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**REPORT ON LEGISLATION BY THE COUNCIL ON CHILDREN
AND THE CHILDREN AND THE LAW COMMITTEE**

**A.8060A
S.6427A**

**M. of A. Jaffee
Sen. Montgomery**

An act to amend the social services law, in relation to the standard of proof for unfounded and indicated reports of abuse or maltreatment and the admissibility of reports of child abuse and maltreatment; and to amend the social services law and the family court act, in relation to the administration of the statewide central register of child abuse and maltreatment.

THIS BILL IS APPROVED

I. PURPOSE

The New York City Bar Association's Council on Children and Children and the Law Committee, which include among their members judges of the Family Court, attorneys for children and attorneys for parents, address legal issues that impact the quality of life for children and families. The Committees agree that by making modifications to the statute governing the State Central Register of Child Abuse and Maltreatment (SCR), this bill will significantly improve the lives of children and families by bringing the procedures governing New York's SCR into line with registries in other states that tailor the impact of indicated findings to the individual's record, and thereby avoid unnecessarily curtailing employment opportunities where no safety reason exists to do so.

II. REASONS FOR SUPPORT

Under current law, New Yorkers are routinely denied employment based on unproven allegations of child abuse and neglect that remain accessible to employers and others for up to 28 years. The record of such allegations is created based on a call to a state hotline, either from mandated reporters or members of the public, who may remain anonymous, alleging some form of child maltreatment. Reports are then investigated by a local child welfare agency and deemed "indicated" if the agency finds "some credible evidence" to support the allegations—a measure that New York's Court of Appeals has acknowledged amounts to a "bare minimum" standard that "imposes no duty on the fact finder to weigh conflicting evidence, no matter how substantial, and allows a report to be indicated if only one out of several believable items of evidence supports it." *Matter of Lee TT*, 87 N.Y.2d 699 (1996). The majority of these indicated reports are never reviewed by a judge to determine whether the allegations meet a higher level of scrutiny that would warrant drastically limiting a person's employability for up to 28 years. The current law's impact

is enormous given that nearly 50,000 indicated cases are added to the State Central Registry in New York State every year.

The vast majority of allegations made to the SCR involve poverty-related neglect, not child abuse. Common allegations of neglect include lack of adequate housing, failure to provide adequate childcare, failure to provide adequate education, and parental substance abuse. Under current law, there is no distinction in the employment consequences imposed for poverty-related neglect from those for caregivers who have committed the most egregious types of physical and sexual abuse.

A wide range of employers are required to conduct SCR background checks before hiring. These include not only childcare and educational providers, but a variety of entities providing services such as healthcare and transportation if they serve children as well as adults. Consequently, an indicated report in the SCR severely hampers a parent's ability to keep or secure employment, the negative consequences of which reverberate throughout that individual's family and, in particular, can have a harmful impact on minor children.

New York's Central Register laws are among the most stringent in the nation. States like Illinois and Pennsylvania, for example, have more flexible statutes that recognize the significant stigma and collateral consequences faced by people with an indicated report in the register.¹

The proposed bill narrows the current, overbroad collateral consequences of records of neglect by tailoring collateral consequences to the seriousness of the allegations and allowing consideration of evidence of rehabilitation. As a safeguard, the bill allows child protection agencies and law enforcement continued access to sealed records for child protection purposes. By ending collateral consequences that have no safety justification, the bill will significantly expand employment opportunities for New Yorkers, particularly low-income parents of color.

a. The Bill Distinguishes Abuse from Neglect so that Collateral Employment Consequences Are Tailored to the Individual

The governing statute currently fails to distinguish between abuse and neglect. In order to avoid unnecessarily curtailing employment opportunities, the Bill requires that neglect and abuse be distinguished for purposes of records in the SCR. The Bill conditionally shortens the time period that indicated reports of neglect are made available to employers in the SCR to eight years for most jobs and twelve years for child care jobs. Currently, all indicated reports are maintained for ten years after the 18th birthday of the youngest child listed in the report, i.e., up to 28 years, imposing exactly the same barrier to employment for single instances of neglect as for the most egregious types of physical and sexual child abuse. Time limits regarding allegations of abuse are not amended under the Bill.

¹ In Pennsylvania, indicated reports are maintained for 5 years after the case is closed. Cons. Stat. Tit. 23, §§ 6337; 6338(b). Illinois distinguishes between reports that are indicated for abuse and neglect, allowing indicated reports for neglect to be expunged after five years if no additional reports are indicated. Comp. Stat. Ch. 325, § 5/7.14.

b. The Bill Raises the Standard of Evidence for Indicating Reports of Child Abuse and Neglect from “Some Credible Evidence” to “A Fair Preponderance Of Evidence”

Under current law, New York uses the lowest possible evidentiary standard to indicate a case of child abuse or neglect: “some credible evidence.” 41 states currently use a higher standard of evidence to indicate cases. This Bill raises the standard of evidence for indicating reports of child abuse and neglect from “some credible evidence” to a “fair preponderance of evidence.” This is the same standard required by case law and by New York’s Family Court Act for court proceedings. Raising the standard would prevent collateral consequences of child welfare investigations by requiring that in every case the evidence be assessed at a higher standard, even when the case does not get to the court level.

c. The Bill Aligns Reports in the SCR with Outcomes in Family Court

Although not all indicated reports result in an Article 10 petition in Family Court, for those reports that do result in a court proceedings, the Bill eliminates unnecessary and costly administrative hearings in cases where a Family Court Judge has already determined there is no basis to find abuse or neglect.² In all cases where a Family Court Judge dismisses the allegations, the Bill provides that the corresponding SCR report would automatically be amended and sealed to reflect that court determination. Currently, a person must separately seek to challenge the SCR report even when a judge has fully addressed the allegations.

Additionally, the Bill eliminates wasteful overlap of proceedings and unnecessary adjournment of fair hearings, which currently are frequently adjourned to await the outcomes of court proceedings, by setting the 90-day timeframe in which a person can request administrative review to start when an associated Family Court case closes (the timeframe remains 90 days from notice if no court case is filed).³

² For example, in NYC in 2016, of the 64,850 reports made to the SCR, 38.4% — nearly 25,000 — were indicated. See NYC Administration for Children’s Services, Abuse/Neglect Allegations by Community District, 2014-2017, <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2018/AbuseNeglectInvestByCommDistrictYrs2014To2017.pdf>. And of those indicated reports, fewer than half — approximately 11,500 cases — were filed as Article 10 petitions in Family Court. See NYC Administration for Children’s Services, January 2017 Flash Report, <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2017/01.pdf> (all websites last visited March 26, 2019).

³ When someone requests an administrative appeal of an indicated report, the Office of Children and Family Services commences review of the report, which includes an administrative review phase, as well as a fair hearing if not amended and sealed during the initial review. Administrative appeals must be made in writing within 90 days from notice, and currently, when an Article 10 case is pending in Family Court, parties involved in the administrative appeal request numerous adjournments until the case is fully adjudicated in Family Court. See New York State Child Protective Services Manual, <https://ocfs.ny.gov/main/cps/manual/CPS-ch03-Central-Register-Responsibilities.pdf>.

d. The Bill Tailors Collateral Employment Consequences Based on a Person's Demonstrated Rehabilitation

The Bill allows Administrative Law Judges to tailor consequences based on a person's demonstrated rehabilitation. Currently ALJ's are allowed to consider evidence of rehabilitation at some fair hearings, but not at others. The Bill amends the governing statute to clarify that all SCR fair hearings should consider evidence of rehabilitation and whether an indicated report should be sealed if it is not relevant to employment.

e. The Bill Updates Statutory Language to Reflect Current Administrative Practices

The New York Office of Children and Family Services modified administrative procedures concerning administrative challenges to the SCR in the 1990's to comply with two court decisions: *Valmonte v. Bane*, 18 F.3d 992 (2d Cir. 1994) and *Matter of Lee TT*, 87 N.Y.2d 699 (1996). However, the Social Services Law was never modified accordingly. This Bill updates statutory language to reflect those changes that are already in practice, including requiring a pre-deprivation hearing with a preponderance of the evidence standard.

For these reasons, the Committees support the Bill and urge its passage.

Council on Children
Lauren Shapiro, Chair

Children and the Law Committee
Sara L. Hiltzik, Chair

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