

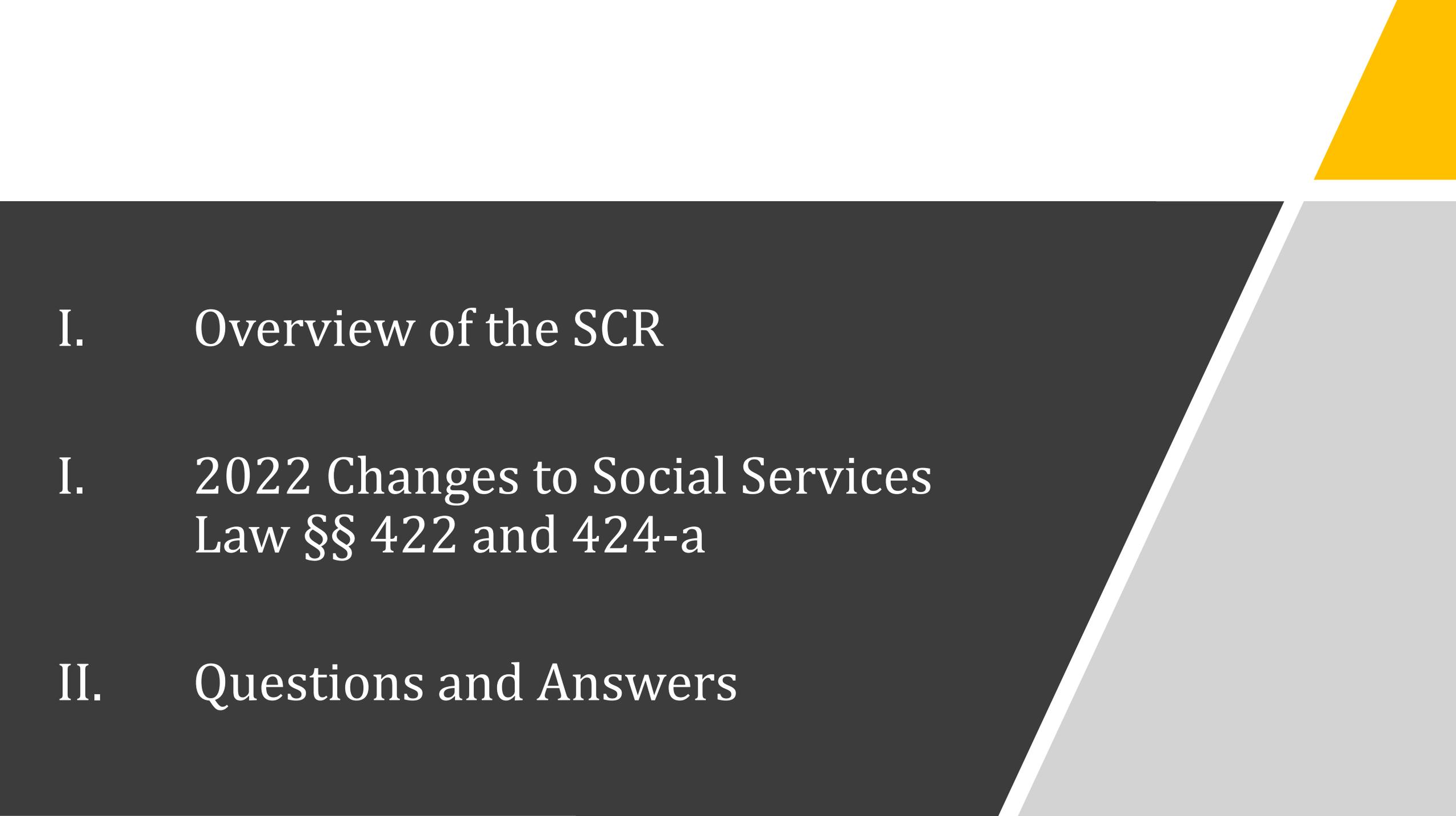


**NYU Family Defense Clinic**

*Using Social Work and the Law to Keep Families Together*

# **An Overview of Recent Reforms to the State Central Register Laws and Their Impact on Families in New York**

Statewide Domestic Violence Task Force  
May 5, 2022



I. Overview of the SCR

I. 2022 Changes to Social Services  
Law §§ 422 and 424-a

II. Questions and Answers

# NY Statewide Central Register of Child Abuse and Maltreatment (SCR)

- Statewide hotline for calls reporting suspected child abuse and maltreatment
- SCR maintains records of these calls, the allegations, and the results of investigations (every report must be “indicated” or unfounded”)
- SCR records are not public, but certain employers and agencies are required to check the SCR before hiring, certifying, or accepting volunteers for certain positions
- An “indicated” case in the SCR significantly limits employment opportunities and opportunities to be a foster or adoptive parent

# SCR: Common Misunderstandings

- The law does not prohibit people with indicated cases from any job or being certified as a foster or adoptive parent.
- The law requires the employer or agency to **consider** the indicated case before hiring/certifying.
- Affects broad range of jobs that may entail contact with children; not only childcare and education

# SCR: Key Terms

“Maltreatment” = “Neglect”

Prevailing at a fair hearing → “Amending and Sealing”  
not “Expungement”

Expungement – extremely rare  
not usually available remedy

# Reports to Registries Skyrocket

First suggested for abuse → expanded to include neglect

1963 150,000 reports

1980 1 million reports

2020 4.4 million reports

→ 13% of American children have an indicated report of maltreatment

# Reports in NYC

- 57,000-60,000 investigations annually
- 37-40% indicated
- Over 21,000 reports indicated each year

(2016-2018)

# Racial Disparity in Registries

- ❖ 11% white children have an indicated report
- ❖ 21% of Black children have an indicated report
- ❖ 53% of Black children's parents are investigated

# Racial Disparity in NYC

Black families are:

- 7x more likely than white families to be reported to the SCR
- 8x more likely than white families to have an indicated case

Hispanic families are:

- 5x more likely than white families to be reported to the SCR
- 6x more likely than white families to have an indicated case

# SCR: Governing Law

- Social Services Law §§ 412, 422 and 424-a
- *Valmonte v. Bane* (1994) and *Lee TT. v. Dowling* (1996)
  - Struck parts of the Social Service Law as unconstitutional
  - Requires pre-deprivation hearing (before employers informed of record) at fair preponderance of the evidence standard
- 18 NYCRR 434.1-11

# SCR: Governing Law

- “Maltreatment” = “Neglect” as defined in Family Court Act 1012(f) per Social Services Law § 412
- Therefore all case law on neglect is relevant to SCR cases
- *Nicholson v. Scoppetta* = most important case defining neglect in NY
- Elements of Neglect: harm/impairment caused by failure of parent (or person legally responsible) to exercise a minimum degree of care

# Two Windows to Challenge

(but only one bite at the apple)

1. Within 90 days of written notice of indicated case

→ “422 Hearing”

2. After applying for a position that requires an SCR screening

→ “424-a Hearing”

# SCR: Structure of Review

## Administrative Review

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

## Fair Hearing

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

## Article 78 Court Review

- Deferential standard: abuse discretion; arbitrary and capricious; error of law

# SCR: Questions at Review

Two questions:

1) Fair preponderance of evidence that abuse or maltreatment occurred?

If NO → amended to unfounded and sealed

If YES → proceed to second question

2) Is maltreatment relevant to working with kids?

If NO → report sealed

Inquiry allows evidence of rehabilitation, consideration of circumstances, time since, etc.

# The 2022 SCR Reform



# 2022 SCR Reform Legislation

- ❖ Broad stakeholder support
- ❖ Effective January 1, 2022
- ❖ 4 major reforms

# 1. Change in Standard for Indication

- ❖ No longer some credible evidence
- ❖ Now fair preponderance of the evidence

## 2. Change in length of time neglect records affect employment and licensing

- ❖ Record of neglect will be automatically sealed after eight years
- ❖ Does NOT affect abuse records

### 3. Increased Opportunity to Seal Records

- ❖ All fair hearings will include a relevancy analysis
- ❖ Chance to show rehabilitation

## 4. Aligns SCR Records with Court Outcomes

- ❖ Parents will no longer need to separately litigate fair hearings to clear their records in the SCR after Family Courts dismissals
- ❖ Irrebuttable presumption goes both ways
- ❖ Administrative review is stayed pending court outcome

## 4. Aligns SCR Records with Court Outcomes

For **identical** allegations:

- Finding of abuse or neglect  
→ report in SCR remains indicated
- Petition withdrawn with prejudice
- family court finds on the merits for respondent
- Family Court dismisses petition  
→ indicated report amended to unfounded and sealed

## 4. Aligns SCR Records with Court Outcomes

### 1051a

- If finding clear → report in SCR remains indicated
- If finding unclear → fair hearing

### Suspended Judgment

- Two interpretations if not vacated
- If finding vacated → amended and sealed

### ACD (with no finding)

→ amended and sealed

# Process for Challenging SCR Records

- One letter triggers entire process
  - Can be a form letter or substantive letter
  - Can include dismissal order
  - Can include evidence of services
- Administrative Review (2 Questions)
- Fair Hearing (2 Questions)

# 90 Days only starts with **Actual** Notice

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

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

# SCR Contact Info

➤ SCR Information Line (not the SCR hotline):

844-337-6298

➤ Fair Hearing Office in NYC:

212-961-4408

212-961-5898 (fax)

[ocfs.sm.legalaffairs.acp.14thfl.efax@ocfs.ny.gov](mailto:ocfs.sm.legalaffairs.acp.14thfl.efax@ocfs.ny.gov)



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THANK YOU

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# Major Reform of New York's Child Abuse and Maltreatment Register

The legislation amends the Social Services Law to raise the legal standard for determining that someone maltreated a child, shortens the length of time before records of neglect are sealed, and provides additional protections for accused parents before employers can access records.

By **Chris Gottlieb** May 26, 2020 at 10:30 AM



The recently enacted 2020 budget bill included the most significant reform of

New York's child welfare law in over a decade. The legislation amends the Social Services Law to raise the legal standard for determining that someone maltreated a child, shortens the length of time before records of neglect are sealed, and provides additional protections for accused parents before employers can access records. These changes, explained in more detail below, will significantly benefit families who are investigated by child protective services.

The State Central Register of Child Abuse and Maltreatment—commonly referred to as the “SCR”—was established in 1964 to keep records of reports of suspected child abuse and neglect made to the state child abuse hotline. Allegations received by the hotline are forwarded for investigation by local child protective services, such as New York City's Administration for Children's Services (ACS). The results—by statute every allegation must be determined either “indicated” or “unfounded”—are then reported back and maintained in the SCR.

Unlike sex offender registries, SCR records are not accessible to the public. But having an indicated record often prevents people from getting jobs because many employers are required to run clearance checks with the SCR for positions that entail contact with children. Although employers are not barred by law from hiring someone with an indicated report on the registry, most have blanket policies against doing so. This blocks employment opportunities in a broad range of jobs, including not only childcare positions, but also certain transportation, secretarial, custodial and home health aide positions, among others. Additionally, records in the SCR can prevent people from adopting or becoming a foster parent, and can be used against them in custody proceedings.

Although it is impossible to know the exact number of people on the registry because New York does not report it, it is a staggering number, certainly in the hundreds of thousands and perhaps in the millions. Because of the extremely low standard of proof, as many as 47,000 people are given indicated records each year. The overwhelming majority are there as a result of allegations of neglect, most of which are poverty related. Less than 14% percent of cases involve any allegations of abuse. There is extreme racial disproportionality in who is affected by the SCR, with black parents 2.6 times more likely to have an indicated report than white parents.

The amendments to the law were proposed by community activists who criticized a practice that perversely penalized low-income families by significantly limiting their earning capacity and, consequently, harmed their children. Particularly concerning is that poor children of color were substantially more likely to have parents saddled with a record for behavior that would not have that result when engaged in by more privileged parents, such as when parents smoke marijuana or a teenager has too many unexplained absences from school. For the families most heavily surveilled by children's services, these kinds of actions can limit employment longer than many felony records do.

The reform campaign garnered widespread support from stakeholders across the spectrum, including directly affected parents, family defense attorneys, children's advocacy organizations, and child welfare agencies. The statutory scheme was criticized because it was too easy to get on the registry and because the procedures for attempting to get off it were so convoluted. Parents and lawyers have long complained that the review process is unnecessarily confusing and intimidating for parents.

The legislation, which goes into effect on Jan. 1, 2022, will bring four significant changes to current law. First, the legislation will raise the standard of evidence required to indicate a case in the SCR from “some credible evidence” to “a fair preponderance of evidence.” New York is one of only a handful of states that uses a standard that can adversely affect one’s livelihood even when the investigator is unable to conclude that it is more probable than not that an act of neglect or abuse occurred. Under the new standard, an allegation will be indicated only when it is determined that the evidence indicates it is more likely than not true. Unless that happens, the report will be unfounded and automatically sealed. (Records of unfounded reports are available for 10 years to investigators of later allegations, but are inaccessible to employers.)

Second, the legislation ensures that when Family Courts dismiss allegations, parents do not need to separately litigate fair hearings to clear their records in the SCR. While most people listed in the register are never charged in court, those who are charged and prevail currently still have to go through a separate administrative challenge to clear the SCR record of the allegations that were dismissed by the court. Under the revised statute, after a court victory, parents will still need to request that their records be amended and sealed accordingly, but the new law requires the request be granted based on the Family Court’s dismissal, without the need for a fair hearing.

Third, the new legislation provides all parents challenging their SCR records the chance to show that the allegations are not relevant to working with children. This is important because it offers parents the opportunity to show that even if there once was a basis to place their name on the register, changed circumstances now justify allowing them to work with children. For example, if a mother has an indicated case related to abusing drugs and she

subsequently completes a drug program and establishes a track record of sobriety, under the new law she will be allowed to provide evidence of her rehabilitation in support of a request to seal her record. Previously, parents were often barred from having such evidence even considered.

Those on the SCR will continue to have two windows in which to seek to challenge their records, as they do under current law. The first window is the 90 days from when the person receives written notice of the indicated case. Those who do not request review within that window have a second opportunity to do so when an employer makes an inquiry about them.

Fourth, and perhaps most important, the legislation provides for automatic sealing of neglect records after eight years. Currently, records remain accessible to employers until the youngest child named in the report turns 28. (As before, sealed records will remain accessible to investigators of any subsequent allegations.) Because so many investigations have to do with neglect rather than abuse, lowering the time that neglect records limit employment will benefit the vast majority of those on the register. The new law will not change the accessibility of records of abuse.

In addition to these substantive changes, the legislation also amends existing law to codify procedures that were put in place following case law that established the right to pre-deprivation review at the fair preponderance of the evidence standard. This case law struck down as unconstitutional the aspects of the Social Services Law that allowed the SCR to inform employers of indicated cases before the accused person had the opportunity to have the evidence against them assessed at the fair preponderance standard.

See *Valmonte v. Bane*, 18 F.3d 992 (2d Cir. 1994); *Matter of Lee TT*, 87 N.Y.2d 699 (1996).

It is important to note that while the legislation does not have an explicit retroactivity provision, the statutory language makes clear that some of the new provisions will benefit those who are currently on the SCR. Records that are indicated at the some credible evidence standard before the effective date will remain indicated unless one of the review provisions applies and the subject of the report seeks amendment and prevails. However, once the law goes into effect, no neglect records that are over eight years old will be accessible to employers whether the case was indicated before or after the effective date. Additionally, those who are already on the SCR will have the right to a relevancy analysis at all fair hearings held after the effective date and their records will be sealed if determined not to be relevant to working with children.

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