

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE SCHOHARIE COUNTY DISTRICT ATTORNEY
AND
THE COMMISSIONER OF THE
SCHOHARIE COUNTY DEPARTMENT OF SOCIAL SERVICES**

I

FRAUD INVOLVING PUBLIC ASSISTANCE OR FOOD STAMPS

WHEREAS, it is the responsibility of the Commissioner to administer public assistance and care for those in need in Schoharie County, and

WHEREAS, the Commissioner is responsible for assigning staff to investigate all applications for assistance, and

WHEREAS, it is found, from time to time, that assistance is sought by making false statements, deliberately concealing material, facts, impersonation, or other fraudulent devise, and

WHEREAS, Section 145 of the Social Services Law requires Social Service officials who have reason to believe that any person has attempted to fraudulently obtain assistance to promptly refer the facts and evidence to the District Attorney, and

WHEREAS, the District Attorney has no investigatory staff, it is appropriate to agree as follows, so as to facilitate prompt prosecution of fraudulent activity.

The investigatory staff of the Department of Social Services shall investigate cases referred to them for welfare fraud. The Investigations Division shall refer all cases for which evidence indicates fraudulent activity to the District Attorney. The District Attorney shall decide what, if any, action should be taken. In the event that the District Attorney feels further investigation is required to develop a case for presentation to either Justice Court or Grand Jury, he may direct the Investigations Division to continue their investigation and prepare evidence.

Cases being referred to the District Attorney shall be in trial book form including a brief summary of the investigation, a list of charges, and an explanation of each charge. The District Attorney shall reserve the right to make alternative charges in the interest of justice.

Upon referral of a case, the District Attorney shall have consultation with the investigator of the case as to the charges. In cases that are accepted for prosecution, the District Attorney shall advise the Investigation s Division as to the charges and provide the department with a copy of the prosecutor's Information; or the District Attorney may notify the Investigations Division that the Department of Social Services may apply at the local court for a warrant of arrest and proceed to arraign the defendant.

The District Attorney shall formally appoint the Social Service investigatory staff as District Attorney Investigators (CPL) 1.20 (34g) .

The Department of Social Services shall require the investigatory staff to attend mandated police officer training and shall withstand all costs for same, and they will have powers to arrest and perform prescribed duties as police officers, excluding the carrying of side arms, upon the successful completion of the municipal police officer training course and their certifications police officers. Supplemental training will be at the Commissioner's discretion.

The Department of Social Services shall be responsible for all compensation to the investigatory staff of the department, to include mileage and other incidental costs.

Said compensation is only with the Commissioner's approval.

The Social Service investigatory staff, when acting as District Attorney investigators, shall only work on Department of Social Services related cases and may be used in the discretion of the District Attorney or Commissioner of the Department of Social Services on any and all Social Services matters where criminal charges are a possible end result.

Upon appointment as District Attorney investigators, the Department of Social Services investigatory staff shall immediately have the following provisions once appropriate approval is received from the Superintendent of the New York State Police by the District Attorney:

1. Access to Department of Motor Vehicle (DMV) records if allowed by DMV.
2. Access to Division of Criminal Justice Services (DCJS) if allowed by DCJS.
3. Access to National Crime Information Center (NCIC).
4. CCH - Criminal History Records - restricted to investigations that are likely to conclude with an arrest.
5. Additional training through the Municipal Police Training Council (MPTC).
6. Be able to have communication equipment installed into county vehicles used only by social services investigators. Said equipment is to be compatible with the Schoharie County Sheriff Department's communication system.

Upon becoming certified by the Municipal Police Training Council, Social Services investigatory staff shall have Police Officer Status under CPL 1.20(34g) and shall have all powers of police officers pursuant to the Criminal Procedure Law and the Penal Law. All arrests for fraud and non support will be made by warrant.

1. All arrests by warrant are to be facilitated by the use of a uniformed police officer from any police department as listed in the definitions of CPL 1.20(34). The investigatory staff of the department may use their status as police officers to effect the arrest in emergency circumstances and / or when a uniformed officer is not available.

2. The investigatory staff of the department may use their status as police officers to effect a warrantless arrest in emergency circumstances to ensure the security of agency personnel and its clients and the proper functioning of the agency while awaiting a uniformed police officer.
3. With prior approval of the District Attorney and the Schoharie County Sheriff Office, the investigatory staff of the department may transport arrestees.
4. Any other responsibilities or powers under CPL & PL at the District Attorney's discretion.

II

DISQUALIFICATION CONSENT AGREEMENTS

In order to facilitate the use of the public assistance and food stamp Disqualification Consent Agreement in conjunction with the public assistance and food stamp Intentional Program violations, and in accordance with 18 NYCRR 359.4 which requires that local Department of Social Services enter into an advance written notification of the consequences of signing a disqualification consent where public assistance or food stamp intentional program violations are alleged; the following guidelines shall be set:

1. Cases involving a monetary value of \$0-\$1,000 shall be referred to the District Attorney, where he shall have the option of criminal prosecution or in the interest of justice, offer to the accused as part of the plea bargaining process, the opportunity to sign the Disqualification Consent Agreement in lieu of prosecution if all the conditions of the Disqualification Consent Agreement are met; the exception being a repeat offender or a blatant and willful case of larceny.
2. The District Attorney agrees that in all cases referred to his office where a public assistance or food stamp intentional program violation is alleged and where the case is to be settled upon a basis of a deferred adjudication, or a plea agreement is part of such settlement or order, the District Attorney will notify Schoharie County Department of Social Services Investigation Division prior to such settlement for the purpose of permitting the Department of notifying the defendant in writing to the consequences of signing the Disqualification Consent Agreement.

III

NON SUPPORT OF A CHILD

WHEREAS, it is one of the responsibilities of the Schoharie County Child Support Collection and Enforcement Division to enforce payment of child support by respondents who are found legally chargeable with the support of their child(ren), and

WHEREAS, the Commissioner of Social Services is responsible for assigning staff to enforce

payment of child support by respondents who are legally obligated to make child support payments through the Schoharie County Child Support Collection and Enforcement Division, and

WHEREAS, it is found, from time to time, that respondents legally obligated to make said child support payments as court ordered, willfully fail to make such child support payments, and

WHEREAS, Section 260.05 of the Penal Law of the State of New York considers non-support of a child in the second degree to be a class A misdemeanor when a parent, guardian or other person legally charged with the care or custody of a child less than sixteen years old, fails or refuses without lawful excuse to provide support for such child when he is able to do so, or becomes unable to do so when, though employable, he voluntarily terminates his employment, voluntarily reduces his earning capacity or fails to diligently seek employment, and

WHEREAS, Section 260.06 of the Penal Law of the State of New York considers non-support of a child in the first degree to be a class E felony when a parent, guardian or other person legally charged with the care or custody of a child less than sixteen years old, fails or refuses without lawful excuse to provide support for such child when he is able to do so, and he or she has previously been convicted in the preceding five years of the crime defined in section 260.05 of the Penal Law of the State of New York, and

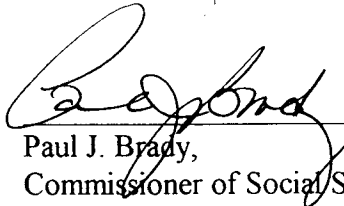
WHEREAS, it is the desire of the District Attorney and the Commissioner of Social Services to proceed with the criminal prosecution of respondents who willfully and repeatedly fail to pay their child support obligations, it is therefore agreed that the following guidelines will be followed by the Department of Social Services and the District Attorney:

1. When all remedies to enforce a child support order through the Family Court have proven to be inadequate, the Coordinator of the Child Support Collection and Enforcement Division will provide the Senior Social Services Investigator of the Investigations Division with the name of any respondent who has willfully and repeatedly failed to meet his/her child support obligation as court ordered. In non-DSS cases, it will be required that the Child Support Collection and Enforcement Division seek the written consent of the victim (custodial parent) to refer the case for consideration of criminal prosecution.
2. The Senior Social Services Investigator of the Investigations Division will assign an investigator to complete a thorough investigation of the referral, complete with documentation. Such investigation shall include consultation with the Coordinator of the Child Support Collection and Enforcement Division and/or any other member of this Division.
3. Upon completion of each investigation by the Investigations Division, cases deemed suitable will be referred to the District Attorney. Cases referred shall be in trial book form.
4. Upon presentation of a referral to the District Attorney by Investigations Division staff, the District Attorney shall decide if the case should/should not proceed. In addition, the District Attorney shall reserve the right to make alternative charges in the interest of justice. The District Attorney may consult with the investigator who performed the investigation or any other Department of Social Services staff deemed necessary.

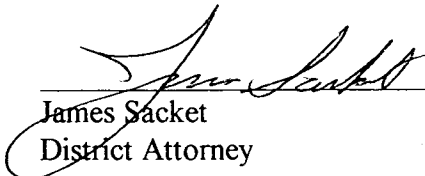
5. Cases deemed suitable shall be prosecuted in the appropriate Justice Court by the District Attorney.
6. If a case proceeds in the appropriate Justice Court, the Department of Social Services will assure that proper Department representation is present to give any necessary testimony.

This Agreement shall become effective on May 14, 1998, and shall remain in effect as long as the principals signing same remain in office. This Agreement does not establish any third party relationships between the Department of Social Services and any other department, agency, or organization. This Agreement may be canceled at any time by either party upon written notice.

Dated: May 14, 1998

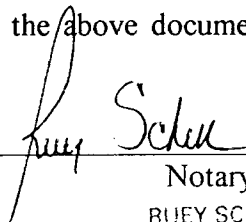
By: 
 Paul J. Brady,
 Commissioner of Social Services

Dated: May 18, 1998

By: 
 James Sacket
 District Attorney

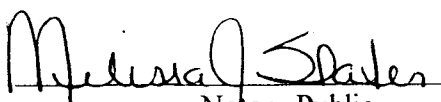
STATE OF NEW YORK)
 COUNTY OF SCHOHARIE)ss.:

On this 12th day of May in the year 1998 before me personally appeared Paul J. Brady, Commissioner of the Schoharie County Department of Social Services to be known and known to me to be the same person described in and who executed the above document, and she duly acknowledge to me that she executed the same.


 Notary Public
 RUEY SCHELL
 Notary Public, State of New York
 No. 4967270
 Qualified in Schoharie County
 Commission Expires 05/29/98

STATE OF NEW YORK)
 COUNTY OF SCHOHARIE)ss.:

On this 18th day of May in the year 1998 before me personally appeared JAMES SACKET, District Attorney for Schoharie County to be known and known to me to be the same person described in and who executed the above document, and he duly acknowledge to me that he executed the same.


 Notary Public
 MELISSA J. SLATER
 NOTARY PUBLIC, State of New York
 Qualified in Schoharie County
 No. 01SL5026051
 Commission Expires April 11, 2005

Investigative Unit Operations Plan

County: Schoharie

Contact Person: Michael Santulli

Title: Social Services Investigator

Phone #: (518) 295-8404

E-mail Address: Michael.Santulli@dFa.state.ny.us

1. What unit is responsible for the investigation of client fraud allegations? Fraud Unit

Please provide the name of the unit, # of positions, titles of positions, and how allegations are processed.

3 positions: Senior Investigator
Investigator
Senior Welfare Examiner

All allegations investigated, reviewed by unit senior and then presented to the District Attorney if criminal activity is present.

2. What unit is responsible for the prosecution of client fraud allegations?

Please provide the name of the unit, # of positions, titles of positions, and how allegations are processed.

Fraud Unit, same as above.

3. What unit is responsible for determining the overpayment amount, establishing the claim, and collection activities?

The originating unit is responsible for the determination of overpayments after review from that unit's supervisor. The Accounting Unit reviews and establishes the claim. With coordination from the Fraud Unit to process and collect claims.

4. What are the step by step procedures for the referral of fraud cases for administrative hearings, including the notices provided and the timing of providing such notices?

No cases have been referred for administrative hearings due to 100% review by District Attorney. If such occurred, the normal review and presentation to the D.A. occurs and with his consent an administrative request and evidence packet would be prepared and submitted.

5. What are the step by step procedures for the referral of fraud cases to your District Attorney, including the notices provided and the timing of providing such notices?

Upon completion of investigation and establishment of any over payments, the case is presented to and reviewed by the District Attorney.

If a D.C.A. will be sought, a client meeting is scheduled to discuss the process, present the LDSS-4904 and answer questions.

Case presented to court if charges are being sought and arrest warrants sought and presented to the Sheriff's Office if warrant is approved.

6. What are your procedures for offering a Disqualification Consent Agreement (DCA)?

After review by the District Attorney, client meeting arranged to discuss case and present the LDSS-4904. If no criminal charges, a second meeting arranged beyond 10 working days to sign the DCA. If criminal charges are sought, D.A. has the D.C.A. signed at the sentencing in court.

7. How is it proven that an individual has been advised on the court record of the Public Assistance disqualification penalties?

An Affidavit of Service is prepared upon presenting the "Terms and Consequences of Signing a Disqualification Consent Agreement" and the D.C.A. is agreed to and recorded on the "Application for Reduction of Charges" form agreed to by client, D.A. and Judge.

Attach a copy of the agreement between your social services district and the District Attorney's Office for the prosecution of welfare fraud.

Schoharie County DSS Investigative Unit Operations Plan.

Mission: *The mission of the Fraud Unit is; To thoroughly, diligently and professionally investigate all referrals and requests for action in a professional and efficient manner while providing an compassionate understanding of the circumstances that have brought clients to the department for temporary assistance and balancing this with the awareness of the needs of the clientele, public, the Board of Supervisors and other oversight agencies.*

Authority: The Fraud Unit was established by the Commissioner of the Department of Social Services and reports to and is responsible to him/her or their designee. All members of the department are to be familiar with and are expected to conduct themselves in accordance with the policies of Schoharie County, the Schoharie County Department of Social Services(DSS) and any higher authority policies or procedures such as from the New York State offices of OTDA, Department of Health, OCS, the Medicaid Inspector General, the Welfare Inspector General and any other agencies of the State of New York or the United States of America that have jurisdiction or interest in the Fraud Unit's activities.

1. Understand that this agency works under a Memorandum of Understanding (MOU) with the Schoharie County District Attorney and that by direction of this Memorandum and policies formulated; that all criminal or administrative sanction actions are to be reviewed by the Schoharie County District Attorney or his designee.
2. The Schoharie County Sheriff's Office (SCSO) is the law enforcement support for the Fraud Unit and is to be consulted and communicated with when any arrest or other support activities are needed.
3. Any non-Social Services criminal activity is to be reported to the agency that has jurisdiction over those activities. Within Schoharie County the primary reporting agency is the Schoharie County Sheriff's Office. Cross jurisdictional criminal activities and investigations needing resources beyond the jurisdiction of Schoharie County are to be sought from the New York State Police.
4. Specific program violations that apply to agencies with specific jurisdiction are to be reported directly to those agencies, i.e.: Social Security Administration; Workers Compensation Investigators, Labor Department Investigators, U.S. Immigration Control and Enforcement, etc.

Reporting: a report by any means of potential fraud or the provision of any service is to be recorded. The preferred method of recording any request or fraud referral is on a Request for Action form. (Addendum 1).

1. Any report or request received is to be reviewed by the Fraud Unit Director/Senior Investigator and then assigned for investigation or completion.
2. All reports or requests are to be recorded in the Unit Fraud Log.

3. The investigator or staff assigned to any task is to report all activities undertaken to complete the investigation or task on a Case Summary Report. (Addendum 2).

Internal Investigations: any complaint of actions by a member of the Fraud Unit are to be directed to the Senior Investigator/Unit Director and/or to the Commissioner of Social Services.

1. The Commissioner of Social Services will determine whether the complaint is to be investigated internally or by an outside agency at the Commissioner's directions.
2. Any report completed by an internal investigation will be submitted to the Commissioner of Social Services who will be responsible for the maintenance of this report and the coordination of any further dissemination of this report.
3. The Commissioner of Social Services will make any determination, if any, as to any personnel or disciplinary actions that will result from such complaints.

Unit Composition: the functions of the Fraud Unit are composed of:

1. **Front End Fraud** [see the 2015 FEDS Plan (Addendum 3)] which investigations referrals received from eligibility workers who observe indicators requiring a referral in the TA, SNAP, Medicaid and Child Care Programs.
2. **General Fraud** which encompasses all other referrals where an indicator or suspicion of fraud has been recognized. Referrals can be through a Request for Action, via mail, phone, Web Fraud or through any other agency or department.
3. **Recoveries** which investigates and coordinates recovery of funds utilizing establishment of claims, taking mortgages, negotiating repayments and coordinating with contracted legal counsel that are originating from Medicaid such as for long term care, burials and other care. Assistance is also extended as needed to CAMS claims from other Department units.
4. **CAMS Unit** is to be coordinated with in properly processing new and ongoing claims where Investigation Unit assistance is required.

CAMS: In general any overpayment whether part of a criminal investigator or not is to be determined by the case worker and then reviewed and approved by their unit supervisor before being communicated to the Fraud Investigator.

1. Referral requests to pursue repayment only without any fraud allegation; are to be accompanied by written justification and the total of the overpayment on a LDSS-4778, *Calculation of Total Overpayment Amount* (Addendum 4) including budgeting methods used, source of overpayment and any other documentation regarding the issue.
2. Any request to a worker to complete an overpayment budget due to fraud, needs to have communicated that the worker is not to request a recoup or repayment to CAMS. This will be done at the completion of the criminal proceedings.

3. The Accounting Unit is to be provided all necessary case material that justifies, determines and explains the claim that is being sought.
4. The Investigations Unit will coordinate and assist with the procurement of Repayment Agreements, sending dunning letters and other communications as needed.

District Attorney: The Schoharie County District Attorney (D.A.) in accordance with the *Memorandum of Understanding between the Schoharie County District Attorney and the Commissioner of the Schoharie County Department of Social Services* dated May 1998, is the current in force MOU.

1. The Fraud Unit Director is to meet regularly with the D.A., particularly when case(s) are in need of his review. A complete Evidence Packet to include sufficient proof to commence charges and of any Intentional Program Violation, if alleged, is to be prepared and presented to the D.A. Prior to any actions being commenced (Pre-Charge Meeting), the D.A. is to agree to the manner in which that case will proceed. The D.A.'s Sentence Recommendation is entered on the *Welfare Fraud Case Summary to District Attorney* form (Addendum 5). This meeting is to be scheduled upon the completion of the case investigation and supervisory review of the result of the investigation. Investigations will not be complete until any overpayments for affected cases are determined and approved by the unit supervisor.
2. Criminal Prosecution: The degree of charges and any potential plea agreement will be determined in the Plea Charge Meeting. It will be the responsibility of the Fraud Unit Director to ensure that charges are presented to the court of jurisdiction and that upon the issuance of a Warrant of Arrest, that the Warrant of Arrest is presented to the Schoharie County Sheriff's Office for execution and that coordination is to be maintained with the SCSO to ensure that any directions to the arrest (requests for arrest by appointment), location and contact information for the defendant, D.A. bail recommendations or other needed information; is provided.
3. Disqualification Consent Agreements (DCA): If, as a result of the Pre-Charge Meeting, it is determined that a DCA will be part of the process, a meeting with the defendant and/or involved client (Consent Interview), is to be arranged, if desired by the client/defendant, where the *Notice of Consequences of Consenting to a Disqualification Consent Agreement* [LDSS-4904(Addendum 6)] will be presented as well as the *DCA Interview Acknowledgement Form* (Addendum 7). The client/defendant will have the process explained, questions answered and referrals made to appropriate agencies upon request. The Client Meeting, in person or via phone is to occur prior to any Arrest Warrant being executed and as required is to be at least ten (10) days prior to any expectation that the

Disqualification Consent Agreement [LDSS-4903(Addendum 8)] be signed by the client/defendant.

- a. Upon presentation of the LDSS-4904 in person, the issuing investigator is to complete and place in the file an *Affidavit of Personal Service LDSS4904* (Addendum 9).
- b. If the Consent Interview is via phone and personal delivery of the LDSS-4904 and the DCA Interview Acknowledgement Form is not feasible, it is to be delivered via U.S. Postal Service certified return receipt mail.
- c. If the DCA is part of a plea agreement from criminal charges, to ensure that the DCA is part of the court record, it is to be included on the *Application for Reduction of Charges-Penal* form that is utilized by the court (Addendum 10).

Administrative Disqualification Hearing: If upon review by the D.A. no criminal charges are to be brought forth and a DCA is not finalized, with the consent of the D.A. a ADH may be sought.

1. **Administrative Disqualification Hearing (ADH):** if the D.A. determines that criminal charges or a DCA will not be sought, but there is sufficient presented evidence that an Intentional Program Violation occurred, with the D.A.'s consent, the department may prepare and submit for an ADH.
 - a. The ADH will be prepared, reviewed and submitted in accordance with OTDA guidance and policy such as Title 7 of the Code of Federal Regulations [Section 273.16(e)], Section 359 of the NYS Social Services regulations.

Support Collection Unit (SCU): The Investigations Unit provides requested support to the SCU upon request.

1. **Criminal Prosecutions:** The Investigations Unit prepares for D.A. review the SCU requests to present misdemeanor or felony charges of *Non-Support of a Child*.
 - a. It needs to be verified that there are no current Family Court actions before filing charges in criminal court.
2. **Serves:** The Investigations Unit upon request will serve designated persons with legal papers when requested by the SCU, DSS Counsel or other units if needed.
 - a. All such actions are to be done in a safe manner and if needed local law enforcement assistance is to be sought if needed.
 - b. All required paperwork is to be returned to the requesting unit upon completion or an unsuccessful action.

Security and Safety Functions: Upon request by DSS personnel, Fraud Unit Investigators provide security stand by if the potential of a difficult client is anticipated and/or will accompany DSS personnel to an out of office location upon request to provide safety or security through their presence. If any threat to physical safety may be anticipated the

Schoharie County Sheriff's Office is to be contacted and coordinated with to ensure safe interactions.

mas/10/7/15