records, usually in some form of a central registry, in either statute or regulation.
In approximately three States, the statutes do not authorize statewide, centralized registries. In these States, the county agencies that receive the reports of suspected abuse or neglect are required to maintain these records and submit the reports to the State department of social services. In most other States, the registries are maintained by State departments of social services. In California and West Virginia, however, the central registries are maintained by the State police. The Northern Mariana Islands and the U.S. Virgin Islands do not address the issue of central registries in their statutes.

**Purpose of Central Registries**

Central registries and the systematic record keeping of child abuse and neglect reports assist child protective services in the identification and protection of abused and neglected children. Central registry reports are typically used to aid agencies in the investigation, treatment, and prevention of child abuse cases and to maintain statistical information for staffing and funding purposes.

Central registry records also are used to screen persons who will be entrusted with the care of children. All States and the District of Columbia, Guam, and Puerto Rico require a check of central registry or department records for individuals applying to be foster or adoptive parents or child or youth care providers. Information from substantiated or founded reports is made available to employers in the child care, education, and health-care sectors. All States, the District of Columbia, Guam, and Puerto Rico also require a check of central registry records as part of the background check for foster and adoptive parent applicants.

**Contents and Maintenance**

The type of information contained in central registries and department records varies from State to State but usually includes the child’s name and address; the name of the mother, father, or guardian; the name of any siblings; the nature of the harm to the child; the name of the alleged perpetrator(s); and the findings of any investigations. Some States maintain all investigated reports of abuse and neglect in their central registries, while others maintain only substantiated reports. Who has access to information maintained in registries and department records also varies among States. In addition, the length of time the information is held and the conditions for expunction vary from State to State.

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1 The word “approximately” is used to stress the fact that States frequently amend their laws. This information is current through May 2018. County agencies are required in to maintain child abuse records in Minnesota, Ohio, and Wisconsin.

2 For more information on requirements to obtain central registry clearances for prospective foster and adoptive parents, see Child Welfare Information Gateway’s Background Checks for Prospective Foster, Adoptive, and Kinship Caregivers at https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/background/.

3 For more information, see Information Gateway’s Disclosure of Confidential Child Abuse and Neglect Records at https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/confide/.

4 For more information, see Information Gateway’s Review and Expunction of Central Registries and Reporting Records at https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/registry/.
Alabama
Current Through May 2018

Establishment
Citation: Ala. Code § 26-14-8
The Department of Human Resources shall establish a statewide central registry.

Purpose
Citation: Ala. Code § 26-14-8
The purpose of the central registry is to:
- Contain reports of child abuse and neglect
- Prevent or discover abuse or neglect of children through the information contained therein
Reports or records in cases determined to be ‘not indicated’ shall not be used or disclosed for purposes of employment or other background checks.

Contents
Citation: Ala. Code § 26-14-8
The central registry shall contain:
- All information in any written reports
- The record of the final disposition of the report, including services offered and services accepted
- The plan for rehabilitative treatment
- The names of persons requesting information from the registry

Maintenance
Citation: Ala. Code § 26-14-8
Requests for information where no report exists may be destroyed 3 years from the date of the request.

Alaska
Current Through May 2018

Establishment
Citation: Alaska Stat. § 47.17.040(a)
The Department of Health and Social Services shall maintain a central registry.

Purpose
Citation: Alaska Stat. § 47.17.040(b)
In accordance with department regulations, investigation reports may be used by appropriate governmental agencies with child-protection functions, inside and outside the State, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody.

Contents
Citation: Alaska Stat. § 47.17.040(a)
The registry shall contain all investigation reports but not the reports of harm.

Maintenance
This issue is not addressed in the statutes reviewed.

American Samoa
Current Through May 2018

Establishment
Citation: Ann. Code § 45.2020
A central registry for reports of child abuse, sexual abuse, or neglect is established within the Child Protection Agency of the Department of Human Resources.
Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

Purpose
Citation: Ann. Code § 45.2021

There is a single telephone number that all persons, whether mandated by law or not, may use to report cases of suspected child abuse, sexual abuse, or neglect to the central registry and that all persons so authorized by this chapter may use for determining the existence of prior records in order to evaluate the condition or circumstances of the child before them.

Contents
Citation: Ann. Code § 45.2022

The registry contains, but is not limited to:

- All information in the written reports
- The final disposition of the report, including services offered and services accepted
- The plan for rehabilitative treatment
- The names, identifying dates, and circumstances of any persons requesting or receiving information from the registry
- Any other information that might be helpful in furthering the purpose of this chapter

Maintenance
This issue is not addressed in the statutes reviewed.

Arizona
Current Through May 2018

Establishment
Citation: Rev. Stat. § 8-804(A)

The Department of Child Safety shall maintain a central registry.

Purpose
Citation: Rev. Stat. §§ 8-804; 8-804.01

The department shall use the information in the central registry only for the following purposes:

- As a factor to determine qualifications for foster home licensing, adoptive parent certification, child care home certification, registration of unregulated child care homes, and home and community-based services certification for services to children
- As a factor to determine qualifications for persons who are employed or who are applying for employment with the State, or contractors and their employees, in positions that provide direct service to children
- As a factor to determine qualifications for individuals who are employed or who are applying for employment with a child welfare agency in positions that provide direct service to children
- Beginning August 1, 2013, to provide information to licensees that do not contract with the State regarding persons who are employed or seeking employment to provide direct services to children
- To identify and review reports concerning individual children and families, in order to facilitate the assessment of safety and risk
- To determine the nature and scope of child abuse and neglect in this State and to provide statewide statistical and demographic information concerning trends in child abuse and neglect
- To allow comparisons of this State’s statistical data with national data
- To comply with § 8-804.01(B), which allows use of the records:
  » To assess the safety and risk to a child when conducting an investigation or identification of abuse or neglect
  » To determine placement for a child, including determining what is the least restrictive setting
  » To determine type and level of services and treatment provided to the child and the child’s family
  » To assist in a criminal investigation or prosecution of child abuse or neglect
  » To meet Federal and State reporting requirements

Contents
Citation: Rev. Stat. § 8-804(A)-(B)

A finding made by a court pursuant to § 8-844(C) that a child is dependent based upon an allegation of abuse or neglect shall be recorded as a substantiated finding of abuse or neglect. The registry will maintain reports of child abuse and neglect that are substantiated and the outcome of investigations.
Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

Arkansas

Establishment
Citation: Ann. Code § 12-18-901
There is established within the Department of Human Services a statewide Child Maltreatment Central Registry.

Purpose
This issue is not addressed in the statutes reviewed.

Contents
Citation: Ann. Code §§ 12-18-902; 15-18-906
The Child Maltreatment Central Registry shall contain records of cases on all true investigative determinations of child maltreatment. Records of all cases in which allegations are determined to be unsubstantiated shall not be included in the central registry.

Maintenance
Citation: Ann. Code §§ 12-18-904; 12-18-908; 12-18-910
An offender’s name shall remain in the central registry, unless any of the following occurs:
- The name is removed pursuant to this chapter or another statute.
- The name is removed under a rule.
- The name was provisionally placed in the registry, and the alleged offender subsequently prevails at an administrative hearing.
- The offender prevails upon appeal.
If an adult offender is found guilty of, pleads guilty to, or pleads nolo contendere to an act that is the same act for which the offender is named in the central registry, regardless of any subsequent expunction of the offense from the offender’s criminal record, the offender shall always remain in the central registry, unless the conviction is reversed or vacated.
Hard copy records of unsubstantiated reports shall be retained no longer than 18 months for purposes of audit. Information on unsubstantiated reports included in the automated data system shall be retained indefinitely to assist the department and the State police in assessing future risk and safety.

California

Establishment
Citation: Penal Code § 11170
The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to § 11169.

Purpose
Citation: Penal Code § 11170
Information from the Child Abuse Central Index shall be provided to specific persons or agencies for the following purposes:
- For investigating a case of known or suspected child abuse or neglect
- For conducting background checks of employment or volunteer candidates
• For conducting background checks of any person who is an applicant for licensure or approval, any adult who resides or is employed in the home of an applicant for licensure or approval, or any applicant for employment in a position having supervisory or disciplinary power over a child or children or will provide 24-hour care for a child or children in a residential home or facility
• For placing children or assessing the possible placement of children
• For conducting a background investigation of an applicant seeking employment as a peace officer
• For conducting a background investigation of an applicant seeking employment or volunteer status in a position that will give the person direct contact with children

Contents
Citation: Penal Code §§ 11167; 11169

Reports of suspected child abuse or neglect pursuant to § 11166 or § 11166.05 shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information.

The report shall include the following information, if known:

• The child's name
• The child's address; present location; and, if applicable, school, grade, and class
• The names, addresses, and telephone numbers of the child's parents or guardians
• The name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child

An agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect that is determined to be substantiated. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is substantiated.

Maintenance
Citation: Penal Code § 11170

The Child Abuse Central Index shall be continually updated by the department and shall not contain any reports that are determined to be not substantiated. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

The Department of Justice shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the index. The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the index accurately reflects the report it receives from the submitting agency.

Colorado
Current Through May 2018

Establishment
Citation: Rev. Stat. § 19-3-313.5

The State Department of Social Services shall maintain the records and reports of child abuse and neglect.

Purpose
Citation: Rev. Stat. § 19-3-313.5

Records or reports may be used for purposes of employment checks or other background checks unless it is determined that a report is to be unsubstantiated or false.

The State department may maintain such records and reports in case files for assisting in determinations of future risk and safety assessments.

Contents
Citation: Rev. Stat. § 19-3-313.5

The State department shall provide reliable, accurate, and timely information concerning records and reports of child abuse or neglect.
Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

Maintenance
Citation: Rev. Stat. § 19-3-313.5
The State department shall provide training to county departments to achieve consistency and standardization in entering data into computer systems maintaining information related to records and reports of child abuse or neglect.

Connecticut
Current Through May 2018

Establishment
Citation: Gen Stat. § 17a-101k
The commissioner of the Department of Children and Families shall maintain a registry of the commissioner's findings of abuse or neglect of children.

Purpose
Citation: Gen. Stat. § 17a-101k
Regulations shall be adopted that shall provide for the use of the registry on a 24-hour basis to prevent or discover abuse of children.

Contents
Citation: Gen. Stat. § 17a-101k
The commissioner shall adopt regulations that implement the provisions of this section.

Maintenance
Citation: Gen. Stat. § 17a-101k
The commissioner shall establish a hearing process for any appeal by a person of a determination that a person is responsible for the abuse of a child.

Delaware
Current Through May 2018

Establishment
Citation: Ann. Code Tit. 16, § 921
The Division of Family Services shall maintain a child protection registry.

Purpose
Citation: Ann. Code Tit. 16, § 921
The primary purpose of the registry is to protect children and to ensure the safety of children in child care, health-care, and public educational facilities.

Contents
Citation: Ann. Code Tit. 16, § 921
The registry will contain information about persons who have been substantiated for abuse or neglect as provided in this subchapter or who were substantiated between August 1, 1994, and February 1, 2003.

Maintenance
Citation: Ann. Code Tit. 16, § 922
The registry must indicate 'substantiated for abuse' or 'substantiated for neglect' and the child protection level as designated in § 923 for any person who:

- Based on the same incident of abuse or neglect on which the substantiation proceeding is premised, has been convicted of any criminal offense set out in § 923 of this subchapter or any equivalent offense in another State
- Has been found by the family court in a child welfare proceeding, by a preponderance of evidence, to have abused or neglected a child
• Fails to make a timely, written request for a hearing as provided in § 924(a)(2) after being given notice by the division of its intent to substantiate the person for abuse or neglect and enter the person in the registry
• Is entered in the registry by court order in a proceeding on a petition for substantiation
• Was substantiated for abuse or neglect between August 1, 1994, and February 1, 2003

District of Columbia
Current Through May 2018

Establishment
Citation: Ann. Code § 4-1302.01

The Child and Family Services Agency shall maintain a child protection register.

Purpose
Citation: Ann. Code § 4-1302.01

The purposes of the register are to:
• Maintain a confidential index of cases of abused or neglected children
• Assist in the identification and treatment of abused and neglected children and their families
• Serve as a resource for the evaluation, management, and planning of programs and services for abused and neglected children

Contents
Citation: Ann. Code § 4-1302.02

The register shall retain the following information about each substantiated and inconclusive report:
• The recipient of the report
• The date and time of the receipt of the report
• The information required by § 4-1321.03
• The ward in which the child lives and other demographic information concerning the incident
• The agencies to which the report was referred and the date and time of the referral
• The agency making the initial investigation, the summary of the results of the initial investigation, and the dates and the times the investigations were begun and terminated
• The agency making the social investigation, the summary of the results of the social investigation, the dates and the times said investigation was begun and terminated, the services offered, and when they were offered
• The agency or agencies to which the referrals were made and the services requested, with the dates of the opening and the closing of the case
• The placements of the child and the dates of each placement
• Court actions concerning the child and the dates thereof
• The date the case was closed
• Other information required for research, planning, evaluation, and management purposes

Maintenance
Citation: Ann. Code § 4-1302.02

The staff that maintains the register shall review all open cases every 6 months to ensure that information is current.

Florida
Current Through May 2018

Establishment
Citation: Ann. Stat. § 39.201

The Department of Children and Family Services shall establish and maintain a central abuse hotline to receive all reports made pursuant to this section in writing, via fax, via web-based reporting, via web-based chat, or through a single statewide toll-free telephone number, which any person may use to report known or suspected child abuse, abandonment, or neglect at any hour of the day or night, any day of the week.
Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

Purpose
Citation: Ann. Stat. § 39.201

The central abuse hotline shall be operated in such a manner as to enable the department to:

- Immediately identify and locate prior reports or cases of child abuse, abandonment, or neglect through utilization of the department's automated tracking system
- Monitor and evaluate the effectiveness of the department's program for reporting and investigating suspected abuse, abandonment, or neglect of children through the development and analysis of statistical as well as other information
- Track critical steps in the investigative process to ensure compliance with all requirements for any report of abuse, abandonment, or neglect
- Maintain and produce aggregate statistical reports monitoring patterns of child abuse, child abandonment, and child neglect
- Serve as a resource for the evaluation, management, and planning of preventive and remedial services for children who have been subject to abuse, abandonment, or neglect
- Initiate and enter into agreements with other States for the purpose of gathering and sharing information contained in reports on child maltreatment to further enhance programs for the protection of children

Information in the central abuse hotline may not be used for employment screening, except that information may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process. The information in the central abuse hotline also may be used by the Department of Education for purposes of educator certification, discipline, and review.

Contents
Citation: Ann. Stat. § 39.201

The department shall voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline that relate to suspected or known child abuse, neglect, or abandonment. The department shall maintain an electronic copy of each fax and web-based report. The recording or electronic copy of each fax and web-based report shall become a part of the record of the report.

Maintenance
Citation: Ann. Stat. § 39.202

The department shall make and keep reports and records of all cases under this chapter and shall preserve the records pertaining to a child and family until the child who is the subject of the record is age 30, and the department may then destroy the records.

Georgia

Current Through May 2018

Establishment
Citation: Ann. Code § 49-5-181

The Division of Family and Children Services shall establish and maintain a central registry that shall be known as the 'Child Protective Services Information System.'

Purpose
Citation: Ann. Code § 49-5-181

The child abuse registry shall be operated in such a manner as to enable abuse investigators to do the following:

- Immediately identify and locate substantiated cases
- Maintain and produce aggregate statistical data of substantiated cases

Contents
Citation: Ann. Code §§ 49-5-181; 49-5-182

The child abuse registry shall receive notice regarding substantiated cases occurring on and after July 1, 2016, reported to the division pursuant to § 49-5-182.
An abuse investigator who completes the investigation of a child abuse report made pursuant to § 19-7-5 or otherwise and determines that it is a substantiated case if the alleged child abuser was at least age 13 at the time of the commission of the act shall notify the division within 30 business days following such determination. Such notice may be submitted electronically and shall include the following:

- The name; age; sex; race; Social Security number, if known; and birthdate of the child alleged to have been abused
- The name, age, sex, race, Social Security number, and birthdate of the parents, custodian, or caregiver of the child alleged to have been abused, if known
- The name, age, sex, race, Social Security number, and birthdate of the person who committed the substantiated case
- A summary of the known details of the child abuse, which at a minimum shall contain the classification of the abuse as provided in § 19-7-5(b)(4) as either sexual abuse, physical abuse, child neglect, or a combination thereof

**Maintenance**

_Citation: Ann. Code § 49-5-183_

Upon receipt of an investigator’s report of a substantiated case naming an alleged child abuser, the division shall include in the child abuse registry the name of the alleged child abuser, the classification of the abuse, and a copy of the investigator’s report.

**Guam**

*Current Through May 2018*

**Establishment**

_Citation: Ann. Code Tit. 19, § 13208_

There shall be established in child protective services:

- An active file of reports under investigation
- A central register of child abuse and neglect
- A ‘suspected’ file (for cases where an investigation is not able to determine whether a report is indicated, substantiated, or unsubstantiated)

**Purpose**

This issue is not addressed in the statutes reviewed.

**Contents**

_Citation: Ann. Code Tit. 19, § 13208_

The central register shall consist of substantiated and indicated reports of abuse or neglect. It shall be limited to the following information:

- The names and home addresses of the subjects of the reports
- The dates and nature and extent of the suspected abuse
- The age and sex of the children harmed or threatened with harm
- The locality in which the harm or threatened harm occurred
- Whether the report was classified as substantiated or indicated
- The progress of any legal proceedings brought on the basis of the report

**Maintenance**

_Citation: Ann. Code Tit. 19, § 13208_

If an investigation of a report of suspected child abuse or neglect does not determine, within 60 days from the date of the report, that the report is an indicated report, substantiated report, or an unsubstantiated report, all information identifying the subjects of such report shall be placed in the child protective services suspected file for a period of 1 year.

**Hawaii**

*Current Through May 2018*

**Establishment**

_Citation: Rev. Stat. § 350-2(d)_

The Department of Human Services shall maintain a central registry.
Purpose
This issue is not addressed in the statutes reviewed.

Contents
Citation: Rev. Stat. § 350-2(d)

Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

Idaho
Current Through May 2018

Establishment
Citation: Idaho Code § 16-1629(3)
The Department of Health and Welfare shall be required to maintain a central registry.

Purpose
Citation: Idaho Code § 16-1629(3)
The registry shall be maintained for the reporting of child neglect, abuse, and abandonment information.

Contents
Citation: Idaho Code § 16-1629(6)
The department shall keep written records of investigations, evaluations, prognoses, and all orders concerning disposition or treatment.

Maintenance
Citation: Idaho Code § 16-1629(6)
The department shall keep the records of every person over whom it has legal custody or is under its protective supervision.

Illinois
Current Through May 2018

Establishment
Citation: Comp. Stat. Ch. 325, § 5/7.7
There shall be a central register of all cases of suspected child abuse or neglect maintained by the Department of Children and Family Services.

Purpose
Citation: Comp. Stat. Ch. 325, § 5/7.7
The register shall enable the department to:

• Immediately identify and locate prior reports of child abuse or neglect
• Continuously monitor the current status of all reports
• Regularly evaluate the effectiveness of laws and programs through the development and analysis of statistical and other information

Contents
Citation: Comp. Stat. Ch. 325, §§ 5/7.7; 5/7.8; 5/7.15
The central register shall record all initial, preliminary, and final reports. The names and other identifying data and the dates and the circumstances of any persons requesting or receiving information from the central register shall be entered in the register record.
The central register may contain such other information that the department determines to be in furtherance of the purposes of this Act.

**Maintenance**

**Citation:** Comp. Stat. Ch. 325, §§ 5/7.7; 5/7.15

The department shall maintain in the central register:

- A listing of unfounded reports where the subject of the unfounded report requests that the record not be expunged because the subject alleges an intentional false report was made
- A listing of unfounded reports where the report was classified as a priority 1 or priority 2 report in accordance with the department’s rules, or the report was made by a mandated reporter
- A listing for 3 years of unfounded reports involving the death, sexual abuse, or serious physical injury of a child
- All other unfounded reports for 12 months following the date of the final finding

If an individual is the subject of a subsequent investigation that is pending, the department shall maintain all prior unfounded reports pertaining to that individual until the pending investigation has been completed or for 12 months, whichever time period ends later. The department may amend or remove from the central register appropriate records upon good cause shown and upon notice to the subjects of the report and the Child Protective Services Unit.

**Indiana**

*Current Through May 2018*

**Establishment**

**Citation:** Ann. Code § 31-33-26-2

The Department of Child Services shall establish and maintain a centralized, computerized child protection index to organize and access data regarding substantiated reports of child abuse and neglect that the department receives from throughout Indiana.

**Purpose**

**Citation:** Ann. Code §§ 31-33-26-3; 31-33-26-10

The index must include:

- Automated risk assessment for reviewing a substantiated child abuse or neglect case to determine prior case history
- The capability to allow supervisors to monitor child abuse and neglect cases and reports
- The automated production of standard reports that compiles information gathered on forms used by family case managers to report on child abuse and neglect cases
- The automation of other data for planning and evaluation
- The capability of same-day notification and transfer of statistical information to the department regarding new and closed child abuse and neglect cases
- The capability to allow child welfare supervisors to review a child abuse or neglect determination at any point after the assessment is initially classified as substantiated, to confirm the status of the case, and to allow for the consolidated management of cases
- The capability for adjusting the index’s programming at a later date if additional reporting requirements occur
- A word-processing capability to allow case notes to be recorded with each substantiated case

The department shall administer the index in a manner that enables the department to do the following:

- Immediately identify and locate prior reports of child abuse or neglect through the use of the department’s computerized tracking system and automated risk-assessment system
- Track steps in the investigative process to ensure compliance with all requirements for a report of child abuse or neglect
- Maintain and produce aggregate statistical reports monitoring patterns of child abuse and neglect that the department shall make available to the public upon request
- Serve as a resource for the evaluation, management, and planning of preventive and remedial services to children who have been subject to child abuse or neglect
Contents
Citation: Ann. Code § 31-33-26-6
The department shall store data regarding child abuse or neglect reports in a manner that allows the data to be retrieved based on the following, if known:

- The child’s name
- The child’s date of birth
- The alleged perpetrator’s name
- The child’s mother’s name
- The child’s father’s name
- The name of a sibling of the child
- The name of the child’s guardian or custodian, if applicable

Maintenance
Citation: Ann. Code §§ 31-33-26-18; 31-33-27-3
The department shall maintain and administer all reports and documents transferred to and included in the child protection index as provided in this chapter.

The department may retain information relating to an unsubstantiated assessment of child abuse or neglect in paper or digital form or in other media that is accessible only by department employees with access rights established by the department through policy or rule. Information that is retained in the records of the department may be used by the department to facilitate its assessment of a subsequent report concerning the same child or family. The department may not rely solely on information available under this section to support substantiation of a later report if information obtained in the assessment of the later report is otherwise insufficient to support a substantiated determination.

Iowa
Current Through May 2018
Establishment
Citation: Ann. Stat. § 235A.14
There is created within the State Department of Human Services a central registry for certain child abuse information.

Purpose
Citation: Ann. Stat. § 235A.14
The registry shall collect, maintain, and disseminate child abuse information.

Contents
Citation: Ann. Stat. § 235A.14
The registry shall:

- Accept reports of suspected child abuse or neglect
- Maintain records of any previous reports of abuse or neglect of the same child or another child in the same family
- Include report data and disposition data

The registry shall not include assessment data.

Maintenance
Citation: Ann. Stat. § 235A.14
The department shall organize and staff the registry and adopt rules for its operation.
Kansas  
*Current Through May 2018*

**Establishment**

Citation: Admin. Regs. § 30-46-10

The Department for Children and Families shall maintain a child abuse and neglect registry.

**Purpose**

This issue is not addressed in the statutes reviewed.

**Contents**

Citation: Admin. Regs. § 30-46-10

The child abuse and neglect registry contains the list of names for individuals identified by the department as substantiated perpetrators.

**Maintenance**

Citation: Admin. Regs. § 30-46-16

The name of a substantiated perpetrator shall not be entered into the department’s child abuse and neglect central registry until the person has exhausted or failed to exercise the appeal process.

Kentucky  
*Current Through May 2018*

**Establishment**

Citation: Admin. Reg. Tit. 922, § 1:470

The Cabinet for Health and Family Services shall maintain a central registry.

**Purpose**

This issue is not addressed in the statutes and regulations reviewed.

**Contents**

Citation: Admin. Reg. Tit. 922, § 1:470

The central registry shall include the name of each individual who has been found by the cabinet to have abused or neglected a child on or after October 1, 1998, and who waived the right to appeal a substantiated finding of child abuse or neglect in accordance with 922 KAR 1:480; 922 KAR 1:320; or 922 KAR 1:330, § 11 or whose substantiated incident was upheld upon appeal.

**Maintenance**

Citation: Admin. Reg. Tit. 922, § 1:470

Each name shall remain on the central registry for a period of at least 7 years.

Louisiana  
*Current Through May 2018*

**Establishment**

Citation: Children’s Code Art. 616; 616.2

The Department of Children and Family Services shall maintain a State repository of all reports of abuse and neglect. Within the State repository, the department shall maintain a State central registry of certain justified reports of abuse and neglect as set forth in rules promulgated by the department.

The Bureau of Identification and Information in the Office of State Police shall maintain a central index registry of all reports of sexual abuse obtained in accordance with article 615.1.
Purpose
Citation: Children's Code Art. 616; 616.2
The purpose of the central repository, among other uses, is to provide information of past reports of abuse or neglect to assist in the proper evaluation of current reports that may include a pattern of incidents.
Upon the written request of the court during its evaluation of an individual applying to work as a court-appointed special advocate (CASA) and with the consent of the applicant, the department shall search the central registry and report to the court any justified report of abuse or neglect alleging that the applicant is a perpetrator.
Information from investigations of reports that are inconclusive may be disclosed, with the applicant's written consent, for the limited purposes of evaluating the applicant to be a CASA volunteer, a foster parent, an adoptive parent, or a caregiver.
The purpose of the central index registry is to provide information of past reports of child sexual abuse to assist in the proper evaluation of current reports of abuse that may include a pattern of incidents and that may prove admissible in a criminal prosecution.

Contents
Citation: Children's Code Art. 616
The State repository shall contain all reports of child abuse and neglect. The State central registry shall contain certain justified reports of abuse and neglect as set forth in rules promulgated by the department.
Effective August 1, 2017, the name of an individual who is determined to be a perpetrator of abuse or neglect shall not be placed on the State central registry until that individual's administrative appeals are exhausted. All decisions rendered by an administrative law judge are final, and the decisions shall exhaust the individual's administrative remedy.

Maintenance
Citation: Children's Code Art. 616
When, after an investigation, the determination is made by the department that the report does appear to be justified, any subsequent adjudication by a court that dismisses petition for a child in need of care involving a report shall be added to the registry. Records shall be maintained during the pendency of any litigation involving those records.

Maine
Current Through May 2018
Establishment
Citation: Rev. Stat. Tit. 22, § 4004(2)(A)
The Department of Human Services shall receive reports of abuse and neglect and suspicious child deaths.

Purpose
This issue is not addressed in the statutes reviewed.

Contents
This issue is not addressed in the statutes reviewed.

Maintenance
Citation: Rev. Stat. Tit. 22, § 4008(5)
The department shall retain unsubstantiated child protective services cases records for no more than 18 months following a finding of unsubstantiation unless a new referral has been received within the 18-month retention period.
Unsubstantiated child protective services records of persons who were eligible for Medicaid services under the Federal Social Security Act, title XIX, at the time of the investigation may be retained for up to 5 years for the sole purpose of State and Federal audits of the Medicaid program. Unsubstantiated child protective services case records retained for audit purposes pursuant to this subsection must be stored separately from other child protective services records and may not be used for any other purpose.
Maryland

Current Through May 2018

Establishment

Citation: Family Law § 5-714

The Social Services Administration may maintain a centralized confidential database of cases reported under the reporting laws.

Purpose

Citation: Family Law § 5-714

The information in the centralized confidential database shall be accessible only to the following:

- The protective services staff of the administration
- The protective services staffs of local departments who are investigating a report of suspected abuse or neglect
- An individual or entity specifically authorized by law to access the information

Unless an individual has been identified as responsible for abuse or neglect in the centralized confidential database, information in the centralized confidential database may not be provided in response to any request for background information for employment or voluntary service.

Contents

Citation: Family Law § 5-714

Each local department shall enter and have access to information in the centralized confidential database related to reports, investigations, and assessments of suspected abuse or neglect.

The State Department of Social Services or a local department may identify an individual as responsible for abuse or neglect in the centralized confidential database only if the individual:

- Has been found guilty of any criminal charge arising out of the alleged abuse or neglect
- Has been found responsible for indicated abuse or neglect and has unsuccessfully appealed the finding in accordance with the procedures established under § 5-706.1 or failed to exercise the individual's appeal rights within the timeframes specified in law

Maintenance

Citation: Family Law § 5-714

The centralized confidential database may not contain any information that is required to be expunged under § 5-707 of this subtitle.

Massachusetts

Current Through May 2018

Establishment

Citation: Ann. Laws Ch. 119, § 51F

The Department of Social Services shall maintain a central registry.

Purpose

Citation: Ann. Laws. Ch. 119, § 51F

The department, upon request, may release this data and information from the registry to a child welfare agency of another State for assisting that agency in determining whether to approve a prospective foster or adoptive parent.

Contents

Citation: Ann. Laws Ch. 119, §§ 51B(h); 51F; Code of Regs. Tit.110, § 12.03

The department shall file in the central registry a written report containing information sufficient to identify each child whose name is reported under the reporting laws.

Nothing in this section shall prevent the department from keeping information on unsubstantiated reports to assist in future risk and safety assessments of children and families.

In regulation: The central registry shall contain, but need not be limited to, all identifying data that are known for each child who is the subject of a report. Identifying data include name, date of birth, sex, ethnicity, and address.
Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

**Maintenance**

*Citation: Ann. Laws Ch. 119, § 51B(h)*

A notation shall be sent to the central registry whenever further reports on a child are filed with the department.

If a report is declared 'allegation invalid,' then the name of the child, identifying characteristics relating to the child, and the names of his or her parents or guardian or any other person relevant to the report shall not be placed in the central registry or in any other computerized program utilized in the department.

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**Michigan**

*Current Through May 2018*

**Establishment**

*Citation: Comp. Laws § 722.627*

The Department of Human Services shall maintain a statewide, electronic central registry.

**Purpose**

*Citation: Comp. Laws §§ 722.627; 722.622*

The central registry shall be used to:

- Carry out the intent of the reporting laws
- Keep a record of all reports filed with the department

**Contents**

*Citation: Comp. Laws § 722.622*

The central registry shall maintain all reports filed with the department in which relevant and accurate evidence of child abuse or neglect is found to exist.

A central registry case is a child protective services case that the department has classified as category I or category II. For a child protective services case that was investigated before July 1, 1999, central registry case means an allegation of child abuse or neglect that the department substantiated.

**Maintenance**

*Citation: Comp. Laws § 722.628(11)*

The department shall enter each report that is the subject of a field investigation into the Child Protective Service Information (CPSI) system. The department shall maintain a report entered on the CPSI system as required by this subsection until the child about whom the investigation is made is age 18 or until 10 years after the investigation was commenced, whichever is later, or, if the case is classified as a central registry case, until the department receives reliable information that the perpetrator of the child abuse or child neglect is dead.

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**Minnesota**

*Current Through May 2018*

**Establishment**

*Citation: Ann. Stat. § 626.556, Subd. 11(a)*

The local social services agency or agency responsible for assessing or investigating the report shall maintain records concerning determinations of child maltreatment.

**Purpose**

*Citation: Ann. Stat. § 626.556, Subd. 11c(a)*

For reports alleging child maltreatment that were not accepted for assessment or investigation, family assessment cases, and cases in which an investigation results in no determination of maltreatment or the need for child protective services, the records must contain sufficient information to identify the subjects of the report, the nature of the alleged maltreatment, and the reasons as to why the report was not accepted. Records under this paragraph may not be used for employment, background checks, or purposes other than to assist in future screening decisions and risk and safety assessments.
Contents
Citation: Ann. Stat. § 626.556, Subd. 11(a)
The records may contain information relating to specific incidents of neglect or abuse that are under investigation, petition, or prosecution, and information relating to any prior incidents of neglect or abuse involving any of the same persons.

Maintenance
Citation: Ann. Stat. § 626.556, Subd. 11(a) & 11c
The records shall be collected and maintained in accordance with the provisions of chapter 13.
For family assessment cases and cases where an investigation results in no determination of maltreatment or the need for child protective services, the assessment or investigation records must be maintained for a period of 5 years.
All records relating to reports that, upon investigation, indicate either maltreatment or a need for child protective services shall be maintained for at least 10 years after the date of the final entry in the case record.

Mississippi
Current Through May 2018

Establishment
Citation: Ann. Code § 43-21-257
The Office of Youth Services shall maintain a State central registry of all cases obtained from the records of the youth court. The Department of Human Services shall maintain a State central registry on neglect and abuse cases.

Purpose
This issue is not addressed in the statutes reviewed.

Contents
Citation: Ann. Code § 43-21-257
The State central registry on neglect and abuse cases shall contain:
- The name, address, and age of each child
- The nature of the harm reported
- The name and address of the person responsible for the care of the child
- The name and address of the substantiated perpetrator of the harm reported

Maintenance
Citation: Ann. Code § 43-21-257
The department shall adopt rules and administrative procedures, especially those procedures to afford due process to individuals, as may be necessary.

Missouri
Current Through May 2018

Establishment
Citation: Ann. Stat. § 210.145
The Division of Family Services shall establish and maintain an information system operating at all times, capable of receiving and maintaining reports.

Purpose
Citation: Ann. Stat. § 210.145
The information system shall have the ability to receive reports over a single, statewide toll-free number.
Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

Contents
Citation: Ann. Stat. § 210.145
The information system shall contain:
- The results of all investigations, family assessments, and services
- The determination made by the division as a result of the investigation
- Identifying information on the subjects of the report and those responsible for the care of the child
- Other relevant dispositional information

Maintenance
Citation: Ann. Stat. §§ 210.145; 210.152
The information system shall be updated within 45 days of the oral report, at regular intervals during the investigation, and at the completion of an investigation. If the investigation is not completed within 45 days, the information system shall be updated at regular intervals and upon the completion of the investigation, which shall be completed no later than 90 days after receipt of a report of abuse or neglect, 120 days after receipt of a report of abuse or neglect involving sexual abuse, or until the division’s investigation is complete in cases involving a child fatality or near-fatality. The information in the information system shall be updated to reflect any subsequent findings, including any changes to the findings based on an administrative or judicial hearing on the matter.

For investigation reports in the central registry, identifying information shall be retained by the division. For investigation reports made by a mandated reporter in which insufficient evidence of abuse or neglect is found, identifying information shall be retained for 5 years from the conclusion of the investigation. For all other investigation reports in which there is insufficient evidence, identifying information shall be retained for 2 years.

For reports in which a family assessment and services approach was used, identifying information shall be retained by the division. For reports in which the division was unable to locate the child, identifying information shall be retained for 10 years from the date of the report.

Montana
Current Through May 2018

Establishment
Citation: Ann. Code § 41-3-202(6)
The Department of Public Health and Human Services shall maintain a record system.

Purpose
This issue is not addressed in the statutes reviewed.

Contents
Citation: Ann. Code § 41-3-202(6)
The system shall contain records documenting investigations and determinations of child abuse and neglect cases.

Maintenance
Citation: Ann. Code § 41-3-202(5)(c)
If the report is unsubstantiated, all of the records, except for medical records, concerning the unsubstantiated report and the investigation shall be destroyed within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:
- There had been a previous or there is a subsequent substantiated report concerning the same person.
- An order has been issued under this chapter based on the circumstances surrounding the initial allegations.
Nebraska  
*Current Through May 2018*

**Establishment**  
**Citation:** Rev. Stat. § 28-718  
There shall be a central registry of child protection cases maintained in the Department of Social Services.

**Purpose**  
**Citation:** Rev. Stat. § 28-718  
The central registry shall contain records of all reports of child abuse or neglect opened for investigation and classified as either court substantiated or agency substantiated.

**Contents**  
**Citation:** Rev. Stat. § 28-720  
All cases entered into the central registry shall be classified as one of the following:

- Court substantiated, if a court of competent jurisdiction has entered a judgment of guilty against the subject of the report of child abuse or neglect upon a criminal complaint, indictment, or information, or there has been an adjudication of jurisdiction of a juvenile court over the child under § 43-247(3)(a) that pertains to the report of child abuse or neglect
- Court pending, if a criminal complaint, indictment, or information or a juvenile petition under § 43-247(3)(a) that pertains to the subject of the report of abuse or neglect has been filed and is pending in a court of competent jurisdiction
- Agency substantiated, if the department's determination of child abuse or neglect against the subject of the report of child abuse or neglect was supported by a preponderance of evidence and based upon an investigation pursuant to § 28-713

**Maintenance**  
**Citation:** Rev. Stat. §§ 28-718; 28-720  
The department shall determine whether a name-change order received from the clerk of a district court is for a person on the central registry of child protection cases and, if so, shall include the changed name with the former name in the registry and file or cross-reference the information under both names.

All reports that are not court substantiated, court pending, or agency substantiated shall be considered unfounded and shall be maintained only in the tracking system of child protection cases pursuant to § 28-715 and not in the central registry.

A case shall not be entered into the central registry of child protection cases under the following circumstances:

- The subject of the report of child abuse or neglect is a minor child who is younger age 12.
- A juvenile petition filed under § 43-247(3)(a) indicates that the juvenile is without proper support through no fault of his or her parent, guardian, or custodian.

If the subject of the report of child abuse or neglect is a minor child who is age 12 or older but younger than age 19, the case shall not be classified as court pending in the central registry of child protection cases.

Nevada  
*Current Through May 2018*

**Establishment**  
**Citation:** Rev. Stat. § 432.100  
A statewide central registry for the collection of information concerning the abuse or neglect of a child shall be maintained by the Division of Child and Family Services.

**Purpose**  
**Citation:** Rev. Stat. § 432.100  
The division may release information contained in the central registry to an employer:

- If the person who is the subject of a background investigation by the employer provides written authorization for the release of information and either:
  - The employer is required by law to conduct the background investigation of the person for employment purposes.
The person who is the subject of the background investigation could, in the course of his or her employment, have regular and substantial contact with children or elderly persons who require assistance or care from other persons.

- The release of information may be only to the extent necessary to inform the employer whether the person who is the subject of the background investigation has been found to have abused or neglected a child.

Contents
Citation: Rev. Stat. § 432.100

The central registry must contain:

- Information in any substantiated report of child abuse or neglect made pursuant to § 432B.220
- The information in any substantiated report of a violation of § 201.540 (sexual conduct between school employees or volunteers and pupils), 201.560 (luring a child), 392.4633 (corporal punishment of a pupil in a public school), or 394.366 (aversive intervention on a pupil with a disability)
- Statistical information on the protective services provided in this State
- Any other information the division determines to be in furtherance of the law

Maintenance
Citation: Rev. Stat. § 432.110

The division shall maintain a record of:

- The names and identifying data, dates, and circumstances of any persons requesting or receiving information from the central registry
- Any other information that might be helpful in furthering the purposes of the reporting laws

The division is not required to maintain a record of information concerning requests for information from or the receipt of information by employees of an agency that provides child welfare services.

New Hampshire
Current Through May 2018

Establishment
Citation: Rev. Stat. § 169-C:35

A State central registry shall be established by the Department of Health and Human Services.

Purpose
Citation: Rev. Stat. § 169-C:35

The purpose of the registry is maintaining a record of founded reports of child abuse and neglect.

Contents
Citation: Rev. Stat. § 169-C:35

Founded reports shall be maintained in the central registry.

Maintenance
Citation: Rev. Stat. § 169-C:35-a

Founded reports of abuse and neglect shall be retained for a period of 7 years subject to an individual’s right to petition for the earlier removal of his or her name from the central registry.

The department shall retain a screened-out report for 1 year from the date that the report was screened out. A report is ‘screened out’ when the department has determined it does not rise to the level of a credible report of abuse or neglect and is not referred for assessment. The department shall retain an unfounded report for 3 years from the date that the department determined the case to be unfounded.

The department shall retain a ‘founded’ report or an ‘unfounded but with reasonable concern’ report for 7 years from the date that the department closes the case. This paragraph shall not apply to foster placement records or to adoption records.

Nothing in this section shall prevent the department from retaining generic, nonidentifying information that is required for State and Federal reporting and management purposes.
New Jersey

Current Through May 2018

Establishment

Citation: Ann. Stat. § 9:6-8.11

The Division of Youth and Family Services in Trenton shall maintain the central registry.

Purpose

Citation: Ann. Stat. § 9:6-8.11

The child abuse registry shall be the repository of all information regarding child abuse or neglect that is accessible to the public pursuant to State and Federal law. No information received in the child abuse registry shall be considered as a public record within the meaning of § 47:1A-1 or § 47:1A-5, et seq.

Contents

Citation: Ann. Stat. § 9:6-8.10

Reports shall contain, where possible:

• The names and addresses of the child and his or her parents, guardian, or other person having custody and control of the child
• The child’s age
• The nature and extent of the child’s injuries, abuse, or maltreatment, including any evidence of previous injuries, abuse, or maltreatment
• Any other information that might be helpful

Maintenance

This issue is not addressed in the statutes reviewed.

New Mexico

Current Through May 2018

Establishment

Citation: Admin. Code § 8.10.3.7

The family automated client tracking system (FACTS) is the official data management system for the Children, Youth and Families Department (CYFD).

Purpose

This issue is not addressed in the statutes and regulations reviewed.

Contents

Citation: Admin. Code § 8.10.3.21

The CYFD Protective Services Division shall document investigation assignments and requirements and shall document the investigation decision, disposition, and notice of results of the investigation letter in FACTS.

Maintenance

This issue is not addressed in the statutes and regulations reviewed.

New York

Current Through May 2018

Establishment

Citation: Soc. Serv. Law § 422

There shall be established within the Office of Child and Family Services a statewide central register.
Purpose
Citation: Soc. Serv. Law § 422

The central register shall be capable of:
• Receiving telephone calls alleging child abuse or maltreatment
• Immediately identifying prior reports of child abuse or maltreatment
• Monitoring the provision of child protective service 24 hours a day, 7 days a week
• Determining the existence of prior reports in order to evaluate the condition or circumstances of a child

Contents
Citation: Soc. Serv. Law § 422

The central register shall include, but not be limited to, the following:
• All information in the written report
• A record of the final disposition of the report, including services offered and accepted
• The plan for rehabilitative treatment
• The names and identifying data, dates, and circumstances of any person requesting or receiving information from the register
• Any other information believed to be helpful

Maintenance
Citation: Soc. Serv. Law § 422(6)

In any case and at any time, the commissioner of the Office of Children and Family Services may amend any record upon good cause shown and notice to the subjects of the report and other persons named in the report.

North Carolina
Current Through May 2018

Establishment
Citation: Gen. Stat. §§ 7B-311; 7B-101(18a)

The Department of Health and Human Services shall maintain a central registry. The department also shall maintain a list of responsible individuals. A ‘responsible individual’ is defined as a parent, guardian, custodian, or caregiver who abuses or seriously neglects a child.

Purpose
Citation: Gen. Stat. § 7B-311

The central registry shall be used:
• To compile data for the appropriate study of the extent of abuse and neglect in the State
• To identify repeated abuses of the same child or other children in the same family

The department may provide information from the responsible individuals list to child-caring institutions, child-placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.

Contents
Citation: Gen. Stat. § 7B-311

The central registry shall contain cases of child abuse, neglect, dependency, and child fatalities that are the result of alleged maltreatment.

Maintenance
Citation: Gen. Stat. § 7B-311

Data shall be confidential and subject to policies adopted by the Social Services Commission for its use and appropriate disclosure. The Social Services Commission shall adopt rules regarding the operation of the central registry and responsible individuals list, including procedures for each of the following:
• Filing data
• Notifying an individual that the individual has been determined by the director to be a responsible individual
• Correcting and expunging information
Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

- Determining persons who are authorized to receive information from the responsible individuals list
- Releasing information from the responsible individuals list to authorized requestors
- Gathering statistical information
- Keeping and maintaining information placed in the registry and on the responsible individuals list

North Dakota

*Current Through May 2018*

**Establishment**

*Citation: Cent. Code § 50-25.1-05.5*

The Division of Children and Family Services shall maintain a child abuse information index.

**Purpose**

This issue is not addressed in the statutes and regulations reviewed.

**Contents**

*Citation: Cent. Code § 50-25.1-05.5*

The index shall contain all reports of decisions that services are required for child abuse, neglect, or death resulting from abuse or neglect.

**Maintenance**

*Citation: CPS. Man. § 640-20-15-25*

Nothing in the destruction of files policies shall prevent child protection services from keeping information or reports in their casework files to assist future risk and safety assessment. However, the information from reports kept in casework files shall not be used for background checks beyond the destruction of record policy dates.

Northern Mariana Islands

*Current Through May 2018*

**Establishment**

This issue is not addressed in the statutes reviewed.

**Purpose**

This issue is not addressed in the statutes reviewed.

**Contents**

This issue is not addressed in the statutes reviewed.

**Maintenance**

This issue is not addressed in the statutes reviewed.

Ohio

*Current Through May 2018*

**Establishment**

This issue is not addressed in the statutes and regulations reviewed.

**Purpose**

*Citation: Admin. Code § 5101:2-1-01*

A ‘central registry report’ is the report of an incident of alleged child abuse or neglect submitted by the public children services agency to the Department of Job and Family Services to determine whether prior reports have been made in other counties concerning the child or other principals of the case.
Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

Contents
This issue is not addressed in the statutes and regulations reviewed.

Maintenance
This issue is not addressed in the statutes and regulations reviewed.

Oklahoma
Current Through May 2018

Establishment
Citation: Ann. Stat. Tit. 10A, § 1-2-108; Admin. Code Tit. 340, § 75-3-140
There is established within the Department of Human Services an information system. In regulation: The Child Abuse and Neglect Information System, also known as KIDS, is a permanent, computerized record-keeping system maintained by Child Welfare Services that requires the maintenance of all reports of child abuse, sexual abuse, and neglect made pursuant to the provisions of the Oklahoma Children’s Code.

Purpose
Citation: Ann. Stat. Tit. 10A, § 1-2-108
The information system will be used to maintain all reports of child abuse, sexual abuse, sexual exploitation, and neglect.

Contents
Citation: Ann. Stat. Tit. 10A, § 1-2-108
The records shall contain:
• All information in the written report
• A record of the final disposition of the report, including services offered and accepted
• The plan for rehabilitative treatment
• Other relevant information

Maintenance
Citation: Ann. Stat. Tit. 10A, § 1-2-108
The Division of Children and Family Services of the Department of Human Services shall be responsible for maintaining a suitably cross-indexed system of all the reports. Records shall be maintained by the department until otherwise provided by law.

Oregon
Current Through May 2018

Establishment
Citation: Rev. Stat. § 419B.030
A central registry shall be established and maintained by the Department of Human Services.

Purpose
This issue is not addressed in the statutes and regulations reviewed.

Contents
Citation: Rev. Stat. § 419B.030
Local offices of the department shall report to the registry in writing when an investigation shows reasonable cause to believe that a child has been abused.

Maintenance
Citation: Rev. Stat. § 419B.030; Admin. Rules §§ 413-015-0440; 413-010-0750
The registry shall contain current information from reports catalogued by both the name of the child and the name of the family.
In regulation: After gathering all the information necessary to complete the child protective services (CPS) assessment, the CPS worker must determine the disposition. The CPS worker must document that determination and explain the basis for the determination in the disposition narrative section of the department’s electronic information system prior to completing the CPS assessment.

When, as a result of a central office CPS founded disposition review, a decision is made to change a CPS-founded disposition, the CPS program coordinator or designee will forward the necessary information to the department’s Office of Information Services service desk or other appropriate organizational unit to make changes in the department’s electronic information system.

Pennsylvania
Current Through May 2018

Establishment
Citation: Cons. Stat. Tit. 23, § 6331

There shall be established in the Department of Public Welfare a statewide database of protective services that shall include the following:

- Reports of suspected child abuse pending investigations
- Reports with a status of pending juvenile court or pending criminal court action
- Indicated and founded reports of child abuse
- Unfounded reports of child abuse awaiting expunction
- Unfounded reports accepted for services
- Reports alleging the need for general protective services
- General protective services reports that have been determined to be valid
- Reports alleging the need for general protective services that have been determined invalid and are awaiting expunction
- Family case records for all reports accepted for investigation, assessment, or services
- Information on reports made to the agency but not accepted for investigation or assessment
- False reports of child abuse pursuant to a conviction under title 18, § 4906.1 (relating to false reports of child abuse) for the purpose of identifying and tracking patterns of intentionally false reports

Purpose
Citation: Cons. Stat. Tit. 23, §§ 6333; 6342(a)

The department shall use the information for immediately identifying prior reports in the statewide database, reports under investigation with a pending status, and monitoring the provision of child protective services 24 hours a day, 7 days a week.

The department may conduct or authorize the conducting of studies of the data contained in the statewide database and by county agencies and distribute the results of the studies.

Contents
Citation: Cons. Stat. Tit. 23, § 6336

The statewide database shall include the following information:

- The names, Social Security numbers, age, race, ethnicity, sex, and home addresses of the subjects of the report
- The date, nature, and extent of the alleged instance that created the need for protective services
- The county in which the alleged incidents occurred
- Family composition
- The names and relationships of the child and other persons named in the report
- Factors contributing to the need for protective services
- The source of the report
- Services planned or provided
- If the report alleges child abuse, whether the report was determined to be founded, indicated, or unfounded
- If the report alleged the child was in need of general protective services, whether the report was valid or invalid
- If the report was accepted for services and the reasons for the acceptance
- If the report was not accepted for services, the reason the report was not accepted and whether the family was referred to other community services
• Information obtained by the department in relation to a perpetrator’s or school employee’s request to release, amend, or expunge information retained by the department
• The progress of any legal proceedings based on the report
• Whether a criminal investigation has been undertaken and the result
• If an unfounded or invalid report is later determined to be a false report, a notation to that effect regarding the status of the report
• Unfounded reports of child abuse, limited to the information relating to disposition and expunction of the reports
• Any additional demographic information needed for data studies
• A family case record for each family accepted for investigation, assessment, or services
• For cases that are not accepted for investigation, assessment, or referral to community services, the reason the report was not accepted and any information on other services provided to the family

Maintenance
Citation: Cons. Stat. Tit. 23, § 6338

When a report of suspected child abuse is determined by the appropriate county agency to be a founded report or an indicated report, the status of the report shall be changed from pending to founded or indicated in the statewide database. The statewide database shall indefinitely retain the names of perpetrators of child abuse and school employees who are subjects of founded or indicated reports only if the individual’s Social Security number or date of birth is known to the department. The entry in the statewide database shall not include identifying information regarding other subjects of the report.

Puerto Rico
Current Through May 2018

Establishment
Citation: Ann. Laws Tit. 8, § 444d(a)

A central registry shall be established as a component of the Commonwealth Center for the Protection of Minors.

Purpose
Citation: Ann. Laws Tit. 8, § 444d(a)

This central registry shall be organized:
• To allow identification of prior referrals and prior protection cases and the status thereof
• To analyze periodically the statistical data and any other information that may allow assessment of the effectiveness of service programs

Contents
Citation: Ann. Laws Tit. 8, § 444d(a)

The central registry shall contain but shall not be limited to:
• All information in any written report confirming abuse, institutional abuse, neglect, and institutional neglect
• The services offered and accepted
• The rehabilitation treatment plan
• The name, date, and other data regarding any person who requests or receives information from the central registry
• Any other information that may be useful to achieve the purposes of this chapter

Maintenance

This issue is not addressed in the statutes reviewed.

Rhode Island
Current Through May 2018

Establishment
Citation: Gen. Laws § 42-72-7

There shall be established a central registry within the Department for Children, Youth and Families.
Purpose
Citation: Gen. Laws § 42-72-7
The central registry shall be responsible for the collection, receipt, dissemination, reporting, and maintenance of all files relating to children.

Contents
Citation: Gen. Laws § 42-72-7
The central registry will be the main repository for all case files and shall establish uniform forms and standards for data acquisition and transmission.
The department shall continuously maintain a management information database that includes all of the information required to implement this section, including the number of cases reported by hospitals, health-care centers, emergency rooms, and other appropriate health-care facilities.

Maintenance
Citation: Gen. Laws §§ 40-11-3(a); 42-72-7(b)
The electronically recorded records, properly indexed by date and other essential identifying data, shall be maintained for a minimum of 3 years.
Any request for information, assistance, and investigation of complaints must be registered with the central registry in order to ensure the elimination of duplication and for gathering statistical data.

South Carolina
Current Through May 2018
Establishment
Citation: Ann. Code § 63-7-1920
The Department of Social Services must maintain a Central Registry of Child Abuse and Neglect within the department’s child protective services unit.

Purpose
Citation: Ann. Code § 63-7-1910
The purpose of the central registry is to:
• Establish a system for the identification of abused and neglected children and those who are responsible for their welfare
• Provide a system for the coordination of reports concerning abused and neglected children
• Provide data for determining the incidence and prevalence of child abuse and neglect in this State
To further these purposes, the department must maintain one or more statewide data systems concerning cases reported to it pursuant to this article.

Contents
Citation: Ann. Code § 63-7-1920
Perpetrators of child abuse and neglect must be entered in the registry only by order of a court as provided for in this subarticle and § 17-25-135 or as provided for in § 63-7-1230.
Each entry in the registry must be accompanied by information further identifying the person, including, but not limited to, the person’s date of birth, address, and any other identifying characteristics, and describing the abuse or neglect committed by the person.

Maintenance
Citation: Ann. Code § 63-7-1920
The Central Registry of Child Abuse and Neglect must not contain information from reports classified as unfounded. Other department records and databases must treat unfounded cases as provided for in § 63-7-930.
South Dakota
Current Through May 2018

Establishment
Citation: Ann. Laws § 26-8A-10
The Department of Social Services shall be the central registry for reports of suspected child abuse or neglect.

Purpose
Citation: Ann. Laws §§ 26-8A-12.1; 26-8A-12.2; 26-8A-12.3
The department may check the registry for findings of child abuse or neglect for any of the following persons:

- Current or potential employees for Head Start programs
- Potential foster or adoptive parents
- Current or potential employees or volunteers for the Juvenile Division of the Department of Corrections
- Current or potential employees or volunteers for any adolescent treatment program operated by the Department of Human Services
- Any entity recognized as administering a court-appointed special advocates program as provided in § 16-2-51
- A court considering appointment of a guardian ad litem for a child
- Kinship, foster care, or adoptive parent applicants

Contents
Citation: Ann. Laws § 26-8A-10
A report shall include:

- The name, address, date, and place of birth of the child
- The name and address of the child's parent, guardian, or other responsible person
- The date of report
- The suspected or proven instances of child abuse or neglect

Maintenance
Citation: Ann. Laws § 26-8A-12
The department will adopt rules for the operation of the registry, including:

- Filing of reports
- Procedures for notice to the subject of the report
- Amendment and expunction
- Release of information
- Statistical information
- Provisions for maintenance of records and the type of information placed in the registry

The secretary may not adopt any rule that would permit the removal from the central registry of any person who has been convicted of any violation of chapter 22-22 (sex offenses), chapter 22-24A (obscenity and indecency), § 22-22A-3 (aggravated incest), or § 26-10-1 (felony abuse of or cruelty to a minor), if the victim of such crime was a child.

Tennessee
Current Through May 2018

Establishment
Citation: Ann. Code § 37-1-406
The Department of Children's Services shall maintain an abuse registry.

Purpose
This issue is not addressed in the statutes reviewed.
Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

Texas
Current Through May 2018

Establishment
Citation: Family Code § 261.002
The Department of Protective and Regulatory Services shall establish and maintain a central registry.

Purpose
Citation: Family Code § 261.002
The rules shall provide for cooperation with local child services agencies and with other States in exchanging reports. The department shall use the information obtained to perform the background checks required under § 42.056 of the Human Resources Code.

Contents
Citation: Family Code § 261.002
The registry shall maintain reported cases of child abuse or neglect.

Maintenance
Citation: Family Code § 261.002
The executive commissioner shall adopt rules necessary to carry out this section. The rules shall require the department to update any relevant department files to reflect an overturned finding of abuse or neglect against a person no later than the 10th business day after the date the finding is overturned in a review, hearing, or appeal.

Utah
Current Through May 2018

Establishment
Citation: Ann. Code § 62A-4a-1003
The Division of Child and Family Services shall develop and implement a management information system that meets the requirements of this section and Federal law and regulation.

Purpose
Citation: Ann. Code § 62A-4a-1003
The information and records in the system may, to the extent required by titles IV-B or IV-E of the Social Security Act, be provided by the division:

- To comply with abuse and neglect registry checks requested by other States
- To the U.S. Department of Health and Human Services for purposes of maintaining an electronic national registry of substantiated cases of abuse and neglect
Contents

Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

With regard to all child welfare cases, the management information system shall provide each caseworker and the department's Office of Licensing with a complete history of each child in that worker's caseload exclusively for the purposes of foster parent licensure and monitoring, including:

- A record of all past action taken by the division with regard to that child and the child's siblings
- The complete case history and all reports and information in the control or keeping of the division regarding that child and the child's siblings
- The number of times the child has been in the custody of the division
- The cumulative period of time the child has been in the custody of the division
- A record of all reports of abuse or neglect received by the division with regard to that child's parent, parents, or guardian including:
  - For each report, documentation of the latest status or final outcome or determination
  - Information that indicates whether each report was found to be supported, unsupported, substantiated by a juvenile court, unsubstantiated by a juvenile court, or without merit
- The number of times the child's parent or parents failed any child and family plan
- The number of different caseworkers who have been assigned to that child in the past

With regard to all child protective services cases, the management information system shall:

- Monitor the compliance of each case with division rule and policy, State law, and Federal law and regulation
- Include the age and date of birth of the alleged perpetrator at the time the abuse or neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of the alleged perpetrator

Maintenance

The management information system also shall:

- Contain all key elements of each family's current child and family plan, including dates and number of times the plan has been judicially reviewed, the number of times the parent has failed that child and family plan, and the exact length of time the plan has been in effect
- Alert caseworkers regarding deadlines for completion of compliance with policy, including child and family plans

The division shall maintain a separation of reports as follows:

- Those that are supported
- Those that are unsupported
- Those that are without merit
- Those that are unsubstantiated under the law in effect before May 6, 2002
- Those that are substantiated under the law in effect before May 6, 2002
- Those that are consented-to supported findings under § 62A-4a-1005(3)(a)(iii)

Vermont

Current Through May 2018

Establishment

The commissioner of the Department of Social and Rehabilitation Services shall maintain a child protection registry that shall contain a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.

Purpose

The commissioner shall adopt rules to permit use of the registry records as authorized by this subchapter while preserving confidentiality of the registry and other department records related to abuse and neglect.
Contents

Citation: Ann. Stat. Tit. 33, § 4916

A registry record is an entry in the child protection registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.

For all substantiated reports of child abuse or neglect made on or after the date the final rules are adopted, the commissioner shall create a registry record that reflects a designated child protection level related to the risk of future harm to children. This system of child protection levels shall be based upon an evaluation of the risk the person responsible for the abuse or neglect poses to the safety of children. The risk evaluation shall include consideration of the following factors:

- The nature of the conduct and the extent of the child's injury, if any
- The person's prior history of child abuse or neglect, either as a victim or perpetrator
- The person's response to the investigation and willingness to engage in recommended services
- The person's age and developmental maturity

Maintenance

Citation: Ann. Stat. Tit. 33, § 4916

The commissioner shall develop rules for the implementation of a system of child protection registry levels for substantiated cases. The rules shall address:

- Length of time a person's name appears on the registry
- When and how names are expunged from the registry
- Whether the person is a juvenile or an adult
- Whether the person was charged with or convicted of a criminal offense arising out of the incident of abuse or neglect
- Whether a family court has made any findings against the person

Virgin Islands

Current Through May 2018

Establishment

This issue is not addressed in the statutes reviewed.

Purpose

This issue is not addressed in the statutes reviewed.

Contents

This issue is not addressed in the statutes reviewed.

Maintenance

This issue is not addressed in the statutes reviewed.

Virginia

Current Through May 2018

Establishment

Citation: Ann. Code § 63.2-1514

The State Department of Social Services shall maintain a child abuse and neglect information system that includes a central registry of founded complaints.

Purpose

Citation: Ann. Code § 63.2-1514

The purpose of these records is to provide local departments with information regarding prior complaints or reports.
Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports

Contents
Citation: Ann. Code §§ 63.2-1514; 63.2-1515; Admin. Code Tit. 22, § 40-705-130

The central registry shall include founded reports and such information as prescribed by State board regulation. When the founded case does not name a parent or guardian of the child as the abuser, the child’s name shall not be entered in the registry without permission of the parent or guardian.

In regulation: The local department shall report all founded dispositions to the child abuse and neglect information system for inclusion in the central registry. Identifying information about the abuser or neglector and the victim child or children reported include demographic information, type of abuse or neglect, and date of the complaint.

Maintenance
Citation: Ann. Code § 63.2-1514; Admin. Code Tit. 22, § 40-705-130

All records related to founded cases of child sexual abuse involving injuries or conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child shall be maintained by the local department for a period of 25 years from the date of the complaint. The department shall maintain all unfounded investigations, family assessments, and reports determined not to be valid in a record that is separate from the central registry.

The record of unfounded investigations and complaints and reports determined not valid shall be purged 1 year after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the complaint or report in that 1 year. The local department shall retain such records for an additional period of up to 2 years if requested in writing by the person who is the subject of such complaint or report.

In regulation: Identifying information in founded reports shall be retained based on the determined level of severity of the abuse or neglect, as follows:

- Level 1 complaints, 18 years past the date of complaint.
- Level 2 complaints, 7 years past the date of the complaint
- Level 3 complaints, 3 years past the date of the complaint

Pursuant to § 63.2-1514, all records related to founded, Level 1 dispositions of sexual abuse shall be maintained by the local department for a period of 25 years from the date of the complaint.

Washington

Current Through May 2018

Establishment
Citation: Rev. Code § 26.44.030(17)(a)

The Department of Children, Youth, and Families shall maintain a child abuse and neglect database.

Purpose
Citation: Rev. Code § 26.44.030(17)(a)

The database shall contain investigation records.

Contents
Citation: Rev. Code § 26.44.030(17)(a)

The department shall maintain investigation records and shall maintain a log of screened-out nonabusive cases.

Maintenance
Citation: Rev. Code §§ 26.44.030(17)(a); 26.44.031

The department shall conduct timely and periodic reviews of all founded cases of abuse and neglect. An unfounded or inconclusive report shall be maintained no longer than 6 years after completion of the investigation, unless a prior or subsequent founded report has been received regarding the child who is the subject of the report; a sibling or half-sibling of the child; or a parent, guardian, or legal custodian of the child.

The department may keep records concerning founded reports of child abuse or neglect as the department determines by rule.
**West Virginia**

*Current Through May 2018*

**Establishment**

**Citation:** Ann. Code §§ 15-2C-2; 15-13-2

The Criminal Identification Bureau of the West Virginia State Police shall establish a central abuse registry to contain information relating to criminal convictions involving child abuse or neglect and information relating to individuals required to be registered as sex offenders.

If a person has been convicted of any criminal offense against a child in his or her household or of whom he or she has custodial responsibility, and the sentencing judge makes a written finding that there is a likelihood that the person will continue to have regular contact with that child or other children and that as such it is in the best interests of the child or children for that person to be monitored, then that person is subject to the reporting requirements of this article.

The State Police shall maintain a central registry of all persons who register under this article and shall release information only as provided in this article.

**Purpose**

**Citation:** Ann. Code §§ 15-2C-9; 15-13-1; 15-13-5

Any business, agency, or organization that provides care, treatment, education, training, instruction, supervision, or recreation for children may utilize the central abuse registry for part of its screening process for its current and/or prospective employees.

It is the intent of this article to assist law enforcement agencies' efforts to protect children from abuse and neglect by requiring persons convicted of child abuse or neglect to register with the State Police. It is not the intent of the legislature that this act be used to inflict retribution or additional punishment on any person convicted of any offense requiring registration under this article. This article is intended to be regulatory in nature and not penal, and it is intended to provide for the safety of children who are exposed to persons convicted of child abuse and neglect.

The State Police may furnish information and documentation required in connection with the registration to authorized law enforcement, campus police, and governmental agencies of other States and of the State of West Virginia upon proper request stating that the records will be used solely for law enforcement-related purposes. The State Police may disclose information collected under this article to Federal, State, and local governmental agencies responsible for conducting preemployment checks.

**Contents**

**Citation:** Ann. Code § 15-2C-2

The central abuse registry shall contain the following information:

- The individual's full name
- Sufficient information to identify the individual, including date of birth, Social Security number, and fingerprints, if available
- Identification of the criminal offense constituting abuse or neglect of a child
- For cases involving abuse or neglect of a child, sufficient information to identify the location where the documentation of any investigation by the Department of Health and Human Resources is on file and the location of pertinent court files
- Any statement by the individual disputing the conviction, if he or she chooses to make and file one

**Maintenance**

**Citation:** Ann. Code §§ 15-2C-2; 15-13-3; 15-13-4

Upon conviction in the criminal courts of this State of a misdemeanor or a felony offense constituting child abuse or neglect, the individual so convicted shall be placed on the central abuse registry.

When any person required to register under this article changes his or her residence or address or when any of the other information required by this article changes, he or she shall, within 10 business days, inform the West Virginia State Police of the changes.

A person required to register pursuant to the provisions of this article shall continue to comply with this section, except during ensuing periods of incarceration or confinement, until 10 years have elapsed since the person was released from prison, jail, or a mental health facility or 10 years have elapsed since the person was placed on probation, parole, or supervised or conditional release. The 10-year registration period shall not be reduced by the offender’s release from probation, parole, or supervised or conditional release.
Wisconsin
Current Through May 2018

Establishment
Citation: Ann. Stat. § 48.981(3)(c)(5)
The agency shall maintain a record of its actions in connection with each report it receives.

Purpose
Citation: Ann. Stat. § 48.981(3)(c)(8)
The information in the reports shall be used by the Department of Children and Families to monitor services provided by county departments or licensed child welfare agencies under contract with county departments or the department.
The department shall use nonidentifying information to maintain statewide statistics on child abuse and neglect and on unborn child abuse and for planning and policy development purposes.

Contents
Citation: Ann. Stat. § 48.981(c)(3)(5), (8)
The records shall include a description of the services provided to the child and to the parents, guardian, or legal custodian of the child.
Using the format prescribed by the department, each county department shall provide the department with information about each report that the county department receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation that the county department or a licensed child welfare agency under contract with the county department conducts.

Maintenance
Citation: Ann. Stat. § 48.981(3)(c)(5)
The agency shall update the record every 6 months until the case is closed.

Wyoming
Current Through May 2018

Establishment
Citation: Ann. Stat. § 14-3-213
The State agency shall establish and maintain within the statewide child protection center a central registry of child protection cases.

Purpose
Citation: Ann. Stat. § 14-3-213
Through the recording of reports, the State agency’s recordkeeping system shall be operated to enable the State agency to:
• Immediately identify and locate prior reports to assist in the diagnosis of suspicious circumstances and the assessment of the needs of the child
• Monitor the status of all pending child protection cases
• Evaluate the effectiveness of existing laws and programs through the development and analysis of statistical and other information
Contents

Citation: Ann. Stat. § 14-3-213

All reports of abuse or neglect contained in the central registry shall be classified as either 'under investigation' or 'substantiated.' Unsubstantiated reports shall not be contained in the central registry.

Any person named as a perpetrator in a substantiated report shall have a right to have included in the record his or her statement concerning the incident.

Maintenance

Citation: Ann. Stat. § 14-3-213

Within 6 months, any report classified ‘under investigation’ shall be reclassified as 'substantiated' or expunged, unless there is an open criminal investigation or prosecution.
Review and Expunction of Central Registries and Reporting Records

Records of child abuse and neglect reports are maintained by State child protection or social services agencies, often in statewide databases that are known as central registries. These records are used to aid in the investigation, treatment, and prevention of child abuse cases and to provide statistical information for staffing and funding purposes. Central registry records also are used to screen persons who will be entrusted with the care of children. Since a person’s eligibility for certain types of employment or to foster or adopt children can be affected by the contents of these records, most States also have procedures for a person to challenge the findings of a central registry record and to request the record’s removal or expungement.

Following an investigation, States classify child abuse records in a variety of ways, depending on the State’s statutory language. The classification “unsubstantiated” often is ascribed to situations in which investigators have been unable to confirm the occurrence of abuse or neglect. Other terms for unsubstantiated can include “unfounded,” “not indicated,” or “unconfirmed.” The classification “substantiated” often is given to a report when a determination has been made that abuse or neglect likely did occur. Other terms for substantiated include “founded,” “indicated,” or “confirmed.” Several States maintain all investigated reports of abuse and neglect in their central registries, while other States maintain only substantiated reports.

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1 For more information on this topic, see Child Welfare Information Gateway’s Establishment and Maintenance of Central Registries for Child Abuse or Neglect Reports at https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/centreg/.
Right of the Reported Person to Review and Challenge Records

All States use the records of substantiated reports that are maintained in central registries or other record-keeping systems for background checks for persons seeking employment to work with children and for prospective foster and adoptive parents. Therefore, several due-process and protection issues arise when a State maintains a central registry that identifies individuals accused of and found to have committed child abuse or neglect. In some cases, persons whose names are listed as alleged perpetrators in a central registry have asserted that the listing of their name in the registry deprives them of a constitutionally protected interest without due process of law.

A review of statutes and regulations across all States indicates that approximately 44 States, the District of Columbia, American Samoa, and Puerto Rico provide an individual the right to request an administrative hearing to contest the findings of an investigation of a report and to have an inaccurate report expunged or deleted from the registry. In Delaware, Louisiana, New Hampshire, and North Carolina, a person who wishes to challenge a report must petition the court for a hearing. In Wyoming, any person who has been named in a substantiated report of child abuse or neglect has the right to submit to the registry a statement concerning the incident.

When Records Must Be Expunged

The terms “expunction” or “expungement” refer to the procedures used by States to maintain and update their central registries and record keeping by removing old or inaccurate records.

Under the Child Abuse Prevention and Treatment Act (CAPTA), in order to receive a Federal grant, States must submit plans that include provisions and procedures for the prompt expunction of records of unsubstantiated or false cases of child abuse if the records are accessible to the general public or are used for purposes of employment or other background checks. CAPTA does, however, allow State child protective services agencies to retain information on unsubstantiated reports in their casework files to assist in future risk and safety assessments.

Approximately 44 States, the District of Columbia, American Samoa, and Guam have provisions in statute for the expunction of certain child abuse and neglect reports. Statutes vary as to expunction standards and procedures. For example, the time specified for the expunction of unfounded or unsubstantiated reports generally ranges from immediately upon determination to 10 years. Delaware, Virginia, and Wyoming do not permit unsubstantiated reports to be placed in the registry at all.

Substantiated reports are usually retained longer, typically at least until the child who was the victim of the abuse or neglect has reached adulthood.

Suggested citation:


This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State’s code as well as agency regulations, case law, and informal practices and procedures.

Footnotes:

2 The word “approximately” is used to stress the fact that States frequently amend their laws. This information is current through May 2018. The States that provide for administrative review include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

3 For more information, see U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Administration for Children and Families, Children’s Bureau.

4 Six States (Alaska, Idaho, New Mexico, Ohio, Oregon, and Wisconsin) and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands do not have provisions for the expunction of child abuse and neglect records.

https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/registry/
**Alabama**

*Current Through May 2018*

**Right of the Reported Person to Review and Challenge Records**

**Citation:** Admin. Code r. 660-5-34-.08

All persons allegedly responsible for abuse/neglect with substantiated (i.e., indicated) dispositions must be given an opportunity to disagree with the findings of the Department of Human Resources through either a hearing or an administrative record review. Any person who is approved, licensed, or certified to care for children or is an employee or volunteer for any licensed facility that cares for children must be offered a hearing when they have been identified as the person allegedly responsible for abuse/neglect and the preliminary disposition is ‘indicated.’ These individuals must be offered a hearing even if they were reported to have abused or neglected their own children.

A child abuse/neglect hearing is an internal investigatory hearing that is fact finding in nature and designed to elicit the facts in an atmosphere that allows the person responsible for the abuse/neglect to contest the evidence presented against him or her. The department shall conduct a hearing to determine by a preponderance of credible evidence that the child has been abused or neglected.

Any person allegedly responsible for abuse or neglect who has a preliminary indicated disposition and is not entitled to a hearing must be offered an administrative record review. The record review is completed to determine if the assessment contains sufficient documentation based on a preponderance of credible evidence to support the indicated disposition of child abuse/neglect. Administrative record reviews are conducted by departmental staff who are not involved with the case. Prior abuse/neglect reports involving the person allegedly responsible are considered during the record review process to assist in determining the disposition. The reviewers have the authority to overturn the dispositional finding of the worker and supervisor, and their decision is final.

**When Records Must Be Expunged**

**Citation:** Ala. Code § 26-14-8

In the case of any child abuse or neglect investigation that is determined to be ‘not indicated,’ the alleged perpetrator may request after 5 years from the completion of the investigation that his or her name be expunged from the central registry. As long as the Department of Human Resources has received no further reports concerning the alleged perpetrator during the 5 years since the completion of the investigation, the department shall expunge the name at that time.

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**Alaska**

*Current Through May 2018*

**Right of the Reported Person to Review and Challenge Records**

**Citation:** Child Prot. Serv. Man. § 2.2.10.1

An individual who disagrees with a decision made by the Department of Health and Social Services that the person has a substantiated finding of child maltreatment may request a review by the Office of Administrative Hearings. Once the department completes the safety assessment and the risk assessment, a maltreatment finding must be made. If the finding is substantiated, the department will send a notice of the decision to the child’s parents and/or legal caregivers. The department also will send each alleged perpetrator a certified letter of notice of alleged maltreatment decision and placement on the child protection registry that advises of the findings and the outcome of the initial assessment. The notice letter informs the alleged perpetrator of the appeal process and the right to appeal the finding within 30 days from when the letter was certified. If certified, the returned certified receipt must be placed in the file subsequent to closure. The notice also must include the following:

- Recommendations and/or service resources as indicated for all cases with a substantiated finding and when there are no impending safety threats
- A summary of any services that have been offered or provided during the initial assessment, regardless of the finding

**When Records Must Be Expunged**

This issue is not addressed in the statutes and regulations reviewed.
American Samoa

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Ann. Code § 45.2028

At any time after the completion of the investigation, but no later than 10 years after the receipt of the report, a subject of the report may request the head of the registry to amend, seal, or expunge the record of the report. If the head of the registry refuses or does not act within a reasonable time, but in no event later than 30 days after the request, the subject shall have the right to a fair hearing to determine whether the record of the report in the central registry should be amended or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with the law.

The burden in the hearing shall be on the Department of Public Safety. In the hearings, the fact that there was a finding of child abuse, sexual abuse, or neglect is presumptive evidence that the report was substantiated.

When Records Must Be Expunged

Citation: Ann. Code §§ 45.2025; 45.2026

Unless an investigation determines there is some credible evidence of alleged abuse, sexual abuse, or neglect, all information identifying the subject of the report is immediately expunged from the central registry.

In all other cases, the record of the report to the central registry is sealed no later than 10 years after the subject child’s 18th birthday. Once sealed, the record shall not otherwise be available unless the head of the central registry, upon notice to the subjects of the report, gives his or her personal approval for an appropriate reason.

Arizona

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Rev. Stat. § 8-811

The Department of Child Safety shall notify a person who is alleged to have abused or neglected a child that the department intends to substantiate the allegation in the central registry and of that person’s right:

• To receive a copy of the report containing the allegation
• To a hearing before the entry into the central registry

The department shall provide the notice by first-class mail or by personal service no more than 14 days after completion of the investigation. A request for a hearing on the proposed finding must be received by the department within 20 days after the mailing or personal service of the notice by the department.

If a request for a hearing is made, the department shall conduct a review before the hearing. The department shall provide an opportunity for the accused person to provide information to support the position that the department should not substantiate the allegation. If the department determines that there is no probable cause that the accused person engaged in the alleged conduct, the department shall amend the information or finding in the report and shall notify the person and a hearing shall not be held.

The notification also shall state that if the department does not amend the information or finding in the report within 60 days after it receives the request for a hearing the person has a right to a hearing, unless:

• The person is a party in a pending civil, criminal, administrative, or juvenile proceeding in which the allegations of abuse or neglect are at issue.
• A court or administrative law judge has made findings as to the alleged abuse or neglect.
• A court has found that a child is dependent or has terminated a parent’s rights based on an allegation of abuse or neglect.

If the court or administrative law judge in a proceeding has made a finding of abuse or neglect, the finding shall be entered into the central registry as a substantiated report.

If the department does not amend the information or finding in the report, the department shall notify the Office of Administrative Hearings of the request for a hearing no later than 5 days after completion of the review. The department shall forward all records, reports, and other relevant information with the request for a hearing within 10 days. The office shall hold a hearing, with the following stipulations:
• A child who is the victim of or a witness to abuse or neglect is not required to testify at the hearing.
• A child’s hearsay statement is admissible if the time, content, and circumstances of that statement are sufficiently indicative of its reliability.
• The identity of the reporting source of the abuse or neglect shall not be disclosed without the permission of the reporting source.
• The reporting source is not required to testify.
• A written statement from the reporting source may be admitted if the time, content, and circumstances of that statement are sufficiently indicative of its reliability.

On completion of the presentation of evidence, the administrative law judge shall determine if probable cause exists to sustain the department’s finding that the parent abused or neglected the child. If the administrative law judge determines that probable cause exists to sustain the department’s finding of abuse or neglect, the sustained finding shall be entered into the central registry as a substantiated report. If the administrative law judge determines that probable cause does not exist to sustain the department’s finding, the administrative law judge shall order the department to amend the information or finding in the report.

**When Records Must Be Expunged**

**Citation: Rev. Stat. § 8-804**

If the Department of Child Safety received a report before September 1, 1999, and determined that the report was substantiated, the department shall maintain the report in the central registry until 18 years from the child victim’s date of birth.

If the department received a report on or after September 1, 1999, and determined that the report was substantiated, the department shall maintain the report in the central registry for 25 years after the date of the report.

The department shall annually purge reports and investigative outcomes received pursuant to the timeframes prescribed above. Any person who was the subject of a department investigation may request confirmation that the department has purged information about the person from the central registry. On receipt of this request, the department shall provide the person with written confirmation that the department has no record containing identifying information about that person.

**Arkansas**

*Current Through May 2018*

**Right of the Reported Person to Review and Challenge Records**

**Citation: Ann. Code § 12-18-908**

The Department of Human Services shall identify in its policy and procedures manual the types of child maltreatment for which an offender can request that the offender’s name be removed from the registry. If an offender has been entered into the registry as an offender for any of these types of child maltreatment, the offender may petition the department to request that his or her name be removed from the registry if he or she has not had a subsequent true report of this type for 1 year and if more than 1 year has passed since the offender’s name was placed on the registry.

If the department denies the request for removal of the name from the registry, the offender shall wait 1 year from the date of the request before filing a new petition with the department. The department shall develop policy and procedures to assist it in determining whether to remove the offender’s name from the registry.

If the department denies the second request for removal of the name from the registry, the offender may request an administrative hearing within 30 days from receipt of the department’s decision. The standard on review for the administrative hearing shall be whether the department abused its discretion.

At least 10 days prior to the administrative hearing, the alleged offender and the department shall share any information with the other party that the party intends to introduce into evidence at the administrative hearing that is not contained in the record. If a party fails to timely share information, the administrative law judge shall:
• Grant a continuance
• Allow the record to remain open for submission of rebuttal evidence
• Reject the information as not relevant to the rehabilitation or the incident of child maltreatment
When Records Must Be Expunged
Citation: Ann. Code § 12-18-908

The department shall identify in its policy and procedures manual the types of child maltreatment that will automatically result in the removal of the name of an offender from the registry. If an adult offender has been entered into the registry, the offender’s name shall be removed from the registry when the offender has not had a subsequent true report of this type for 1 year and if more than 1 year has elapsed since the offender’s name was placed in the registry. Notwithstanding the foregoing provisions, with regard to offenders who were juveniles at the time of the act or omission that resulted in a true finding of child maltreatment, the department shall:

- Not remove the name from the registry if the offender was found guilty of, pled guilty to, or pled nolo contendere to a felony in circuit court as an adult for the same act for which the offender is named in the registry, unless the conviction is reversed or vacated
- Remove the name from the registry if more than 1 year has passed since the true finding of child maltreatment, there have been no subsequent true findings of child maltreatment, and the offender can prove by a preponderance of evidence that he or she has been rehabilitated

California
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Penal Code § 11170; Pol. & Proc. Man. § 31-021

Any person may determine if he or she is listed in the Child Abuse Central Index (CACI) by making a request in writing to the Department of Justice (DOJ). The request shall be notarized and include the person’s name, address, date of birth, and either a Social Security number or a California identification number.

Upon receipt of a notarized request, the DOJ shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to § 11167.5(b)(11).

In policy: Within 5 business days of submitting a person’s name to the DOJ for listing on the CACI, notice of that listing must be sent to the person at his or her last known address.

A person who wishes to schedule a grievance hearing must submit a written request to the county within 30 calendar days of the date of notice. Failure to submit the request within the prescribed timeframe shall constitute a waiver of the right to a grievance hearing.

A grievance hearing request shall be denied when a court of competent jurisdiction has determined that the suspected child abuse and/or severe neglect has occurred or when the allegation of child abuse or severe neglect is pending before the court. If this no longer applies, the person can submit the written request within 30 calendar days of the conclusion of the court case to request a grievance hearing.

The grievance hearing shall be scheduled within 10 business days and held no later than 60 calendar days from the date the request for grievance is received by the county.

The county may resolve a grievance at any point by changing a finding of substantiated child abuse and/or severe neglect to a finding that is not substantiated and notifying the DOJ of the need to remove the individual’s name from the CACI.

The grievance review officer conducting the grievance hearing shall be a staff member or other person not directly involved in the decision, the investigation, or finding that is the subject of the hearing. The grievance hearing shall, to the extent possible, be conducted in a nonadversarial environment.

The county and the person shall be permitted to examine all records and evidence related to the county’s investigative activities and investigative findings associated with the original referral that prompted the CACI listing, except for information that is otherwise made confidential by law.

The county shall first present its evidence supporting its action or findings that are the subject of the grievance. The person will then provide evidence supporting his or her claim that the county’s decision should be withdrawn or changed. The county shall then be allowed to present rebuttal evidence in further support of its finding. Thereafter, the grievance review officer may, at his or her discretion, allow the parties to submit any additional evidence as may be warranted to fully evaluate the matter under review.
The grievance review officer shall make a determination based upon the evidence presented at the hearing as to whether the allegation of child abuse and/or severe neglect is substantiated as defined by the Penal Code ($ 11165.12).

The grievance review officer shall render a written recommended decision within 30 calendar days of the completion of the hearing. The decision shall contain a summary statement of facts, the issues involved, findings, and the basis for the decision. The county director shall issue a final written decision adopting, rejecting, or modifying the recommended decision within 10 business days after the recommended decision is rendered. The final written decision shall explain why a recommended decision was rejected or modified by the county director.

**When Records Must Be Expunged**

**Citation:** Penal Code § 11170

If a person listed in the CACI was under age 18 at the time of the report, the information shall be deleted from the index 10 years from the date of the incident resulting in the index listing, if no subsequent report concerning the same person is received during that time period.

Information from an inconclusive or unsubstantiated report shall be deleted from the index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained in the index for a period of 10 years from the time the most recent report is received by the DOJ.

If a person is listed in the index only as a victim of child abuse or neglect, and that person is age 18 or older, that person may have his or her name removed from the index by making a written request to the DOJ. The request shall be notarized and include the person's name, address, Social Security number, and date of birth.

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**Colorado**

*Current Through May 2018*

**Right of the Reported Person to Review and Challenge Records**

**Citation:** Rev. Stat. § 19-3-313.5

On or before January 1, 2004, the State Board of Human Services shall promulgate rules to establish a process at the State level by which a person who is found to be responsible in a confirmed report of child abuse or neglect filed with the State Department of Human Services pursuant to § 19-3-307 may appeal the finding of a confirmed report of child abuse or neglect to the State department. At a minimum, the rules established shall address the following matters, consistent with Federal law:

- The provision of adequate and timely written notice by the county departments of social services or, for an investigation pursuant to § 19-3-308(4.5), by the agency that contracts with the State, using a form created by the State department, to a person found to be responsible in a confirmed report of child abuse or neglect of the person's right to appeal the finding of a confirmed report of child abuse or neglect to the State department
- The timeline and method for appealing the finding of a confirmed report of child abuse or neglect
- Designation of an entity other than a county department of social services with the authority to accept and respond to an appeal by a person found to be responsible in a confirmed report of child abuse or neglect at each stage of the appellate process
- The legal standards involved in the appellate process and a designation of the party who bears the burden of establishing that each standard is met
- The confidentiality requirements of the appeals process

**When Records Must Be Expunged**

**Citation:** Rev. Stat. § 19-3-313.5

The rules established by the State Board of Human Services shall, consistent with Federal law, provide for procedures that facilitate the prompt expunction of and prevent the release of any information contained in any records and reports that are accessible to the general public or are used for purposes of employment or background checks in cases determined to be unsubstantiated or false. The State Department of Social Services and the county Department of Social Services may maintain information concerning unsubstantiated reports in casework files to assist in future risk and safety assessments.
Connecticut
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Gen. Stat. § 17a-101k

Upon the issuance of a recommended finding that an individual is responsible for abuse or neglect of a child, the Commissioner of Children and Families shall provide notice of the finding, by first class mail, no later than 5 business days after the issuance of such finding, to the individual who is alleged to be responsible for the abuse or neglect. The notice shall:

- Contain a short and plain description of the finding that the individual is responsible for the abuse or neglect of a child
- Inform the individual of the existence of the registry and of the commissioner’s intention to place the individual’s name on the registry unless the individual exercises his or her right to appeal the finding
- Inform the individual of the potential adverse consequences of being listed on the registry, including, but not limited to, the potential effect on the individual obtaining or retaining employment or licensure or engaging in activities involving direct contact with children, and inform the individual of the individual’s right to administrative procedures as provided in this section to appeal the finding
- Include a written form for the individual to sign and return, indicating if the individual will invoke the appeal procedures

Following a request for appeal, the commissioner shall conduct an internal review of the recommended finding to be completed no later than 30 days after the request for appeal is received by the department. The commissioner shall review all relevant information relating to the finding to determine whether the finding is factually or legally deficient and ought to be reversed. Prior to the review, the commissioner shall provide the individual access to all relevant documents in the possession of the commissioner regarding the finding of responsibility for abuse or neglect of a child.

The individual or the individual’s representative may submit any documentation that is relevant to a determination of the issue and may, at the discretion of the commissioner, participate in a telephone conference or face-to-face meeting to be conducted for gathering additional information that may be relevant to determining whether the finding is factually or legally deficient.

If the commissioner, as a result of the prehearing review, determines that the recommended finding of abuse or neglect is factually or legally deficient, the commissioner shall so indicate, in writing, and shall reverse the recommended finding. The commissioner shall send notice to the individual by certified mail of the commissioner’s decision to reverse or maintain the finding no later than 5 business days after the decision is made. If the finding is upheld, the commissioner shall notify the individual of the right to request a hearing. The individual may request a hearing no later than 30 days after receipt of the notice. The hearing shall be scheduled no later than 30 days after receipt by the commissioner of the request for a hearing, except for good cause shown by either party.

At the hearing, the individual may be represented by legal counsel. The burden of proof shall be on the commissioner to prove that the finding is supported by a fair preponderance of evidence submitted at the hearing. No later than 30 days after the conclusion of the hearing, the hearing officer shall issue a written decision to either reverse or uphold the finding.

When Records Must Be Expunged
Citation: Gen. Stat. § 17a-101k

Records containing unsubstantiated findings and records relating to family assessment cases shall remain sealed, except that such records shall be made available to department employees in the proper discharge of their duties. These records shall be expunged by the commissioner 5 years from the completion date of the investigation or the closure of the family assessment case, whichever is later, if no further report is made about the individual subject to the investigation or the family subject to the assessment.

If the department receives more than one report on an individual subject to investigation or a family subject to assessment and each report is unsubstantiated, all reports and information pertaining to the individual or family shall be expunged by the commissioner 5 years from the completion date of the most recent investigation.
**Delaware**  
*Current Through May 2018*

**Right of the Reported Person to Review and Challenge Records**  
*Citation: Ann. Code Tit. 16, § 929; Pol. Man. Admin. Stds. § G*

A person who has been entered on the Child Protection Registry at Child Protection Level II or Level III, and who has successfully completed a division-recommended or family court-ordered case plan, may file a petition for removal in the family court prior to the expiration of the time designated for the level. Only a person who has successfully completed that person’s own case plan is eligible to petition for an early removal.

A petition for removal from the registry must be filed in the family court in the county in which the substantiation occurred. A copy of the petition must be served on the Division of Family Services. The division may file an objection or answer to the petition within 30 days after being served. In every case, the division shall inform the court whether or not the person applying for removal has been substantiated for abuse or neglect while on the Child Protection Registry. The family court may, in its discretion, dispose of a petition for removal without a hearing.

**In policy:** Beginning February 1, 2003, the child protection registry shall only contain substantiated incidents of child abuse and neglect. At the conclusion of an investigation, the division shall send written notice to the person’s last known address of its intent to place the person on the child protection registry for having committed child abuse or neglect, and shall advise the individual of the opportunity to request a hearing in family court. A hearing request form shall be included with each notice of intent to substantiate. Only the person (alleged perpetrator) who has been notified of the division’s intent to substantiate may request a hearing in family court.

**When Records Must Be Expunged**  
*Citation: Ann. Code Tit. 16, § 929*

A person who has been entered on the Child Protection Registry at Child Protection Level II or Level III will be automatically removed from the registry if the person has not been substantiated for an incident of abuse or neglect while on the registry. Removal from the Child Protection Registry means only that the person’s name has been removed from the registry and may no longer be reported to employers pursuant to chapter 85 of title 11 or chapter 3 of title 31. Notwithstanding removal from the registry, the person’s name and other case information remains in the Division of Family Services’ internal information system as substantiated for all other purposes, including, but not limited to, the division’s use of the information for historical, treatment, and investigative purposes; child care licensing decisions; foster and adoptive parent decisions; reporting pursuant to § 309 of title 31; reporting to law enforcement authorities; or any other purpose set forth in § 906(e) of this title.

**District of Columbia**  
*Current Through May 2018*

**Right of the Reported Person to Review and Challenge Records**  
*Citation: Ann. Code §§ 4-1302.05; 4-1302.06*

The staff that maintains the Child Protection Register shall, within 7 days from the date that a report is entered in the register, give notice to each person identified in the report that the report identifies him or her as responsible for the alleged abuse or neglect of the child who is the subject of the report. This notice shall include the following information:

- The date that the report identifying the person was entered in the Child Protection Register
- The right of the person to review the entire report, except information that identifies other persons mentioned in the report
- The administrative procedures through which the person may seek to correct information that he or she alleges is incorrect or to establish that the report is unfounded

The Mayor shall establish, by rules adopted pursuant to § 2-501, et seq., procedures to permit a person identified in the Child Protection Register to challenge information that he or she alleges is incorrect or establish that a report is unfounded.
**When Records Must Be Expunged**  
**Citation: Ann. Code § 4-1302.07**

Notwithstanding any other provision of law, substantiated reports shall not be expunged from the Child Protection Register. The staff that maintains the Child Protection Register shall expunge from each inconclusive report all information that identifies any person in the inconclusive report upon the first occurrence of either:

- The 18th birthday of the child who is the subject of the report, if there is no reasonable suspicion or evidence that another child living in the same household or under the care of the same parent, guardian, or custodian has been abused or neglected
- The end of the 5th year after the termination of the social rehabilitation services directed toward the abuse and neglect

The staff that maintains the Child Protection Register shall expunge the following:

- Any unfounded report immediately upon such classification by the agency
- Any material successfully challenged as incorrect pursuant to the rules adopted under § 4-1302.06

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**Florida**  
**Current Through May 2018**

**Right of the Reported Person to Review and Challenge Records**  
**Citation: Ann. Stat. § 39.202(2)(e); Pol. Man. # 170-16**

Except for the name of the reporter, access to child abuse and neglect reports shall be granted to any person alleged in the report as having caused the abuse, abandonment, or neglect of a child. This access shall be made available no later than 30 days after the Department of Children and Family Services receives the initial report of abuse, abandonment, or neglect and, when the alleged perpetrator is not a parent, shall be limited to information involving the protective investigation only and shall not include any information relating to subsequent dependency proceedings. However, any information otherwise made confidential or exempt by law shall not be released.

In policy: The Florida Safe Families Network (FSFN) is the department's Statewide Automated Child Welfare Information System. FSFN serves as the statewide electronic case record for all child abuse investigations and case management activities.

An internal review can be conducted by the department to ensure policy, rule, and statute were followed when making a determination of a verified finding in a child protective investigation. Only the ‘caregiver responsible’ may request an internal review.

An internal review involves the examination of the information contained in FSFN; the hardcopy investigation file; other pertinent documents (if any are available) particular to the specific case, such as police reports; and any documents provided by the requestor along with interviews of staff involved in the investigation, if they are still employed by the department. The internal review will not reinvestigate the allegations but will consider whether a preponderance of the evidence supports the verified finding based on the investigative process and information provided by the requestor.

The internal review will be completed by the Regional Family and Community Services director or his or her designee. The person completing the internal review must not have been involved in any stage of the investigation.

The internal review shall be completed within 60 days of the request. The person completing the internal review has the authority to change a verified finding if the documentation does not support the finding.

If a dependency proceeding is pending at the time of the request for an internal review, the review shall not be initiated until after the adjudicatory hearing. If a criminal investigation or criminal case is pending at the time of the request, the internal review shall not be initiated until after the law enforcement investigation or State attorney's case is completed.

An internal review may not be conducted on an investigative file past the department’s retention schedule.

After the review is completed, if the verified finding is changed as a result, the supervisor of the child protective investigator that made the finding or a person designated by the Regional Family and Community Services director will immediately:

- Ensure the investigative summary is updated and an addition is made to the chronological notes to explain that an internal review occurred, resulting in an update of the finding
- Ensure the program office staff documents the decision in FSFN
- Prepare an addendum to the investigative summary reflecting the changed finding and send a copy to the Children’s Legal Services attorney assigned to the case as well as the case manager assigned to the case if there is an open dependency case involving the subject of the internal review
• Review the case with the child protective investigator, supervisor, and program administrator that made the finding, if appropriate, to discuss and document why the reviewer indicated that a preponderance of credible evidence did not exist and to discuss any changes in practice indicated by the internal review

When Records Must Be Expunged
Citation: Ann. Stat. § 39.202

The Department of Children and Family Services shall make and keep reports and records of all cases under this chapter and shall preserve the records pertaining to a child and family until the child who is the subject of the report is age 30, at which time the records may then be destroyed.

Georgia

Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Ann. Code § 49-5-183

Upon receipt of an investigator’s report of a substantiated case, the Division of Family and Children Services shall mail to the alleged child abuser a notice regarding the substantiated case via certified mail, return receipt requested. The notice shall further inform the alleged child abuser of his or her right to a hearing to appeal the determination and the procedures for obtaining the hearing. In order to exercise his or her right to a hearing, the alleged child abuser shall file a written request for a hearing with the division within 10 days after receipt of the notice. The written request shall contain the alleged child abuser’s current residence address and, if he or she has a telephone, a telephone number at which he or she may be notified of the hearing. If the division receives a timely written request for a hearing, it shall transmit that request to the Office of State Administrative Hearings within 10 days after the receipt. The office shall conduct a hearing that shall be for the purpose of an administrative determination regarding whether, based on a preponderance of evidence, there was child abuse committed by the alleged child abuser to justify the investigator’s determination of a substantiated case. At the conclusion of the hearing, upon a finding that there is not a preponderance of evidence to conclude that the alleged child abuser committed an act of child abuse, the administrative law judge shall order that the alleged child abuser’s name be removed from the child abuse registry.

When Records Must Be Expunged
Citation: Ann. Code §§ 49-5-183; 49-5-184

With regard to a minor child alleged to have committed abuse, the division shall remove such individual’s name from the registry if:
• He or she has reached age 18.
• More than 1 year has passed from the date of the act or omission that resulted in a substantiated case and there have been no subsequent acts or omissions resulting in a substantiated case.
• He or she can prove by a preponderance of the evidence that he or she has been rehabilitated.

An individual whose name appears in the child abuse registry as having committed a substantiated case shall be entitled to a hearing for an administrative determination of whether or not expunction of such individual’s name should be ordered. In order to exercise such right, the individual shall file a written request for a hearing with the division. A hearing shall be conducted within 60 days following receipt of the request by the Office of State Administrative Hearings. Upon a finding that there is no credible evidence that the individual who requested the hearing is the individual who had a substantiated case, the office shall order the division to expunge that name from the registry.

Guam

Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Ann. Code Tit. 19, § 13210(c)

A victim or alleged victim of child abuse, the parents of a victim or alleged victim of child abuse, or a perpetrator or alleged perpetrator of child abuse may review, upon written request, all information contained in the central register or in any report filed pursuant to § 13203, except information that would identify the reporter of the abuse, and the review may occur at any time after a court proceeding has been initiated regarding the abuse.
When Records Must Be Expunged

Citation: Ann. Code Tit. 19, § 13208(f)

If an investigation of a report of suspected child abuse or neglect does not determine, within 1 year of the date of the report of suspected child abuse or neglect, that the report is an indicated report or a substantiated report, the report shall be considered an unsubstantiated report, and all information identifying the subjects of the report shall be expunged from child protective services’ suspected files.

Hawaii

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged

Citation: Rev. Stat. § 350-2(d)

The Department of Human Services shall promptly expunge the reports in cases if either of the following is true:

- The report is determined not confirmed by the department, an administrative hearing officer, or a Hawaii State court on appeal.
- The petition arising from the report has been dismissed by order of the family court after an adjudicatory hearing on the merits pursuant to chapter 587A.

Records and information contained in a report that is expunged may be retained by the department solely for future risk and safety assessment purposes.

Idaho

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Idaho Code § 16-1629(10); Admin. Code § 16.05.03.500

The Department of Health and Welfare shall establish appropriate administrative procedures for the conduct of administrative reviews and hearings as required by Federal statute for all children committed to the department and placed in out-of-home care.

In regulation: A substantiated incident of child abuse, neglect, or abandonment will automatically become effective and be placed on the child protection central registry, unless the individual identified in the notification files a request for an administrative review within 28 days from the date on the notification. The request for an administrative review must be mailed to the Family and Community Services (FACS) division administrator.

The request for an administrative review must identify the notification being protested and explain the reasons for disagreement. Additional information may be provided for the administrator’s consideration.

The FACS division administrator will consider all available information and determine whether the incident was erroneously determined to be ‘substantiated.’ The administrator will furnish a written decision to the individual.

When Records Must Be Expunged

This issue is not addressed in the statutes reviewed.
Illinois

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

**Citation: Comp. Stat. Ch. 325, § 5/7.16**

Within 60 days after the notification of the completion of the Child Protective Service Unit investigation, the perpetrator named in the notification may request the Department of Children and Family Services to amend the record or remove the record of the report from the register. The 60-day deadline for filing a request shall be tolled until after the conclusion of any criminal court action in the circuit court or after adjudication in any juvenile court action concerning the circumstances that give rise to an indicated report. The request shall be in writing and directed to such person as the department designates in the notification letter notifying the perpetrator of the indicated finding.

The perpetrator shall have the right to a timely hearing within the department to determine whether the record of the report should be amended or removed on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this act, except that there shall be no such right to a hearing on the ground of the report’s inaccuracy if there has been a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator. Such hearing shall be held within a reasonable time after the perpetrator’s request and at a reasonable place and hour. The appropriate Child Protective Service Unit shall be given notice of the hearing.

If the minor who is the victim named in the report is the subject of a pending action chapter 705, § 405/5-1, et seq., and is in the custody or guardianship of the department or has an open intact family services case with the department or is the subject of a pending action under chapter 705, § 405/2-1, et seq., and the report was made while a guardian ad litem was appointed for the minor, then the minor, through the minor’s attorney or guardian ad litem, shall have the right to participate and be heard in such hearing as defined under the department’s rules.

In such hearings, the burden of proving the accuracy and consistency of the record shall be on the department and the appropriate Child Protective Service Unit. The hearing shall be conducted by the director or his or her designee, who is hereby authorized and empowered to order the amendment or removal of the record to make it accurate and consistent with this act. The decision shall be made, in writing, at the close of the hearing, or within 60 days thereof, and shall state the reasons upon which it is based. Decisions of the department under this section are administrative decisions subject to judicial review under the Administrative Review Law.

Should the department grant the request of the perpetrator, either on an administrative review or after an administrative hearing, to amend an indicated report to an unfounded report, the report shall be released and expunged in accordance with the standards set forth in chapter 325, § 5/7.14.

When Records Must Be Expunged

**Citation: Comp. Stat. Ch. 325, § 5/7.14**

All reports in the central register shall be classified in one of three categories: ‘indicated,’ ‘unfounded,’ or ‘undetermined,’ as the case may be. All information identifying the subjects of an unfounded report shall be expunged from the register forthwith, except as provided in chapter 325, § 5/7.7.

Identifying information on all other records shall be removed from the register no later than 5 years after the report is indicated. However, if another report is received involving the same child, his or her sibling or offspring, or a child in the care of the persons responsible for the child’s welfare, or involving the same alleged offender, the identifying information may be maintained in the register until 5 years after the subsequent case or report is closed.

Notwithstanding any other provision of this section, identifying information in indicated reports involving serious physical injury to a child, as defined by the department in rules, may be retained longer than 5 years after the report is indicated or after the subsequent case or report is closed and may not be removed from the register except as provided by the department in rules. Identifying information in indicated reports involving sexual penetration, sexual molestation, sexual exploitation, torture, or death of a child shall be retained for a period of not less than 50 years after the report is indicated or after the subsequent case or report is closed.
Indiana
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Ann. Code §§ 31-33-26-8; 31-33-27-5

This section does not apply to substantiated reports if a court has determined that a child is a child in need of services based on the following:

- A report of child abuse or neglect that names the perpetrator as the individual who committed the child abuse or neglect
- Facts presented to the court at a hearing in a child-in-need-of-services case that are consistent with the facts and conclusions stated in the report, if the department approved the substantiated report after the court’s determination

No later than 30 days after the Department of Children and Family Services enters a substantiated child abuse or neglect report into the index, the department shall notify the following:

- The parent, guardian, or custodian of the child who is named in the report as the victim of the child abuse or neglect
- Any person identified as the perpetrator, if other than the child's parent, guardian, or custodian

The department shall state the following in a notice to the perpetrator of a substantiated report:

- The report has been classified as substantiated.
- The perpetrator may request that a substantiated report be amended or expunged at an administrative hearing if the perpetrator does not agree with the classification of the report unless a court is in the process of making a determination.
- The perpetrator's request for an administrative hearing to contest the classification of a substantiated report must be received by the department not more than 30 days after the notice is served.

If the perpetrator fails to request an administrative hearing within 30 days, the perpetrator named in a substantiated report may request an administrative hearing to contest the classification of the report if the perpetrator demonstrates that the failure to request an administrative hearing was due to excusable neglect or fraud. The Indiana Rules of Civil Procedure provide the standard for excusable neglect or fraud.

This section applies to information relating to substantiated reports in any records of the department. An individual identified as a perpetrator of child abuse or neglect in a substantiated report may file a petition with a court exercising juvenile jurisdiction in the county in which the individual resides, requesting that the court order the department to expunge the substantiated report and related information.

The court shall hold a hearing on the petition and any response filed by the department, unless a hearing is waived by agreement of the parties.

In considering whether to grant a petition filed under this section, the court may review:

- The factors listed in § 31-39-8-3 concerning the risk assessment in relation to the petitioner if the substantiated report was the subject of a juvenile court case
- Any facts relating to the petitioner’s current status, activities, employment, contacts with children, or other circumstances relevant to consideration of whether the petition should be granted

The court may grant the petition if the court finds, by clear and convincing evidence, both of the following:

- There is little likelihood that the petitioner will be a future perpetrator of child abuse or neglect.
- The information has insufficient current probative value to justify its retention in records of the department for future reference.

When Records Must Be Expunged
Citation: Ann. Code §§ 31-33-26-14; 31-33-26-15; 31-33-27-3; 31-33-27-4

The department shall immediately amend or expunge from the index a substantiated report containing an inaccuracy arising from an administrative or a clerical error.

The department shall expunge a substantiated report contained within the index no later than 10 working days after any of the following occurs:

- A court determines that child abuse or neglect has not occurred.
- An administrative hearing officer finds that the child abuse or neglect report is unsubstantiated.
- A court enters an order for expunction of the report under § 31-33-27-5.

The department shall amend a substantiated report in the index by deleting the name of an alleged perpetrator if the court or an administrative hearing officer finds that the person was not a perpetrator of the child abuse or neglect that occurred.
The department shall expunge child abuse or neglect information no later than 24 years after the date of birth of the youngest child named in the department’s assessment report as an alleged victim of child abuse or neglect, if:

- The department approved the assessment as unsubstantiated.
- The court entered a final judgment based on a finding that child abuse or neglect did not occur.

The department may, upon the request of an interested person, expunge information relating to an unsubstantiated assessment of child abuse or neglect at any time if the department determines that the probative value of the information does not justify its retention in the records of the department.

The department shall amend information relating to a substantiated report by deleting the name of a person as an alleged perpetrator if a court having jurisdiction over a child in need of services proceeding or an administrative hearing officer finds that the person was not a perpetrator of the child abuse or neglect that occurred.

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Iowa

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Ann. Stat. § 235A.19

A subject of a child abuse report shall have the right to examine report data and disposition data that refers to the subject. Within 90 days of the date of the notice of the results of a child abuse assessment, the subject of a child abuse report may file with the Department of Human Services a written statement to the effect that report data and disposition data referring to the subject are in whole or in part erroneous and may request a correction of those data or of the findings of the child abuse assessment report. The department shall provide the subject with an opportunity for a contested case hearing to correct the data or the findings, unless the department corrects the data or findings as requested. The department may defer the hearing until the conclusion of the adjudicatory phase of a pending juvenile or district court case relating to the data or findings. The subject of a child abuse report may appeal the decision resulting from a hearing to the district court. Immediately upon appeal, the court shall order the department to file with the court a certified copy of the report data or disposition data.

Upon the request of the appellant, the record and evidence in such cases shall be closed to all but the court and its officers, and access to the record and evidence shall be prohibited unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. Whenever the department corrects or eliminates data as requested or as ordered by the court, the department shall advise all persons who have received the incorrect data of that fact. Upon application to the court and service of notice on the department, any subject of a child abuse report may request and obtain a list of all persons who have received report data or disposition data referring to the subject.

When Records Must Be Expunged

Citation: Ann. Stat. § 235A.18

Report and disposition data relating to a particular case of alleged child abuse shall be sealed 10 years after the initial placement of the data in the registry unless good cause be shown why the data should remain open to authorized access. If a subsequent report of alleged child abuse involving the same child or the same person named in the data as having abused a child is received within this 10-year period, or within the period in which the person’s name is in the central registry, the data shall be sealed 10 years after receipt of the subsequent report unless good cause be shown why the data should remain open to authorized access. Notwithstanding the paragraph above, a person named in the initial data placed in the registry as having abused a child shall have the person’s name removed from the registry after 10 years, if not previously removed from the registry pursuant to the other provisions of this section, if that person has not had a subsequent case of alleged abuse that resulted in the person’s name being placed in the registry as the person responsible for the abuse within the 10-year period.

A person named in the initial data placed in the registry as having abused a child shall have the person’s name removed from the registry after 5 years if the department determined in the initial report and disposition data that the person committed child abuse as defined in § 232.68(2)(a)(1) (physical abuse), (4) (neglect), or (6) (prenatal drug exposure).

The subparagraph above shall not apply, and the name of a person named in the initial data as having abused a child shall remain in the registry for 10 years, if the department determined in the initial report and disposition data that the person committed child abuse as defined in § 232.68(2)(a)(1), (4), or (6), and the child abuse resulted in the child’s death or a serious injury.
Kansas

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Admin. Regs. § 30-46-17

Any perpetrator of abuse or neglect may apply in writing to the secretary of the Department of Children and Family Services to have the perpetrator’s record expunged from the central registry when 3 years have passed since the perpetrator’s name was entered on the central registry or when information is presented that was not available at the time of the finding of abuse or neglect.

Each application for expunction shall be referred to the expunction review panel. The panel shall consist of the director of the department or the director’s designee, the chief legal counsel of the department or the counsel’s designee, and a representative of the public appointed by the secretary. The department director or the director’s designee shall chair the panel.

A review hearing shall be convened by the panel, at which time the applicant may present evidence supporting expunction of the applicant’s name from the central registry. The applicant shall have the burden of providing the panel with the basis for granting the application. Evidence in support of or in opposition to the application may be presented by the regional office that conducted the original investigation. An application for expunction from a perpetrator shall be accepted no more than once every 12 months.

Recommendations of the review panel shall be determined by majority vote. The following factors shall be considered by the panel in making its recommendation:

- The nature and severity of the act of abuse or neglect
- The number of findings of abuse or neglect involving the applicant
- If the applicant was a child at the time of the findings of abuse or neglect for which expunction is requested, the age of the applicant at the time of the occurrence
- Circumstances that no longer exist that contributed to the finding of abuse or neglect by the applicant
- Actions taken by the applicant to prevent the reoccurrence of abuse or neglect

The review hearing shall be set within 30 days from the date the application for expunction is received by the department. The department director or the director’s designee shall send a written notice to the applicant and the regional office that made the finding at least 10 days before the hearing. The notice shall state the day, hour, and place of the hearing. Continuances may be granted only for good cause.

A written recommendation to the secretary shall be rendered by the panel within 60 days from the date of the hearing. The recommendation to the secretary shall be submitted in writing and shall set forth the reasons for the recommendation. Based upon findings and recommendations of the panel, a record may be expunged or expunction may be denied by the secretary.

When Records Must Be Expunged

Citation: Admin. Regs. § 30-46-17(c)

Any record may be expunged from the central registry by the secretary when 18 years have passed since the most recent finding of abuse or neglect.

Each record of a perpetrator who was under age 18 at the time of abuse or neglect shall be expunged 5 years after the finding of abuse or neglect is entered in the central registry if the perpetrator has had none of the following after entry in the registry:

- A finding of abuse or neglect
- A juvenile offender adjudication for any act that, if committed by an adult, would be a class A person misdemeanor or any person felony
- A criminal conviction for a class A person misdemeanor or any person felony

The decision of the secretary shall be in writing and shall set forth the reasons for the decision. Denial of the application shall be the final agency order. The applicant shall be informed of the right to appeal pursuant to the Kansas judicial review act.
Kentucky
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Admin. Reg. Tit. 922, § 1:480

A person who has been found by the Cabinet of Health and Family Services to have abused or neglected a child may appeal the cabinet’s investigative finding through an administrative hearing. The person must submit a written request for appeal to the cabinet no later than 30 calendar days from the date the notice of a substantiated finding of child abuse or neglect is postmarked. The request must include the following:

- A description of the nature of the investigative finding
- The specific reason the appellant disputes the cabinet’s substantiated finding of child abuse or neglect
- The specific name of each known cabinet staff person involved with the investigation
- A copy of the notice of a substantiated finding of child abuse or neglect, if available

Upon receipt of a written request for appeal, the cabinet shall confirm whether the matter is subject to review through an administrative hearing. The following shall not be subject to review through an administrative hearing:

- A matter in which a civil court having competent jurisdiction:
  » Has heard evidence and made a final judicial determination that abuse or neglect of a child did or did not occur
  » Is currently engaged in legal proceedings regarding the same issue being appealed
- A matter in which an appellant has been criminally charged and convicted of an action that is the basis of the cabinet’s finding of abuse or neglect of a child
- A final administrative decision made by the cabinet as a result of a previous appeal on the same issue
- An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward
- Failure to submit a written request for appeal within the established timeframe, unless an appellant demonstrates good cause
- An investigation that results in an unsubstantiated finding of abuse or neglect of a child

The cabinet shall reserve the right, in its sole discretion, to amend, modify, or reverse its investigative finding of child abuse or neglect at any time based upon a review of the cabinet’s records or subsequent discovery of additional information.

When Records Must Be Expunged
Citation: Admin. Reg. Tit. 922, § 1:470

Each name shall be removed from the central registry after a period of 7 years if both of the following are true:

- No additional incident of child abuse or neglect has been substantiated by the cabinet since the time of the incident for which the individual’s name was placed on the registry.
- Cabinet records indicate that the incident for which the individual’s name was placed on the registry did not relate to any of the following:
  » Sexual abuse or sexual exploitation of a child
  » A child fatality related to abuse or neglect
  » A near fatality related to abuse or neglect
  » Involuntary termination of parental rights in accordance with §§ 625.050 through 625.120

Louisiana
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Children’s Code Art. 616.1

When a report alleging abuse or neglect is recorded as justified by the Department of Children and Family Services in the central registry but no petition is subsequently filed alleging that the child is in need of care, the individual who is the subject of the finding may file a written motion seeking correction of that entry and all related department records in the court exercising juvenile jurisdiction in the parish in which the finding was made. If neither the department nor the district attorney files a written objection, the court may enter an order.

If, after a contradictory hearing with the department and the district attorney, the court finds that the report was not justified, and correction of the record is not contrary to the best interests of the child, it may order the department to correct the central registry entry.
If the central registry entry is ordered to be corrected, the department and any law enforcement office having any record of the report shall be ordered to correct those records and any other records, notations, or references thereto, and the court shall order the department and other custodians of these records to file a sworn affidavit to the effect that their records have been corrected. The affidavit of the department shall also attest to the correction of the central registry entry.

The provisions of this article shall apply only to those reports determined by the department to be justified prior to the effective date of Children’s Code article 616.1.1 (August 1, 2017).

Effective August 1, 2017, when a report alleging abuse or neglect is determined to be justified by the department, the individual who is or was the subject of the determination may make a formal written request to the Division of Administrative Law for an administrative appeal of the justified determination, in accordance with the procedures set forth in title 67 of the Louisiana Administrative Code.

When Records Must Be Expunged

Citation: Children’s Code Art. 616.2

The Bureau of Identification and Information in the Office of State Police shall maintain a central index registry of all reports of sexual abuse. All information regarding the reports shall be maintained by the Department of Public Safety and Corrections for 10 years from the date of receipt of the report, unless a subsequent report is received during that time, in which case, information from all reports will be maintained indefinitely.

Maine

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Child & Fam. Pol. Man. § XV. E

A person who officially has been found by the State to have abused or neglected a child has the right to have that finding reviewed. Once the Department of Human Services has made an official finding of abuse or neglect, the responsible caseworker shall send a letter to the affected individual within 10 calendar days, informing him or her of the findings. These findings must be specific in that they identify the type of abuse; the name of the victim; the specific incidents, behaviors, or patterns of behaviors; and the specific harm or threats of harm to the child.

Once a request for a review is received, an agency reviewer will be appointed to review the case record. The reviewer, who must have had no involvement with the case prior to the review process, shall have the authority to overturn the previous official finding of child abuse or neglect. The reviewer shall review the case and make a determination either (a) sustaining the official finding of abuse or neglect or (b) overturning the official finding. This determination shall be made in writing and mailed to the appellant by first class mail, at his or her last known address, within 45 days of the receipt of the request for review.

In making a determination to sustain or overturn an official finding of abuse or neglect, the reviewer will review and consider all information in the case record as well as information provided by the appellant. The reviewer will then determine whether the information in the record, taken as a whole, establishes by preponderance that child abuse or neglect has occurred or is threatened to occur. In making that determination, the reviewer may consider such factors as whether:

- Sufficient information was gathered from relevant collateral sources, including, but not limited to, past department records, medical and mental health records, law enforcement records, school records, and community nursing records to support the findings.
- The process and content of information gathering from the family was accomplished within policy and practice guidelines.
- The record reflects an analysis of all relevant information.
- Critical persons were interviewed during the assessment.
- The request for the review from the appellant is specific to the findings with which there is disagreement and the basis for that disagreement.
- Sufficient documentation exists in the record to support the substantiation decision.

When the reviewer has completed the review of the agency record, he or she will prepare a written statement of findings, including a statement as to whether the reviewer believes that the record contains sufficient information to support the substantiation. In those cases in which an official finding of abuse or neglect is overturned, that finding shall become part of all information systems maintained by the department. In such cases, any allegation that was originally entered as ‘substantiated’ shall be changed to ‘unsubstantiated.’
When Records Must Be Expunged
Citation: Rev. Stat. Tit. 22, § 4008(5)

The Department of Human Services shall retain unsubstantiated child protective services case records for no more than 18 months following a finding of unsubstantiation and then expunge unsubstantiated case records from all departmental files or archives, unless a new referral has been received within the 18-month retention period.

Unsubstantiated child protective services records of persons who were eligible for Medicaid services under the Federal Social Security Act, title XIX, at the time of the investigation may be retained for up to 5 years for the sole purpose of State and Federal audits of the Medicaid program. Unsubstantiated child protective services case records retained for audit purposes must be stored separately from other child protective services records and may not be used for any other purpose.

Maryland
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Family Law § 5-706.1

Within 30 days after the completion of an investigation in which there has been a finding of indicated or unsubstantiated abuse or neglect, the local Department of Social Services shall notify, in writing, the individual alleged to have abused or neglected a child of the following:

- The finding
- The opportunity to appeal the finding
- If the individual has been found responsible for indicated abuse or neglect, that the individual may be identified as responsible for abuse or neglect in the centralized confidential database

In the case of a finding of indicated abuse or neglect, an individual may request a contested case hearing to appeal the finding by responding to the notice of the local department in writing within 60 days. Unless the individual and the department agree on another location, a contested case hearing shall be held in the jurisdiction in which the individual alleged to have abused or neglected a child resides.

If a criminal proceeding is pending on charges arising out of the alleged abuse or neglect, the Office of Administrative Hearings shall stay the hearing until a final disposition is made. If, after final disposition of the criminal charge, the individual requesting the hearing is found guilty of any criminal charge arising out of the alleged abuse or neglect, the Office of Administrative Hearings shall dismiss the administrative appeal.

If a child in need of assistance (CINA) case is pending concerning a child who has been allegedly abused or neglected by the appellant or a child in the care, custody, or household of the appellant, the Office of Administrative Hearings shall stay the hearing until the CINA case is concluded. After the conclusion of the CINA case, the Office of Administrative Hearings shall vacate the stay and schedule further proceedings in accordance with this section.

In the case of a finding of unsubstantiated abuse or neglect, an individual may request a conference with a supervisor in the local department by responding to the notice of the local department in writing within 60 days.

In response to a timely request for a conference, a local department supervisor shall schedule a conference, to occur within 30 days after the supervisor receives the request, to allow the individual an opportunity to review the redacted record and request corrections or to supplement the record. Within 10 days after the conference, the local department shall send the following to the individual:

- A written summary of the conference and of any modifications to be made in the record
- Notice of the individual’s right to request a contested case hearing

The individual may request a contested case hearing to appeal the outcome of the conference by responding to the summary in writing within 60 days. If the individual does not receive the written summary and required notice within 20 days, the individual may request a contested case hearing.

In the case of an unexpunged finding of indicated or unsubstantiated abuse or neglect made prior to June 1, 1999, the local department shall provide the individual with an opportunity to appeal the finding in accordance with this section if the individual:

- Requests such an appeal
- Has not been offered an opportunity to request a contested case hearing
- Has not been found guilty of any criminal charge arising out of the alleged abuse or neglect
When Records Must Be Expunged
Citation: Family Law § 5-707(b)

The local department shall expunge a report of suspected abuse or neglect and all assessments and investigative findings:

- Within 5 years after the date of referral if the investigation concludes that the report is unsubstantiated, and no further reports of abuse or neglect are received during the 5 years
- Within 2 years after the date of referral if the report is ruled out, and no further reports of abuse or neglect are received during the 2 years

If a report is ruled out, the local department may, on good cause shown, immediately expunge the report and all assessments and investigative findings.

Massachusetts
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: DCF Policy #94-001

Alleged perpetrators may request a fair hearing if the Department of Children and Families identifies the individual on the department’s registry of alleged perpetrators.

To reverse a support decision or to remove an individual’s name from the department’s registry of alleged perpetrators, the aggrieved party must demonstrate by evidence presented at the fair hearing at least one of the following:

- That, based on the information available during the investigation and/or new information not available during the investigation, the department’s or provider’s decision was not in conformity with the department regulations:
  - With regard to the request to remove an individual’s name from the registry of alleged perpetrators, the aggrieved party must demonstrate that the department’s action was not in accordance with Regulation 110 CMR 4.33
  - With regard to a support decision, the aggrieved party must demonstrate that the decision was not in conformity with department policies and/or regulations and that the decision resulted in substantial harm to the aggrieved party
- That the department’s or provider’s procedural actions were not in conformity with the department’s policies and/or regulations and resulted in substantial harm to the aggrieved party

Whenever a decision to list an individual on the department’s registry of alleged perpetrators is reviewed, the related support decision is also considered as part of the review. If a support decision is reversed by the director of the area office or provider that made the decision under appeal or by a fair hearing, the name of any individual(s) that was listed on the department’s registry of alleged perpetrators is removed.

The fair-hearing officer will not recommend reversal of the clinical decision made by a trained social worker if there is a reasonable basis for the questioned decision.

When Records Must Be Expunged
Citation: Ann. Laws Ch. 119, § 51E

The name and all other identifying information relating to any child, or to his or her parents or guardian, shall be removed from the reports 1 year after the Department of Children and Families determines that the allegation of serious physical or emotional injury resulting from abuse or neglect cannot be substantiated, or, if the allegations are substantiated, when the child reaches age 18 or 1 year after the date of termination of services to the child or his or her family, whichever date occurs last.

Michigan
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Comp. Laws § 722.627(4)-(6)

If the Department of Human Services classifies a report of suspected child abuse or child neglect as a central registry case, the department shall maintain a record in the central registry and, within 30 days after the classification, shall notify in writing each person who is named in the record as a perpetrator of the child abuse or child neglect. The notice shall set forth the person’s right to request expunction of the record and the right to a hearing if the department refuses the request. The notice shall not identify the person reporting the suspected child abuse or child neglect.
A person who is the subject of a report or record made under this act may request the department to amend an inaccurate report or record from the central registry and local office file. A person who is the subject of a report or record made under this act may request the department to expunge from the central registry a report or record by requesting a hearing. A report or record filed in a local office file is not subject to expunction except as the department authorizes, if considered in the best interests of the child.

A person who is the subject of a report or record made under this act may, within 180 days from the date of service of notice of the right to a hearing, request the department hold a hearing to review the request for amendment or expunction. If the hearing request is made within 180 days of the notice, the department shall hold a hearing to determine by a preponderance of the evidence whether the report or record in whole or in part should be amended or expunged from the central registry. The hearing shall be held before a hearing officer appointed by the department and shall be conducted as prescribed by the Administrative Procedures Act of 1969. The department may, for good cause, hold a hearing under this subsection if the department determines that the person who is the subject of the report or record submitted the request for a hearing within 60 days after the 180-day notice period expired.

**When Records Must Be Expunged**

Citation: Comp. Laws § 722.627(7)

If the investigation of a report does not show child abuse or child neglect by a preponderance of evidence, or if a court dismisses a petition because the petitioner has failed to establish that the child comes within the jurisdiction of the court, the information identifying the subject of the report shall be expunged from the central registry.

If a preponderance of evidence of abuse or neglect exists, or if a court takes jurisdiction of the child, the department shall maintain the information in the central registry as follows:

- For a person listed as a perpetrator in category I or II under § 722.628d, either as a result of an investigation or as a result of the reclassification of a case, the department shall maintain the information in the central registry for 10 years.
- For a person listed as a perpetrator in category I or II that involved any of the circumstances listed in § 622.637(1), including severe physical injury or exposure or contact with methamphetamine manufacture; or § 722.638(1), including abandonment, criminal sexual conduct, torture, life-threatening injury, murder, or attempted murder, the department shall maintain the information in the central registry until the department receives reliable information that the perpetrator of the abuse or neglect is dead.

For a person who is the subject of a report or record made under this act before March 31, 2015, the following applies:

- For a person listed as perpetrator in category I or II, the department may remove the information in the registry after 10 years without a request for amendment or expunction.
- For a person listed as a perpetrator in category I or II that involved any of the circumstances listed in § 722.637(1) or 722.638(1), the department shall maintain the information in the central registry until the department receives reliable information that the perpetrator of the child abuse or child neglect is dead.

**Minnesota**

Current Through May 2018

**Right of the Reported Person to Review and Challenge Records**

Citation: Ann. Stat. § 626.556, Subd. 10f & 10i

The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section or § 256.022. Administrative reconsideration is not applicable in family assessments since no determination concerning maltreatment is made.

For an investigation in which an individual or facility has been determined to have maltreated a child, an interested person acting on behalf of the child who contests the investigating agency’s final determination regarding maltreatment may request the investigating agency to reconsider its final determination regarding maltreatment.

The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the parent or guardian of the child.

Effective January 1, 2002, an individual who was determined to have maltreated a child and who was disqualified for employment or licensure based on serious or recurring maltreatment may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual’s receipt of the notice of disqualification.
If the investigating agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled to a fair hearing may submit to the Commissioner of Human Services or the Commissioner of Education a written request for a hearing. For reports involving maltreatment of a child in a facility, an interested person acting on behalf of the child may request a review by the Child Maltreatment Review Panel under § 256.022 if the investigating agency denies the request or fails to act upon the request or if the interested person contests a reconsidered determination. The investigating agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the investigating agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered determination. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied. If, as a result of a reconsideration or review, the investigating agency changes the final determination of maltreatment, that agency shall notify the parties specified in subdivisions 10b, 10d, and 10f.

If an individual or facility contests the investigating agency’s final determination regarding maltreatment by requesting a fair hearing under § 256.045, the Commissioner of Human Services shall ensure that the hearing is conducted and a decision is reached within 90 days of receipt of the request for a hearing. The time for action on the decision may be extended for as many days as the hearing is postponed or the record is held open for the benefit of either party.

When Records Must Be Expunged
Citation: Ann. Stat. § 626.556, Subd. 11c

Records maintained or records derived from reports of abuse by local welfare agencies, agencies responsible for assessing or investigating the report, or court services agencies shall be destroyed by the responsible authority under the following circumstances:

- For reports alleging child maltreatment that were not accepted for assessment or investigation, family assessment cases, and cases in which an investigation results in no determination of maltreatment or the need for child protective services, the records must be maintained for a period of 5 years after the date the report was not accepted for assessment or investigation or of the final entry in the case record and then destroyed.
- All records relating to reports that, upon investigation, indicate either maltreatment or a need for child protective services shall be maintained for 10 years after the date of the final entry in the case record and then destroyed.
- All records regarding a report of maltreatment, including any notification of intent to interview that was received by a school, shall be destroyed by the school when ordered to do so by the agency conducting the assessment or investigation. The agency shall order the destruction of the notification when other records relating to the report under investigation or assessment are destroyed.
- Private or confidential data released to a court services agency must be destroyed by the court services agency when ordered to do so by the local welfare agency that released the data. The local welfare agency shall order destruction of the data when other records relating to the assessment or investigation are destroyed.

Mississippi

Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Ann. Code § 43-21-257; Admin. Code § 18-006-101

The Department of Human Services shall adopt rules and administrative procedures, especially those procedures to afford due process to individuals who have been named as substantiated perpetrators before the release of their names from the central registry, as may be necessary to carry out this subsection.

In regulation: The department provides individuals who disagree with department findings or decisions covered under this policy a right to appeal the decision. An administrative process has been implemented to offer a fair, impartial, timely, and accessible hearing to any person whose name has been placed into the child abuse central registry as a perpetrator of child abuse or neglect or has a substantiated report of abuse or neglect against him or her.

With the establishment of the central registry, there also is the requirement to establish procedures to afford due process to individuals who have been named as substantiated perpetrators prior to the release of their name from the registry.

When a request for a fair hearing is received by the department, a hearing will be arranged. The administrative fair hearing must be conducted within 60 days after the receipt of the request for a hearing.
The hearing officer will do the following:

- Schedule a date, time, and place for the hearing
- Send a written notice of the scheduled hearing at least 30 days prior to the hearing date
- Notify the Protection Unit of the scheduled hearing

The Protection Unit will then notify the county office responsible for the investigation report of the scheduled hearing and request the social worker or social worker’s supervisor prepare to be present at the hearing and be prepared to present evidence that led to the individual’s name being placed in the registry.

At the administrative fair hearing, either party may be represented by an attorney. The department will be asked to present all the evidence which led to the department’s findings. The appealing party shall follow, presenting evidence that the reasons for the decision made are not true or not sufficient for the action taken.

After all evidence is heard or received and the hearing is completed, the presiding hearing officer shall prepare and file a written finding of facts and a decision on these findings and forward the document to the Protection Unit within 15 days of the hearing date.

If the administrative fair hearing reverses the department’s decision, the Protection Unit will notify the appealing party in writing that his or her name shall be removed from the central registry by administrative procedures.

The decision of the hearing officer is final and binding, unless overturned by a court of competent jurisdiction.

When Records Must Be Expunged

Citation: Ann. Code § 43-21-263

The youth court may order the sealing of records involving children under the following conditions:

- The child who was the subject of the case has reached age 20.
- The youth court has dismissed the case.
- The youth court sets aside an adjudication in the case.

Missouri

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Ann. Stat. § 210.152

The alleged perpetrator named in the report and the parents of the child named in the report, if the alleged perpetrator is not a parent, shall be notified in writing of any determination based on the investigation made by the Division of Family Services within 90 days, 120 days in cases involving sexual abuse, or until the investigation is complete in cases involving a child fatality or near-fatality. The notice shall advise either:

- That the division has determined by a probable-cause finding (prior to August 28, 2004) or by a preponderance of evidence (after August 28, 2004) that abuse or neglect exists and that the division shall retain all identifying information regarding the abuse or neglect; that such information shall remain confidential and will not be released except to law enforcement agencies or prosecuting or circuit attorneys or as provided in § 210.150; and that the alleged perpetrator has 60 days from the date of receipt of the notice to seek reversal of the division’s determination through a review by the child abuse and neglect review board
- That the division has not made a probable cause finding or determined by a preponderance of evidence that abuse or neglect exists

The division may reopen a case for review if new, specific, and credible evidence is obtained.

Any person named in an investigation as a perpetrator who is aggrieved by a determination of abuse or neglect by the division may seek an administrative review by the child abuse and neglect review board. The request for review must be made within 60 days of notification of the division’s decision. In those cases where criminal charges based on the facts of the investigation are pending, the request for review shall be made within 60 days from the court’s final disposition or dismissal of the charges.

In any action for administrative review, the child abuse and neglect review board shall sustain the division’s determination if that determination was supported by evidence of probable cause prior to August 28, 2004, or is supported by a preponderance of evidence after August 28, 2004, and is not against the weight of the evidence. The child abuse and neglect review board hearing shall be closed to all persons except the parties, their attorneys, and those persons providing testimony on behalf of the parties.
If the alleged perpetrator is aggrieved by the decision of the child abuse and neglect review board, the alleged perpetrator may seek de novo judicial review in the circuit court. The request for a judicial review shall be made within 60 days of notification of the decision of the child abuse and neglect review board. In reviewing these decisions, the circuit court shall provide the alleged perpetrator the opportunity to appear and present testimony. The alleged perpetrator may subpoena any witnesses except the alleged victim or the reporter.

In the action for administrative review, the child abuse and neglect review board shall notify the child or the parent, guardian, or legal representative of the child that a review has been requested.

When Records Must Be Expunged

Citation: Ann. Stat. § 210.152

For investigation reports where there is insufficient evidence of abuse or neglect, and the Division of Family Services determines that the allegation was made maliciously, for purposes of harassment, or in retaliation for the filing of a report, identifying information shall be expunged within 45 days from the conclusion of the investigation.

For investigation reports initiated by a mandated reporter where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for 5 years from the conclusion of the investigation.

For all other reports where there is insufficient evidence, identifying information shall be retained for 2 years. At the end of that time, the identifying information shall be removed from the records of the division and destroyed.

For reports in which the division is unable to locate the child alleged to have been abused or neglected, identifying information shall be retained for 10 years from the date of the report and then shall be removed from the records of the division.

Montana

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Child & Family Serv. Pol. Man. § 106-1

Any action taken by a government agency that is against the recognized constitutional rights of a person is considered an ‘adverse action.’ Those actions include the substantiation of child abuse or neglect.

Notice is a fundamental aspect of the general right of due process that a governmental agency must provide. The purpose of a notice is to provide the client with the opportunity to be specifically informed of the Division of Child and Family Services’ adverse action and the opportunity to contest the action in a fair hearing.

The notice of adverse action should contain the following information:

- A statement of the adverse action and the reasons for the adverse action
- The effective date of the adverse action
- The legal basis for the division’s action
- An explanation of the client’s right to request a fair hearing

In the case of a substantiation of child abuse or neglect, the individual against whom child abuse or neglect was substantiated does not have the right to a fair hearing if a district court has made an adjudication in the substantiated case or the perpetrator has been criminally convicted of an offense related to child abuse or neglect that contains the same facts as the substantiated report and involves the same child.

Persons requesting a fair hearing as a result of a substantiation of child abuse or neglect must request a fair hearing within 30 days of the date of the substantiation letter.

In the case of a substantiation of child abuse, the hearings officer need not grant or may dismiss a fair hearing when the internal review of the Substantiation Review Panel has resulted in a reversal of the original substantiation determination.

If the Substantiation Review Panel determines that the documentation does not support the substantiation, a letter shall be sent to the individual requesting the fair hearing about the internal review’s decision to reverse the substantiation. If the Substantiation Review Panel upholds the substantiation determination, the case will be referred to the Hearings Office to schedule a fair hearing.

To prepare for the hearing, all evidence should be reviewed and organized in consultation with department legal staff. It is the responsibility of the specialist in charge of the case to outline the circumstances of the case and the reasons for the decision.
At the hearing, the hearing officer may explain the procedures, such as which party is to present its case first, immediately prior to the opening of the hearing. The party who has the burden of proof should be the party who presents its position first, which is usually the division.

The hearing officer will issue a final written decision within 90 days from the date when all requested documentation is received, including briefs. The hearing officer has final decision-making authority for cases involving substantiated child abuse or neglect. In child abuse or neglect substantiation cases, because the hearing officer has final decision-making authority, any appeal must be submitted directly to district court within 30 days of the hearing officer’s decision.

**When Records Must Be Expunged**

*Citation: Ann. Code § 41-3-202*

A person who is the subject of an unsubstantiated report that was made prior to October 1, 2003, and after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or an order issued based on the circumstances surrounding the initial allegations may request that the department destroy all of the records concerning the unsubstantiated report. If it is determined from the investigation that the child has not suffered abuse or neglect, and the initial report is determined to be unfounded, the Department of Public Health and Human Services and the social worker, county attorney, or peace officer who conducted the investigation shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

If the report is unsubstantiated, the department and the social worker who conducted the investigation shall destroy all of the records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

- There had been a previous report or there is a subsequent substantiated report concerning the same person.
- An order has been issued based on the circumstances surrounding the initial allegations.

**Nebraska**

*Current Through May 2018*

**Right of the Reported Person to Review and Challenge Records**

*Citation: Rev. Stat. § 28-723*

At any time subsequent to the completion of the investigation by the Department of Social Services, the subject of the report of child abuse or neglect may request the department to amend, expunge identifying information from, or remove the record of the report from the central registry of child protection cases maintained pursuant to § 28-718. If the department refuses to do so or does not act within 30 days, the subject of the report shall have the right to a fair hearing within the department to determine whether the record of the report of child abuse or neglect should be amended, expunged, or removed on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with the Child Protection and Family Safety Act.

Such fair hearing shall be held within a reasonable time after the subject’s request and at a reasonable place and hour. In such hearings, the burden of proving the accuracy and consistency of the record shall be on the department. A juvenile court finding of child abuse or child neglect shall be presumptive evidence that the report was not unfounded.

The hearing shall be conducted by the chief executive officer of the department or his or her designated agent, who is hereby authorized and empowered to order the amendment, expunction, or removal of the record to make it accurate or consistent with the requirements of the act. The decision shall be made in writing, at the close of the hearing or within 30 days thereof, and shall state the reasons upon which it is based. Decisions of the department may be appealed under the provisions of the Administrative Procedure Act.

**When Records Must Be Expunged**

*Citation: Rev. Stat. §§ 28-720; 28-721*

If a case that has been classified as court pending is dismissed by the court or a juvenile petition under § 43-247(3)(a) is redesignated to indicate there is no fault on the part of the parent, guardian, or custodian, the case shall be immediately expunged from the central registry of child protection cases.

At any time, the department may amend, expunge, or remove from the central register of child protection cases any record upon good cause shown and upon notice to the subject of the report of child abuse or neglect and to the division.
If the subject of the report of child abuse or neglect is a minor child who is age 12 or older but younger than age 19, the subject is entered into the central registry, and the case involving that minor child is classified as court substantiated or agency substantiated, the department shall conduct a mandatory expunction hearing within 60 days after the subject receives the notification required under § 28-713.01, unless the subject and the subject’s attorney of record, parent, guardian, or guardian ad litem sign and return a waiver form within 30 days after receipt. The department shall not, as guardian, sign a waiver form for any subject in its custody. If such subject remains on the central registry of child protection cases, the department shall conduct a second mandatory expunction hearing within 60 days after the subject’s 19th birthday, unless the subject signs and returns a waiver form within 30 days after receipt.

If a mandatory expunction hearing is held regarding the subject of a report of child abuse or neglect who is a minor child and the subject is entered into the central registry, the subject may make a subsequent request under this section or § 28-723.

**Nevada**

*Current Through July 2014*

**Right of the Reported Person to Review and Challenge Records**

*Citation: Admin. Code § 432B.170; Child Welfare Pol. Man. § 0516.5.1*

When a finding of confirmed abuse or neglect of a child by the person responsible for the welfare of the child has been made, the agency that provides child welfare services shall:

- Provide written notification to the person concerning his or her right to appeal the finding
- Provide information on the appeals process

A request for an appeal must be made in writing to the agency within 15 days after the date on which the written notification is sent. A hearing that is held pursuant to this section must be conducted in accordance with chapter 233B.

*In policy:* There are three main reasons to overturn a finding from substantiated to unsubstantiated in the central registry system:

- Overturn a substantiated finding due to an agency appeal decision
- Overturn a substantiated finding based on a judicial decision
- Overturn a substantiated finding in due to a data entry error

To overturn a finding due to an agency appeal, the child welfare designee assigned to hear the appeal must have the authority to overturn the finding. Upon completion of the appeal process, the following actions will be taken by the agency that provides child welfare services:

- Within 5 days of rendering an appeal decision, the designee who heard the appeal will ensure that the case file documentation is completed to justify overturning the finding.
- A staff member designated by the child welfare agency or upper level manager will overturn the finding in the central registry and enter a case note that the approved change has occurred, noting where to find the documentation for the rationale for the decision.
- The designee who rendered the decision will send a letter to the individual whose finding has been overturned, notifying them of the change in the central registry.
- The same notification will be sent via email to the investigating caseworker and their supervisor.
- If a central registry check occurred prior to the appeal decision being rendered, another central registry check can be requested to reflect the current finding.

When a child welfare agency is notified that a finding has been overturned by a judicial review or a fair hearing, documentation of that decision and the rationale for the decision should be submitted to the designee responsible for overturning the finding in the central registry.

**When Records Must Be Expunged**

*Citation: Rev. Stat. § 432.120*

The information contained in the central registry concerning cases in which a report of abuse or neglect of a child has been substantiated by an agency that provides child welfare services must be deleted from the central registry no later than 10 years after the child who is the subject of the report reaches age 18.
New Hampshire
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Rev. Stat. § 169-C:35

Upon receipt by the Department of Health and Human Services of a written request and verified proof of identity, an individual shall be informed by the department if that individual’s name is listed in the founded reports maintained in the central registry.

Any individual whose name is listed in the founded reports maintained on the central registry may petition the district court to have his or her name expunged from the registry. A petition to expunge shall be filed in the district court where the abuse and neglect petition was heard. In cases where the department makes a finding but no petition is filed with the court, a petition to expunge shall be filed in the district court where the petition for the abuse and neglect could have been brought.

When a petition to expunge is filed, the district court shall require the department to report to the court concerning any additional founded abuse and neglect reports on the petitioner and shall require that the department submit the petitioner’s name, birth date, and address to the State police to obtain information about criminal convictions. The court may require the department to provide any additional information that the court believes may aid it in making a determination on the petition.

Upon the receipt of the department’s report, the court may act on the petition without further hearing or may schedule the matter for hearing at the request of either party. If the court determines that the petitioner does not pose a present threat to the safety of children, the court shall grant the petition and order the department to remove the individual’s name from the central registry. Otherwise, the petition shall be dismissed.

When an individual’s name is added to the central registry, the department shall notify individuals of their right to petition to have their name expunged from the central registry. No petition to expunge shall be brought within 1 year from the date that the petitioner’s name was initially entered on the central registry. If the petition to expunge is denied, no further petition shall be brought more frequently than every 3 years thereafter.

When Records Must Be Expunged
Citation: Rev. Stat. § 169-C:35-a

The department shall retain a screened-out report for 1 year from the date that the report was screened out, after which time the department shall delete or destroy all electronic and paper records of the report. A report is ‘screened out’ when the department has determined it does not rise to the level of a credible report of abuse or neglect and is not referred for assessment.

The department shall retain an unfounded report for 3 years from the date that the department determined the case to be unfounded, after which time the department shall delete or destroy all electronic and paper records of the report.

The department shall retain a founded report or a report that was unfounded but with reasonable concern for 7 years from the date that the department closes the case, after which time the department shall delete or destroy all electronic and paper records of the report. This paragraph shall not apply to foster placement records or to adoption records.

New Jersey
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Ann. Stat. § 9:6-8.10a(b)(12)

The Division of Child Protection and Permanency in the Department of Children and Families may, upon written request, release the records and reports of child abuse and neglect, or parts thereof, consistent with the provisions of § 9:6-8.83, et al., to any person appealing a department service or status action or a substantiated finding of child abuse or neglect and his or her attorney or authorized lay representative upon a determination by the department or the presiding administrative law judge that such disclosure is necessary for a determination of the issue on appeal.

When Records Must Be Expunged
Citation: Ann. Stat. § 9:6-8.40a

The division shall expunge from its records all information relating to a report, complaint, or allegation of an incident of child abuse or neglect when an investigation has determined that the allegation was unfounded.
New Mexico

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Admin. Code § 8.10.3.22

The Protective Services Division (PSD) worker shall provide parents, guardians, foster parents, preadoptive parents, and treatment foster parents who were the subject of the protective services investigation the notice of results of the investigation letter. The PSD worker shall send the notice of the results of the investigation letter within the 45-day timeframe for completion of an investigation, with a possible 30-day extension.

The PSD worker shall notify parents, guardians, foster parents, preadoptive parents, and treatment foster parents who were the subject of a substantiated investigation, which is not the subject of a pending children's court case, in writing that the decision to substantiate the investigation may be reviewed through PSD’s administrative review process. A client seeking an administrative review shall request the review in writing to PSD within 10 days of the action or notice of the proposed action.

If the investigation decision is upheld after being reviewed through PSD’s administrative review process, then PSD shall send a formal letter to the parent, guardian, foster parent, preadoptive parent, or treatment foster parent who was the subject of the investigation notifying them of the decision to uphold the substantiation and that the upheld decision may be reviewed through the Children, Youth and Families Department’s administrative hearing process. The parent, guardian, foster parent, preadoptive parent, or treatment foster parent shall request an administrative hearing in writing to the PSD director’s office within 10 days of receipt of the letter.

When Records Must Be Expunged

This issue is not addressed in the statutes and regulations reviewed.

New York

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Soc. Serv. Law § 422(5), (7)-(8)

Notwithstanding any other provision of law, the Office of Children and Family Services may, at its discretion, grant a request to expunge an unfounded report when:

- The source of the report was convicted of knowingly making a false allegation about that report.
- The subject of the report presents clear and convincing evidence that affirmatively refutes the allegation of abuse or maltreatment.

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 to decide whether to expunge a report. That 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 that investigated the allegations of abuse or maltreatment.

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.

At any time subsequent to the completion of the investigation, but in no event later than 90 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 within 90 days, the subject shall have the right to a fair hearing to determine whether the record of the report in the central register should be amended on the grounds that it is inaccurate or is being maintained in a manner inconsistent with the law.

When Records Must Be Expunged

Citation: Soc. Serv. Law § 422(5-a), (6)

Upon notification from a local social services district that a report is part of the family assessment and services track, the central register shall forthwith identify the report as an assessment track case and legally seal such report.
In all other cases, the record of the report to the central register shall be expunged 10 years after the 18th birthday of the youngest child named in the report. In the case of a child in residential care, the record of the report to the central register shall be expunged 10 years after the reported child’s 18th birthday.

North Carolina
Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Gen. Stat. § 7B-311(d)

The Social Services Commission shall adopt rules regarding the operation of the central registry and responsible-individuals list (RIL), including procedures for notifying a responsible individual of a determination of abuse or serious neglect. The name of an individual who has been identified as a responsible individual shall be placed on the RIL only after one of the following:

• The individual is properly notified pursuant to § 7B-320 and fails to file a petition for judicial review in a timely manner.
• The court determines that the individual is a responsible individual as a result of a hearing on the individual’s petition for judicial review.
• The individual is criminally convicted as a result of the same incident involved in an investigative assessment response.

Within 5 working days after the completion of an investigation that results in a determination of abuse or serious neglect and the identification of a responsible individual, the director of the Department of Social Services shall deliver written notice of the determination to the identified individual. The notice shall include all of the following:

• The nature of the investigation
• That the individual has been identified as a responsible individual
• A summary of the evidence supporting determination
• A statement that unless the individual petitions for judicial review, his or her name will be placed on the RIL
• A description of the actions the individual must take to seek judicial review of the determination
• A copy of a petition for judicial review form

The person must file a petition for judicial review within 15 days of the receipt of the notice. Failure to timely file the petition constitutes a waiver of the person’s right to a district court hearing and to contest the placement of the individual’s name on the RIL.

Upon the filing of a petition, the court clerk shall calendar the matter for hearing within 45 days. At the hearing, the director shall have the burden of proving by a preponderance of evidence the abuse or serious neglect and the identification of the person seeking judicial review as a responsible individual.

Upon receipt of a notice of a hearing, the director shall review all records, reports, and other information gathered during the investigation. If after a review, the director determines that there is not sufficient evidence to support a determination that the person abused or seriously neglected the child and is a responsible individual, the director shall prepare a written statement of the determination and deliver the statement to the individual seeking judicial review. The director also shall give written notice of the director’s determination to the court clerk, and the judicial review hearing shall be cancelled.

Within 30 days after completion of the hearing, the court shall enter an order containing findings of fact and conclusions of law. If the court concludes that the director has not established by a preponderance of evidence abuse or serious neglect or the identification of the responsible individual, the court shall reverse the director’s determination and order the director not to place the individual’s name on the RIL. If the court concludes that the director has established by a preponderance of the evidence abuse or serious neglect and the identification of the individual seeking judicial review as a responsible individual, the court shall order the director to place the individual’s name on the RIL.

A person who has been identified as a responsible individual may not petition for judicial review if either of the following apply:

• The person is criminally convicted as a result of the same incident.
• After proper notice, the person fails to file a petition for judicial review with the district court in a timely manner.

When Records Must Be Expunged

Citation: Gen. Stat. § 7B-311(d)

The Social Services Commission shall adopt rules regarding the operation of the central registry and RIL, including procedures for correcting and expunging information.
North Dakota

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Cent. Code § 50-25.1-05.4; Admin. Code §§ 75-03-18-02; 03; 04; 05; 07; 12; 13

The Department of Human Services shall adopt rules to resolve complaints and conduct appeal hearings requested by the subject of a report of suspected child abuse, neglect, or death resulting from abuse or neglect who is aggrieved by the conduct or result of an assessment.

In regulation: The subject of a report of suspected child abuse or neglect who is aggrieved by the result of the assessment may file an appeal.

A staff member of child protection services will notify the subject in writing of the decision resulting from an assessment. The staff member who notifies the subject of the decision resulting from the assessment shall complete an affidavit of mailing that becomes a part of the assessment record in the form and manner prescribed by the department.

A request for an appeal must be in writing on forms developed and provided by the department. The written request must include the following:

- A succinct statement by the subject as to why the subject disagrees with the decision that includes all reasons or grounds with which the subject disagrees
- A statement of the relief sought by the subject

An appeal may not be filed before the date of an assessment decision and must be filed within 30 days after the documented date of the subject notification of the decision. Notification is considered to have occurred 3 days after the date on the affidavit of mailing.

This chapter shall be construed to encourage informal, mutually consensual meetings or discussions between the subject and the assessing agency or regional human service center. Such informal review will not suspend or extend the time for filing an appeal.

The formal hearing must be conducted in substantial conformity with applicable provisions of chapter 75-01-03.

Neither a request for appeal under this chapter nor an appeal from that decision under North Dakota Century Code chapter 28-32 shall be construed to suspend the legal effect of an assessment decision during the time of the appeal, until such time as a final decision overturning the case decision has been made and not appealed.

If an assessment decision is reversed on appeal under this chapter or under North Dakota Century Code chapter 28-32, a notation of the fact that the finding was overturned must be added to the record.

When Records Must Be Expunged

Citation: Child Prot. Serv. Man. § 640-20-15

For those cases where a decision is made that services are required, the assessment information should be destroyed after 10 years from the date the decision is made. The identifying information will be expunged from the child abuse information index after 10 years from the date of the decision.

For those cases where a decision is made that no services are required/services recommended, the assessment information should be destroyed after 3 years from the date of the decision. The identifying information will not be kept on the index after the decision is made.

For those cases where a decision is made that no services are required and no services are recommended, the file should be destroyed after 1 year from the date of the decision. The identifying information will not be kept on the index.

If a subsequent decision is made, the assessment information from the prior decision will follow the date of the subsequent decision for destruction if the time line is longer. For example:

- If an initial decision is made that ‘services are required’ and 3 years later a subsequent decision is made that ‘services are required,’ the information in the prior report will follow the date of the newer decision and both sets of information may be retained for 10 years from the new decision date.
- If an initial decision is made that ‘no services are required’ and 1 year later a subsequent decision is made that ‘no services are required,’ the assessment information from the prior report will follow the date of the subsequent decision for destruction. Both sets of information may be retained for 3 years from the new date.
- If an initial decision is made that ‘services are required’ and 2 years later a decision is made that ‘no services are required,’ the timeframe for retention for the initial ‘services required’ decision is not shortened to the ‘no services required’ timeframe.
Northern Mariana Islands
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
This issue is not addressed in the statutes reviewed.

When Records Must Be Expunged
This issue is not addressed in the statutes reviewed.

Ohio
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
This issue is not addressed in the statutes and regulations reviewed.

When Records Must Be Expunged
This issue is not addressed in the statutes and regulations reviewed.

Oklahoma
Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Admin. Code Tit. 340, § 75-3-530
An individual may be eligible to request an appeal when the individual is a person responsible for the child's health, safety, or welfare (PRFC) in an investigation involving abuse or neglect allegations and the investigation results in a substantiated finding regarding the PRFC.

An eligible individual may request a review through the appeal process when no deprived petition is filed, no existing deprived petition is amended, or a deprived petition is filed and the court case is dismissed prior to adjudication.

Upon substantiation of abuse, neglect, or both, the child welfare specialist notifies the PRFC of the finding by mail within 10 calendar days to the PRFC's last known address. The notice informs the PRFC of any substantiated child abuse or neglect finding in the investigation; the date of the abuse or neglect referral, allegation, and finding without identifying the reporting party; and demographic information.

The notice specifies that the PRFC may file an appeal by mailing a request to the Appeals Program Unit within 15 calendar days from the postmark on the envelope containing the notice and that failure to submit the appeal request within 15 calendar days results in the finding becoming final and the PRFC waives any right to appeal this finding in the future, unless good cause is established. Conditions of good cause include, but are not limited to, severe illness or other disabling condition.

Within 120 calendar days following acceptance of the PRFC's timely request for a review, the appeals committee determines whether the substantiated finding of abuse or neglect meets substantiation protocol per regulation. When the appeals committee determines the finding failed to meet the criteria for substantiation, the Appeals Program Unit determines whether the preliminary decision was based upon lack of credible evidence to support the allegations of child abuse, neglect, or both or determines whether the preliminary decision is based upon a lack of documentation by the child welfare specialist.

The Appeals Program Unit modifies the finding, when appropriate, in the Child Abuse and Neglect Information System (KIDS). When the substantiation finding is appropriate, but the allegation in KIDS is incorrect, the chair on the appeals committee ensures the inappropriate allegation is marked as an improper entry and the correct allegation is added along with the substantiated finding.

When Records Must Be Expunged

Citation: Ann. Stat. Tit. 10A, § 1-2-108
Records obtained by the Department of Human Services shall be maintained by the department until otherwise provided by law.
Oregon

Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Admin. Rules §§ 413-010-0715; 413-010-0720; 413-010-0721; 413-010-0735

The local child welfare office must deliver a notice to the person identified as the perpetrator in the child protective services (CPS)-founded disposition. The notice must include the following:

- A statement that the CPS disposition was recorded as ‘founded,’ including a description of the type of child abuse or neglect identified
- A description of the CPS assessment that briefly explains how the CPS-founded disposition was determined
- A statement about the right of the individual to submit a request for review of the CPS-founded disposition
- Instructions for making a request for review, including the requirement that the requestor provide a full explanation why the requestor believes the CPS-founded disposition is in error

A person requesting a review must prepare a written request for review within 30 calendar days of the receipt of the notice of the founded disposition that includes the following items:

- The date the request for review is written
- The full name of the person identified as responsible for abuse or neglect in the CPS-founded disposition
- A full explanation of why the person believes the founded disposition is in error and any additional information and documents the person wants considered during the review
- The person’s current name (if it has changed), street address, and telephone number

The local office must conduct a review and issue a review decision to the requestor within 30 days from the date the local office receives a request for review. The review must be based on current child welfare practice and definitions of child abuse and consider the following:

- Relevant documentary information contained in the department’s child welfare case file, including the CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information provided by the person requesting review
- Whether there is reasonable cause to believe that child abuse occurred
- Whether there is reasonable cause to believe that the person requesting review is responsible for the child abuse
- Whether there is reasonable cause to believe that the type of abuse for which the CPS assessment was founded is correctly identified in the assessment

At the conclusion of the review, each committee member must make his or her respective recommendations known to the child welfare program manager.

The child welfare program manager must:

- Observe the review committee
- Ask questions of the committee members as needed for clarification
- Consider the committee’s recommendations and the basis for the recommendations
- Make one of the following decisions:
  - Retain the founded disposition
  - Change the disposition to ‘unfounded disposition’ or ‘unable to determine’
  - Change the type of abuse for which the CPS disposition was founded

The decision and the basis for the decision must be documented.

When Records Must Be Expunged

This issue is not addressed in the statutes and regulations reviewed.
Pennsylvania
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Cons. Stat. Tit. 23, § 6341

Any person named as a perpetrator and any school employee named in an indicated report of child abuse may, within 90 days of being notified of the status of the report, request the secretary of the Department of Public Welfare to amend or expunge an indicated report on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with law. If the secretary grants the request, the statewide central register, appropriate county agency, appropriate law enforcement officials, and all subjects shall be so advised of the decision.

If the secretary refuses a request for administrative review or does not act within the prescribed time, the perpetrator or school employee shall have the right to appeal and request a hearing before the secretary to amend or expunge an indicated report on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with the law. The request for hearing must be made within 90 days of notice of the decision. The appropriate county agency and appropriate law enforcement officials shall be given notice of the hearing. The burden of proof in the hearing shall be on the appropriate county agency. The department shall assist the county agency as necessary.

A person named as a perpetrator in a founded report of child abuse must provide to the department a court order indicating that the underlying adjudication that formed the basis of the founded report has been reversed or vacated. The department or county agency shall provide a person making an appeal with evidence gathered during the child abuse investigation within its possession that is relevant to the child abuse determination. The department or county agency shall bear the burden of proving by substantial evidence that the report should remain categorized as an indicated report.

The administrative law judge’s or hearing officer’s decision in a hearing shall be entered, filed, and served upon the parties within 45 days of the date upon which the proceeding or hearing is concluded. Notice of the decision shall be made to the statewide database, the appropriate county agency, any appropriate law enforcement officials, and all subjects of the report, except for the abused child. The secretary or designated agent may make any appropriate order respecting the amendment or expunction of such records to make them accurate or consistent with the requirements of this chapter.

When Records Must Be Expunged
Citation: Cons. Stat. Tit. 23, §§ 6337; 6338(b); 6338.1

A report shall be maintained for 1 year then expunged under the following circumstances:

- It is determined to be unfounded.
- An investigation is unable to determine whether it is founded, indicated, or unfounded.
- It is an unfounded report for which the county agency has accepted the family for services.
- It is determined to be invalid.

Reports that are determined to be valid but are not accepted for services shall be maintained for 5 years then expunged. Valid reports that are accepted for services shall be maintained for 5 years after the closure of services then expunged.

All information that identifies the subjects of founded and indicated child abuse reports shall be expunged when the subject child reaches age 23.

The name of a person who is the subject of an indicated report who was under age 18 when he or she committed the abuse shall be expunged from the statewide database when he or she reaches age 21 or 5 years have elapsed, whichever is later, as follows:

- The person has not been named as a perpetrator in any subsequent indicated report.
- The person has never been convicted or adjudicated as delinquent for an offense he or she committed under § 6344(c).
- The child abuse did not involve the use of a deadly weapon.

The provisions of this section shall not apply to any of the following:

- A perpetrator who is the subject of a founded report of child abuse
- A sexually violent delinquent child who is required to register as a sexual offender or was found delinquent as a result of the same acts that resulted in child being named a perpetrator of child abuse
- A juvenile offender who is required to register as a sex offender for the same acts that resulted in being named a perpetrator of child abuse and who has not been removed from the statewide registry of sexual offenders
Puerto Rico
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Ann. Laws Tit. 8, § 446d

The subject of the report shall be entitled to request in writing from the secretary of the Department of the Family a copy of the information found in the central registry referring to his or her case. The secretary or his or her designee shall furnish the information, provided this does not go against the best interests of the minor and if the necessary steps are taken to protect the confidentiality of the person who in good faith reported the case or cooperated during its investigation. If the request for information is denied, the person affected by the secretary’s decision may resort to the court of appeals within 30 days of the date of notice of the final decision.

In those referrals lacking grounds, the subject of the report may request in writing that his or her name be amended or deleted from the registry within 30 days following the date of the notification that there are no grounds. The Commonwealth Center for the Protection of Minors shall have 30 days from the date of receipt of the request to act thereon. If the request is denied or the center fails to act thereon, the subject of the report shall have 30 days to file his or her petition for review with the court of appeals.

When Records Must Be Expunged
This issue is not addressed in the statutes reviewed.

Rhode Island
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Code of Rules § 03 001 001, Policy 100.0055

The Department of Children, Youth and Families has a responsibility to inform any person ‘indicated’ as a result of a child abuse and/or neglect investigation of the right to an agency appeal to the department hearing officer. The department hearing officer provides an opportunity for any person to be heard through a formal procedure for review of any agency decision when efforts at resolution within the respective divisions have not been successful.

In the case of a complaint related to an indicated finding of child abuse or neglect, the complainant’s initial statement of dissatisfaction with the decision and request for hearing shall be filed directly with the department hearing officer. The hearing officer shall send a copy of the complaint and request for hearing to the child protective services (CPS) chief executive who may at his or her discretion consider the complaint and act thereon, if he or she deems appropriate.

At a hearing on a complaint, the hearing officer must determine whether a preponderance of the evidence gathered during the investigation indicated that abuse or neglect occurred and whether or not the CPS investigator complied with all policy and procedures relating to the conduct of such investigations.

No investigative findings made by the department shall be deemed final and no final entry shall be made into the central registry with reference to any investigation when the right to appeal has been claimed, unless and until such time as the appeal hearing has been conducted and a written decision is rendered.

The results of all appeals hearings shall be promptly reflected in the central registry.

When Records Must Be Expunged
Citation: Gen. Laws §§ 40-11-3; 40-11-13.1

Any person who has been reported for child abuse and/or neglect and who has been determined not to have neglected and/or abused a child shall have his or her record expunged as to that incident 3 years after that determination.

All records concerning reports of child abuse and neglect made pursuant to this chapter, including reports made to the department, shall be destroyed 3 years after the date of a final determination by either the family court or the department that the reported child abuse or neglect did not in fact occur.
South Carolina
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Ann. Code §§ 63-7-1410 through 63-7-1440

This article provides for a child protective services appeals process for reports that have been indicated and are not being brought before the family court for disposition and for reports indicated and entered in the central registry and not being brought before the family court for disposition. This process is available only to the person determined to have abused or neglected the child.

If a person requests an appeal and the family court has determined that the person is responsible for abuse or neglect of the child, an appeal is not available. If the family court reaches such a determination after the initiation of the appeal, the Department of Social Services shall terminate the appeal. If a proceeding is pending in the family court, the department shall stay the appeal pending the court’s decision.

If the department determines that a report of suspected child abuse or neglect is indicated, or if the case was entered in the central registry and the department is not taking the case to the family court for disposition, the department shall provide notice of the case decision by certified mail to the person determined to have abused or neglected the child. The notice must inform the person of the right to appeal the case decision and that if he or she intends to appeal the decision, he or she must notify the department of this intent in writing within 30 days of receipt of the notice. If the person does not provide notice within 30 days, the right to appeal is waived by the person and the case decision becomes final. Within 14 days after receipt of a notice of intent to appeal, an appropriate official of the department must conduct an interim review of the case.

If the official conducting the interim review decides that the determination against the appellant is not supported by a preponderance of evidence, this decision must be reflected in the department’s case record and database. If the person’s name was in the central registry and the interim review results in a reversal of the decision that supports that entry, the person’s name must be removed from the central registry.

The State director shall appoint a hearing officer to conduct a contested case hearing for each case decision appealed. The purpose of the hearing is to determine whether there is a preponderance of evidence that the appellant was responsible for abuse or neglect of the child.

After a contested case hearing, if the State director decides that the determination against the appellant is not supported by a preponderance of evidence, this decision must be reflected in the department’s case record and database. If the person’s name was in the central registry as a result of a determination and the State director reverses the decision that supports that entry, the person’s name must be removed from the central registry. If the State director affirms the determination against the appellant, the appellant has the right to seek judicial review in the family court of the jurisdiction in which the case originated.

An appellant seeking judicial review shall file a petition in the family court within 30 days after the final decision of the department. The family court shall conduct a judicial review of the pleadings and a certified transcript of the record that must include the evidence upon which the findings and decisions appealed are based. The judgment must include a determination of whether the decision of the department that a preponderance of evidence shows that the appellant abused or neglected the child should be affirmed or reversed.

When Records Must Be Expunged
Citation: Ann. Code §§ 63-7-1950; 63-7-1960

If it is determined that a report is unfounded, the Department of Social Services must immediately purge information identifying that person as a perpetrator from the registry and from department records.

The names, addresses, birth dates, identifying characteristics, and other information unnecessary for auditing and statistical purposes of persons named in department records of indicated cases other than the central registry must be destroyed 7 years from the date services are terminated.
South Dakota

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Ann. Laws § 26-8A-11

Within 30 days after the Department of Social Services notifies any person that he or she will be placed on the central registry for child abuse and neglect based upon a substantiated investigation, the person may request an administrative hearing. The administrative hearing is limited to determining whether the record should be amended or removed on the grounds that it is inaccurate. The request shall be made in writing and directed to the person designated by the department in the notice.

If there has been a court finding of child abuse or neglect, the record’s accuracy is conclusively presumed and the person has no right to an administrative hearing.

In the hearing, the burden of proving the accuracy of the record is on the department. The hearing examiner may order the amendment or removal of the record. The decision of the hearing examiner shall be made in writing within 90 days after the date of receipt of the request for a hearing and shall state the reasons upon which it is based. Decisions of the department under this section are administrative decisions subject to judicial review under chapter 1-26.

When Records Must Be Expunged

Citation: Ann. Laws §§ 26-8A-11; 26-8A-12

In any case where there has been no substantiated report of child abuse and neglect, the Department of Social Services may not maintain a record or other information of unsubstantiated child abuse and neglect for longer than 3 years if there has been no further report within that 3-year period.

The secretary may not adopt any rule that would permit the removal from the central registry of any person who has been convicted of any violation of chapter 22-22 (sex offenses), chapter 22-24A (obscenity and indecency), § 22-22A-3 (aggravated incest), or § 26-10-1 (felony abuse of or cruelty to a minor), if the victim of the crime was a child.

Tennessee

Current Through May 2018

Right of the Reported Person to Review and Challenge Records

Citation: Admin. Regs. §§ 0250-07-09-.07; 0250-07-09-.11

Within 10 business days after the Department of Children’s Services has closed the case and classified a person in a substantiated report as a perpetrator of abuse or neglect, the department shall notify the person of the classification. The notice shall contain, at a minimum, the following:

- That the person has been classified as the perpetrator of abuse or neglect in a substantiated report
- That the person may request a formal file review by the department within 20 business days of the date of the notice
- That failure to submit a request for a formal file review within 20 business days, absent a showing of good cause, shall result in the classified report becoming final and the person shall waive any right to a formal file review

The department shall respond to a request for a formal file review within 10 business days by sending written notice of the person’s obligations pursuant to a formal file review process. This additional notice shall include, at a minimum, the following:

- That the person may submit additional written information on his or her behalf that must be received within 30 business days of the date of the notice
- That if the information is not timely submitted, the formal file review shall proceed with the information in the file and the person’s right to submit additional information shall be waived
- That the formal file review shall be completed within 90 business days of the date of the notice

In conducting the formal file review, the commissioner’s designee shall determine whether a preponderance of the evidence available to the reviewer, including any submission by the alleged perpetrator, supports substantiation.

If the commissioner’s designee determines that a preponderance of evidence does not support substantiation, the report shall be reversed and it shall be classified as unsubstantiated. If the commissioner’s designee determines that the proof in the report supports a different conclusion than that reached by the department, the report shall be modified and it shall be classified accordingly. The commissioner’s designee shall notify the person of the outcome.
If the commissioner’s designee determines that a preponderance of the evidence supports substantiation, the report shall be upheld and it shall be classified as substantiated. Within 10 business days of the date of completion of the formal file review, the department shall send to the person who was classified in a report of any form of abuse or neglect written notice containing at a minimum, the following:

- That the person has been identified as the perpetrator of abuse or neglect in a substantiated report investigated by the department and, after conducting a formal file review, the ‘substantiated’ report was upheld
- That the person may request a hearing within 20 business days of the date of the notice before an administrative law judge
- That if the person fails to timely request a hearing absent good cause, he or she shall waive the right to an administrative hearing
- That if the person fails to timely request a hearing absent good cause, the department will release its finding of abuse or neglect to any person or organization consistent with these rules

The sole issue for the administrative judge to determine is whether the preponderance of the evidence, in light of the entire record, proves that the individual committed any form of abuse or neglect. If the administrative judge concludes that a preponderance of the evidence does not support a conclusion that the individual committed the act of abuse or neglect, the report shall be classified as unsubstantiated.

**When Records Must Be Expunged**

*Citation: Admin. Regs. § 0250-07-09-.11*

If the administrative judge concludes that a preponderance of the evidence does not support a conclusion that the individual committed the act of abuse or neglect, or if a reviewing court reverses a departmental determination of abuse or neglect, the report shall be classified as unsubstantiated. The department shall not release information from its records identifying the individual as a perpetrator of any form of abuse or neglect.

Nothing in this rule shall be construed to require expunction of any information from internal case records maintained by the department.

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**Texas**

*Current Through May 2018*

**Right of the Reported Person to Review and Challenge Records**

*Citation: Family Code § 261.309*

The executive commissioner shall by rule establish policies and procedures to resolve complaints relating to and conduct reviews of child abuse or neglect investigations conducted by the Department of Family and Protective Services.

If a person under investigation for allegedly abusing or neglecting a child requests clarification of the status of the person’s case or files a complaint relating to the conduct of the department’s staff or to department policy, the department shall conduct an informal review to clarify the person’s status or resolve the complaint. The division of the department responsible for investigating complaints shall conduct the informal review as soon as possible but no later than the 14th day after the date the request or complaint is received.

If, after the department’s investigation, the person who is alleged to have abused or neglected a child disputes the department’s determination of whether child abuse or neglect occurred, the person may request an administrative review of the findings. A department employee in administration who was not involved in or did not directly supervise the investigation shall conduct the review. The review must sustain, alter, or reverse the department’s original findings in the investigation.

The department employee shall conduct the review as soon as possible but no later than the 45th day after the date the department receives the request, unless the department has good cause for extending the deadline. If a civil or criminal court proceeding or an ongoing criminal investigation relating to the alleged abuse or neglect investigated by the department is pending, the department may postpone the review until the court proceeding is completed.

A person is not required to exhaust the remedies provided by this section before pursuing a judicial remedy provided by law. This section does not provide for a review of an order rendered by a court.
**When Records Must Be Expunged**  
**Citation:** Family Code §§ 261.002; 261.315

The executive commissioner shall adopt rules necessary to carry out this section. The rules shall require the department to remove a person's name from the central registry maintained no later than the 10th business day after the date the department receives notice that a finding of abuse and neglect against the person is overturned in any of the following:

- An administrative review or an appeal of the review conducted under § 261.309(c)
- A review or an appeal of the review conducted by the Office of Consumer Affairs of the department
- A hearing or an appeal conducted by the State Office of Administrative Hearings

At the conclusion of an investigation in which the department determines that the person alleged to have abused or neglected a child did not commit abuse or neglect, the department shall notify the person of the person's right to request the department to remove information about the person's alleged role in the abuse or neglect report from the department's records.

On request by a person whom the department has determined did not commit abuse or neglect, the department shall remove information from the department’s records concerning the person’s alleged role in the abuse or neglect report.

The executive commissioner shall adopt rules necessary to administer this section.

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**Utah**  
**Current Through May 2018**

**Right of the Reported Person to Review and Challenge Records**  
**Citation:** Ann. Code § 62A-4a-1009

The Division of Child and Family Services shall send a notice of agency action to a person about whom the division has made a supported finding. The notice shall state that:

- The division has conducted an investigation regarding alleged child abuse, neglect, or dependency.
- The division has made a supported finding of abuse, neglect, or dependency.
- Facts gathered by the division support the supported finding.
- The person has the right to request a copy of the report and an opportunity to challenge the supported finding.
- Failure to request an opportunity to challenge the supported finding within 30 days of receiving the notice will result in an unappealable supported finding of child abuse, neglect, or dependency unless the person can show good cause why compliance within the 30-day requirement was virtually impossible or unreasonably burdensome.

A person may make a request to challenge a supported finding within 30 days of a notice being received. Upon receipt of a request, the Office of Administrative Hearings shall hold an adjudicative proceeding pursuant to the Administrative Procedures Act.

In an adjudicative proceeding, the division shall have the burden of proving, by a preponderance of evidence, that there is a reasonable basis to conclude that child abuse, neglect, or dependency occurred and that the alleged perpetrator was substantially responsible for the abuse or neglect that occurred. Any party shall have the right of judicial review of final agency action. Except as otherwise provided in this chapter, an alleged perpetrator who, after receiving notice, fails to challenge a supported finding may not further challenge the finding and shall have no right to agency review, an adjudicative hearing, or judicial review of the finding.

An alleged perpetrator may not make a request to challenge a supported finding if a court of competent jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency that was also the subject of the supported finding.

An adjudicative proceeding may be stayed during the time a judicial action on the same matter is pending.

**When Records Must Be Expunged**  
**Citation:** Ann. Code § 62A-4a-1008

The division shall delete any reference in the management information system to a report that is:

- Determined by the division to be without merit, if no subsequent report involving the same person has occurred, within 1 year
- Determined by a court to be unsubstantiated or without merit, if no subsequent report involving the same person has occurred, within 5 years
On or before May 1, 2018, the division shall make rules for the expunction of supported reports or unsupported reports in the
management information system. The rules shall:

- In relation to an unsupported report or a supported report, identify the types of child abuse or neglect reports that the
division:
  - Shall expunge within 5 years after the last date on which the person’s name was placed in the information system, without
    requiring the subject of the report to request expunction
  - Shall expunge within 10 years after the last date on which the person’s name was placed in the information system, without
    requiring the subject of the report to request expunction
  - May expunge following a person’s request for expunction
  - May not expunge due to the serious nature of the specified types of child abuse or neglect
- Establish an administrative process and a standard of review for the subject of a report to make an expunction request

If a person’s name is in the information system for a type of serious child abuse or neglect report, the person may request to have
the report expunged 10 years after the last date on which the person’s name was placed in the information system for a supported or
unsupported report. If a person’s expunction request is denied, the person shall wait at least 1 year after the issuance of the denial
before the person may again request to have the person’s report expunged.

Vermont
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Ann. Stat. Tit. 33, §§ 4916a; 4916b

If an investigation results in a determination that a report of child abuse or neglect should be substantiated, the Department for
Children and Families shall notify the person alleged to have abused or neglected a child of the right to request a review of the
substantiation determination by an administrative reviewer and the right to receive a copy of the commissioner’s written findings. A
person who wishes to challenge placement of his or her name on the registry must notify the department within 14 days of the date
the department mailed notice of the right to review.

The department shall hold an administrative review conference within 35 days of receipt of the request for review. At least 10 days
prior to the administrative review conference, the department shall provide to the person requesting the review a copy of the
redacted investigation file, notice of time and place of the conference, and conference procedures, including information that
may be submitted and mechanisms for providing information. The department shall also provide to the person those redacted
investigation files that relate to prior investigations that the department has relied upon to make its substantiation determination in
the case in which a review has been requested.

The administrative review may be stayed upon request of the person if there is a pending criminal or family division of the superior
court case that is related to the same incident of abuse or neglect for which the person was substantiated. During this period, the
person’s name shall be placed on the registry. Upon resolution of the court case, the person may exercise his or her right to review
by notifying the department in writing within 30 days after the related court case, including any appeals, has been fully adjudicated.
If the person fails to notify the department within 30 days, the department’s decision shall become final and no further review is
required.

If the administrative reviewer accepts the department’s substantiation determination, a registry record shall be made immediately. If
the reviewer rejects the department’s substantiation determination, no registry record shall be made.

If no administrative review is requested, the department’s decision in the case shall be final, and the person shall have no further
right of review. The commissioner may grant a waiver and permit such a review upon good cause shown. Good cause may include an
acquittal or dismissal of a criminal charge arising from the incident of abuse or neglect.

A commissioner’s decision that creates a registry record may be appealed to the Human Services Board. Within 30 days of the
date on which the administrative reviewer mailed notice of placement of a report on the registry, the person who is the subject of the
substantiation may apply in writing to the Human Services Board for relief. The board shall hold a hearing within 60 days of the
receipt of the request for a hearing and shall issue a decision within 30 days of the hearing. Priority shall be given to appeals in which
there are immediate employment consequences for the person appealing the decision.

A hearing may be stayed upon request of the petitioner if there is a pending court case related to the same incident of abuse or
neglect for which the person was substantiated.
If no review by the board is requested, the department’s decision in the case shall be final, and the person shall have no further right for review under this section. The board may grant a waiver and permit such a review upon good cause shown.

**When Records Must Be Expunged**  
**Citation:** Ann. Stat. Tit. 33, §§ 4916c; 4916d

A person whose name has been placed on the registry prior to July 1, 2009, and has been listed on the registry for at least 3 years may file a written request with the Commissioner for Children and Families seeking a review for the purpose of expunging an individual registry record. A person whose name has been placed on the registry on or after July 1, 2009, and has been listed on the registry for at least 7 years may file a written request seeking a review for the purpose of expunging a record. The commissioner shall grant a review upon request.

A person who is required to register as a sex offender shall not be eligible to petition for expunction of his or her registry record until the person is no longer required to register.

The person shall have the burden of proving that a reasonable person would believe that he or she no longer presents a risk to the safety or well-being of children.

A review shall consider the following factors:

- The nature of the substantiation
- The number of substantiations
- The amount of time since the substantiation
- The circumstances that would indicate whether a similar incident would likely occur
- Any activities that would reflect upon the person’s changed behavior or circumstances, such as therapy, employment, or education

At the review, the person who requested the review shall be permitted to present any evidence that supports the request for expunction. A person may seek a review no more than once every 36 months.

Registry entries concerning a person who was substantiated for behavior occurring before the person reached age 10 shall be expunged when the person reaches age 18, provided that the person has had no additional substantiated entries. A person substantiated for behavior occurring before age 18 and whose name has been listed on the registry for at least 3 years may request a review for the purpose of expunging an individual registry record.

**Virgin Islands**  
**Current Through May 2018**

**Right of the Reported Person to Review and Challenge Records**

This issue is not addressed in the statutes reviewed.

**When Records Must Be Expunged**

This issue is not addressed in the statutes reviewed.

**Virginia**  
**Current Through May 2018**

**Right of the Reported Person to Review and Challenge Records**  
**Citation:** Ann. Code § 63.2-1526

A person who is suspected of or is found to have committed abuse or neglect may, within 30 days of being notified of that determination, request the local Department of Social Services making the determination to amend the determination and the local department’s related records.

Upon written request, the local department shall provide the appellant all information used in making its determination. The local department shall hold an informal conference where this person, who may be represented by counsel, shall be entitled to informally present testimony of witnesses, documents, factual data, arguments, or other submissions of proof to the local department.

If the local department refuses the request for amendment or fails to act within 45 days after receiving the request, the person may, within 30 days thereafter, petition the commissioner, who shall grant a hearing to determine whether it appears, by a preponderance
of evidence, that the determination or record contains information that is irrelevant or inaccurate regarding the commission of abuse or neglect by the person who is the subject of the determination.

The hearing officer shall have the authority to issue subpoenas for the production of documents and the appearance of witnesses and to determine the number of depositions that will be allowed. The person who is the subject of the report has the right to submit oral or written testimony or documents and to be informed of the procedure by which information will be made available or withheld. The alleged child victims of the person and their siblings shall not be subpoenaed, deposed, or required to testify.

The hearing officers are empowered to order the amendment of such determination or records as required to make them accurate and consistent with the requirements of law or regulation.

If, after hearing the facts of the case, the hearing officer determines that the person who is the subject of the report has presented information that was not available to the local department at the time of the local conference and that, if available, may have resulted in a different determination by the local department, he or she may remand the case to the local department for reconsideration.

The local department shall have 14 days in which to reconsider the case. If, at the expiration of 14 days, the local department fails to act or fails to amend the record to the satisfaction of the appellant, the case shall be returned to the hearing officer for a determination. If aggrieved by the decision of the hearing officer, the appellant may obtain further review of the decision in accordance with article 5 of the Administrative Process Act.

When an appeal of the local department’s finding is made and a criminal charge is also filed against the appellant for the same conduct involving the same victim as investigated by the local department, the appeal process shall automatically be stayed until the criminal prosecution in circuit court is completed. During that stay, the appellant’s right of access to the records of the local department regarding the matter being appealed shall also be stayed.

Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his or her right to resume his or her appeal within the timeframes provided by law and regulation.

**When Records Must Be Expunged**

*Citation: Ann. Code § 63.2-1514; Admin. Code Tit. 22, § 40-705-130*

The record of unfounded investigations and complaints and reports determined to be not valid shall be purged 1 year after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the complaint or report in that 1 year.

The record of family assessments shall be purged 3 years after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the report in that 3-year period.

The child protective services records regarding the petitioner that result from the complaint or report shall be purged immediately by any custodian of the records upon presentation to the custodian of a certified copy of a court order that there has been a civil action that determined that the complaint or report was made in bad faith or with malicious intent. After purging the records, the custodian shall notify the petitioner in writing that the records have been purged.

In regulation: Reports with an unfounded disposition will be kept in the child abuse and neglect information system to provide local departments with information regarding prior investigations. This record shall be kept separate from the central registry and accessible only to the department and to local departments.

The record of the investigation with an unfounded disposition shall be purged 1 year after the date of the complaint or report if there are no subsequent complaints or reports regarding the individual against whom allegations of abuse or neglect were made or regarding the same child in that 1 year.
Washington
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Rev. Code § 26.44.125

A person who is named as an alleged perpetrator in a founded report of child abuse or neglect after October 1, 1998, has the right to seek review and amendment of the finding as provided in this section. Within 30 calendar days after the Department of Children, Youth, and Families has notified the alleged perpetrator that he or she is named as an alleged perpetrator in a founded report of child abuse or neglect, the person may request that the department review the finding. The request must be made in writing. The written notice provided by the department must contain at least the following information in plain language:

- Information about the department’s investigative finding as it relates to the alleged perpetrator
- Sufficient factual information to apprise the alleged perpetrator of the date and nature of the founded reports
- That the alleged perpetrator has the right to submit to child protective services a written response regarding the child protective services finding, which, if received, shall be filed in the department’s records
- That information in the department’s records, including information about this founded report, may be considered in a later investigation or proceeding related to a different allegation of child abuse or neglect or child custody
- That founded allegations of child abuse or neglect may be used by the department in determining whether a perpetrator is qualified to be licensed or approved to care for children or vulnerable adults or to be employed by the department in a position having unsupervised access to children or vulnerable adults
- That the alleged perpetrator has a right to challenge a founded allegation of child abuse or neglect

If a request for review is not made as provided in this section, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding, unless he or she can show that the department did not comply with notice requirements.

Upon receipt of a written request for review, the department shall review and, if appropriate, may amend the finding. Management-level staff within the department designated by the secretary shall be responsible for the review. The review must be completed within 30 days after receiving the written request for review. The review must be conducted in accordance with procedures the department establishes by rule. Upon completion of the review, the department shall notify the alleged perpetrator in writing of the agency’s determination.

If, following agency review, the report remains founded, the person named as the alleged perpetrator in the report may request an adjudicative hearing to contest the finding. The request for an adjudicative proceeding must be filed within 30 calendar days after receiving notice of the agency review determination. If a request for an adjudicative proceeding is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.

When Records Must Be Expunged
Citation: Rev. Code § 26.44.031

The department shall destroy all of its records concerning the following:

- A screened-out report within 3 years from the receipt of the report
- An unfounded or inconclusive report within 6 years of completion of the investigation, unless a prior or subsequent founded report has been received regarding the child who is the subject of the report; a sibling or half-sibling of the child; or a parent, guardian, or legal custodian of the child before the records are destroyed
West Virginia
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: CPS Pol. Man. § 6.1

A person may request a hearing any time that he or she feels aggrieved by an action taken by the Department of Health and Human Services. This can be done either verbally or in written format. It is important that when a person expresses a wish to have a hearing that the appropriate forms are completed and timely submitted to the Board of Review.

When a person wishes to appeal a substantiation of maltreatment, the appropriate form must be used. Within 2 business days from receipt of a completed and signed form, the local office will submit the form via email to the regional program manager or his/her designee(s) for review. If a notice of findings and/or adjudication order was issued and can be accessed, a copy of that document will be sent with the form. The regional staff member or designee will review the finding(s) and make a decision within 15 days from receipt of the form.

If the decision is to reverse/remove the finding(s), the regional staff member will indicate approval of an override on the form and return the form to the local office. The local office will then send notice of the override decision to the person within 5 business days.

If the decision is to deny the request for reversal on at least one of the findings, the regional staff will so indicate on the form and will forward the form with any associated notice letter(s) or adjudication orders by email to the Board of Review within 2 business days from the reconsideration decision date entered on the form.

When Records Must Be Expunged
Citation: Ann. Code §§ 15-2C-5; 15-13-4

Registry listings of abuse, neglect, or misappropriation of property with respect to an individual shall promptly be expunged in cases where a conviction is vacated or overturned following appeal by a court having jurisdiction, where the record of a conviction is expunged by a court having jurisdiction, or in cases where the individual so convicted is granted executive clemency with respect to the conviction.

A person whose conviction is overturned for the offense which required them to register under this article shall, upon petition to the court, have their name removed from the registry.

Wisconsin
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Ann. Stat. § 48.981(3)(c)(5m), (5p)

The county department or, in a county having a population of 750,000 or more, the Department of Children and Families or a licensed child welfare agency under contract with the department, may include in the results of an investigation a determination that a specific person has abused or neglected a child. If the department or agency makes an initial determination that a specific person has abused or neglected a child, the department or agency shall provide that person with an opportunity for a review of that initial determination in accordance with rules promulgated by the department before the department or agency may make a final determination that the person has abused or neglected a child. Within 5 days after the date of a final determination that a specific person has abused or neglected a child, the department or agency shall notify the person in writing of the determination, the person’s right to a contested case hearing on that determination, and the procedures by which the person may receive that hearing.

A person who is the subject of a final determination that the person has abused or neglected a child has the right to a contested case hearing on that determination under chapter 227. To receive that hearing, the person must send to the department a written request for a hearing within 10 days after the date of the notice of the determination. The department shall commence the hearing within 90 days after receipt of the request for the hearing, unless the hearing is rescheduled on the request of the person requesting the hearing or the contested case proceeding is held in abeyance, as provided in this subdivision, and shall issue a final decision within 60 days after the close of the hearing.

Judicial review of the final administrative decision following the hearing may be had by any party to the contested case proceeding as provided in chapter 227. The person presiding over a contested case proceeding may hold the hearing in abeyance pending the outcome of any criminal proceedings or any proceedings under § 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under § 48.13 based on the alleged abuse or neglect.
Wyoming
Current Through May 2018

Right of the Reported Person to Review and Challenge Records
Citation: Ann. Stat. § 14-3-213; Code of Rules § 049-0006-2

Any person named as a perpetrator of child abuse or neglect in any report maintained in the central registry that is classified as a substantiated report shall have the right to have included in the report his or her statement concerning the incident giving rise to the report. Any person seeking to include a statement pursuant to this subsection shall provide the state agency with the statement. The State agency shall provide notice to any person identified as a perpetrator of his or her right to submit his or her statement in any report maintained in the central registry.

In regulation: In substantiated cases, the Department of Family Services shall inform the alleged perpetrator in writing that:

- Their name has been entered on the central registry.
- They may respond in writing to the findings of the investigation and such statement will be included with the central registry report.
- They may request an administrative hearing pursuant to the department’s contested case hearing procedures.

Following a determination of substantiation, an alleged perpetrator of abuse and/or neglect who is aggrieved by the determination may request an administrative hearing. Requests for an administrative hearing shall be submitted in writing within 20 days of the date of the notice of the determination. In those cases in which criminal charges arising out of facts of the investigation are pending, the request for review shall be made within 20 days from the court’s final disposition or dismissal of the charges. If criminal charges are filed after the request for hearing has been made but before the administrative hearing is held, the hearing request will be dismissed and a subsequent request may be submitted pursuant to the terms of this subsection.

An opportunity to discuss the issues and resolve the dispute shall be offered. If the dispute is resolved to the satisfaction of both parties, the person who requested the administrative hearing shall sign a statement withdrawing the request. If the dispute is not resolved, the matter shall proceed to hearing.

Notwithstanding any other provision in this section, an alleged perpetrator is not entitled to an administrative hearing if the perpetrator has been convicted, adjudicated, or there is a finding by a civil, juvenile, or criminal court, or a consent decree whether by a plea of guilty, finding of guilt, or nolo contendere plea that the alleged perpetrator committed certain acts that the child protective act defines as abuse or neglect.

When Records Must Be Expunged
Citation: Ann. Stat. § 14-3-213

Upon good cause shown and upon notice to the subject of an ‘under-investigation’ or ‘substantiated’ report, the State agency may list, amend, expunge, or remove any record from the central registry in accordance with rules and regulations adopted by the State agency.

Within 6 months, all reports classified as ‘under investigation’ shall be reclassified as ‘substantiated’ or expunged from the central registry, unless the State agency is notified of an open criminal investigation or criminal prosecution. Unsubstantiated reports shall not be contained within the central registry.