

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

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

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February 4, 2009

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Executive Summary

A. Purpose of the Feasibility Study

Chapter 595 of the Laws of 2008 requires that the New York State Office of Children and Family Services (OCFS), in conjunction with the New York State Office of Court Administration (OCA), study, evaluate, and make recommendations concerning the feasibility of using computers connected to the Statewide Central Register of Child Abuse and Maltreatment (SCR), as a means of providing the courts with information regarding parties requesting orders of custody or visitation.¹

Responding to the Legislature's mandate, OCFS contacted OCA, to begin analyzing the feasibility of connecting computers at Family and Supreme Courts to the SCR.

The Legislature set a January 31, 2009 deadline for an Interim Report, and a June 1, 2009 deadline for the Final Report with the findings, conclusions and recommendations of the Commissioner of OCFS. In addition, the Final Report will outline any areas where proposed statutory revisions are recommended, and provide a draft legislative proposal, if necessary.

B. Brief Summary

The first phase of the feasibility study focused on the technological issues associated with providing Family and Supreme Courts with access to the SCR/CONNECTIONS² databases. Two different models were identified to potentially connect the SCR/CONNECTIONS databases to the courts. Either model would need to be able to accommodate at least one million additional SCR database searches, an approximately four hundred percent increase to the SCR's current annual search volume.

The first potential model would be for OCA to replicate the existing SCR database facility, staffing and search function, but in a form at least four times as large. This model is presented in section VII(A) of this report, and is estimated to have technical and staffing costs that could range from \$45 million to \$90 million to establish, with substantial additional annual operating costs. There would also be training costs and costs to set up and equip the facility needed to house the additional court staff that would be required under this model. These additional costs were not estimated during this phase of the study.

¹ Chapter 595 also required courts, prior to issuing an order in a custody or visitation case, to review the decisions in any related child protective proceeding under Article 10 of the Family Court Act, the statewide registry of orders of protection and warrants of arrest established under the Executive Law, and the sex offender registry established under the Correction Law.

² The CONNECTIONS database is the statewide automated child welfare system that contains case records regarding children and families receiving foster care, preventive, adoption, and independent living services as well as child protective services. It also includes information about foster parents and prospective adoptive parents.

The second potential model would be for OCFS to develop a simplified web-based search program that the courts could use to run SCR database searches concerning orders of custody or visitation. This model is presented in section VII(B), and is estimated to have initial technical costs of approximately \$2.5 million, with annual technical costs of approximately \$1 million. With this model too, there would be initial and ongoing training and staff support costs.

Either solution would require a period of time to establish the necessary facility and/or develop the software and hardware systems. The initial start-up period is estimated to take as long as two years, depending upon a number of factors that will be studied in second phase of this study.

OCFS and OCA also discussed potential evidentiary issues related to the use of SCR information in custody and visitation issues. These issues need to be further explored during phase two of this study.

C. Brief List of Interim Findings

- If the Legislature requires the courts to consult the SCR/CONNECTIONS databases prior to issuing any order of custody or visitation, it would add at least one million and potentially up to two million new database searches to the SCR/CONNECTIONS database systems.
- Adding one million court searches to the existing SCR database searches would increase database searches by four hundred percent, which could have significant unintended negative effects upon the SCR/CONNECTIONS computer systems' ability to handle their other critical child welfare functions.
- The SCR/CONNECTIONS databases are not currently capable of accommodating the estimated one million additional SCR database searches required in conjunction with all custody and visitation orders, unless such searches are not real-time SCR database searches and responses.³
- Neither OCFS nor the courts presently possess the legal authority for OCFS to grant the type of court access to SCR records contemplated in this feasibility study.
- In addition to the technological challenges, there are other significant challenges to the use by the courts of SCR reports in custody and visitation proceedings that must be further studied before a decision is made whether to grant such access to the courts.

³ A "real-time" search and response is where a search request would be immediately executed as soon as it was entered, and the search requester would receive an immediate response from the database. This is how the SCR database searches currently operate. Real-time searches require intensive computer hardware resources. It is currently estimated that the existing SCR databases and servers can only accommodate approximately 10,000 additional real-time database searches. Significant expenditures would be needed to up-grade the system to accommodate any more real-time database searches. See section VI(B) of this report.

D. Brief List of Interim Conclusions and Recommendations

- It may be feasible to connect court computers to the SCR databases to provide information concerning parties requesting orders of custody or visitation, however, there are significant fiscal, infrastructure, procedural, and statutory challenges to doing so.
- Due the substantial costs associated with providing the courts with access to SCR reports and all of the substantive issues associated with the courts using such reports, OCFS and OCA should further study which, if any, types of SCR reports would provide the courts with the most probative value and least potential for appellate litigation, unsettled judgments, and unnecessary delays in issuing custody or visitation orders. The study should include examining whether modifications should be made to the existing record retention schedules and, if possible, the solutions created in other states that have also studied or implemented court access in relation to custody and visitation proceedings.
- If a decision is made to proceed with providing the courts access to some SCR reports, the following technological issues need to be addressed including:
 - There would have to be a new user-level security process for providing accounts and passwords for court users to access the SCR reports, so users leaving the courts' employ or moving to other task areas would have their access removed.
 - OCFS and OCA should consider whether the courts should retain SCR data on their local computers and whether such data should become part of the courts' records. There would be a need for desktop security measures if the courts intend to keep SCR data on their local computers so that some or all of the data does not become part of the public record. Any SCR data kept on the court computers would need to be subject to the same record retention periods and statutory confidentiality requirements afforded to records maintained by the SCR.
 - A potential technical solution that could improve the feasibility of providing SCR database access to the courts would be to create a web-based on-line clearance submission system for use by the courts instead of the existing search application, and to create a methodology for simplifying the search analysis results. Those enhancements would also make it possible to reduce the training and support costs for court staff doing the searches.
 - OCFS should further study the design and creation of a new web-based search application that would permit the on-line clearance submissions, with the goal of including as many timesaving and ease-of-use features as are cost-effective and beneficial.
 - OCFS and OCA should work closely together to further develop recommendations regarding the optimal balance between real-time data search and response, and data entry into an overnight or longer deferred search queue, where responses come to the court 24 hours or more after a search is started.
 - OCFS should study the creation of an OCFS virtual classroom platform (iLinc) training module for the courts, so court staff might be able to use SCR database searches in the most efficient manner.

I. Introduction

Chapter 595 of the Laws of 2008 requires the Commissioner of the New York State Office of Children and Family Services (OCFS) to complete the following study:

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

Responding to the Legislature's charge, OCFS contacted the New York State Office of Court Administration (OCA), to establish a process for analyzing the feasibility of providing direct computer access for the courts to the Statewide Central Register of Child Abuse and Maltreatment (SCR).⁴ The process agreed upon was for each agency to analyze its core competencies and needs, then to compare data and assumptions in a series of meetings designed to provide background and context. Having arrived upon a common knowledge platform, the agencies would then work together to outline the threshold questions underlying the feasibility of this significant expansion in the courts' data access and the SCR/CONNECTIONS databases' functions.

As charged by the Legislature, the deadline for this Interim Report is January 31, 2009, with the Final Report to be submitted on June 1, 2009. Each report will contain the findings, conclusions and recommendations of the Commissioner of OCFS. The Final Report, additionally, will outline areas where proposed legislative action is recommended, and provide draft legislative language, if necessary.

⁴ Although the legislative language relating to the feasibility study only refers to the use of computers in Family Courts, OCFS and OCA decided to review the use in Supreme Courts as well as they also have jurisdiction over custody and visitation cases and must conduct the other searches required by Chapter 595 of the Laws of 2008 in relation to such cases.

II. Statutory Basis of the SCR Database

The SCR was established in 1973 to record and maintain a file on each reported instance of child abuse or maltreatment.⁵

The existence and function of the SCR is set forth in §422 of the Social Services Law (SSL). By statute, the SCR must “be capable of receiving telephone calls alleging child abuse or maltreatment and of immediately identifying prior reports of child abuse or maltreatment and capable of monitoring the provision of child protective service twenty-four hours a day, seven days a week.” SSL §422(2)(a). The law further provides that “there shall be a single statewide telephone number that all persons, whether mandated by the law or not, may use to make telephone calls alleging child abuse or maltreatment and that all persons so authorized by this title may use for determining the existence of prior reports in order to evaluate the condition or circumstances of a child.”⁶

SCR reports generally contain, but are not limited to, the subject of the report,⁷ the other persons named in the report,⁸ the institution name if the child is in residential care,⁹ the name of the reporter, and specific allegations setting forth the elements of the alleged maltreatment or abuse.¹⁰ Once reports have been investigated by the applicable investigative agency, the allegations are substantiated, or unsubstantiated, and the reports are separated into two categories: “indicated” and “unfounded” reports.¹¹

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

⁵ Monroe and Onondaga counties have traditionally operated their own child abuse and maltreatment hotlines. Since 1973 however, both counties also submit their reports electronically to the SCR for processing and inclusion in its database.

⁶ Calls are received on a “Mandated Reporter” line (1-800-635-1522); a “Public” line (1-800-342-3720); a “Mandated Reporter” fax line (1-800-635-1554); and a “Hearing Impaired TTY” line (1-800-638-5163).

⁷ Section 412 (4) of the SSL provides that the “Subject of the report” includes any parent of, guardian of, and certain other individuals legally responsible for a child reported to the SCR who are allegedly responsible for causing injury, abuse or maltreatment to such child or who allegedly allowed such injury, abuse or maltreatment to be inflicted on such child.

⁸ Section 412(5) of the SSL provides that “Other persons named in the report” are specified persons who are named in a report of child abuse or maltreatment other than the subject of the report and include the child who is reported to the SCR; and such child’s parent, guardian, custodian or other person legally responsible for the child who have not been named in the report as allegedly responsible for causing injury, abuse or maltreatment to the child or as allegedly allowing such injury, abuse or maltreatment to be inflicted on such child.

⁹ The statutory provisions relating to an abused or neglected child in residential care were moved by Chapter 323 of the Laws of 2008 from section 412 of the SSL to the new section 412-a of the SSL effective January 17, 2009.

¹⁰ As discussed further in section IV(D)(3), the SCR’s pre-1997 database indexing did not distinguish between subjects of the report and other persons named in the report. Rather, reports were always indexed under the mother’s name irrespective of whether she was the subject of the report.

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

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

Currently, there are over two million reports in the SCR, with over 4.3 million persons named in those reports.

III. Child Abuse or Maltreatment Reporting and Investigations

As noted above, OCFS operates the SCR. The SCR is responsible for receiving telephone calls alleging child abuse or maltreatment, and taking action upon such telephone calls.¹² When any allegation contained in such a call could reasonably constitute a "report" of child abuse or maltreatment, the SCR registers the report and promptly transmits the report for investigation to the appropriate investigative agency. In 2007, there were 275,919 calls to the SCR; 186,098 of those calls resulted in the registration of an SCR report.

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

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

A. The CPS Investigation and Evidentiary Standard for "*Indicated*" and "*Unfounded*" Reports

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

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

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

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

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

B. Review of Reports of Child Abuse or Maltreatment

1. Reviews Requested by the Subject

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

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

592, 651 N.Y.S.2d 726 (3d Dep't 1997), app. denied, 89 N.Y.2d 813 (1997). Chapter 323 of the Laws of 2008 recently amended the statutory requirements to reflect the higher standard of evidence for reviews as required by the litigation.

2. Timing of Reviews Requested by the Subject

Within 90 days after the subject of a report of child abuse or maltreatment is notified that the report is *indicated*, the subject may request the SCR to amend and seal the report. Upon receiving such a request, the SCR confirms that the requesting person is actually the subject of an *indicated* report maintained in the SCR, and, if so, sends a letter to the subject acknowledging the SCR's receipt of the request. The SCR also sends a request to the investigative agency for all its records, reports, and other information pertaining to the *indicated* report. The investigative agency then forwards all records, reports, and other information it maintains on the *indicated* report to the SCR.¹³

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

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

¹³ OCFS operates New York's child welfare information system of record, which is known as CONNECTIONS. Local CPS, OCFS, CQC, OMH, and OMRDD employees involved in SCR report investigations and other statutorily required users, use CONNECTIONS to store electronic information about reports that they investigated. CONNECTIONS data is available to the SCR without separate transmission from the investigative agency. However, non-electronic information that the investigative agency might have in support of the *indicated* report is not included in CONNECTIONS and still has to be obtained separately from the investigative agency.

3. Reviews Triggered by a Licensing or Provider Agency Inquiry

Section 424-a of the SSL requires some licensing and provider agencies to request a search of the SCR database (“SCR database check”) of certain persons applying for employment, certification, or licensure in the child care field (applicant).¹⁴

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

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

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

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

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

If the SCR determines after review that there is a fair preponderance of the evidence that the subject committed an act of child abuse or maltreatment but that the act is not relevant and reasonably related to employment in the child care field, the report will

¹⁴ In some circumstances, child care workers may work while results are pending, but such persons may not have unsupervised access to the children.

remain *indicated* but the SCR will notify the inquiring agency that the person inquired about is not the subject of an *indicated* report.

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

4. The Administrative and Judicial Hearing Process

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

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

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

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

IV. Operational Requirements of the SCR

A. SCR Database Checks - Background

As previously discussed, §424-a of the SSL requires some licensing and provider agencies to request a search of the SCR database (“SCR database check”) of certain applicants for employment, certification, or licensure in the child care field. For a child care field involving the care of children in a home-based setting, SCR database checks are also required of those individuals who are 18 years of age or older residing in the applicant’s home.

In calendar year 2007, the SCR received 216,569 database check requests. These database checks were divided among the following categories:

Home Child Care Database Checks ¹⁵	24,136
Out-of-Home Child Care Database Checks ¹⁶	182,904
Court Requested Database Checks ¹⁷	9,529

There was a ten percent increase in the number of SCR database checks conducted in 2007 over the number conducted in 2006. This reflects the growing trend of annual increases in such requests.

This growth trend in the number of SCR database requests is separate and apart from the growth in requests resulting from a new mandate imposed upon the process by federal legislation. The federal Adam Walsh Act¹⁸ provided that national crime and state child abuse and neglect databases must both be used to screen all prospective foster and adoptive parents and individuals eighteen years of age and older who reside in their homes. Screening was required even for children not receiving federal foster care or adoption subsidies. The federal act also required that the child abuse and neglect registries of other states where prospective foster or adoptive parents and adults in their homes have lived during the past five years be checked before the homes were approved. In 2007, New York State changed its statutes to incorporate these requirements and allow disclosure of the required information.¹⁹ Thus, New York State must perform SCR checks for other states and must request checks from other states for all prospective foster and adoptive parents.

The Adam Walsh Act was responsible for roughly 1,632 database checks in 2008, which represents over a hundred percent increase in such checks over the number conducted in 2007.

¹⁵ These checks relate to applicants for a child care field where children are cared for in a home-like setting, including foster homes, adoptive homes, family day care homes, and group family day care homes.

¹⁶ These checks relate to applicants for a child care field where children are cared for in out-of-home settings including day care centers, residential facilities, juvenile detention facilities, and summer camps.

¹⁷ The family and supreme courts are authorized under various statutes to check the SCR regarding certain individuals who are before the court. These checks are separate from the SCR database checks required under SSL §424-a.

¹⁸ Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248).

¹⁹ See Chapter 327 of the Laws of 2007, effective Dec. 31, 2007.

Although it is possible that the increase in Adam Walsh checks from 2008 to 2009 will not be as dramatic as the increase from 2007 to 2008, it would be prudent to build in a factor for these increases separate from the general trended annual increases when determining the capacity of the SCR/CONNECTIONS databases to perform additional checks. However, OCFS will conduct further analysis on this issue in the second phase of this study.

B. SCR Report Analysis and Database Check Procedure

The SCR currently uses approximately 91 full-time equivalent staff (FTEs) to process these database check requests. The checks have to be conducted against the over two million reports in the SCR, which contain over 4.3 million names.

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

- The SCR worker receives a database check form through the mail. The form must include the name, maiden name, previous married name, aliases, gender, and date of birth of the applicant. It also must include the names, genders and dates of birth of all other persons in the applicant's household as well as their relationships to the applicant. In addition, the form must include the applicant's current address and any other address at which the applicant resided over the last twenty-eight years. For applicants applying to be foster parents, adoptive parents, family day care providers, or group family day care providers, the form also must include the same address history for all household members who are 18 years of age or older.
- The SCR worker enters the information from the form into the Advanced Integrated Management System (AIMS),²⁰ which checks whether the data is free of errors.
- Database check forms with missing, incomplete, or illegible information are returned to the submitting entity for correction. Errors may include, for example, the applicant's failure to provide every address where he or she lived during the previous 28 years.
- Once all data entry edits have been completed, AIMS conducts a search against the SCR database, which returns a list of possible matches or "hits" to the applicant's name, and the names of other adults in the household.
- Potential matches are then analyzed by an SCR worker, to see if the person is "known to the SCR database" – that is, is the subject of a report. In some circumstances, depending upon the type of search, the worker also analyzes other adults in the household (e.g., spouses, "significant others," non-minor children, etc.) to see if they are "known" to the SCR database.
- If there is no *indicated* report involving the person being screened or any other adult household member, then a "No Hit" letter is communicated to the relevant party(ies)

²⁰ AIMS is the SCR's front-end application for using the data contained in New York's child welfare database, CONNECTIONS. As previously indicated, the CONNECTIONS database is the statewide automated child welfare system that contains case records regarding children and families receiving foster care, preventive, adoption, and independent living services as well as child protective services. It also includes information about foster parents and prospective adoptive parents.

or entity(ies); if an *indicated* report involving the person being screened or any other adult household members is found, then the database check request or report is routed to a second level of review.

- The second level review involves the manual check of all the individual SCR reports which might involve the person being screened or any other adult household members to determine whether the person being screened is actually the subject of an *indicated* report. It can be a time-consuming and labor intensive process because individuals are listed in the SCR by their names, addresses and dates of birth as reported at the time a particular report is made and investigated, instead of by a unique identifier. In addition, some records may contain misspellings or inaccurate information, which may further slow down the review process.
- If a second level review confirms the individual being screened is the subject of an *indicated* report, then the administrative review process described in section III(B)(3) above would commence.

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

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

- The AIMS software application, which is a front-end data entry and search query launching program that connects directly into the CONNECTIONS database, launches a search application, then displays a search result on any potential “hit” to an SCR worker’s computer screen.
- The Identity Systems (IDS) person search application, which is triggered by AIMS, conducts searches, and then allocates response weightings to arrive at a frequency distribution of potential hits for AIMS to display.
- Stand-alone computer “servers” that host the AIMS and IDS applications, and the CONNECTIONS database.
- An optical disc “jukebox” server that is linked to CONNECTIONS and AIMS, which allows searches of pre-1996 CPS reports.

Each of these applications, and the computer servers, were developed and sized for the SCR’s current database check volume, plus a reasonable annual increase. None of these inter-related programs and the computers upon which they run could continue to work properly if the volume of database checks were to expand as dramatically as OCA estimates would be required to process database searches for all custody and visitation

orders. Furthermore, the AIMS application links to the CONNECTIONS database²¹ on a “real-time” basis. That is, data entered into AIMS is directly entered into the CONNECTIONS’ database. As noted further in section VI(B) below, that means that AIMS users at the SCR are part of the significant demands made on the CONNECTIONS database and the application’s connectivity by the many thousands of simultaneous users statewide. Any significant increase in use of real-time AIMS searches adds to the burden on CONNECTIONS’ servers, which already run close enough to their maximum capacities that they will need to be replaced soon even without adding any additional database searches to their current loads.

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

There are several other substantive issues associated with the courts using SCR reports in custody and visitation cases that need to be further studied in the second phase of the feasibility study. The issues derive from the statutory confidentiality and record retention requirements for SCR reports, historical practices of the SCR and local social services districts (LSSD), the low evidentiary standards for indicating a report of child abuse or maltreatment, and the constitutional and procedural issues raised in the *Valmonte* case. See, e.g., Valmonte v. NYS Dept. of Soc. Svcs., 18 F.3d 992. In addition, the courts recently were required to access other information prior to issuing custody and visitation orders, which may limit or negate the utility of the courts also accessing SCR reports.

1. Confidentiality of SCR Reports

One crucial underpinning to encouraging individuals to report suspected child abuse or maltreatment is maintaining the anonymity of the “reporters” (a/k/a “sources”) of the SCR reports. Another key requirement is exercising vigilance in protecting the confidentiality and/or privacy of the identity of individuals who are named in SCR reports but are not the subjects of an *indicated* report including individuals who were the alleged subjects of reports determined to be *unfounded*.²² Consequently, the Legislature created a complicated statutory scheme for sealing SCR reports, maintaining their confidentiality, and disposing of such reports after the end of their useful life (a “record retention” schedule).²³

Because the SCR was not fully automated until 1997, it has approximately three million scanned images of pre-1997 reports and supporting documentation on an aging optical

²¹ The exception is that when CONNECTIONS is unreachable or briefly offline for maintenance reasons or during one of CONNECTIONS’ quarterly upgrades, the SCR can enter its “intake data” – reports and clearance requests – into a computer program called the Business Continuity Application (BCA). The BCA’s function is to store the SCR’s data and upload it to CONNECTIONS in a manner that allows the SCR to operate without pause.

²² See, generally, §422(4), (5) and (12) of the SSL.

²³ See, e.g., §422(5)-(8) of the SSL. Additional confidentiality provisions relating to CONNECTIONS are set forth at 18 New York Codes, Rules and Regulations (NYCRR) 466.4 and 466.5, and at 45 Code of Federal Regulations (CFR) 95.621.

storage/retrieval system. Although the number of SCR database searches that consult that old data is a small percentage of all searches, the SCR must nonetheless maintain the images. To provide SCR database access to the courts, those images would have to be accessible as part of the vast number of new search requests that the courts anticipate.²⁴ Unfortunately, however, use of these older records could conceivably be problematic for the reasons cited below in section IV(D)(2).

2. Record Retention Schedules

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

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

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

OCFS questions whether it is necessary to retain SCR records for such lengthy periods of time. Furthermore, there has been little attention paid to the differences between abuse and maltreatment, and whether there might be a reasonable argument for shorter retention periods for *indicated* reports of maltreatment, as opposed to *indicated* reports of abuse. *OCFS tentatively concludes therefore that differential retention periods might be a logical area to study before the issuance of the final report in June of 2009.*

3. Historical Practice Challenges

²⁴ See section V below.

Prior to 1997, the general practice of the SCR and LDSS was to name all adults living in a household in the narrative section of SCR reports regardless of whether they were suspected of abuse or maltreatment. Because of the manner in which these older reports were maintained, there is a serious risk that some parents may be flagged, during SCR database checks, as potentially having abused or maltreated a child even though they never were alleged to have done so. This risk is greater for women because many cases were historically listed by the mother's name regardless of whether she was alleged to have committed the abuse or maltreatment. *Therefore, OCFS, along with the Office for the Prevention of Domestic Violence (OPDV), tentatively conclude that the use of pre-1997 SCR records by the courts creates a disproportionate risk of a negative impact on mothers seeking custody and visitation and that both male and female non-perpetrating parents could be flagged as potential abusers by an SCR check where the search is conducted by an individual without the necessary understanding of these historical practices. Due to the potential for such broad exposure, OCFS recommends that existing record retention schedules be carefully analyzed during the second phase of this study with the goal of determining whether measures should be proposed which could limit the risk of disparate impact.*

4. Evidentiary Standards

As previously discussed, a report is *indicated* or *unfounded* at the end of an investigation based on whether there is some credible evidence of child abuse or maltreatment, which is an extremely low evidentiary standard. The United States Court of Appeals for the Second Circuit has held that there are constitutional liberty interests associated with the use of indicated reports in the SCR in relation to employment. *See, e.g., Valmonte*. The court held that the subject of an indicated report is entitled to a fair hearing using a fair preponderance of the evidence standard before potential employers are informed that the individual was the subject of a report. The liberty interest that parents possess regarding their fundamental right to raise their children is certainly as strong, if not stronger, than the liberty interest associated with access to employment. *Consequently, OCFS and OPDV tentatively conclude that careful consideration needs to be given during the second phase of this feasibility study as to whether a court relying solely or primarily upon a check of SCR records indicated on the basis of the some credible evidence standard before issuing an order of custody or visitation, may violate a parent's constitutional right to raise his or her children.*²⁵ *OCFS further recommends that the second phase of this feasibility study examine both which types of SCR reports should be used by the courts, and how the reports may be used. It may be appropriate, for example, to limit court access to reports that have been subject to an administrative review or administrative hearing under the fair preponderance of the evidence standard. An additional area for study for the final report is whether the courts should or could be permitted to make sua sponte findings of fact regarding abuse or maltreatment based solely or primarily on the SCR reports, and if so, under what circumstances.*

²⁵ OCA does not take a position concerning whether there may be a constitutional issue at stake. Rather, OCA notes that if the issue of constitutionality as applied to a custody or visitation order were litigated, it would be heard and decided by the judge presiding over that case.

5. Procedural Issues

Another factor counterbalancing the potential utility of SCR database checks to custody and visitation determinations is that they may unnecessarily delay custody and visitation proceedings to the detriment of children and families. Because SCR records are kept by name, addresses and dates of birth, rather than by a unique identifier, confirming the identity of a person listed in an SCR report can be a time-consuming process that involves matching address histories and may result in errors.²⁶ The required confirmation process could delay custody and visitation proceedings, even where abuse or neglect has never been raised as an issue in the proceedings. Due to the potential for inaccurate identification of individuals as subjects of indicated reports and the low evidentiary standard, parties may make additional motions or request additional hearings regarding whether a particular report is relevant to the custody or visitation proceeding. The need for a court to rule on additional motions and hold additional hearings on the relevance and evidentiary weight of SCR information in the underlying custody or visitation proceeding could delay the court's decisions in such cases and also increase the costs to the courts, the parties, and the investigative agency that investigated the report. Delays in custody and visitation decisions can be detrimental to a child by postponing important services such as school enrollment and access to medical care. In addition, if there are SCR reports involving both parties to a custody proceeding, the court may determine that it is necessary to place the children in foster care pending the resolution of the SCR information, which could result in increased costs to social services districts for such placements. *OCFS tentatively concludes that requiring SCR database checks prior to issuing custody and visitation orders could delay the issuance of such orders to the detriment of the parties and children involved. Therefore, OCFS tentatively recommends that the second phase of this study closely examine the appropriateness of using information from SCR checks in such proceedings, especially where there is no indication that issues of abuse or neglect exist for the child.*

6. Other Information Available to the Courts

The courts have other information available to assist them in making custody and visitation decisions, which may negate or further limit the need for the courts to also have access to SCR report information. Chapter 595 of the Laws of 2008, which required OCFS to conduct this feasibility study, also required that Family and Supreme Courts review other records prior to issuing orders in custody and visitation proceedings. Effective September 28, 2008, the courts must review the decision in any related child protective proceeding under FCA Article 10, the statewide computerized registry of orders of protection and warrants of arrest, and the sex offender registry. The courts have already identified some issues with the breadth of the records that must be reviewed and with delays to proceedings resulting from these new requirements. These issues are similar to some of the issues identified above regarding the use of SCR records in custody and visitation proceedings. Further, these new record review

²⁶ See section IV(B) above.

requirements provide the courts with additional information about the parties that they previously may not have had at the time they made custody or visitation orders. For example, reviewing any related child protective proceeding under FCA Article 10 provides the courts with information about those SCR reports where the applicable LDSS felt court intervention was needed to protect the children in the case. Many *indicated* SCR reports do not warrant court intervention because the underlying issues are resolved through the provision of services to the families. It is questionable whether these latter types of SCR reports should be considered in custody and visitation proceedings. *Therefore, OCFS recommends that OCFS and OCA closely examine, during the second phase of this study, whether also requiring the courts to access the SCR databases in some or all custody and visitation cases would provide sufficient additional useful information to the courts to warrant the potential costs and delays in those proceedings associated with such access.*

7. Conclusion

Due to all of the substantive issues with the use of SCR reports by the courts discussed in this section and the substantial costs associated with providing such access, OCFS concludes that OCFS and OCA should further study which, if any, types of SCR reports would provide the courts with the most probative value and least potential for appellate litigation, unsettled judgments, and unnecessary delays in issuing custody or visitation orders.

V. Operational Requirements of OCA

A. Court Database Search Needs

In 2006, there were 680,791 filings in New York State Family Court,²⁷ and 681,181 dispositions.²⁸ Of those cases, 177,686 were dispositions of custody or visitation filings.²⁹ In addition to the cases handled by the Family Court, in many parts of New York, Supreme Courts act as Family Courts for a portion of their court calendar. Supreme Courts also hear matrimonial cases, which often involve custody and visitation decisions.

Using data generated in 2007 in OCA's Universal Case Management System (UCMS), it is estimated there will be an annual need for 883,339 SCR database checks for cases filed in Family Court,³⁰ and 141,000 SCR database searches for cases filed in Supreme Court acting on matrimonial matters concerning child custody and visitation.³¹ Of those matrimonial cases concerning child custody or visitation, roughly fifty percent occurred in New York City and fifty percent were located in the remainder of NYS.³² The searches are projected to result as follows: 854,000 searches arising from Family Court Act Article 6 custody cases; 28,000 searches arising from Family Court Act Article 8 family offense cases; and 141,000 searches arising from other appearances on custody or visitation.³³ Therefore, this interim report estimates that providing Family and Supreme Courts access to the SCR database in relation to custody and visitation proceedings would result in at least one million additional SCR database checks annually. The number of database searches will exceed the number of filings because §651(e)(5) of the FCA requires that database searches be re-initiated where more than one month has elapsed since the previous order of custody or visitation.

It is important to note that there is some inconsistency between the manner in which OCA and OCFS count the average number of searches that would need to be performed for each case. OCA's statistics derive from a calculated average of approximately 2.6 searches per case. OCFS' practice, however, suggests that as many as three to five searches must be conducted for each case, which could as much as double the estimated number of SCR database searches to two million required for all custody and visitation cases, which would significantly increase the associated costs, staffing and effort. *Consequently, OCFS concludes that this matter should be studied in greater detail in the second phase of this study.*

²⁷ Twenty-Ninth Annual Report of the Chief Administrator of the Courts: For the Calendar Year 2006, last accessed on November 20, 2008 at <http://www.nycourts.gov/reports/annual/pdfs/2006annualreport.pdf> .

²⁸ Id. at p. 7.

²⁹ Id. at p. 13.

³⁰ See Appendix C.

³¹ Id.

³² Id.

³³ OCA based its calculations upon 2007 data supplied from UCMS.

B. Parameters of Court Searches of the SCR Database

New York's court computers and local area networks are connected on a "wide-area-network" called CourtNet.³⁴ CourtNet connects all courts and many other OCA locations -- totaling more than 250 locations statewide -- and is continually growing, as is shown by the addition of high-speed data access at 20 court facilities in Albany, Rensselaer, Schenectady and Saratoga counties in 2006.³⁵

OCA estimates that under the web-based SCR search model discussed in section VII(B), it would need to conduct SCR database checks from 150 locations statewide, with an average of five staff at each location, resulting in 750 court personnel needing access. Connection to the SCR database for the estimated 750 court personnel is anticipated to be possible over CourtNet's existing Internet access. At this point, it is not anticipated that any judges would need or seek access directly. It is thought that court clerks and administrative personnel would conduct the searches, but this matter will receive further examination in the second phase of this study.

An issue that will need careful consideration relates to the security necessary to provide the courts with access to the sensitive and confidential data in the SCR/CONNECTIONS databases. The proper function of the SCR/CPS intake system requires protection of the privacy of source information and the subjects of the *unfounded* reports, as well as the confidentiality of all SCR records. Initial analysis by the Information Technology departments of OCFS and OCA suggest that each entity's network and servers appear sufficiently secure to allow the courts to connect to the SCR/CONNECTIONS databases, although this issue will receive further study. In addition, each prospective user in the courts would need an account to access the SCR/CONNECTIONS databases, so that access controls could be implemented.³⁶ There would also need to be a security process for establishing and closing accounts and passwords so that as users left the courts' employ, their access would be removed. *It is tentatively concluded that the existing security on CourtNet, and on the Human Services Enterprise Network (HSEN) used by OCFS, may be sufficient to protect data confidentiality on the connection from the courts to the SCR database.*³⁷

However, securing the information while it is transferred between the court and OCFS networks would be a bit more challenging, but appears possible by use of web-browser based industry standard virtual private network software (SSL-VPNs) and access control measures. *OCFS therefore tentatively finds that it may be possible to provide secure access using SSL-VPN access from the courts to the SCR database via the HSEN. However, this matter should receive further analysis in the second phase of the study.*

³⁴ See 2006 Report at p. 24.

³⁵ Id.

³⁶ Each HSEN account would have an initial and ongoing cost associated with it, as it described in section VII(A) and VII(B).

³⁷ Because of the importance of safeguarding the confidentiality of the client identifiable information in the SCR database, the matter of security will be examined in more detail in the second phase of this study.

There would also need to be measures in place to protect the confidentiality of shared data, safeguards against redisclosure, and agreements between OCFS and the courts concerning responses to Freedom of Information Law (FOIL) requests and litigation. In addition, further discussions need to occur between OCFS and OCA regarding whether the courts would maintain SCR data on their local computers. If the courts wish to maintain SCR data on their local computers, then there would need to be a way to protect the confidentiality of such information in conformance with the SCR confidentiality statutes as well as a need to coordinate the amendment and/or destruction of SCR reports between OCFS and the courts. *OCFS recommends that OCFS and OCA consider whether the courts should retain SCR data on their local computers as well as whether such data should become part of the court's record. Any SCR data kept on the court computers needs to be subject to the same record retention schedules and statutory confidentiality requirements afforded to records maintained by the SCR.*³⁸

Due to the wide extent of CourtNet connectivity, and absent a careful study,³⁹ it is anticipated that no additional network hardware or fiber-backbone would need to be deployed for the courts to be able to access the SCR databases. Similarly, the court system computers are anticipated to be capable of using the software necessary to search the SCR database. However, given the unfamiliarity of court personnel with the search application, and with the SCR databases' results and function, it is anticipated that the court personnel doing the SCR database checks would need training and "help desk" support from both the New York State Enterprise Help Desk operated by the New York State Office for Technology (OFT), and from OCFS information technology or SCR staff.

³⁸ It is also very likely that statutory changes would be necessary to §422 of the SSL, and there might need to be an Memorandum of Understanding between OCA and OCFS with regard to the data and process involved.

³⁹ An actual deployment study, with carefully designed load-balancing tests, would be part of the planning for a deployment.

VI. Estimated Impact of Search Requests Made by the Court System

A. Volume of Requests

One of the questions that must be quantified is the extent of the impact upon the SCR/CONNECTIONS databases that would be generated by the courts directly accessing the SCR databases to run checks for custody and visitation orders. OCA has estimated, tentatively, that giving direct SCR access to courts will result in at least an additional one million database searches being conducted annually. To put this into perspective, the SCR currently conducts an annual average of roughly 200,000 database checks⁴⁰.

The addition of one million searches to the existing workload of the SCR/CONNECTIONS databases is unmanageable with the SCR's current resources and system capabilities. However, it is worth examining the statistics. At the human level, it implies that roughly 26,000 database checks will be run each week by the courts alone. Alternatively, expressed another way, giving desktop SCR access to the courts will result in roughly 650 additional database checks per hour, for a normal 40-hour workweek.

B. Timing of Requests

A key issue in determining the impact of these additional database searches on the SCR is the issue of the timing of the entry of, and the responses to, the searches submitted by the courts. The addition of the court's searches to the existing SCR database searches and the increase in database searches by roughly 400 percent could have significant negative effects upon other areas of New York's child welfare system. The reasons are set forth below.

All SCR database checks are carried out against the CONNECTIONS database. CONNECTIONS was designed to create a single, statewide, integrated system for the collection and recording of child protective, preventive, foster care, adoption, and independent living services information as well as information about foster parents and prospective adoptive parents. CONNECTIONS' primary task is to document information and casework activity concerning families and children for New York State's child welfare system. This statewide system of record for child welfare has approximately twenty-two thousand users. Up to five thousand users may be logged into the database simultaneously via either direct network connections or SSL-VPNs. Because of its centrality to the provision of services to, and the protection of, children and families, any challenges to CONNECTIONS' stability are extremely problematic. The increased usage caused by the courts conducting SCR database checks in relation to all custody and visitation orders would pose such a challenge. It would be complicated further by the timing issues associated with when the court requests are made and how quickly the SCR needs to respond to such requests.

⁴⁰ As noted above, the SCR based its calculations upon statistics from the 2007 calendar year.

As currently constructed, CONNECTIONS is incapable of accommodating the one million additional SCR database searches that OCA believes the courts would initiate if the searches were real-time SCR database searches and responses. Therefore, it would be necessary for the courts to prioritize their searches, so that only “emergency” searches were done on a real-time basis, and all other searches were deferred for 24 hours or longer and queued for overnight and/or “off-hour” processing.⁴¹ The decision of the number of real-time response searches and deferred searches must strike a balance between speed, cost of system upgrades,⁴² and potential risk to CONNECTIONS’ stability. It is also necessary to note here that the courts might need an application analogous to the SCR’s business continuity application, so that the submission of SCR database searches could continue during periods of CONNECTIONS downtime.⁴³

At this stage of OCFS and OCA’s examination of the feasibility of providing SCR database access to the courts, OCA estimates that roughly ten percent of the courts’ database searches would require immediate answers, and the other ninety percent could be divided between searches that need responses in 24 to 48 hours, and searches where longer response periods would be acceptable. Therefore, the courts are forecasting approximately 100,000 real-time searches per year, or roughly 400 searches per day (based on the court system’s 250-day average work year). However, even conducting these 100,000 real-time searches per year will still significantly exceed CONNECTIONS’ current capabilities as the current CONNECTIONS system may be able to safely accommodate only an additional 10,000 annual real-time SCR database searches and responses, without significant hardware and other upgrades. Even with some prudent investment in CONNECTIONS’ infrastructure,⁴⁴ it would still not be possible to meet the courts’ requirements for 100,000 real-time searches and responses.

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

As noted above, based on the roughly one million additional searches that OCA asserts will be necessary, and the forecast of a potential 400 additional real-time searches per day, the existing AIMS/IDS/CONNECTIONS/SCR database infrastructure would need to be upgraded to support the increased usage. Initial testing carried out as part of the process of gathering data for this Interim Report indicated a significant potential performance impact upon the SCR’s function, and upon CONNECTIONS. An analysis of the existing databases showed a degradation in services and an increase in failures within ten minutes during an initial load test with 400 additional concurrent users. Although more testing and reconfigurations will be carried out during phase two of this feasibility study, it appears that such problems are unavoidable without sweeping alterations in the existing architecture.

⁴¹ OCA will be further examining the optimal balance of real-time versus queued searches. For this Interim Report however, the estimate is a split of 10% or less real-time searches versus 90% or more queued searches.

⁴² As the search burden increases, OCFS theoretically could meet the demand by procuring and deploying additional processor cores, memory, and disk space for the systems at a substantial cost as discussed in section VII below.

⁴³ See footnote 21 in section IV(C) above.

⁴⁴ See sections VI(C) and VII for preliminary cost estimates.

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

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

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

As previously discussed, conducting one million database searches on the existing AIMS/IDS/CONNECTIONS systems is theorized to place an enormous additional burden upon the courts because of the need for increased court personnel, training, and technical support, and a corresponding burden upon the State because of the need to upgrade OCFS' servers and operating systems. *OCFS tentatively concludes that one potential solution that could lower the impact on both the courts and OCFS would be to modify the existing AIMS application and design a methodology for simplifying the search analysis, which would also make it possible to reduce the training and support for OCA staff doing the searches.*

After some internal analysis, OCFS believes it is worth investigating the design and creation of a new web-based search application that would act as an on-line clearance submission (OCS) system. It is conjectured that a properly designed OCS could include many timesaving and ease-of-use features as described below.

- A “category identification and refinement” mechanism could provide court personnel with a simplified/refined search result. This is tentatively envisioned as reporting a category of search response such as, e.g., Not Known; Under Investigation; or *Indicated*.
- A database search and decision mechanism that would return only the highest-likelihood individual, compared to the current AIMS system that returns multiple likely matches to the subject of a report and requires extensive training to understand the results provided.

Although further study in the second phase of this report may indicate other timesaving alterations, a new database search system that could conduct the search and the analysis, and provide a single result, would lessen the workload impact of the one million new searches dramatically.⁴⁵ The interpretation of the multiple responses that AIMS currently generates concerning a database search subject is one of the more difficult areas for training individuals to conduct SCR database searches accurately.

To implement this new web-based solution, OCFS’ initial analysis suggests there would need to be, at a minimum, the following areas of new application development and hardware deployment.

- SCR database searches require a search product called IDS, a sophisticated solution for providing a weighted response of potential “hits.” With major enhancements and/or modifications to adapt it for use within OCFS’ web services,⁴⁶ IDS could be used as a web-service to access the SCR/CONNECTIONS database, and then its complex indexing could be used to assess individuals who are known to the system.
- The on-line clearance submission application, which would be used to launch and control IDS, would need to be custom-developed and designed, along with the computer hardware infrastructure for the new web-based application.

This enhancement would allow for the volume and criticality of searches as well as minimize the potential impacts on CONNECTIONS.

⁴⁵ At this stage, it is unknown if such a search/analysis engine for the SCR database can be perfected. This must receive further analysis in the second phase of this study.

⁴⁶ It may also necessitate upgrades to the current versions of the products so that they will be able to tie into a web-based application.

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

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

The first potential model considered by OCFS and OCA is to provide access to the courts through the current SCR/CONNECTIONS system. The investment necessary to implement Model 1 to process one million database searches is estimated to be \$45 million in technical and staffing costs, with substantial as yet uncalculated costs to establish and equip a facility to house the court personnel who would conduct the searches and to train and provide ongoing support to them. The costs would double to \$90 million if two million database searches were required.

This model would require OCFS to create duplicate computer hardware, operating system, and software installation to the SCR/CONNECTIONS system the SCR currently operates. The duplicate system would be dedicated solely to SCR searches for the courts. Similarly, OCA would need to create a facility whose sole purpose would be to conduct work similar to that of the SCR's workers, but essentially four times larger.⁴⁷

At this stage in the study, OCFS estimates that the costs of the computer hardware, operating system, and software upgrades initially theorized to be required for the courts to have access to SCR databases using the current SCR/CONNECTIONS system would most likely be allocated as follows:⁴⁸

Upgrade of Existing AIMS System

Servers – ESX with VMware ⁴⁹ (2 at \$31,704 each)	\$63,408.00
Tivoli Licenses for new servers ⁵⁰ (2 at \$2,456 each)	\$4,912.00
OS Licenses for new servers ⁵¹ (19 at \$450.20 each)	\$8,554.56

⁴⁷ Because the existing SCR workers were not trained simultaneously, generating an estimate of the costs of providing 631 court personnel with ten business days' worth of training, at a ratio of one trainer to each fifteen workers, is beyond the scope of this Interim Report. Similarly, without exploring existing unused building space in the control of OCA, any estimates of the cost of establishing a facility approximately five times the size of the existing SCR is beyond the scope of the first phase of this study. Finally, each worker would require office equipment, connectivity and support, which would also add costs to the establishment of such a facility.

⁴⁸ These are estimates based on currently available NYS Office of General Services (OGS) contracts, contractor pricing, OFT pricing, and current availability within the OFT-managed collection of OCFS servers and applications. These estimates do not include any costs that would be incurred by OCA for this deployment.

⁴⁹ VMware is software that allows one computer to function as if it were several separate "virtual computers." The ESX version can be installed directly on servers without an operating system on the server such as UNIX or Windows.

⁵⁰ IBM's Tivoli product is a remote computer resource and security management tool.

⁵¹ Each "virtual computer" will need an operating system license, as well as each new server.

SAN Initial Cost ⁵² (19 at \$962.10 each) · NOTE: This is an Annual Recurring Amount	\$18,279.90
SAN Backup Cost ⁵³ (19 at \$1,068.39 each) · NOTE: This is an Annual Recurring Amount	\$20,299.41
DC Support Cost ⁵⁴ (4.9/wu at \$24,772.92 each) · NOTE: This is an Annual Recurring Amount	\$121,387.31
SSL Certificates ⁵⁵ (7 two year VeriSign certificates at \$493.51 each)	\$3,454.57
ScaleOut Licenses ⁵⁶ (6 Enterprise state server licenses)	\$8,995.00
24x7 Support costs – OFT	TBD
Total Cost - First Year	\$249,290.75
Total Annual Recurring Costs	\$159,966.62

Upgrade of Existing Database

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

Staffing Costs – Maintenance

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

SSLVPN Annual Costs	\$3.38/user/month =	\$30,420.00
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⁵² A SAN is a storage area network, which provides additional data storage for computers on the network.

⁵³ The SAN will require backup services to protect against data loss.

⁵⁴ These are data center costs allocated to OCFS by OFT.

⁵⁵ SSL certificates are used by computers and web services to identify each other as part of a security solution.

⁵⁶ The ScaleOut software tool is used to manage one of the types of storage area networks.

HSEN Annual Costs	\$3.54/user/month =	\$31,860.00
*Based on 750 users	Total =	\$62,280.00

Total Costs

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

OCFS' initial analysis suggests that for the courts to staff a facility able to process one million SCR database searches in a timely manner, they would need approximately 636 additional staff as follows:

Process	Percent of Cases in Process	Additional FTE Needed for one million searches
Log and Batch Requests	100%	6
Data Enter into AIMS	100%	81
Send backs (16%)	16%	6
Potential Matches are Analyzed	100%	93
Generate "No Hit" Letter	25%	3
Second Level of Review	75%	244
Compile Case information and Generate "Hit Letter"	37.5%	122
Generate "No Hit" Letter after Second Level Review	12.5%	1

Additional FTEs Required	One million Court Requests
Grade 6	97
Grade 9	93
Grade 14	367
Grade 11 (Supervise 12 Gr 9)	8
Grade 18 (Supervise 7 Gr 14)	52
Grade 23 (Supervise 4 Gr 18)	13

Grade 27 (Supervise 4 Gr 23)	3
Chief of Operations	1
Director	1
Associate Commissioner	1
Total FTE	636

OCFS estimates that the associated costs for these staff would be approximately \$44 million: \$27 million would be attributable to staff and non-personal services costs, an additional \$11.6 million would be attributable to fringe benefits costs; and \$5 million would be attributable to connectivity costs and the cost for CONNECTIONS’ access and security requirements. The costs would double if two million additional searchers were required.

The costs for the building and equipment needed for the facility that would house the staff and the costs of providing necessary “help-desk” support and training to the staff was not calculated during phase one of this study.

B. Model 2: Access Provided Through a New Web-based System

The second potential model considered by OCFS and OCA would be to provide the courts access to the SCR/CONNECTIONS databases through a web-based enhancement to the AIMS system. The investment necessary to implement Model 2 is estimated to be approximately \$2.5 million in startup technical costs, with approximately \$1 million in ongoing technical costs along with additional training and support costs.

OCFS estimates that the costs of the systemic changes initially theorized to be required for a simplified web-based solution would most likely be allocated as follows: ⁵⁷

Upgrade of Existing AIMS System

Servers – ESX with VMware (2 at \$31,704 each)	\$63,408.00
Tivoli Licenses for new servers (2 at \$2,456 each)	\$4,912.00
OS Licenses for new servers (19 at \$450.20 each)	\$8,554.56
SAN Initial Cost (19 at \$962.10 each) · NOTE: This is an Annual Recurring Amount	\$18,279.90
SAN Backup Cost (19 at \$1,068.39 each) · NOTE: This is an Annual Recurring Amount	\$20,299.41
DC Support Cost	\$121,387.31

⁵⁷ These are estimates based on available OGS contracts, contractor pricing, and OFT pricing as well as the current availability upon the OFT-managed OCFS servers and applications. These estimates do not include any costs that would be incurred by OCA for this deployment.

(4.9/wu at \$24,772.92 each) · NOTE: This is an Annual Recurring Amount	
SSL Certificates (7 two year VeriSign certificates at \$493.51 each)	\$3,454.57
ScaleOut Licenses (6 Enterprise state server licenses)	\$8,995.00
24x7 Support costs – OFT	TBD
Total Cost - First Year	\$249,290.75
Total Annual Recurring Costs	\$159,966.62

Upgrade of Existing Database

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

Staffing Costs – Development

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

Staffing Costs – Maintenance

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

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

Total Costs

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

As previously discussed, there also would be costs associated with providing “help desk” support to the court personnel in using the SCR databases. Because neither OCFS nor OCA has investigated the likely volume of help desk calls, this Interim Report will use the estimate ordinarily used by OFT for help desk services that ten percent of users ordinarily seek help in an average month. This would result in roughly 75 help desk calls per month by 750 OCA staff conducting SCR database searches, at an average annual cost preliminarily estimated at \$10,687 solely for the cost of the calls, without factoring in additional costs.⁵⁸

After initial study, OCFS also estimates that necessary training for the OCA personnel to conduct searches using Model 2 will optimally cost approximately \$25,611 as a start-up cost, with additional ongoing annual training expenses. In addition, it is important to note that OCA staff using the SCR databases would need training in using the search application, and in interpreting the results returned to the court. OCFS has tentatively considered the matter, and anticipates it could create a computer-based training (CBT) module that the courts could use for its employees, or that it might use a “virtual classroom” environment for training, either of which would simplify the training process and allow enough flexibility for vital work to continue in the courts without productivity impacts.

Although further study would be required to establish the optimal balance of training speed and quality versus workplace impact, it appears that the training might require one half-day of training for each of the 150 locations and roughly 750 court personnel who would do the database searches.⁵⁹ *OCFS, therefore, tentatively recommends that the best solution would be to deliver this through OCFS’ virtual classroom platform (iLinc).* This virtual classroom is a live computer based distance-learning platform that uses the Internet and Voice over IP technology to assemble trainees and a trainer into a live classroom. The iLinc technology could make this training less costly and easily scalable. In this challenging fiscal climate, it is also worth noting that iLinc eliminates the need for trainees and trainers to travel, while making every training session available statewide as opposed to requiring single regional deliveries.

The initial projection is that the entire training project could be completed by dedicating fifteen percent of one Grade 18 worker’s annual work time and fifteen percent of a Grade 23

⁵⁸ Help desk support costs roughly \$25 per call. OCFS estimates there will be 427.5 help desk calls in the first fiscal year.

⁵⁹ Before choosing and deploying training modalities, a study of the optimal tradeoff of speed versus workplace disruption would be conducted.

worker’s annual work time. The development and deployment time would be approximately three months including training time, time for developing the half-day training course, practice sessions for the instructor(s), and roughly forty half-day training sessions of twenty trainees each, statewide.⁶⁰

Therefore, if iLinc were suggested, the preliminary plan tentatively advanced by OCFS would require the following commitment of resources:

Resource	Expense
• 15% Grade 18 FTE (\$47,860 Annual Salary)	\$7,179
• 15% Grade 23 FTE (\$61,693 Annual Salary)	\$9,294
• Fringe benefits at 45.55%	\$7,504
• Indirect costs at 3.85%	\$634
• Virtual Classroom Service	No Charge
• Virtual Classroom Training and Support	No Charge
Total	\$24,611

⁶⁰ It is important to note that the training time is likely to be an annual cost due to turnover among the court personnel who would conduct the SCR database checks.

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

Although there has not been a dedicated study at this point of the deployment timelines of either proposed solution for providing the courts with SCR database access, it is possible to provide some estimates. The challenges to rapid deployment of the required technology and rapid training of personnel will be addressed in the second phase of this study.

A. Deployment of Upgraded Server Infrastructure

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

B. Development of a Web-based AIMS System for Online Clearance Submissions

At this point, a best-guess estimate is that it would take one year of programming to develop a web-based AIMS system. This would require at least two teams of programmers dedicated to writing, checking, and testing the newly developed application(s).⁶¹ It is also reasonable to assume that training court staff in the use of the new application(s) would take several months on a statewide basis, and that it would take several months to create a targeted training process and product. Finally, it also would be necessary to establish internal “help desk” functionality at OCA and OCFS that would have the ability to address questions related to the application(s)’ functions.

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

Although it is suggested in the first phase of this study that it is feasible to provide a simplified search result to the courts by means of an “automated” search process, so that courts could gain useful information from access to the SCR/CONNECTIONS databases, it is not that simple. Once a specific search result has been created, determining if there is a

⁶¹ Initial estimates suggest that the development would require eight full-time equivalents (FTEs) working for six months on the graphical user interface; seven FTEs working for nine months on re-coding AIMS so that it would be able to support the new search queuing and provide a simplified answer interface; two FTEs to re-code IDS to become a robust web service, and to upgrade its search capabilities; six FTEs for the integration of the recoded modules of the existing database search system; and three FTEs for ongoing annual support to make any necessary fixes and minor upgrades.

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

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

There are no clear rules on how to analyze the search results. Unfortunately, the process is idiosyncratic and proficiency comes with a combination of training and practice. Consequently, court personnel would require additional training and practical experience, and judges may also require training in the interpretation of the SCR database search results so that they will accurately assess the probative value of such searches.⁶²

In conclusion, although a great deal of further study, analysis, and organizational learning by both OCFS and OCA must still occur, it is possible to conclude that connecting the courts to the SCR database is feasible, albeit extremely expensive and potentially of equivocal value.

⁶² It is anticipated that, during the second phase of this study, OCFS and OCA will examine the potential costs of the training necessary for the courts to make the most effective use of SCR database searches.

IX. Statement of Interim Findings, Conclusions and Recommendations

A. Interim Findings

OCFS tentatively makes the following interim findings:

- If the Legislature requires the courts to consult the SCR/CONNECTIONS databases prior to issuing any order of custody or visitation, it would add at least one million and potentially up to two million new database searches to the SCR/CONNECTIONS database systems.
- Adding one million court searches to the existing SCR database searches would increase database searches by four hundred percent, which could have significant unintended negative effects upon the SCR/CONNECTIONS computer systems' ability to handle their other critical child welfare functions.
- The SCR/CONNECTIONS databases are not currently capable of accommodating the estimated one million additional SCR database searches that would be required in conjunction with all custody and visitation orders, unless such searches are not real-time SCR database searches and responses.
- The courts would have to prioritize their searches, so that only "emergency" and very high-priority searches would be done on a real-time basis. All other searches would be deferred for up to 24 hours or longer in a queue for overnight or "off-hour" processing.
- Even if court search submissions were queued, the existing SCR/CONNECTIONS database systems and infrastructure would have to be upgraded to support the increased usage.
- There are three areas of the SCR/CONNECTIONS databases' infrastructure that would have to be adapted if desktop search access were deployed for the courts. First, a number of additional heavy-duty server computers would need to be purchased, configured, and deployed. Second, a custom software application would have to be created to queue search requests to run on a non real-time basis, such as overnight, or at some later date selected by the courts. Finally, a custom software application with a simplified web-search style interface would have to be created for court users to submit and understand the results without requiring as much specialized training as SCR workers now undergo. The preliminary technological and staffing costs for these changes are estimated to range from \$3.5 million to \$90 million depending on the model used to provide access and the number of required searches. There also would be additional costs that have not yet been fully studied.
- In addition to these technological challenges, there are other significant challenges associated with the courts using SCR reports in custody and visitation proceedings that must be further studied before a decision is made whether to grant such access to the courts. Those issues include:
 - The use of pre-1997 SCR database records by the courts would create a disproportionate risk of a negative impact on mothers seeking custody and visitation and pose a significant risk that both male and female non-perpetrating parents could be falsely identified as potential abusers.

- The use in custody proceedings of SCR reports that are *unfounded* or that are *indicated* at the some credible evidence level may violate parents' constitutional rights.
- Due to the large number of SCR reports and the lack of unique identifiers for persons listed in such reports, verifying whether a party to a custody or visitation proceeding is the subject of a report of child abuse or maltreatment can be a time-consuming process, which could delay the timeliness of court orders in such proceedings with resulting negative impacts on the court process and the families and children involved.

B. Interim Conclusions and Recommendations

OCFS tentatively draws the following interim conclusions:

- It may be feasible to connect court computers to the SCR databases to provide information concerning parties requesting orders of custody or visitation, however, there are significant fiscal, infrastructure, procedural, and statutory challenges to doing so.
- Due the substantial costs associated with providing the courts with access to SCR reports and all of the substantive issues associated with the courts using such reports, OCFS and OCA should further study which, if any, types of SCR reports would provide the courts with the most probative value and least potential for appellate litigation, unsettled judgments, and unnecessary delays in issuing custody or visitation orders. The study should include examining whether modifications should be made to the existing record retention schedules and, if possible, the solutions created in other states that have also studied or implemented court access in relation to custody and visitation proceedings.
- If a decision is made to proceed with providing the courts access to some SCR reports, the following technological issues need to be addressed.
 - The existing security on CourtNet and the Human Services Enterprise Network used by OCFS is sufficient to protect the confidentiality of the data that would be sent from and received by the SCR and the courts, however additional security solutions must be implemented to protect the confidentiality of the data as it is transferred between the two networks.
 - The security solution most likely to safeguard the confidentiality of the SCR's database records would be to use SSL-VPN access from the courts to the SCR database.
 - There would have to be a new user-level security process for providing accounts and passwords for court users to access the SCR reports, so users leaving the courts' employ or moving to other task areas would have their access removed.
 - OCFS and OCA should consider whether the courts should retain SCR data on their local computers and whether such data should become part of the courts' records. There would be a need for desktop security measures if the courts intend to keep SCR data on their local computers so that some or all of the data does not become part of the public record. Any SCR data kept on the court computers

needs to be subject to the same record retention periods and statutory confidentiality requirements afforded to records maintained by the SCR.

- A potential technical solution that could improve the feasibility of providing SCR/CONNECTIONS database access to the courts would be to create a web-based on-line clearance submission system for use by the courts instead of the existing AIMS application, and to create a methodology for simplifying the search analysis results. Those enhancements would also make it possible to reduce the training and support costs for court staff doing the searches.
- OCFS should further study the design and creation of a new web-based search application that would permit the on-line clearance submissions, with the goal of including as many timesaving and ease-of-use features as are cost-effective and beneficial.
- OCFS and OCA should work closely together to further develop recommendations regarding the optimal balance between real-time data search and response, and data entry into an overnight or longer deferred search queue, where responses come to the court 24 hours or more after a search is started.
- OCFS should study the creation of an OCFS virtual classroom platform (iLinc) training module for the courts, so court staff might be able to use SCR database searches in the most efficient manner.

X. Appendices

Appendix A: Legislative Language Enacting the Study

LAWS OF NEW YORK, 2008

CHAPTER 595

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Legislature of the STATE OF NEW YORK ss:

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

DEAN G. SKELOS
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

Appendix B: Statutory Underpinnings

1. Statutory underpinnings of the SCR and its Operation

§ 422. Statewide central register of child abuse and maltreatment

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

2. (a) The central register shall be capable of receiving telephone calls alleging child abuse or maltreatment and of immediately identifying prior reports of child abuse or maltreatment and capable of monitoring the provision of child protective service twenty-four hours a day, seven days a week. To effectuate this purpose, but subject to the provisions of the appropriate local plan for the provision of child protective services, there shall be a single statewide telephone number that all persons, whether mandated by the law or not, may use to make telephone calls alleging child abuse or maltreatment and that all persons so authorized by this title may use for determining the existence of prior reports in order to evaluate the condition or circumstances of a child. In addition to the single statewide telephone number, there shall be a special unlisted express telephone number and a telephone facsimile number for use only by persons mandated by law to make telephone calls, or to transmit telephone facsimile information on a form provided by the commissioner, alleging child abuse or maltreatment, and for use by all persons so authorized by this title for determining the existence of prior reports in order to evaluate the condition or circumstances of a child. When any allegations contained in such telephone calls could reasonably constitute a report of child abuse or maltreatment, such allegations shall be immediately transmitted orally or electronically by the 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, except as provided in subdivision eleven of this section. 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 department, local departments, or the commission on quality of care for the mentally disabled, shall be confidential and shall only be made available to:

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

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

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

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

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

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

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

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

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

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

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

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

(m) the New York city department of investigation provided however, that no information identifying the subjects of the report or other persons named in the report shall be made available to the department of investigation unless such information is essential to an investigation within the legal authority of the department of investigation and the state department of social services gives prior approval;

(n) chief executive officers of authorized agencies, directors of day care centers and directors of facilities operated or supervised by the department of education, the division for youth, the office of mental health or the office of mental retardation and developmental disabilities, in connection with a disciplinary investigation, action, or administrative or judicial proceeding instituted by any of such officers or directors against an employee of any such agency, center or facility who is the subject of an indicated report when the incident of abuse or maltreatment contained in the report occurred in the agency, center, facility or program, and the purpose of such proceeding is to determine whether the employee should be retained or discharged; provided, however, a person given access to information pursuant to this subparagraph (n)

shall, notwithstanding any inconsistent provision of law, be authorized to redisclose such information only if the purpose of such redisclosure is to initiate or present evidence in a disciplinary, administrative or judicial proceeding concerning the continued employment or the terms of employment of an employee of such agency, center or facility who has been named as a subject of an indicated report and, in addition, a person or agency given access to information pursuant to this subparagraph (n) shall also be given information not otherwise provided concerning the subject of an indicated report where the commission of an act or acts by such subject has been determined in proceedings pursuant to article ten of the family court act to constitute abuse or neglect;

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

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

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

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

(s) a child protective service of another state when such service certifies that the records and reports are necessary in order to conduct a child abuse or maltreatment investigation within its

jurisdiction of the subject of the report and shall be used only for purposes of conducting such investigation and will not be redisclosed to any other person or agency;

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

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

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

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

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

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

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

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

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

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

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

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

information the reasons for the denial.

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

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

(i) to the office of children and family services for the purpose of supervising a social services district;

(ii) to the office of children and family services and local or regional fatality review team members for the purpose of preparing a fatality report pursuant to section twenty or four hundred twenty-two-b of this chapter;

(iii) to a local child protective service, the office of children and family services, all members of a local or regional multidisciplinary investigative team, the commission on quality of care for the mentally disabled, or the department of mental hygiene, when investigating a subsequent report of suspected abuse or maltreatment involving a subject of the unfounded report, a child named in the unfounded report, or a child's sibling named in the unfounded report;

(iv) to the subject of the report; and

(v) to a district attorney, an assistant district attorney, an investigator employed in the office of a district attorney, or to a sworn officer of the division of state police, of a city, county, town or village police department or of a county sheriff's office when such official verifies that the report is necessary to conduct an active investigation or prosecution of a violation of subdivision three of section 240.55 of the penal law.

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

subdivision three of section 240.55 of the penal law. Legally sealed unfounded reports shall be expunged ten years after the receipt of the report. Whenever the office of children and family services determines that there is some credible evidence of abuse or maltreatment as a result of an investigation of a report conducted pursuant to subdivision (c) of section 45.07 of the mental hygiene law, the office of children and family services shall notify the commission on quality of care for the mentally disabled.

(c) Notwithstanding any other provision of law, the office of children and family services may, in its discretion, grant a request to expunge an unfounded report where: (i) the source of the report was convicted of a violation of subdivision three of section 240.55 of the penal law in regard to such report; or (ii) the subject of the report presents clear and convincing evidence that affirmatively refutes the allegation of abuse or maltreatment; provided however, that the absence of credible evidence supporting the allegation of abuse or maltreatment shall not be the sole basis to expunge the report. Nothing in this paragraph shall require the office of children and family services to hold an administrative hearing in deciding whether to expunge a report. Such office shall make its determination upon reviewing the written evidence submitted by the subject of the report and any records or information obtained from the state or local agency which investigated the allegations of abuse or maltreatment.

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

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

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 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 commission on quality of care for the mentally disabled, the division for youth, department of education, office of mental health, office of mental retardation and developmental disabilities, the local social services commissioner or school district placing the child, any law guardian appointed to represent the child whose appointment has been continued by a family court judge during the term of a child's placement, and the director or operator of a residential care facility or program. The local child protective service or the state agency which investigated the report, upon receipt of such notice, shall take the appropriate similar action in regard to its child abuse and maltreatment register and records and inform, for the same purpose, any other agency which received such record.

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

11. (a) Reports and records made pursuant to this title, including any previous report concerning a subject of the report, other persons named in the report or other pertinent information, involving children who reside in residential facilities or programs enumerated in paragraphs (a), (b), (c), (d), (e), (f) and (j) of subdivision four of section four hundred twelve-a of this title, shall be transmitted immediately by the statewide central register to the commissioner of the office of children and family services who shall commence an appropriate investigation consistent with the terms and conditions set forth in section four hundred twenty-four-c of this title.

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

department policies and procedures relating to the protection of children from abuse and maltreatment.

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

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

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

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

2. Statutory Underpinnings for Court Use of SCR Reports and Database Searches

Section 240 (1-a) of the SSL

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

...

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

it meets the other requirements of this subdivision and is otherwise admissible as a business record. If such a report, or portion thereof, is admissible in evidence but is uncorroborated, it shall not be sufficient to make a fact finding of abuse or maltreatment in such proceeding. Any other evidence tending to support the reliability of such report shall be sufficient corroboration.

Appendix C: OCA Methodology to Derive Projected Number of Searches

A. Family Court Methodology

OCFS Feasibility Study Methodology For Determining Number of People Who Need SCR Database Checks Based on 2007 UCMS-Family Data

Summary:

529,996 Statewide Article 6 checks and rechecks of adults
324,610 Statewide Article 6 checks and rechecks of children
18,514 Statewide Article 8 checks and rechecks of adults
9,257 Statewide Article 8 checks and rechecks of children
481 Statewide Article 10 checks of adults
+ 481 Statewide Article 10 checks of children
883,339 Statewide checks and rechecks of adults and children in family court

1. Article 6 custody/visitation (case type V):

Initial Original/Supplemental V Case Checks:

- Adult checks: The number of petitioners, respondents and interested parties were determined for original and supplemental custody/visitations cases filed in 2007. These participants were added together to determine the number of initial checks needed. Cases in which the same participants filed more than once on the same day (e.g. Mom files against Dad at the same time Dad files against Mom) were counted as one occurrence, as only one check would be needed for each of the parties.
- Children checks: The number of unique children were determined for original and supplemental custody/visitations cases filed in 2007. If a V petition was filed by Mom and a separate V petition was filed by Dad on the same day, the child would only be counted once as only one check would be needed for the child.

Original/Supplemental V Case Rechecks:

- Adult Rechecks: The number of rechecks was reached by determining all subsequent appearances that were associated with an original or supplemental custody/visitation docket filed in 2007, where the subsequent appearance occurred more than 29 days from the previous

appearance. The number of unique petitioners, respondents and interested parties for these subsequent appearances were added together.

- Children Rechecks: The number of rechecks was reached by determining all subsequent appearances that were associated with an original or supplemental custody/visitation docket filed in 2007, where the subsequent appearance occurred more than 29 days from the previous appearance. The number of unique children for these appearances were counted.

Total # of Original/Supplemental Registry Checks:

- Adult checks and rechecks: The number of initial checks and rechecks for adults were added together for original custody/visitation cases (301,688) and supplemental custody/visitation cases (228,308) for a statewide total of **529,996** adults requiring registry checks in Article 6 cases.
- Children checks and rechecks: The number of initial checks and rechecks for children were added together for original custody/visitation cases (176,836) and supplemental custody/visitation cases (147,774) for a statewide total of **324,610** children requiring registry checks in Article 6 cases.
- Total checks and rechecks for adults and children: The total number of checks and rechecks for adults (529,996) and children (324,610) were added together for a statewide total of **854,606** adults and children requiring registry checks in Article 6 cases.

2. Article 8 family offense (case type O):

Initial Orders of Protection Case Checks:

- Adult checks: The number of 2007 orders of protection where the conditions include Permit Visitation (Term 5) or Temporary Order of Custody (Term 7), were determined. Because the information on the parties involved is in the order itself and not able to be counted, it is assumed, for purposes of this analysis, that there are at least two parties involved in the custody/visitation issue. Thus, the count of orders of protection involving these conditions was multiplied by two (i.e. $8,665 \times 2 = 17,330$).
- Children checks: The number of 2007 orders of protection where the conditions include Permit Visitation (Term 5) or Temporary Order of Custody (Term 7), were determined. Because the information on the parties involved is in the order itself and not able to be counted, it is assumed, for purposes of this analysis, that there is at least one child that is the subject of the custody/visitation issue. Thus, the count of orders of protection involving these conditions was multiplied by one (i.e. $8,665 \times 1 = 8,665$).

Orders of Protection Case Rechecks:

- Adult checks: Orders of protection extended in 2007 where the extension was issued more than 29 days after the previous order and the conditions include Permit Visitation (Term 5) or Temporary Order of Custody (Term 7) were determined. Because the information on the parties involved is in the order itself and not able to be counted, it is assumed, for purposes of this analysis, that there are at least two parties involved in the custody/visitation issue. Thus, the count of orders of protection involving these conditions was multiplied by two (i.e. $592 \times 2 = 1,184$).

- Children checks: Orders of protection extended in 2007 where the extension was issued more than 29 days after the previous order and the conditions include Permit Visitation (Term 5) or Temporary Order of Custody (Term 7) were determined. Because the information on the parties involved is in the order itself and not able to be counted, it is assumed, for purposes of this analysis, that there is at least one child that is the subject of the custody/visitation issue. Thus, the count of orders of protection involving these conditions was multiplied by one (i.e. $592 \times 1 = 592$).

Total # of Article 8 Registry Checks:

- Adult checks and rechecks: The number of initial checks and rechecks for adults were added together for a statewide total of **18,514** adults requiring registry checks in Article 8 cases.
- Children check and rechecks: The number of initial checks and rechecks for children were added together for a statewide total of **9,257** children requiring registry checks in Article 8 cases.
- Total checks and rechecks for adults and children: The total number of checks and rechecks for adults (18,514) and children (9,257) were added together for a statewide total of **27,771** adults and children requiring registry checks in Article 8 order of protection cases.

3. Article 10 (NA/NN/K/L) Registry Checks:

- Adult checks: Determined the number of 2007 appearances associated with an original or supplemental NA (abuse), NN (neglect), K (Foster care review) or Foster care Placement (L) where there was a case outcome of: order of visitation, visitation continued or visitation modified. The number of unique respondents and interested parties in these appearances were added together for a statewide total of **481** people requiring registry checks.
- Children checks: Determined the number of 2007 appearances associated

with an original or supplemental NA (abuse), NN (neglect), K (Foster care review) or Foster care Placement (L) where there was a case outcome of: order of visitation, visitation continued or visitation modified. The number of unique children on these appearances were counted for a statewide total of **481** children requiring registry checks.

- Total checks and rechecks for adults and children: The total number of checks and rechecks for adults (481) and children (481) were added together for a statewide total of **962** adults and children requiring registry checks in Article 10 cases.

B. Supreme Court Methodology

OCFS Feasibility Study
Estimate for People to Be Checked in Supreme Civil Matrimonial Cases
Involving Custody/Visitation

Total Number of Supreme Court Checks and Rechecks=141,000

Summary:

70,500 Approximate number of parent and children checks required in uncontested matrimonial cases involving custody/visitation

47,000 Approximate number of parent and children checks and rechecks required in contested matrimonial cases for temporary orders (pendente lite) and final orders involving custody/visitation

+ **23,500** Approximate number of parent and children rechecks required in contested matrimonial cases where modifications are ordered to existing orders involving custody/visitation

141,000

- All matrimonial cases (contested and uncontested) that involve children have a custody/visitation order. There is a small percentage of cases that come to the Supreme Court with an existing family court custody order in place. (Source: Jim McElliott, NYS Supreme Civil).

Note: Initial checks processed in the Family Court; rechecks if necessary, processed in Supreme Court.

- There are approximately 60,000 divorces statewide each year. New York City equals 50% and Outside New York City equals 50%. (Based on 2006, Dept. of Health, Vital Statistics)

- Of the 60,000 divorces, approximately 45% or 27,000 cases involve children. Of these 27,000 divorce cases, about 75% (20,250) are uncontested. These cases would require a check for each parent one time (typically both mom and dad are seeking custody-- 40,500). The 20,250 uncontested matrimonial cases involve 30,000 children and would require a check once for each child; 30,000. The total number of required checks for parent and children in uncontested matrimonial cases equal **70,500**.

(Based on 2006 Dept. Of Health, Vital Statistics)

*Note: Few cases come to the Supreme Court where other interested parties are seeking custody, e.g., grandparents. (Source: Peter Sorrento-Matrimonial Office).

- The remaining 25% (6,750) matrimonial cases involving children are contested and therefore, would require two checks for each parent (13,500), once when the temporary order (pendente lite) was ordered and again (recheck) when the final order was issued; (27,000). These cases involve 10,000 children and the children would also require two checks, once at the time of temporary order and again at the final order; 20,000. The total for parent and children minimum required checks in uncontested matrimonial cases is **47,000**.

- It is estimated at least half of the contested matrimonial cases (3,375) appear before the court for an additional one to three times for a modification to an existing custody/visitation order. We multiplied the 3,375 by an average of 2 modifications per case for a total of 6,750. We double that figure for each parent involved for a total of 13,500 rechecks.

These additional cases involve 5,000 children; therefore 10,000 rechecks will be required. Total parent and child rechecks for contested matrimonial cases that come back for a modification equal **23,500**.

(Source; Judge Silberman's Matrimonial Office)