

**SUFFOLK COUNTY SUPREME COURT
SPECIAL GRAND JURY**

**AUGUST 17, 2016
TERM 9E**

**GRAND JURY REPORT
CPL § 190.85(1)(C)**

DATED: JANUARY 26, 2017

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FOREPERSON
SUPREME COURT SPECIAL GRAND JURY
AUGUST 17, 2016**

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PRELIMINARY STATEMENT

The Suffolk County Supreme Court Special Grand Jury, Term 9E, was empaneled on August 17, 2016 to conduct an investigation into the facts and circumstances surrounding the placement of children into A's Suffolk County foster home for two decades, along with the laws, rules, regulations, and policies relating to these placements, as well as other related matters.¹

The Grand Jury heard testimony from twenty-nine witnesses and considered ninety-one exhibits, many consisting of thousands of pages and documents.

As a result of this investigation the following report has been adopted, pursuant to New York State Criminal Procedure Law Section 190.85(1)(C), and is respectfully submitted to the Court.

¹ This Grand Jury did not focus its investigation on the procurement rules relating to contracts entered into by child welfare agencies for foster care services, nor did it focus its investigation on Family Court proceedings.

I. Findings of Fact

A. Introduction

With the benefit of hindsight, and through the lens of a single foster home, this Grand Jury examined a New York State Child Welfare System where foster children were voiceless. This system was “designed to establish procedures to help protect children from injury or mistreatment and to help safeguard their physical, mental and emotional well-being.”² This system has, unfortunately, proven to be woefully inadequate.

Typically, a child placed in foster care has been removed from an unsafe family environment. For example, the child may have been the victim of abuse or neglect, or his or her own parent may be struggling with mental health or substance abuse issues, thereby rendering the parent incapable of adequately caring for the child. The goal is to temporarily place the child in a normal, loving home, while expeditiously working towards reuniting the child with his or her biological family or, if that is not possible, freeing the child for adoption.

“A” operated a foster home in Suffolk County, New York for approximately twenty years. During that time, over one hundred male children resided in A’s home, some as short term placements and others for extended periods of time, leading to eight of those children being legally adopted by A. A’s home was anything but a normal, loving home. Foster children placed there found themselves in a punitive, oppressive environment. A rationed food, required the children to ask permission to use the bathroom, and isolated the children by refusing to allow them to participate in any activities outside of the home. Worse, A systematically sexually abused a number of children in his care over a course of years, and threatened to beat or send them away to an institution if they disclosed the abuse.

² N.Y. FAM. CT. ACT § 1011 (McKinney 2016).

The agencies responsible for the well-being of these children were: The Office of Children and Family Services [hereinafter “OCFS”], the New York City Administration for Children’s Services [hereinafter “ACS”], Suffolk County Department of Social Services [hereinafter “Suffolk DSS”], Suffolk County Child Protective Services [hereinafter “Suffolk CPS”], and SCO Family of Services [hereinafter “SCO”], a non-profit human services organization. Although these agencies were accountable for the children, the communication amongst them was abysmal. Even with multiple levels of supervision in place, the children placed in A’s home were overlooked, resulting in abuse that spanned two decades. The system failed these children for two decades too long.

The New York Statewide Central Register of Child Abuse and Maltreatment [hereinafter “SCR”] is responsible for receiving complaints involving allegations of child abuse or neglect of children residing within the State of New York.³ In January of 2016, the SCR received a call, often referred to as a “hotline report.” The report alleged that A, a male therapeutic foster parent,⁴ made inappropriate comments to two foster children, B and C, ages eleven and thirteen, respectively, who had been placed in A’s home by SCO. This disclosure led to the Suffolk County Police Department arresting A and charging him with several counts of Endangering the Welfare of a Child, in violation of New York State Penal Law Section 260.10(1), and one count of Sexual Misconduct, in violation of New York State Penal Law Section 130.20(3).

³ N.Y. SOC. SERV. LAW § 422 (McKinney 2016).

⁴ N.Y. SOC. SERV. LAW § 371(20) (McKinney 2016) states: “ ‘Therapeutic foster parent’ means a foster parent who is certified or licensed pursuant to section three hundred seventy-five or section three hundred seventy-six of this article, or otherwise approved and who has successfully completed a training program developed by professionals experienced in treating children who exhibit high levels of disturbed behavior, emotional disturbance or physical or health needs. For any such child placed in their care, such parent shall assist in the implementation of the therapeutic treatment portion of the family service plan required by section four hundred nine-e of this article.” N.Y. SOC. SERV. LAW § 371(19) (McKinney 2016) states: “ ‘Foster parent’ shall mean any person with whom a child, in the care, custody or guardianship of an authorized agency, is placed for temporary or long-term care, and ‘foster child’ shall mean any person, in the care, custody or guardianship of an authorized agency, who is placed for temporary or long-term care.”

In March of 2016, a Suffolk County Grand Jury voted to indict A for a series of sexual crimes, in violation of Article 130 of the New York State Penal Law, some dating back as far as 1996. For these crimes, A faces up to twenty-five years in jail.

A subsequent Grand Jury investigation commenced and additional victims disclosed being sexually abused by A during this twenty-year time span. However, prosecution was foreclosed for the crimes allegedly committed against the majority of these victims, because the statute of limitations had expired. It was additionally revealed that, prior to the 2016 allegations, the SCR had received eighteen hotline reports involving A dating as far back as 1998, all of which were ultimately closed.

This Grand Jury investigation brought to light how multiple agencies failed in their responsibilities by disregarding rules and procedures enacted to protect the children in their care. This report addresses the significant breakdowns in the system which were designed to protect children, and how the system ultimately failed in this mission.

II. The New York State Child Welfare System

A. Overview

In New York, OCFS is responsible for the oversight of the child welfare system.⁵ The general functions of OCFS include, but are not limited to, the oversight of foster care, the SCR, daycare facilities, and child advocacy centers throughout the State. Included within OCFS's oversight of foster care, is the responsibility to establish the monetary rates of reimbursement for foster and adoptive parents.⁶ OCFS works closely with local departments of social services and issues regulations, policies and guidelines relevant to state child welfare. OCFS also oversees the Interstate Compact on the Placement of Children [hereinafter "ICPC"], which allows for the

⁵ N.Y. SOC. SERV. LAW §§ 17, 20, 34 (McKinney 2016).

⁶ N.Y. SOC. SERV. LAW §§ 398-a(2), 453(3) (McKinney 2016).

adoption of children from outside New York State. OCFS has offices throughout New York State. The Spring Valley Regional Office encompasses both the Long Island and Hudson Valley regions, and has fifty-two employees, of which ten staff a Suffolk County office.

In 2015, OCFS was responsible for overseeing approximately 18,000 children placed in foster care, and 2000 children placed in adoptive homes. There are normally over 200,000 child protective hotline reports every year. In 2015, the SCR received just under 300,000 reports. Also in 2015, New York State had 17,452 children in foster care and 1733 children freed for adoption. As of October 12, 2016, there were 14,733 foster homes in the state, of which 12,151 were certified.⁷ As of the same date, there were 21,099 New York State foster parents.

New York State has implemented a state-supervised, locally-administered social services system. The State is responsible for providing overall supervision. Services, however, are administered at the local or county level.⁸ In the City of New York, services are administered by the City, not the individual boroughs. Child welfare services, at the local level, have three basic responsibilities. These responsibilities include providing child protective services, such as the investigation of any abuse and maltreatment of children. Additionally, local child welfare services provide foster care; children are placed into the custody of the Commissioner of Social Services. They also handle the adoption of children. Preventive services, that aim to keep children out of the foster care system, or, if that is not possible, quickly remove them from the foster care placement in favor of a more permanent arrangement, are also locally administered.

A child who has been placed in foster care has been removed from his or her biological family, and placed in the care and custody of the local Commissioner of Social Services. In the majority of cases, the child has been removed because of allegations of abuse or maltreatment by

⁷ The statutory rules and regulations that govern the certification of foster boarding homes can be found within the New York State Social Services Law. N.Y. SOC. SERV. LAW §§ 376, 377, 378 (McKinney 2016).

⁸ N.Y. SOC. SERV. LAW §§ 17, 20.

his or her parent. There are many other circumstances under which a child may be placed into foster care. For example, a parent may voluntarily surrender custody if he or she is unable to care for the child, either for personal reasons or because the child has special needs that the parent is incapable of addressing. There are also instances in which a parent may file a petition with a Family Court, commonly known as a “PINS” petition.⁹ This petition requests assistance from the Family Court in parenting a child, usually with behavioral issues, which may result in the child being placed into foster care. Additionally, if a child has been adjudicated as a juvenile delinquent,¹⁰ a Family Court may place that child into foster care.

B. Voluntary Authorized Agencies

The local social services district is responsible for administering foster care. It may, however, enter a contract with a voluntary authorized agency to provide foster care services.¹¹ Within the context of this investigation, ACS and Suffolk DSS, both local social services districts, contracted with SCO, a voluntary authorized agency, for the purpose of providing foster

⁹ “PINS” is an acronym used for “Person in Need of Supervision.” N.Y. FAM. CT. ACT § 712(a) (McKinney 2016) states: “ ‘Person in need of supervision’ [is a] person less than eighteen years of age who does not attend school in accordance with the provisions of part one of article sixty-five of the education law or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child’s care, or other lawful authority”

¹⁰ N.Y. FAM. CT. ACT § 301.2(1) (McKinney 2016) states: “ ‘Juvenile delinquent’ means a person over seven and less than sixteen years of age, who, having committed an act that would constitute a crime if committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law.”

¹¹ N.Y. SOC. SERV. LAW § 398 (McKinney 2016) provides, in pertinent part: “Commissioners of public welfare and city public welfare officers responsible under the provisions of a special or local law . . . shall have powers and perform duties . . . [to] [p]lace children in its care and custody or its custody and guardianship, in suitable instances, in family homes, agency boarding homes, group homes, or institutions under the proper safeguards. Such placements can be made either directly, or through an authorized agency” N.Y. COMP. CODES R. & REGS. tit. 18, § 441.2(d) (2016) states an “[a]uthorized agency means any voluntary authorized agency or public authorized agency.” N.Y. COMP. CODES R. & REGS. tit. 18, § 441.2(b) (2016) states a “[v]oluntary authorized agency means any agency, association, corporation, institution, society or other organization which is incorporated or organized under the laws of New York with corporate power or empowered by law to care for, to place out or to board out children, which actually has its place of business or plant in this State and which is approved, visited, inspected and supervised by the department or which shall submit and consent to the approval, visitation, inspection and supervision of the department as to any and all acts in relation to the welfare of children performed or to be performed under the provisions of title 1 of article 6 of the Social Services Law.” N.Y. COMP. CODES R. & REGS. tit. 18, § 441.2(c) (2016) states that a “[p]ublic authorized agency means any local social services commissioner.” *See also* N.Y. COMP. CODES R. & REGS. tit. 18, § 405.1(a) (2016).

care services. SCO placed foster children who were in the custody of ACS and Suffolk DSS in A's home.

Foster care service providers have three basic roles: that of caseworker, case planner, and/or case manager. A case worker provides professional services directly to the child.¹² A case planner develops and implements goals for the foster child, determines and ensures that the child's needs are being met, works directly with the foster parent(s), and makes recommendations to the Family Court regarding the permanency of the child.¹³ A case manager has overall responsibility for the case. A case manager must approve the plan developed by the case planner and monitor the progress of the case. Additionally, the case manager must ensure that the case is progressing in a timely fashion, and that the appropriate services are being provided.¹⁴

When a local social services district contracts with a voluntary authorized agency for foster care services, the responsibility of case management continues to rest with the local social

¹² N.Y. COMP. CODES R. & REGS. tit. 18, § 432.1(o) (2016) provides: "Casework contacts mean face-to-face contacts with a child and/or a child's parents or guardians, or activities with the child and/or the child's parents or guardians, which may include but are not limited to: (1) facilitating information gathering and analysis of safety factors; (2) facilitating information gathering and analysis of the inter-relatedness of risk influences and individual risk elements affecting family functioning; (3) reaching a determination on the allegations reported to the State central register; (4) providing necessary protection to the child and/or ensuring the provision of such protection; (5) providing rehabilitative services to reduce risk to the child and/or ensuring the provision of such services; (6) evaluating the level of progress being made toward achievement of outcomes set forth in the family and children's service plan; and (7) assessing family needs and strengths and facilitating the provision of services in conjunction with a family assessment response."

¹³ N.Y. COMP. CODES R. & REGS. tit. 18, § 432.1(n) (2016) provides: "Case planning means assessing the need for, providing or arranging for, coordinating and evaluating the provision of protective services for children and all other rehabilitative services provided to children named in abuse and/or maltreatment reports and their families. Case planning includes referring child(ren) and his/her family to providers of rehabilitative services, as needed. Case planning responsibility also includes recording in the child's uniform case record that such services are provided and that casework contacts, as prescribed by subdivision (o) of this section, are provided. In addition, case planning includes the timely completion of reports required by this Part to be submitted or transmitted to the State central register."

¹⁴ N.Y. COMP. CODES R. & REGS. tit. 18, § 432.1(m) (2016) provides: "Case management shall mean the responsibility of the local social services district to authorize the provision of protective services for children, to approve in writing the child and family services plan, and to approve in writing the reports to be submitted to the State Central Register of Child Abuse and Maltreatment and the filing of such reports to the State Central Register."

services district.¹⁵ ACS is the only local social services district that has been granted permission by OCFS to delegate the case management function to the voluntary authorized agency, in this case SCO. While Suffolk DSS always retained the ultimate case management function over their cases, ACS was able to delegate both case planning and case management responsibilities to SCO, thereby, in essence, abrogating its responsibility for foster care in New York City.

When a local social services district contracts out for foster care services, the voluntary authorized agency maintains the record on each foster child. This record is referred to as the Uniform Case Record [hereinafter “UCR”]. Both OCFS and the custodial local social services district have access to this record. Contained within the UCR is the Family Assessment and Services Plan [hereinafter “FASP”]. The purpose of the FASP “is to record information gathered about family members in receipt of child welfare services, including preventive services, child protective services, foster care and/or adoption services; assist with evaluations and assessments of the family; assist with determining the family's need for services necessary to achieve the child(ren)'s permanency planning goal; assist with ascertaining family progress in meeting desired outcomes and assist with on-going planning with the family.”¹⁶

In summary, the structure of child welfare in New York is multi-tiered, comprised of OCFS, acting as the overseeing agency, and local social services districts performing the daily functions. (*See Appendix A*). Oftentimes, however, the local social services districts contract with authorized voluntary agencies, such as SCO, to provide foster care services. The goal, which this Grand Jury determined was unrealized, has always been for each agency to work in conjunction with one another, for the ultimate benefit of the children.

¹⁵ N.Y. COMP. CODES R. & REGS. tit. 18, § 403.4 (2016).

¹⁶ N.Y. COMP. CODES R. & REGS. tit. 18, § 428.6(a) (2016); *See also* N.Y. COMP. CODES R. & REGS. tit. 18, § 428.1 (2016).

C. *The New York Statewide Central Register of Child Abuse and Maltreatment*

OCFS established, and currently maintains, a statewide central register of child abuse and maltreatment.¹⁷ This register operates on a seven day a week, twenty-four hour a day basis, for the purpose of receiving and screening reports of child abuse and maltreatment.¹⁸ The hotline staff is comprised of approximately 250 to 300 employees. Some of these employees are Child Protective Services specialists [hereinafter “CPS specialists”]. Their function is to screen calls made to the hotline in order to determine whether the allegations warrant an investigation. Of the 250 to 300 total employees, approximately 180 to 200 are CPS specialists. Remarkably, as of the date of this report, there are approximately forty unfilled hotline staff positions.

A CPS specialist, upon receiving a call, determines if the alleged subject of the report is a parent, guardian, custodian, or other person legally responsible for the abused or maltreated child.¹⁹ Certain individuals are mandated by law to report any suspected abuse or maltreatment of a child. Those individuals include, amongst several others, school personnel, social service workers, and foster care workers.²⁰ A CPS specialist also determines whether there is reasonable cause to believe that what is alleged to have occurred constitutes child abuse or maltreatment. If

¹⁷ N.Y. SOC. SERV. LAW § 422(1) (McKinney 2016).

¹⁸ N.Y. SOC. SERV. LAW § 422(2)(a) (McKinney 2016).

¹⁹ N.Y. SOC. SERV. LAW § 412(4) (McKinney 2016) states, in pertinent part: “ ‘Subject of the report’ means . . . any parent of, guardian of, or other person eighteen years of age or older legally responsible for . . . a child reported to the statewide central register of child abuse and maltreatment who is allegedly responsible for causing injury, abuse or maltreatment to such child or who allegedly allows such injury, abuse or maltreatment to be inflicted on such child” N.Y. SOC. SERV. LAW § 412(5) (McKinney 2016) provides: “ ‘Other persons named in the report’ shall mean and be limited to the following persons who are named in a report of child abuse or maltreatment other than the subject of the report: (a) the child who is reported to the statewide central register of child abuse and maltreatment; and such child’s parent, guardian or other person legally responsible for the child who has not been named in the report as allegedly responsible for causing injury, abuse or maltreatment to the child or as allegedly allowing such injury, abuse of maltreatment to be inflicted on such child; or (b) other persons named in a report of an abused or neglected child in residential care as defined in subdivision nine of section four hundred twelve-a of this title.”

²⁰ N.Y. SOC. SERV. LAW § 413 (McKinney 2016). “In addition to those persons and officials required to report suspected abuse or maltreatment, any person may make such a report if such person has reasonable cause to suspect that a child is an abused or maltreated child.” N.Y. SOC. SERV. LAW § 414 (McKinney 2016).

a determination is made that the allegations may constitute abuse or maltreatment, an investigation commences.

Once a report is accepted, a CPS specialist enters all information into “*CONNECTIONS*,”²¹ a statewide child welfare computer database. This database is utilized, in part, to document reports of suspected child abuse and maltreatment, and any potential subsequent investigation. A CPS specialist is required to document in *CONNECTIONS* the following: the name of the person about whom the report is being made, the name of the abused or maltreated child, the names of any other persons legally responsible for the child, the name of the reporting party, the source of the reporter’s information, as well as a narrative of the specific allegations.²² A CPS specialist is mandated to check *CONNECTIONS* for any prior reports involving the same subject, the same abused or maltreated child, and/or the same persons legally responsible for the child. The report is then forwarded, along with the relevant background information, to the local social services district, such as Suffolk CPS or ACS, for further investigation. The local social services district is alerted electronically once a report is received. The local social services districts, like the SCR, must be available on a twenty-four hour, seven day a week basis to receive reports of suspected child abuse or maltreatment.²³

Inexplicably, prior to the arrest of A, it was not common practice for a CPS specialist to affirmatively inquire as to whether the maltreated child, or any other child residing in the subject residence, was a foster child. However, due to recent policy changes, CPS specialists are now, in fact, required to ask the reporter if a foster child resides within the home. Furthermore, if a

²¹ N.Y. COMP. CODES R. & REGS. tit. 18, § 432.1(ak) (2016) states: “*CONNECTIONS* refers to the computerized electronic system of record that is used for recording child welfare case information in New York State, including information regarding reports of alleged child abuse and maltreatment and the provision of protective services. This term will also apply to any successor reporting system that may be required by OCFS for recording such information.”

²² See generally N.Y. SOC. SERV. LAW § 422(2)(a).

²³ N.Y. SOC. SERV. LAW § 424 (McKinney 2016); See also N.Y. COMP. CODES R. & REGS. tit. 18, § 432.2(b)(2) (2016).

foster child is residing within the home, a CPS specialist will also forward a copy of the report to the geographically appropriate OCFS regional office, which, in this case, would be the office located in Spring Valley, New York.

D. The SCR Investigation

Child Protective Services, at the local level, is responsible for investigating reports of child abuse or maltreatment made to the SCR, as well as documenting that investigation.²⁴ Any hotline report received, regardless of whether it involves a foster child or not, is investigated by the local Child Protective Services where the home is located and the alleged abuse occurred. An investigation must be commenced within twenty-four hours of receiving the report. Specifically, within twenty-four hours of receiving a report there must be “face-to-face contact or a telephone contact with the subjects and/or other persons named in the report or other persons in a position to provide information about whether the child may be in immediate danger of serious harm.”²⁵ Within seven days, a preliminary safety assessment must be completed, confirming that no child in the home is in danger of serious harm.²⁶ Child Protective Services must obtain and review all prior reports of suspected abuse or maltreatment involving family members, including any legally sealed and unfounded reports.²⁷ In addition, contact must be made with the reporting party, as well as any other collateral sources, such as hospitals, medical providers, schools, social service agencies, family members, voluntary authorized agencies, or any other persons who may have relevant information. If the subject home is a certified foster home, Child Protective Services should also contact “the local social services district having care and custody of the

²⁴ N.Y. SOC. SERV. LAW § 424.

²⁵ N.Y. COMP. CODES R. & REGS. tit. 18, § 432.2(b)(3)(i) (2016). Suffolk CPS, however, imposes a more stringent requirement that mandates in-person contact within twenty-four hours.

²⁶ N.Y. COMP. CODES R. & REGS. tit. 18, § 432.2(b)(3)(ii)(c) (2016).

²⁷ N.Y. COMP. CODES R. & REGS. tit. 18, § 432.2(b)(3)(i).

child(ren) and, notify the agency having supervision over the placement if different from the custodial agency.”

Child Protective Services must also, within sixty days, make a final determination as to whether a report will be “indicated” or “unfounded.” A report must be indicated when there exists “some credible evidence of the alleged abuse or maltreatment.” A report will be unfounded when there exists no credible evidence to support the allegations.²⁸

III. The Penal Law and Criminal Procedure Law

A. Factual Background

In 1996, A began fostering young boys in his home located in Suffolk County, New York. Over the next twenty years, A fostered over one hundred boys. Of those children, A legally adopted eight sons, including two boys from a west coast state. In 2016, two foster children, B and C, disclosed to their SCO caseworker that A had made inappropriate comments to them while residing in A’s home. The allegations were reported to the SCR and A was subsequently arrested in January of 2016. The Suffolk County Police Department charged A with numerous counts of Endangering the Welfare of a Child, in violation of Penal Law Section 260.10(1), and one count of Sexual Misconduct, in violation of Penal Law Section 130.20(3).

A subsequent investigation revealed that A had sexually abused his adopted sons and two foster children. A Suffolk County Grand Jury voted to indict A in March of 2016. There were seven different victims included in this Indictment.

In September of 2016, this Grand Jury voted to indict A. This Indictment included one additional victim and additional crimes. The second Indictment charged a multitude of sexual

²⁸ See also N.Y. SOC. SERV. LAW §§ 412(6), (7), 424(7) (McKinney 2016).

offenses, in violation of Article 130 of the New York State Penal Law. Under this Indictment, A faces the possibility of a life sentence.

As will be detailed below, there were additional allegations made by other victims against A, none of which were included in either Indictment. Unfortunately, prosecution of these allegations was impossible due to the fact that either there existed no statutory authority in New York under which to charge A, or the statute of limitations had expired. This Grand Jury explored these legal deficiencies in the law.

B. Course of Sexual Conduct Against a Child

The crime of Course of Sexual Conduct against a Child is a relatively new crime. This crime evolved from the understanding that children have difficulty specifying the date, time and place of sexual assaults. This law allows for a sex crime to be charged, even when a child cannot articulate a specific date, time or place.²⁹

Under current New York State law, a continuous crime committed against a child may be prosecuted under Penal Law Section 130.75(1), Course of Sexual Conduct against a Child in the First Degree. There are two subsections of that statute. The first subsection requires that the sexual misconduct occur over a period of time not less than three months in duration and with a child less than eleven years of age. The second subsection has the same time period requirements, but the conduct must occur with a child less than thirteen years of age, while the perpetrator is over the age of eighteen.³⁰ Another statute, Course of Sexual Conduct against a Child in the Second Degree, Penal Law Section 130.80(1), criminalizes sexual misconduct over a

²⁹ Course of Sexual Conduct against a Child in the First and Second Degrees went into effect on August 1, 1996 and were subsequently amended on February 1, 2001. N.Y. PENAL LAW §§ 130.75, 130.80 (McKinney 2016).

³⁰ N.Y. PENAL LAW § 130.75(1) states: “A person is guilty of course of sexual conduct against a child in the first degree when, over a period of time not less than three months in duration: (a) [h]e or she engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual conduct, with a child less than eleven years old; or (b) [h]e or she, being eighteen years old or more, engages in two or more acts of sexual conduct, which include at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than thirteen years old.”

period of time not less than three months in duration, with the same age limitations as previously defined.³¹ The difference between the two statutes is the severity of the conduct, with Course of Sexual Conduct against a Child in the First Degree requiring at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual abuse.³²

D testified before the Grand Jury that *A* subjected him to multiple criminal sexual acts when *D* was less than thirteen years old. *D* testified as to a course of sexual conduct that occurred over a period of time greater than three months in duration. As a result of his testimony, this Grand Jury voted to indict *A* on one count of Course of Sexual Conduct Against a Child in the First Degree. *D* also testified that this sexual conduct continued after he turned thirteen years old, but did not provide specific dates. As a result, *A* could not be charged with a crime since, as previously explained, no statute exists to address a course of sexual conduct against a child over the age of thirteen.

This Grand Jury also heard testimony from *E*. *E* testified that *A* subjected him to sexual conduct up until the time he was thirteen years old. As a result of *E*'s testimony, this Grand Jury voted to indict *A* on one count of Predatory Sexual Assault Against a Child, and one count of Course of Sexual Conduct Against a Child in the First Degree. *E* further testified that this sexual conduct continued after the age of thirteen and up until the time he was sixteen years old. However, *E* did not articulate specific dates and times. As a result, *A* could not be charged with a crime since *E* was over thirteen years old and the sexual conduct did not fall within the parameters of the statutes outlined above.

³¹ N.Y. PENAL LAW § 130.80(1) states: "A person is guilty of a course of sexual conduct against a child in the second degree when, over a period of time not less than three months in duration: (a) [h]e or she engages in two or more acts of sexual conduct with a child less than eleven years old; or (b) [h]e or she, being eighteen years old or more, engages in two or more acts of sexual conduct with a child less than thirteen years old."

³² It should be noted that in New York, the age of consent for sexual conduct is seventeen years of age. *See also* N.Y. PENAL LAW § 130.05(3) (McKinney 2016).

Unfortunately, the aforementioned statutes fail to address despicable, serious crimes committed against children who are sexually abused beyond the age of thirteen, as articulated by *D* and *E*. Paul DerOhannesian,³³ a practicing attorney for thirty-seven years and legal expert in the area of sexual assault, testified before this Grand Jury and provided insight into the shortcomings of the current law, along with potential legislative changes. Mr. DerOhannesian has successfully advocated legislative changes related to sexual assault law reform. In describing the shortcomings in the law, Mr. DerOhannesian explained that, under the current state of the law, if a child is abused at a young age, and that abuse continues beyond the child's thirteenth birthday, those acts occurring after the thirteenth birthday cannot be charged as a serious felony course of conduct crime. Similarly, if a child is sexually abused beginning after his or her thirteenth birthday, the conduct cannot be charged as a serious felony course of conduct crime. The Legislature's apparent rationale was that a child over the age of thirteen has the ability to recall specific dates, times and places, so as to permit the charging of individual acts. Therefore, the Legislature did not enact a law accounting for the continuous course of sexual abuse of children thirteen years old or older. As Mr. DerOhannesian explained, in reality, it is frequently difficult for a child of that age to recall specific incidents of sexual abuse, particularly when the acts occur with such frequency and span an extensive period of time. Thus the age restriction imposed in the statutes is arbitrary and should be eliminated.

³³ Mr. DerOhannesian worked for 21 years in the Albany County District Attorney's Office, Sexual Assault Unit, eventually leading the unit. He is the sole author of the treatise "Sexual Assault Trials," which was first published in 1994 and is now in its fourth edition. He has contributed to other publications, including the National Center for Child Abuse and Neglect and the New York Law Journal. Mr. DerOhannesian has also testified before the Attorney General's Commission on Pornography. Additionally, Mr. DerOhannesian has instructed numerous law enforcement groups, including the Justice Department, postal inspectors, and District Attorney Associations from New York to Hawaii. He has also taught at the National Center for Child Abuse and Neglect and the United States military. Mr. DerOhannesian has participated in professional groups such as the State Task Force of Sexual Assault and the Office of Children and Family Service Advisory Board.

C. Statute of Limitations

Statute of limitations refers to a prescribed period of time in which charges can be brought against an individual.³⁴ Such limitations exist in both criminal and civil cases, and protect a potential defendant from indefinite exposure to prosecution. While an argument can be made in favor of the statute of limitations, there also exist some very compelling reasons to completely eliminate it. States other than New York do, in fact, have laws eliminating the statute of limitations for felony sexual offenses. If the statute of limitations is eliminated for sexual offenses committed against children, any case that can be prosecuted within the existing statute of limitations at the time of the new law's passage, may be prosecuted in perpetuity.

In New York, a felony must be commenced within five years after the commission thereof.³⁵ However, the period of limitation for sexual offenses committed against children, as defined in Article 130 of New York State Penal Law, does not begin to run until the child has reached the age of eighteen or the offense is reported to a law enforcement agency or statewide central register of child abuse and maltreatment, whichever occurs earlier.³⁶ In 2006, the Legislature again amended the statute of limitations period for sexual offenses. Specifically, on June 23, 2006, the statute of limitations for Rape in the First Degree (New York Penal Law Section 130.35), Criminal Sexual Act in the First Degree (New York Penal Law Section 130.50), Aggravated Sexual Abuse in the First Degree (New York Penal Law Section 130.70), and Course of Sexual Conduct Against a Child in the First Degree (New York Penal Law Section 130.75) was eliminated.³⁷ The statute of limitations for all other felony sexual crimes remains unchanged.

³⁴ N.Y. CRIM. PROC. LAW § 30.10 (McKinney 2016).

³⁵ N.Y. CRIM. PROC. LAW § 30.10(2)(b) (McKinney 2016).

³⁶ N.Y. CRIM. PROC. LAW § 30.10(3)(f) (McKinney 2016).

³⁷ N.Y. CRIM. PROC. LAW §30.10(2)(a) (McKinney 2016) states: "A prosecution for a class A felony, or rape in the first degree as defined in section 130.35 of the penal law, or a crime defined or formerly defined section 130.50 of the penal law, or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course

Dr. Eileen Treacy, an expert in child sexual abuse, explained to this Grand Jury the inherent dynamics of sexual abuse and how they oftentimes prevent immediate disclosure.³⁸ The sex offender often manipulates his or her victim through the use of express or implied threats. A explicitly threatened to beat the children and/or send them to a psychiatric hospital or jail should they disclose the abuse. Making these types of threats with any child, but in particular with a foster or adopted child with special needs, ensures secrecy and delays disclosure. A's threats had their intended effect. The majority of the children A abused did not disclose the abuse occurring in the home. Instead, the children engaged in what is often referred to as "survival sex," engaging in sexual activity with A as a better alternative to being beaten, institutionalized or sent to jail.

Offenders often seek out vulnerable victims. The majority of A's foster and adopted children were intellectually disabled, and the epitome of vulnerable children. In fact, A specifically requested foster children with special needs. Children with special needs frequently do not have the same capabilities as other children. As a result, the child might not know where to seek help. A isolated the children in his care by not allowing them to have friends, cellular telephones, or engage in any activities outside the home. Moreover, foster children may fear not being believed. As Dr. Eileen Treacy stated, "[I]t's harder for kids who are in [these] kinds of situations to disclose because this was supposed to be their forever family. . . . [T]hey were

of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law may be commenced at any time."

³⁸ Dr. Eileen Treacy has a PhD in psychology. Her PhD dissertation was on Foster Parenting and Sexually Abused Children. She has done pro bono work for an adoptive foster care agency. For over thirty years she has worked in the field of child sexual abuse. Dr. Treacy has a consultation practice in the areas of sexual abuse and developmental psychology. She teaches psychology part time at Lehman College in the Bronx. She has testified numerous times as an expert in the area of child abuse and lectured to law enforcement and CPS. Dr. Treacy was one of the authors and trainers for New York State Forensic Interviewing Best Practices and is a consultant with the Justice Center for the Protection of People with Special Needs.

abandoned by their birth family and now here is the family that . . . was supposed to take care of them. So it's kind of compounding trauma upon trauma.”

Furthermore, there is a stigma attached to being the victim of a sex crime that does not normally attach to victims of other crimes. As is the case here, when young men are sexually abused in their teenage years by a male offender, that stigma is even worse. All of the aforementioned factors work together to prevent a victim of a sex crime from disclosing the abuse. It is not uncommon for victims of child sexual abuse not to disclose their abuse immediately, if ever.

The Grand Jury heard testimony from foster child *F*, who was thirty-two years old at the time of his appearance before the Grand Jury. *F* testified to a single incident of sexual abuse committed against him by *A*. This incident was alleged to have occurred when *F* was between the ages of thirteen and sixteen.

The Grand Jury also reviewed the sworn statement of *G*, a thirty-three year old previous foster child who alleged that *A* had sexually abused him. *G* detailed multiple acts of sexual abuse, including oral and anal sexual conduct, committed against him by *A*. These incidents were alleged to have occurred when *G* was between the ages of 15 and 17.

This Grand Jury reviewed the sworn statement of *H*, a thirty-one year old adopted son of *A*, who also alleged that *A* sexually abused him. *H* described multiple acts of sexual abuse, including oral and anal sexual conduct, committed against him by his adoptive father, *A*. These incidents were alleged to have occurred when *H* was between the ages of approximately 13 and 20 years old.

All three of these victims who are alleged to have suffered horrific sexual abuse at the hands of *A*, will never receive the justice they deserve due to the current statute of limitations.

The alleged abuse is unfortunately outside the statute of limitations and therefore cannot be charged.

D. Propensity Evidence

As outlined above, this Grand Jury learned of multiple instances in which A sexually abused both his adopted and foster children, yet these allegations could not be charged due to statutory restrictions. Under current New York State law, there is a general rule that a criminal defendant's prior sexual offenses are inadmissible at trial. Following this rule, a trial jury would never learn the complete history of A's past crimes and bad acts. Other jurisdictions, however, have laws that permit the introduction of evidence of prior offenses to specifically establish the propensity of an individual to commit the current charged crime(s). Such propensity evidence is used to demonstrate that it is more likely that an individual committed the current offense if he or she committed the same, or similar, crime in the past.

Opponents to the introduction of propensity evidence often base their opinion upon the theory that such evidence is too prejudicial. The rationale is that the defendant should be judged only for the current charges, not for something committed in the past. There is also resistance to the admission of propensity evidence based upon the assumption that introducing the prior act(s) would require additional court time litigating the prior behavior. In reality, however, evidence of prior bad acts is helpful information for a trial jury. Moreover, with respect to sexual abuse, studies show that individuals who have sexually abused in the past are more likely to do so again. Most importantly, by prohibiting the introduction of such evidence at trial, the jury receives a dangerously incomplete picture of what actually occurred.

In cases of delayed disclosure, evidence, such as physical and/or biological evidence and witness statements, may be lost due to the passage of time. It therefore logically follows that

absent such corroborating evidence, these cases are more difficult to prosecute. Permitting the admission at trial of propensity evidence may encourage law enforcement to seek and preserve such evidence. This would increase the likelihood that evidence that would normally be lost through time would be recovered and preserved.

IV. The Investigation

After learning of the years of sexual abuse committed by A, the agencies tasked with those children's oversight conducted internal investigations. Under this harsh spotlight, many deficiencies in the child welfare system were brought to light, and each agency implemented various corrective actions. The following is an examination of each agency, their history with A, their failures, and the actions each one took to prevent this tragedy from ever reoccurring.

A. Suffolk County Child Protective Services

Suffolk County receives approximately 9000 SCR reports per year. At one point in time, Suffolk County had the highest intake of hotline reports in the State, second only to the five boroughs of New York City combined. OCFS recommends that a caseworker maintain a caseload of twelve. In Suffolk County, the average caseload varies between eight and twenty-three cases, but is generally fifteen. Suffolk CPS employs only one bilingual caseworker between the two Suffolk CPS specialized abuse teams,³⁹ in spite of an overall increase in the Spanish-speaking demographic of the county.

New CPS workers receive mandatory training within the first three months of employment. This training teaches the fundamentals of child protection, including, at a minimum, the principles and techniques of investigations, relationships with other investigative

³⁹ Specialized abuse teams are comprised of CPS workers assigned to specifically investigate allegations of child physical or sexual abuse.

bodies, legal issues in child protection, and methods of remediation, diagnosis, treatment, and prevention. Further, each worker must complete at least six hours annually of in-service training. This additional training specifically includes skills training for working with children with developmental disabilities. It also addresses topics which impact families, such as domestic violence, substance abuse, sexual abuse and physical abuse. The caseworkers are responsible for knowing a plethora of laws, rules, regulations and guidelines, including Article Ten of the Family Court Act, Part 432 of Title 18 of the New York Compilation of Rules and Regulations, the Child Protective Services Manual, the OCFS directives, and, in Suffolk County, locally implemented “cheat sheets,” desk aids used to clarify rules and procedures. This material is extremely complicated, written in such a format as to oftentimes require the assistance of an attorney for complete comprehension.

Shockingly, New York State does not mandate any training for foster care workers. However, in Suffolk County, foster care workers receive the same initial core training described above, as Suffolk CPS caseworkers. New York State also does not require yearly supplemental training, either for foster care workers or workers employed at a voluntary authorized agency.

The foregoing is presented simply to demonstrate the extreme burden on the County workers, including the high number of SCR reports, the caseload of individual workers, the training for the workers, or lack thereof, and the voluminous and complex nature of the laws workers are responsible for knowing.

Between 1996 and 2016, A was a foster parent in Suffolk County. Many of the foster children in his home were in the custody of New York City ACS, and placed in A’s home by SCO. SCO also placed children in A’s home who were in the custody of Suffolk County, as well as pre-adoptive children from a west coast state. Within this twenty-year time frame, A’s home

was the subject of eighteen SCR reports.⁴⁰ Since the SCR reports involved allegations of abuse or maltreatment occurring in a Suffolk County home, Suffolk CPS was the agency responsible for investigating those allegations.

The SCR hotline reports regarding A's home varied in nature, the most serious of which involved allegations that A sexually abused the children. Other allegations included: A preventing a child from showering; A not following up on filling a much-needed prescription for eyeglasses; A prohibiting a child from having a cellphone; and A not allowing children in his home to socialize with other children.

All eighteen of the SCR reports involving A's home were eventually unfounded. Only one report was initially indicated against A. This indicated report alleged that A had inflicted bruises on a child, and that these injuries had been observed by a Suffolk CPS caseworker. However, during the pendency of the case, the child went into a psychiatric facility and recanted the allegations, claiming that he had inflicted the bruises upon himself. The child was in a fragile mental state and there were concerns about the child's credibility. A then filed and requested a fair hearing⁴¹ in which A challenged the indicated finding. At the fair hearing, the indicated finding was overturned and the ultimate determination was changed to unfounded. This change was reflected in *CONNECTIONS*, and the case was sealed.

Several SCR reports were unfounded based upon nondisclosure, recantation, or findings that the allegations were not credible. It is not uncommon for children who have been sexually abused to fail to disclose the abuse or to recant allegations. This is particularly true for foster or adopted children. Expert Child Sexual Abuse witness, Dr. Treacy, explained that children who

⁴⁰ These eighteen reports do not include the most recent SCR reports which precipitated this investigation and the criminal charges filed in 2016.

⁴¹ A fair hearing is a formal, administrative hearing, presided over by a judge, at which a foster parent is entitled to present evidence and witnesses to contest a hotline's indicated finding. See N.Y. SOC. SERV. LAW § 422(8) (McKinney 2016).

are sexually abused often give false denials when confronted with the allegations. Children do not disclose until they feel it is safe to tell someone about the abuse. Children often suppress the memory of having been sexually abused because the pain can be too much to bear. This suppression is a defense mechanism children utilize, especially in cases where a child lacks a supportive environment.

As was established before this Grand Jury, children frequently do not report their abuse immediately, and delayed disclosure is common. If a child denies being sexually abused, without additional proof, the case must be unfounded. In the case of *A*, and consistent with the behavior of children who are victims of sexual abuse, the children falsely denied the allegations and did not disclose the abuse until years later.

Statistically, approximately seventy percent of SCR hotline reports are ultimately unfounded. Reasons a case may be unfounded include, amongst others, false reports, lack of contact information, an isolated incident or lapse in judgment by a parent, or outright denials by a child. As such, a case being unfounded is not unusual. Here, however, what was unusual and should have prompted action, but did not, were the sheer number of unfounded reports involving *A* over twenty years.

In addition to the children SCO placed from ACS and a west coast state, SCO also placed children from Suffolk County in *A*'s home. The last Suffolk County child placed in *A*'s home was in 2002. At some time in 2001 or 2002,⁴² Suffolk DSS verbally requested that SCO cease placing Suffolk County children in the home because "there were concerns about the ongoing reports and the nature of the reports, even though . . . there was not evidence that supported that finding." For some reason, and with tragic results, Suffolk DSS did not document this concern

⁴² The record is unclear when Suffolk County DSS advised SCO to cease placing its children in *A*'s home. Therefore, it is not clear whether Suffolk County DSS's last placement occurred before, or after, this directive.

in writing, nor did they send any written notification to SCO or OCFS about their concerns. Apparently, although Suffolk DSS did notify SCO, as SCO was the licensing agency for A's home, not one witness from Suffolk DSS, nor SCO, could explain when or how this notification occurred. One witness, in fact, testified that this notification could potentially have been made in passing, during a conversation in a hallway.

The Child Protective Services Program Manual provides guidance to agencies when there exist concerns as to whether a provider of foster care services should remain open. The Manual states, in pertinent part:

Concerns about whether the provider should remain certified/licensed and, should they retain their license, the health and/or safety of foster or day care children, should generally be addressed by those entities responsible for licensing and/or evaluating the care provided in such homes. It would certainly be appropriate for CPS to provide any suggestions concerning licensure and/or corrective action to staff with licensing responsibility.

It appears that Suffolk DSS verbally advised SCO about their concerns sometime in 2001 or 2002, but, because of a failure to properly document, a specific date cannot be determined. However, there is no evidence that, following this initial expression of concern and even after receiving multiple additional SCR reports involving A's home, Suffolk CPS⁴³ ever notified SCO. Considering that Suffolk CPS received additional SCR reports involving A and conducted the investigations, in keeping with the spirit of the guidelines, it would have been more than prudent to provide written notification to management at SCO. Common sense would have also dictated that Suffolk CPS should have contacted their sister agency in New York City, ACS, to advise them of their concerns. This should have prevented any children, in the custody of any local social services district, from being placed in A's home. Furthermore, it would have behooved

⁴³ The directive to no longer place any Suffolk County children in A's home, in 2001/2002, came directly from Suffolk DSS. However, any subsequent notifications to SCO should have originated from Suffolk CPS, since Suffolk DSS no longer had any foster children in the home.

Suffolk CPS to contact OCFS, in their role as the supervising authority, to advise them of their concerns. Potentially, OCFS could have then addressed the issue, or perhaps instituted a corrective action at the time these concerns were raised. If these simple, but crucial, steps had been taken, it is likely further incidents of abuse would not have occurred.

Once OCFS did, in fact, become aware of the history of unfounded reports at A's home, and following the January, 2016 allegations, they conducted an investigation. This investigation examined Suffolk County's role in the placement of foster children in A's home. OCFS issued a written report, concluding that Suffolk County was inadequate in several areas. Two major areas identified were the quality and comprehensiveness of the overall investigations, as well as Suffolk County's communication with ACS and SCO, or, specifically, the lack thereof. OCFS found that, between the years of 1998 and 2014, Suffolk CPS investigated A eighteen separate times regarding allegations that included inadequate guardianship, sexual abuse, and excessive corporal punishment. OCFS concluded that between the years of 1998 and 2002, the investigations conducted were properly and comprehensively documented in the progress notes.

However, between the years of 2006 and 2014, while some of the investigations were conducted in accordance with the relevant law and guidelines, others failed to meet OCFS regulatory standards and policies. The investigations were found to be lacking in several different areas. In some cases, not all of the children were interviewed. In other cases, progress notes were lacking. Additionally, OCFS found that Suffolk County failed to reconcile inconsistent statements of witnesses and speak with necessary collateral contacts. The OCFS report specifically identified SCO, the certifying agency, as a collateral contact that Suffolk County failed to contact.

OCFS also noted that several investigations were closed because the children were found to not be “ ‘credible’ despite the consistency and detail provided in their allegations.” One child was noted to have provided very graphic detail about behavior by A, which was ultimately determined to be incredible based upon mental health issues.

Another failure identified by OCFS was Suffolk County’s lack of notification to outside agencies, particularly ACS and SCO. The Child Protective Services Program Manual provides, that with respect to foster care related reports, CPS must “notify the local social services district having care and custody of the child(ren) and, notify the agency having supervision over the placement if different from the custodial agency.” The OCFS review found that Suffolk County failed, on at least four occasions, to notify ACS when A was the subject of a report involving children in the custody of ACS. Suffolk County also failed to notify ACS regarding the one indicated report. The review found that “Suffolk County DSS protocol for communicating with authorized agencies that certify foster homes and districts that have custody of children placed in foster homes in Suffolk County is unclear and insufficient and does not follow the Child Protective Services Program Manual.”

OCFS also noted Suffolk County’s failure to document contact it may have had with SCO or ACS, regarding SCR investigations that involved ACS foster children. This included, as discussed, that Suffolk County failed to notify SCO, in writing, of their decision to no longer place any Suffolk County foster children in A’s home.

As a result, OCFS required that Suffolk DSS, the umbrella agency for Suffolk CPS, submit a corrective action plan. There were three areas of correction: training, notification, and establishing a quality assurance process. Training was required to be provided to Suffolk CPS staff concerning the notification process to voluntary authorized agencies and local custodial

departments of social services in cases involving reports of suspected abuse or maltreatment involving foster parents. Suffolk DSS was also required to obtain approval from OCFS in implementing procedures and protocols that guided how Suffolk CPS would reach out to collateral contacts, such as a voluntary authorized agency or local department of social services. Additionally, Suffolk DSS was required to develop and submit a quality assurance process for Suffolk CPS to address those specific instances where a foster parent was the subject of three or more prior unfounded SCR reports.

Suffolk County complied with the corrective action imposed by OCFS. Within the prescribed time frame, Suffolk CPS re-trained 154 of the 157 staff members required to be trained. The remaining three staff members were to receive this training at a future date. Additionally, the protocols for notification were revised. Whereas foster care protocols were previously included in desk tips, muddled amongst daycare procedures and other items, Suffolk CPS prepared new desk aids exclusively containing foster care protocols. A nine-page document, containing footnotes and a separate checklist with step-by-step guidance for the caseworker, was created. Suffolk County also revised the letters now required to be sent to all collateral contacts. Suffolk CPS developed a quality control procedure to institute an extra level of scrutiny in those situations involving a foster parent with three or more unfounded prior SCR reports. In the event that a situation, such as here, arises in the future, one of six administrators in Suffolk CPS will review the new checklist and case record, as well as confirm that each of the mandatory steps has been completed.

Furthermore, Suffolk CPS instituted new pre-screening procedures, requiring their workers to determine if a home is currently, or was previously operated as a foster home. Suffolk CPS adopted this procedure due to the fact that, in the case of A, several prior unfounded

reports solely identified A as a parent, not a foster parent, since the children had been adopted. Different notification provisions apply to a foster parent named as a subject of a hotline report, as opposed to an adoptive or biological parent. If pre-screening identifies the subject as a foster parent, Suffolk CPS will now contact the State to generate a new report, identifying the subject as such.

Based upon the OCFS review, Suffolk DSS undertook additional corrective measures. Suffolk County conducted a historical review and evaluated every active case of abuse where there existed multiple prior reports. This review was done by administrative personnel. Suffolk DSS also instituted a practice to conduct an enhanced review of any abuse investigation where there is a significant history.

Unfortunately, we cannot go back in time. Had Suffolk CPS conducted more thorough investigations of SCR reports naming A as the subject, perhaps a case would have been indicated, and the home closed. Similarly, had Suffolk CPS notified ACS of the reports, ACS potentially could have made the decision to stop the placement of children in A's home. Perhaps if Suffolk CPS had notified OCFS of their concerns, OCFS would have initiated some action. What can be concluded unequivocally is that Suffolk CPS failed to follow procedures that were meant to protect children. These failures resulted in children being harmed. Nevertheless, Suffolk County has now complied with the changes directed by OCFS. The deficiencies in Suffolk CPS practice that contributed to this overall system failure appear to have been assessed, addressed and remediated, albeit too late for A's victims.

B. Administration for Children's Services

ACS is the child welfare agency jurisdictionally responsible for the five boroughs of New York City. ACS has three major functions: the juvenile justice system, the early childhood

system, and the child welfare system. The child welfare system includes the investigation of SCR reports involving abuse and maltreatment, preventive services, and foster care. For the purposes of this Grand Jury investigation, the focus was on the ACS foster care system. The following data provides some perspective on the enormity of the system.

In 2015, ACS preventive services served 20,000 families and 45,000 children. Each year ACS conducts approximately 55,000 investigations regarding abuse or maltreatment. In 2016, the ACS foster care system was responsible for approximately 9000 foster children and just under one thousand children who were freed for adoption.

ACS's foster care unit is staffed by 600 city government employees. The unit also oversees twenty-seven non-profit voluntary authorized agencies, such as SCO, with whom ACS maintains a contract for foster care services. The ACS foster care staff is divided amongst the Children's Center, an administrative department, and the consultation and technical support department. Approximately 200 staff members work at the Children's Center, a residential facility, open twenty-four hours a day, seven days a week, providing immediate housing on a short term basis for children not directly placed into a foster home. Staff members tasked with the administrative functions ensure that all appropriate paperwork, such as Medicaid health insurance and interstate placements, are completed. The consultation and technical assistance personnel provide support to the twenty-seven non-profit voluntary authorized agencies and, in some instances, are actually placed at the voluntary agency to provide assistance.

ACS foster care is implementing an evidence-based program that has been researched and has resulted in improved practice. New York City instituted the Workforce Institute which, in addition to providing training for ACS employees, offers training to the voluntary authorized

agencies as well. This program assists the voluntary authorized agencies by providing free training, whereas those agencies previously bore the entire cost.

On July 28, 2016, the Commissioner of ACS issued a “Child Safety Alert.” This document was in response to heightened safety concerns in foster homes and intended to address problems that occurred in the case of A. The Alert addressed matters of notification among agencies, prioritizing foster care cases when there are two or more SCR reports within a five year period, and requesting voluntary compliance by foster parents to inform the voluntary authorized agency about SCR reports in the home. The Alert also highlighted the responsibilities of foster care provider agencies to protect the safety and wellbeing of children in foster care. Most of the items addressed in the Alert were already in existence and merely reinforced. (*See Appendix B*).

ACS has enhanced monitoring and quality oversight through its Policy Planning and Measurement Division. This supervision and oversight is more system oriented, in that the Division collects and analyzes data to assess the efficacy of the foster care system. This data is crucial in determining how voluntary authorized agencies are performing, and changes are implemented based upon the information.

The goal of the foster care system is to reunite the child with his or her biological family, or, if that is not feasible, to transition the child toward being freed for adoption in a smooth and seamless manner. Beginning in 2007, and through 2009, ACS instituted a new approach for handling foster care entitled Improved Outcomes for Children [hereinafter “IOC”]. There were essentially two components to this program. The first component permitted ACS to delegate the case management function to the voluntary authorized agencies. The second component was the implementation of “Family Team Conferencing.”

The impetus and reasoning for delegating the case management responsibilities to the voluntary authorized agencies was to place the “decision making in the hands of the staff who are closest to these kids and families.” Prior to this program, an ACS staff member who sat in an office, and had no direct contact with any of the involved parties, would review the paperwork submitted by the voluntary authorized agency and have final decision-making authority as to the plan for the child. ACS determined that this was solely a perfunctory process. The intent of this change was to allow those with direct involvement to have authority to determine the ultimate plan for a child, as they would be most knowledgeable and best able to assess the situation.

ACS is the only local social services department in New York State that has been permitted to delegate its case management function. ACS conducted an internal review after a particularly difficult case, and concluded that it did not do a particularly good job of case management. ACS concluded that the voluntary authorized agencies were not only better at performing this function, but were also able to perform it more economically. As a result, ACS proposed a plan to OCFS, namely IOC, to allow the waiver of the case management function in favor of the voluntary authorized agencies. The case management function may not be delegated via contract absent a waiver. Any such waiver must be approved by the New York State Division of the Budget, as well as OCFS. This plan was approved and has been largely successful over the past ten years. However, in the wake of the case of A, OCFS is re-evaluating the waiver and considering some level of modification.

This Grand Jury finds that by delegating the case management function, ACS virtually divested itself of direct responsibility for its foster care function. Over the years, ACS had sixty children placed with A by SCO. ACS had children placed in A’s home between 1996 and January of 2016. In fact, remarkably, in 2016 during a statistical review of all ACS foster

homes, ACS found no evidence that there had been any direct contact between ACS and A's home.

The second component of the IOC was the implementation of Family Team Conferencing. This was instituted to establish "touch points," direct contact with each foster care case. These case conferences occurred upon a child first entering foster care, every six months prior to a permanency hearing,⁴⁴ upon any risk of placement disruption,⁴⁵ upon any need to reassess the child's goals, or upon the child exiting foster care. ACS always participated in the initial conference of a child entering foster care. However, ACS did not always participate in any subsequent Family Team Conference. Thus, once a child formally enters the system, there could potentially be no future conferences involving an ACS staff member. In the past, ACS had participated in approximately 24,000 conferences per year. Current plans are in place to double that number, as well as to increase the "touch points."

In response to concerns regarding the lack of supervision by SCO of A's home, as well as to the details of the abuse that had occurred, ACS has taken several affirmative actions. ACS sent staff to visit 370 foster homes. ACS also had staff review records, including the certifications of SCO foster homes. Additionally, ACS reviewed SCO practices and imposed a corrective action plan on SCO.⁴⁶ As of March 28, 2016, ACS stopped SCO's placement of children into non-kinship foster homes.⁴⁷ ACS further limited the number of SCO foster care placements, reducing it from approximately 1000 to 700 in number.

⁴⁴ The Family Court conducts permanency hearings every six months "to provide children placed out of their homes timely and effective judicial review that promotes permanency, safety and well-being in their lives." N.Y. FAM. CT. ACT § 1086 (McKinney 2016).

⁴⁵ Placement disruption might occur if a foster parent is having a particular issue with a child or if the child is having difficulty within the home.

⁴⁶ The corrective action plan imposed by ACS is discussed on pages 59-62 of this report.

⁴⁷ A kinship foster home is one in which a child is placed in a home of a family member or relative. A non-kinship foster home is headed by a foster parent who is a stranger to the foster child.

An omission in practice identified by OCFS in its investigation is that ACS neglected to include certain language within its contract with SCO, which was mandated by OCFS. OCFS issued a corrective action plan, stating specifically that ACS failed to incorporate the following language:

The agency agrees to promptly notify the Department of any report of suspected abuse or maltreatment occurring in the program regarding any child placed by the Department with the Agency, to notify the Department of the actions taken by the Agency in regard to the report and to confirm that, to the extent authorized by law, the parents of the child who is the alleged victim of such abuse or maltreatment will be notified by the appropriate investigative agency of such report.

ACS admitted to omitting the required paragraph. However, ACS explained that the City has its own structure for contracts and that its template substantially aligns with the state model contract. The City contract language reads as follows:

Section 6.05-Independent Reporting

- A. The Contractor shall notify ACS immediately in the event of a situation, which presents an imminent danger to the health or welfare of any Foster Child. For purposes of this clause, immediate notice shall mean providing notice to ACS as soon as practicably possible without placing the Foster Child in any further danger.
- B. The Contractor shall report fatalities, serious accidents and incidents, and injuries of any Foster Child to ACS within twenty-four (24) hours of receiving notice. The Contractor shall immediately send notification to ACS's Shared Services Response Team upon knowledge of any such incident, and shall follow up with a comprehensive report within twenty-four (24) hours of the initial notification. The Contractor shall comply with the Law with regarding [sic] to reporting including 18 NYCRR 441.7 and 18 NYCRR 441.8 or any successor or amended regulation. The Contractor shall submit a copy of each critical incident report within twenty-four (24) hours of completion of the report to its commercial general liability insurance carrier and to the City of New York Law Department Affirmative Litigation Division.

ACS is currently in the process of amending its contracts in order to comply with the OCFS corrective action. It is a time-consuming and tedious task, as there are many layers of review

and seventy amendments to process. Once the process is complete, ACS will have complied with OCFS's corrective action.

This Grand Jury learned during this investigation that New York State law does not permit access to open and unfounded SCR reports to all agencies. If an ACS child is named in an open case, in another jurisdiction, ACS may only view in *CONNECTIONS* the fact that an open case exists, but not the details of that case. In order to obtain further information, ACS would be required to make a request, pursuant to an exception under the Social Services Law.⁴⁸ Similarly, if a case is unfounded, ACS can make a request, pursuant to the Social Services Law, requesting the details of the report.

There are reasons why access to details of open or unfounded reports is not provided to all individuals and agencies. Open investigations are just that, an investigation of an allegation. There is no proof yet that anything occurred and, therefore, out of fairness and due process, this information remains with OCFS and the investigating agency. In *CONNECTIONS*, access is only granted to agency personnel who require the information in order to complete their work. There is a concern that, if the information in the report is shared, the investigation may be compromised. If there is no credible evidence to substantiate the allegations, a report must be unfounded. This being the case, the subject of the SCR report should have finality and the information should not be revealed. However, these rules limited the access that ACS had regarding the many SCRs in A's home.

In retrospect, had ACS included the appropriate notification language in its contract with SCO, and had SCO complied with such language, ACS would have been aware of the multitude of SCR reports in A's home, despite the failure of Suffolk CPS to notify them. As a result, ACS would have been in a better position to make an informed decision regarding the placement of

⁴⁸ N.Y. SOC. SERV. LAW § 422(4)(A) (McKinney 2016).

children in A's home. Moreover, had ACS retained its case management function, it would have had access to review SCO files and more involvement in Family Team conferences, presumably enlightening them as to what was occurring in A's home. Had all of these things been in place, undoubtedly there would have been a different outcome for the ACS foster children in A's home.

C. *The Office of Children and Family Services*

OCFS, in its supervisory role of New York State's immense child welfare system, investigated the agencies under its jurisdiction and issued corrective actions in response to what it perceived to be system failures in A's case. On June 17, 2016, OCFS issued an administrative directive intended to remind the local departments of social services and voluntary authorized agencies of existing regulatory and policy requirements relating to SCR hotline reports involving children in foster care. The directive focused on the rights of foster children, the multiple notifications mandated, the investigation of SCR hotline reports, and the certification process of foster homes. As noted earlier, OCFS also amended its SCR practice, and now requires a CPS specialist to specifically inquire of the reporting party as to whether the call is related to a foster home.

This Grand Jury finds that OCFS is not without its share of blame. The OCFS Suffolk County regional office received many of the SCR reports, which referenced the multiple prior reports involving A. This Grand Jury finds that the regional office failed, in its oversight capacity, by not following-up with any of the hotline reports. OCFS does random reviews of foster care agencies every three years. However, they do not review every one of the 14,733 foster homes in the state. Prior to 2016, OCFS had no direct contact with A's home, and did not review any yearly certification files pertaining to A's home. Statutory authority provides OCFS

with the ability to visit any foster child and to visit any licensed foster home.⁴⁹ However, due to the structure of the New York State Child Welfare System, which is state-supervised, and locally administered, OCFS delegated, and continues to delegate, this responsibility to the local departments of social services and the voluntary authorized agencies.⁵⁰ OCFS has oversight over an immense system. Regardless, OCFS made no contact with a foster home under its jurisdiction which was the subject of eighteen separate SCR reports, in the last approximately twenty years. This is clearly a problem.

OCFS and Suffolk CPS were not able to retrospectively review all of the prior SCR reports involving A's home, as some of these reports were expunged by operation of law. Reports that are unfounded are expunged ten years after the receipt of the report. Indicated reports are expunged ten years after the eighteenth birthday of the youngest child named in the report.⁵¹ If the SCR reports from A's early years as a foster parent had been available, perhaps the involved agencies would have taken a closer look.

Lastly, it was also revealed that OCFS reached out to the west coast state, but never actually received any information in response. OCFS sought this information to review A's adoption of children from that state. Ultimately, OCFS received this information from another source.

D. SCO Family of Services

SCO is a non-profit human services agency that has been in existence, in one form or another, for about a hundred years. It provides residential and support services to both children

⁴⁹ N.Y. SOC. SERV. LAW § 386(1) (McKinney 2016) states: "The board of the department is authorized to visit, in its discretion, any minor under the age of twenty-one years committed, placed out or boarded out and not legally adopted or in the custody of a legal guardian." N.Y. SOC. SERV. LAW § 386(2) (McKinney 2016) states: "The board or the department is authorized to visit, in its discretion, any home or place where a child or children are received, boarded or kept under a license or certificate whether or not such children are maintained as public charges. Every licensed home shall, if practicable, be visited by the department at least four times in each year."

⁵⁰ See N.Y. COMP. CODES R. & REGS. tit. 18, § 441.21 (2016).

⁵¹ See also N.Y. SOC. SERV. LAW § 422(6) (McKinney 2016).

and adults who are struggling with various issues, including homelessness, developmental disabilities, mental health disorders, and substance abuse. It has juvenile justice programs designed to give youths involved with the criminal justice system a second chance.

SCO's function as a foster care agency played an integral role in the oversight of *A*'s home. SCO is a voluntary authorized foster care agency that certifies foster homes, operates an adoption program, and operates residential facilities for children. It certifies between 600 and 700 foster homes, and runs twenty-nine residential facilities. In point of fact, it is one of the largest human services agencies in New York State.

The preferred placement for children in foster care is in a foster home. The child lives in the home as a member of the family, while the social services district works to deal with the biological family's problems in the hopes of reuniting the child with his or her family. Foster homes and parents must be certified, in that they have to meet certain regulatory requirements and standards. Some counties certify foster homes themselves, but most contract with non-profit agencies to certify and/or operate foster homes on their behalf.

A foster parent can be certified as a regular foster parent, and/or as a therapeutic foster parent. A foster child with severe behavioral and/or cognitive problems might present with particularly challenging behaviors and needs, and therefore require a higher level of care. Such a child needs to be placed in a therapeutic foster home or residential setting. Therapeutic foster parents receive additional training and support in order to learn how to appropriately handle children who have greater needs, and would otherwise be in a residential setting.

The local social services commissioner who has custody of the child is legally responsible for that child. The agency that certifies the foster home, whether it be the social

services district that has custody of the child, or a voluntary authorized agency that has contracted with that district, has legal responsibility for the daily care of the child.

Foster care is intended to be temporary while the problems in the family are resolved. The ultimate goal is to reunite the child with the family, if at all possible. Therefore, once the child enters foster care, a plan must be made. The extant problems must be identified, and a plan set forth as to what is going to be done to resolve them.⁵² This plan is set forth in the Family Assessment and Services Plan [“FASP”], which must be updated every six months. All of this is overseen by the Family Court. The county social services commissioner who has taken custody of the child can maintain an emergency placement for a few days without court approval.⁵³ After that, the social services district must seek a court order in the Family Court, and prepare a permanency hearing report for the court. The permanency hearing report is prepared for the court every six months and sets forth, in part, the child’s placement, the case plan, the progress the child is making, and the intent to move the child out of foster care — either to return the child to his or her parents or to some other permanent arrangement, such as adoption.⁵⁴ The FASP contains the information that must be included in the permanency hearing report.⁵⁵ When SCO places a child in one of its certified foster homes, SCO is responsible for preparing the permanency hearing report and, therefore, would attend the permanency hearing.

⁵² N.Y. SOC. SERV. LAW § 409-e(1) (McKinney 2016) provides, in pertinent part: “With respect to each child who is identified by a local social services district as being considered for placement in foster care . . . by a social services district, such district, within thirty days from the date of such identification, shall perform an assessment of the child and his or her family circumstances.”

⁵³ N.Y. FAM. CT. ACT §§ 1024, 1026 (McKinney 2016).

⁵⁴ N.Y. FAM. CT. ACT § 1087(e) (McKinney 2016) states: “‘Permanency hearing report’ shall mean a sworn report submitted by the social services district to the court and the parties prior to each permanency hearing regarding the health and well-being of the child, the reasonable efforts that have been made since the last hearing to promote permanency for the child, and the recommended permanency plan for the child.” *See also* N.Y. FAM. CT. ACT § 1089 (McKinney 2016).

⁵⁵ The FASP is maintained in *CONNECTIONS*. However, portions of the record are kept as hard copy documents due to the fact that *CONNECTIONS* cannot upload scanned documents.

Given the fact that ACS has been granted a waiver of the requirement to retain the case management function in its foster care program, in instances in which SCO placed children, who were in the legal custody of ACS, into its own certified foster homes, SCO performed both the case planner and case management functions for that child.

SCO also provides respite care via its certified foster homes.⁵⁶ Respite care can be provided at the behest of a parent who voluntarily seeks to have his or her child placed into another home as a temporary safeguard. For example, the child may have behavioral issues or there may have been an incident that placed undue stress on the home. In order to avoid hospitalization of the child, the parent can voluntarily place the child in respite care for up to twenty-one days. There can also be respite care provided at the behest of a foster parent. For example, the foster parent might need to visit a sick parent or travel for some other reason, and the child's biological parents will not consent to the child joining in the trip. Or, the foster parent might need temporary relief from contending with a foster child who has behavioral issues or is mentally ill. In such a case, that foster child can be placed temporarily in respite care.

1. SCO's Function with Adoptions

In order to adopt a child, a prospective adoptive parent must work with a social services district or a voluntary authorized agency that has an adoption program, such as SCO. One of the main functions that SCO performs in adoptions is to prepare the requisite home study.⁵⁷ The home study must comply with statutory and regulatory requirements. It includes information such as background checks, criminal history checks, checks for indicated SCR reports, and an

⁵⁶ N.Y. COMP. CODES R. & REGS. tit. 18, § 435.2(d) (2016) states: "Respite care and services means the provision of brief and temporary care and supervision of children for the purpose of relieving parents or foster parents of the care of such children or foster children when the family or foster family needs immediate relief in order to be able to maintain or restore family functioning or to provide relief for foster parents from the stress of providing care for a severely handicapped or emotionally disturbed foster child or for a foster child with a chronic or recurring illness."

⁵⁷ N.Y. COMP. CODES R. & REGS. tit. 18, § 421.15 (2016).

evaluation of the home and the individuals involved. The home study is then reviewed by a court, which ultimately determines whether to approve the adoption.

In the case of a foster parent who wishes to adopt, he or she can work with any agency. Most foster parents, however, choose to adopt a child through the agency where he or she is currently certified as a foster parent because the parent is familiar with the agency, and vice versa.

It is possible to adopt a child through the auspices of the ICPC. The ICPC is a law to which each state subscribes. It sets forth a method of overseeing and regulating the placement of children from one state to another, and provides standards and procedures as to how placements are to occur.⁵⁸ SCO, as an authorized adoption agency, oversees such placements, and prepares the necessary home study. OCFS has oversight responsibility to ensure that the home study has been properly completed. OCFS then contacts the custodial state to advise that the home study and proposed placement have been approved. Aside from the preparation of a home study, SCO's role in such a placement is to monitor the prospective adoptive home.

2. SCO's Relationship with A

A was certified as a foster parent by SCO for approximately twenty years. He was first certified by SCO in 1996, and recertified each succeeding year until January of 2016. Initially, he was certified as a regular foster parent. A few months to a year after he was originally certified, he was certified as a therapeutic foster parent, and remained so certified throughout his tenure with SCO.

SCO placed approximately 106 foster children with A over the twenty years that he was certified. Since A expressed a preference for male foster children, none of the children placed with him were female.

⁵⁸ N.Y. SOC. SERV. LAW § 374-a (McKinney 2016).

SCO placed children in A's foster home who were in the custody of the Suffolk DSS and ACS. A portion of the Suffolk DSS children were respite care placements. SCO performed the case planner function for all foster care placements and, in the case of children in the custody of ACS, it performed the case management function as well.

SCO oversaw the placement of three children for purposes of adoption in A's home that were originally in the custody of a west coast state's Department of Social and Health Services through the auspices of the ICPC. One was placed in A's home on July 4, 2011 and adopted on August 30, 2012; one was placed on June 23, 2010 and adopted on June 8, 2011; and one was placed on April 9, 2014 and removed from A's home on January 13, 2016. A personally contacted this west coast state seeking these three children who were freed for adoption. SCO monitored these placements because A was certified by SCO.

SCO oversaw A's adoption of eight children. Six of these children had originally been in the custody of ACS, and placed in A's home by SCO. The remaining two children had originally been in the custody of the west coast state. After learning that A had been arrested in January of 2016, SCO closed his home.

3. A Review of A's Home

Following the arrest of A in January of 2016, and subsequent Indictments, an investigation revealed that while A was certified as a foster parent, he was also the subject of eighteen SCR reports. Of those eighteen, seventeen of them were unfounded, and one indicated. As to the one that was indicated, that finding was challenged by A through his request for a fair hearing.⁵⁹ This resulted in a reversal of the finding to unfounded.

⁵⁹ A discussion of the nature of the unfounded reports, as well as the fair hearing proceedings relative to the indicated report, may be found on pages 22 and 23 of this report.

In light of the arrest and Indictments of A on allegations of various acts of sexual abuse and endangering the welfare of a child, as well as the testimony received regarding uncharged victims, this Grand Jury finds that there is sufficient evidence to suggest that A engaged in numerous acts of abuse and maltreatment against several of his foster and adopted children during his twenty-year tenure as a foster parent. The question then becomes how is it that, although there were eighteen SCR reports of abuse or maltreatment naming A as the subject, all were ultimately unfounded over the twenty years A served as a foster parent.

Part of the answer to this question may come from the nature of the population of children that were placed in A's foster home. Children who are suffering from an intellectual disability often do not disclose abuse because they do not have the resources to do so. Additionally they may not possess the requisite intelligence to think things through, or understand when and how to seek help. This Grand Jury received in evidence the Individual Education Plans [hereinafter "IEP"] for six of the children placed with A.⁶⁰ Of those six children, one scored in the average Intelligence Quotient [hereinafter "IQ"] range, one scored in the low end of average, one scored in the range that would qualify him as learning disabled, and the remaining three scored in the educationally retarded range.

It is also true that children with special needs, including mental disorders such as ADHD, borderline personality disorder, or bipolar disorder, often do not disclose abuse. Essentially, they can be tricked into thinking that the abuse is normal. A was certified by SCO as a therapeutic foster parent for approximately nineteen of the twenty years that he served as a foster parent. Over twenty of the children placed in his care were transferred to or from hospitals, and he provided respite care for approximately thirty-eight children. Many of the children in respite

⁶⁰ An IEP is an educational plan for a child that has been classified as being in need of special services through the Special Education Department of a school.

care were either exiting or entering Sagamore Psychiatric Hospital. Even if a child with special needs were to have the wherewithal to disclose abuse, or an SCR report would be called in on behalf of such a child by a mandated reporter, an SCR could well be unfounded because the child may be considered an unreliable witness due to the child's emotional or mental health issues. In fact, this happened with children in *A*'s care.

It is not uncommon for an SCR report to be unfounded because the abused child is pressured not to disclose. This pressure may include threats of what the consequences of disclosure will be, such as being taken away from the home and moved to a different home that could be worse, or being sent to a hospital or jail.

This Grand Jury finds that *A* systematically abused and maltreated several children. This Grand Jury finds that *A* took full advantage of his victims' intellectual and mental disabilities, and the impact that those disabilities would have on the likelihood that they would disclose the abuse.

Three salient examples of this can be found in examining the cases of children *E*, *D*, and *I*, respectively. *A* repeatedly sexually abused *D* and *E* over the course of many years. *D* was abused from the time he was eight years old until he left *A*'s home, and *E* was abused from the time he was ten years old until he was sixteen. Both of these children tested with IQ levels in the educationally retarded range. *A* also sexually abused child *I* as well. *I* had an IQ level in the learning disabled range. All three of these children suffered with mental disabilities. *D* was bipolar and in and out of psychiatric facilities. *E* was diagnosed with ADHD and was on medication. *I* left *A*'s home in 2012 because he was cutting himself and has been in a series of residential psychiatric facilities ever since. Ultimately, *A* adopted *D*, *E*, and *I*.

This Grand Jury also finds that *A* pressured his victims to keep them from disclosing the sexual abuse. *E* recalls occasions when Suffolk CPS workers came to *A*'s foster home and spoke with him. On these occasions, the conversations took place in the living room. When asked in the Grand Jury whether he ever told Suffolk CPS what was happening to him, he testified that "I would try but every time [*A*] walked by I couldn't say nothing because [*A*] said he would beat me up." *E* went on to explain that *A* would speak with him before Suffolk CPS arrived at the home, and make this threat in anticipation of the Suffolk CPS interview. Similarly, *D* reported that he was too afraid to disclose to Suffolk CPS workers when they came to the home. *D* further stated that *A* had told him exactly what to say when interviewed by Suffolk CPS. *A* threatened to shoot *I* if he disclosed the abuse.

A's threats were not always of physical violence. A case in point is that of foster child *F*. *F* was placed with *A* from the time he was thirteen years old, up until he was sixteen. He paints a grim picture of abuse and maltreatment that he observed and experienced in those three long years. *F* testified that the children were isolated; they had to stay in their rooms, were not allowed to have friends, nor talk to anyone, including school staff. *A* underfed the children and, if one of them was in bad standing with *A*, he would make them eat dog food. Sometimes *A* would punish the children by punching them in the back of the head. *F* recalls one incident in which *A* dragged him outside and put him in a dog kennel. *A* sprayed him with a hose, made him stay outside for an hour, and then sprayed him again. *F* remained outside the home for hours after that, until it was time for him to go to school. This took place on a cold winter day.

A kept *F* silent by threatening to send anyone who disclosed the abuse to a residential treatment center, where they would remain until they reached the age of twenty-one. *F* resided in multiple residential treatment centers prior to being placed with *A*, knew what they were like

and feared returning. The threat was powerful enough to keep him silent. In short, A made sure that there were many reasons why SCR reports were not indicated against him during his entire twenty-year career as a certified foster parent.

4. Suffolk County's Directive to SCO

Suffolk DSS was deeply concerned about the number of SCR reports of abuse and maltreatment naming A as the subject. Although all of the reports were unfounded, meaning that no credible evidence had been found to support the allegations, Suffolk DSS made the decision to advise SCO that it would no longer permit any of the children in its custody to be placed in A's foster home. As a result of this communication, the last placement of a child in Suffolk DSS custody into A's foster home was on May 2, 2002.

There was no written, formal notification from Suffolk DSS to SCO of this decision. When Suffolk DSS conducted its investigation of the circumstances surrounding A's foster home, it found documentation indicating that an administrator in the Foster Care Bureau had wanted a meeting with internal Suffolk DSS staff about concerns regarding the abundance of SCR reports from A's foster home. However, there were no notes found as to what the proposed content of such a meeting was to be, nor was any documentation that such a meeting ever took place. There has been no documentation found to show that Suffolk DSS ever notified OCFS of its directive to SCO not to place its children with A.

SCO never notified ACS of the request by Suffolk DSS not to place any of its children in A's foster home. SCO continued to place children in ACS custody with A well after the Suffolk DSS directive. The last of these placements was a pair of siblings on July 1, 2015. This placement lasted until January 13, 2016. The charges of Endangering the Welfare of a Child and Sexual Misconduct that were brought against A when he was arrested in January of 2016 involve

these two ACS children. SCO immediately transferred these children out of A's home upon learning of the allegations.

SCO did not conduct any independent investigation into the safety of A's foster home in response to the Suffolk DSS directive to no longer place children in A's home. It would appear that its only response was to follow the directive, nothing more. It did not impact its decisions to place non-Suffolk DSS children with A, nor to reevaluate the prudence of continuing to certify A as a foster parent.

5. *Inadequate Notification of SCR Reports*

SCO records demonstrate that they were only aware of thirteen of the eighteen SCR investigations naming A as the subject. The agency was aware of seven of them by virtue of the fact that a staff member of SCO was the reporting party. SCO was aware of the remaining six because, after the fact, A provided SCO with letters that he had received advising him that these reports had been unfounded.

In its investigation, OCFS concluded that SCO was aware of at least sixteen of the eighteen SCR investigations. The discrepancy lies with the fact that despite SCO caseworkers being anecdotally aware of the many investigations, there was never any official notification to management at SCO. In fact, applicable rules and regulations do not require that notification be made to management. In any event, it has been conceded that if a Suffolk CPS caseworker spoke with a caseworker at SCO and notified him or her of a pending SCR report, that caseworker might feel justified in concluding that such notification met the requirement to notify SCO. While this may have been objectively reasonable, it is clearly inadequate.

OCFS regulations require that local social services districts use the OCFS model formats for local purchase of services contracts.⁶¹ OCFS issues administrative directives in which it provides periodic updates as to revisions in these model contracts. There is a provision in the OCFS model contract which requires the voluntary authorized agency, if it becomes aware of a child abuse or maltreatment report involving a child from the social services district, to notify the social services district. An OCFS review of three of the contracts between ACS and SCO dated May 2, 2011, May 15, 2011, and June 19, 2015, respectively, revealed that this notification paragraph was missing from these contracts. There was therefore no contractual obligation on the part of SCO to notify ACS of any such reports.

Aside from the SCR reports that resulted in A's arrest in January of 2016, SCO advised ACS of only two SCR investigations naming A as the subject, in which an ACS child was named as the abused child. There was one such SCR in 2002, and another from 2007. Both of these were unfounded.

The Child Protective Services Program Manual requires child protective services to notify the county that has custody of a child named as the abused or maltreated party in any SCR investigation. Suffolk CPS did not notify ACS pursuant to this requirement.

It is ambiguous as to whether there is a similar notification requirement in instances where the custodial department of social services has a child placed in the foster home that is the subject of an SCR, but that child is not named as the abused or maltreated party. In any event, Suffolk CPS did not notify ACS of any SCR reports of this nature involving A as the subject.

⁶¹ N.Y. COMP. CODES R. & REGS. tit. 18, § 405.3(d) (2016) states: "Model formats for local purchase of services contract developed by the department shall be used by the social services district. They may be modified, as necessary, to cover additional details or to reflect in greater detail the specifications and terms under which payment will be made for services rendered. They shall be prepared in accordance with instructions promulgated by the department."

Neither SCO, nor ACS, was fully aware of the total number and nature of all eighteen SCR investigations. As such, independent investigations of the safety of A's home were not conducted by either entity.

6. *The Placement of Children in A's Home During a Pending SCR Investigation*

If there is an open SCR report involving a foster home, there are no rules, regulations, or guidelines that preclude an agency from placing a child in that home while the investigation is pending. Suffolk CPS follows an internal policy whereby if there is an SCR report that warrants a CPS investigation, and there is a serious concern resulting in the temporary removal of children from that foster home, no child in Suffolk DSS custody will be placed in that home until the investigation is complete. However, there is no statute or regulatory guideline to this effect.

Remarkably, it is also true that if a voluntary authorized agency, such as SCO, is about to place a child into a certified foster home, it cannot check *CONNECTIONS* to see if there is an open SCR report currently under investigation at that home.

Sadly, SCO placed four foster children into A's foster home while he was the subject of a pending SCR investigation. One was placed twenty-one days prior to the conclusion of an investigation, one was placed twelve days after the start of an investigation, one was placed six days after the start of an investigation, and one was placed approximately a month after the start of an investigation. Later, A adopted two of these children, both of whom were abused.

7. *Court Notification during Adoption Proceedings*

SCO oversaw the adoption of eight children by A. Six of these children had originally been in the custody of ACS, and had been placed by SCO with A as foster children, before A ultimately adopted them. The remaining two had originally been in the custody of the Department of Social and Health Services of a west coast state. The children from this state

were placed with A through the auspices of the ICPC. OCFS approved the placement of these two children, as well as a third from the same state, who was not adopted by A as result of his arrest in January of 2016. Because SCO had licensed A's foster home and had an ongoing relationship with him, it oversaw these adoptions. SCO monitored A's home during the pendency of the adoption proceedings.

Incredibly, New York State law does not permit a court presiding over an adoption proceeding to be notified of, or given access to, unfounded SCR reports.⁶² The theory behind this prohibition is, essentially, that insofar as an SCR report is unfounded, because there was no credible evidence found to support the allegations, in the interests of fairness and due process, the court's opinion as to whether to permit an adoption to proceed should not be influenced by unsubstantiated allegations. Additionally, by statute, records of unfounded SCR reports are considered to be legally sealed,⁶³ and cannot be shared outside the local child protective services agency with limited exceptions.⁶⁴ One such exception occurs when there is a subsequent report and a previously unfounded report is considered relevant to the new investigation.

Similarly, when a child is being adopted, the court presiding over the proceeding is not notified that a potential adoptive parent is the subject of a pending SCR report. There is an exhaustive list of who may have access to a pending SCR investigation, however, a court presiding over an adoption is not one of them.

⁶² N.Y. SOC. SERV. LAW § 422(4)(A).

⁶³ N.Y. COMP. CODES R. & REGS. tit. 18, § 432.1(ac) (2016) states: "Legally sealed report means a report made to the State Central Register on or after February 12, 1996, that was determined to be unfounded based on a lack of some credible evidence"

⁶⁴ N.Y. SOC. SERV. LAW § 422(5)(a) (McKinney 2016) provides, in pertinent part: "Unless an investigation of a report conducted . . . 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."

A judge presiding over an adoption proceeding has access to indicated SCR reports involving the prospective adoptive parent. The adoptive parent must go through an SCR clearance check, and the information gleaned relative to an indicated SCR report is then shared with the judge. It would be possible to expeditiously conduct such a clearance check of a prospective adoptive parent on the same day as a court hearing.

8. *Yearly Certification of A's Home*

Part of OCFS's review included an examination of SCO's certification files for A's foster home. SCO also conducted its own review of those files. Deficiencies were found. The deficiencies that OCFS focused on are delineated as follows: (1) SCO did not make re-evaluation visits to the home, or at least did not document them; (2) SCO certified the home for seven children whereas the law only allows for certification of a maximum of six foster children; (3) the certification files were cut and pasted from prior files for two years in a row; and (4) SCO only spoke to the children in the home to evaluate the quality of care on one or two occasions, in contravention of the OCFS Administrative Directive requiring that this be done with every annual renewal of a foster home certification.

The law allows a foster home to be certified for a maximum of six foster children. There are certain exceptions to that rule: (a) if there are a grouping of siblings that should not be separated, and (b) if a child previously sent to a residential facility is ready for discharge, the foster home may exceed the statutory limit in order to provide continuity in the child's care and return that child to his original placement.⁶⁵ If a foster parent has a child of his or her own (biological or adopted) who is less than thirteen years old, that child counts towards the six children permitted in the home. If the foster parent's own child is older than thirteen, that child does not count towards the six, even if that child has special needs.

⁶⁵ N.Y. SOC. SERV. LAW § 378.

The agency certifying a foster home has the discretion to determine the appropriate number of children to certify the home for each year. Although not required by statute, the best practice would be to consider the level of effort required on the part of the foster parent in caring for therapeutic children, and make a realistic assessment as to how many children the foster parent(s) can safely handle. It should be noted that it is very unusual for a foster parent to have six therapeutic foster care and/or adoptive children in the home at the same time, given the challenges posed by caring for such children.

A was certified by SCO as a therapeutic foster parent, and was known to take some of the “toughest kids” and is “described [by SCO staff] as the last resort before residential placement.” When A established a relationship with the west coast state, it was for the purpose of accepting “extremely vulnerable and behavior disordered children with a goal of adoption.” When A applied to another foster care agency to become certified by them as a foster parent, he indicated on his application that he was willing to take males, aged seven to eighteen years old, with special needs, namely behavioral problems and/or mild retardation. SCO placed approximately 106 foster children in A’s home over the course of his twenty-year tenure as a foster parent. A adopted eight of these children. By necessity, this meant that there were often numerous children in A’s home at any given time, many, if not all of whom, were children with special needs. For example, when *F* was placed in A’s home, there were seven children living there, including him.

Even though a prudent exercise of discretion should have given SCO pause in certifying a single foster parent for the maximum number of therapeutic foster children, SCO did exactly that. For the 2002-2003, and 2003-2004 years, SCO certified A’s home for a maximum number of seven children. This capacity exceeded the statutory limitation of six children.

9. SCO's Internal Investigation of A's Home

An education specialist from SCO who had previously dealt directly with A's foster home filed a grievance about A to her direct supervisors and administrative staff working in the foster care program. The grievance made its way up through SCO's Human Resources Department, and ultimately came to the attention of the highest level of administration at SCO. A Quality Improvement specialist was assigned to conduct an investigation.

The nature of the complaints made included: that she felt directly threatened by A; that she had a long and contentious history of working with A; and that she had specific concerns about her own well-being, which she described in her complaint. The education specialist also made allegations as to how A treated the children in his home, as well as staff at SCO, that were of particular concern to her.

A number of people were interviewed during the course of the investigation: the complainant, all SCO staff who had direct knowledge of the complainant's various allegations, all SCO staff who had visited A's foster home, all SCO staff who had previously been or were currently responsible for the home, various members of SCO management, and one child who had been living in A's home. The home-finding records for A's foster home were reviewed, as well as the records of two children living in the home. The matter was assigned for investigation in December of 2012. The investigation began in January of 2013, and concluded in April or May of 2013. A report of the findings of the investigation was issued in June of 2013.

As a result of this investigation, there were a number of findings regarding A's foster home. Some of those findings are delineated as follows:

1. "A's home-finding file had been non-compliant with the Homefinding requirements since 2009;"

2. There was a clear discrepancy between how management and line staff perceived and interacted with A. With the exception of one particular caseworker, others at SCO had a more negative view of A as a foster parent, and reported inappropriate and sometimes abusive behavior on A's part directed at SCO staff;
3. A was the subject of multiple child protective reports throughout the time he was a foster parent with the agency, including one as recent as January of 2013. None of the reports were indicated against him;
4. It was confirmed by staff that Suffolk DSS had "verbally requested that none of their children be placed in [A's] home;"
5. Some of A's household rules, such as requiring that the children ask permission before being allowed to use the bathroom, were concerning;
6. The children in A's home all presented extreme challenges. "Some SCO staff expressed concerns about verbal and emotional abuse;" and
7. Some SCO staff members complained that A's "rude, inappropriate, nasty and bullying" behaviors were "minimized or ignored by the Directors" at SCO, and that management "failed to address staff concerns and complaints about A."

During the pendency of SCO's internal investigation, SCO stopped placing children in A's home. However, at the time, A was in direct contact with a child that he was hoping to adopt from the previously mentioned west coast state, and that process was allowed to continue. In August of 2013, staff met to discuss the report, its findings, and its recommendations. A contract was drafted which required A to agree to be cooperative with SCO staff and comply with specific requirements imposed upon him as a certified foster parent. The contract was signed by A, as

well as an executive from SCO, on October 15, 2013. In the contract, A agreed to continue to:

1. Permit workers to count medication as required;
2. Follow medical recommendations for the SCO children in his care as required;
3. Permit SCO children in his home to call their families;
4. Follow the requirements for parents/visits for the children placed in his home;
5. Permit socio-therapists to make the required visits on various days and times;
6. Accommodate scheduling appointments as needed with SCO staff;
7. Work with caseworkers and socio-therapists as required by the foster care program;
8. Permit unannounced visits by SCO staff;
9. Not limit the amount of food that children are allowed to eat at meals;
10. Provide proof of income and a lease or deed for his home;
11. Provide annual medicals for all of the family members residing in his home; and
12. Refrain from making negative remarks to or about SCO staff.

ACS was not aware of this internal investigation until it conducted its own review of A's foster home in 2016, despite the fact that it could be argued that SCO had been contractually obligated to notify ACS of the investigation. SCO never notified OCFS of this investigation or report prior to 2016.

High-ranking executives at SCO made the decision that, until A met the condition precedent of executing the October 15, 2013 contract, SCO would not place any additional children in A's home, but would permit the pending adoption of the child from the west coast state to proceed. A's home was to be closed once that child was successfully adopted. This Grand Jury finds that this decision was a poor exercise of judgment.

Despite the decision not to place any more children in A's home, SCO decided to place two siblings in ACS custody in A's home for respite care. These children's foster parent was familiar with A, and asked that the children be placed with A while she went on vacation. The placement took place on July 1, 2015, and was only supposed to be for the summer. The placement lasted until January 13, 2016, when both children made allegations that gave rise to A's arrest.

10. SCO's Access to A's Home

OCFS found, in its investigation of A's foster home, that A refused to allow SCO staff access to the home and children for about a year. OCFS found, in one particular case, that A refused to allow an SCO therapist to have contact with one of A's foster children from September 3, 2008 until A adopted the child in February of 2009. The therapist documented twenty-two attempts to visit the child in the home that were thwarted by A. Progress notes in SCO's records indicated that the therapist planned to discuss the matter with his supervisor. However, there was no documentation found demonstrating that any SCO supervisors monitored or addressed any of the concerns raised by other SCO staff during this time period. A allowed only one SCO caseworker access to this child. OCFS found no indication that SCO took appropriate steps to deal with these troubling circumstances.

11. *A Attempts to Agency Shop*

SCO stopped placing children in A's foster home when it commenced its internal investigation of the home, and this continued throughout the pendency of the investigation. A apparently was unhappy with this lack of placement, and, as a result, applied to another foster care and adoption agency in hopes of transferring to them. When asked by the new agency why he was seeking this transfer, A said that it was because SCO was not placing children in his home.

The recruiter from the home-finding department at the new agency, who was tasked with evaluating A's application, spoke with someone from SCO, who advised her that SCO had "concerns about the home." The recruiter also had conversations with A in which he was demanding, pushing her to make the decision to accept the transfer despite the guidelines and time frames that she was constrained to adhere to. She decided not to work with A, and his application was denied.

A also reached out to a west coast state, seeking children who were freed for adoption, and he was successful in having three children placed with him for that purpose. It was not apparent what process A engaged in to locate these children, whether it was through an agency or via a website. Most, if not all, states have a placement website which is open to the public and provides information about children who are available for adoption. OCFS has such a placement site on its official website. The OCFS placement site works similarly to the placement sites in other states. Anyone in the public, without identifying themselves in any way, can enter criteria for a child that they would be interested in adopting, such as the gender, age range, and/or information regarding special needs. A list of children who are freed for adoption and fall within

the selected criteria, coupled with photographs of the children and additional information about their likes, dislikes, and other salient details, is provided.

In order to actually adopt a child selected from a placement site, a potential adoptive parent must work with a social services district or voluntary authorized agency that has an adoption program. The agency must prepare a home study, and evaluate the suitability of a potential adoptive parent, pursuant to statutory and regulatory requirements. Generally, the agency is required to conduct background and criminal history checks, a clearance through the SCR for any indicated reports, as well as complete an evaluation of the home and all individuals in the home. The home study and proposed adoption is reviewed by a court, and cannot be finalized without court approval.

A was forthcoming with the new agency about the fact that he had been previously certified by SCO, and SCO was no longer placing children with him. If he had not been, there was no mechanism by which the second agency would have known that the first agency was not satisfied with A as a foster or adoptive parent. Similarly, if a private agency interviews and rejects a potential adoptive or foster parent, the applicant can attempt certification with another agency, and that agency will be none the wiser.

It is also true that there is no interstate database or system which allows states to communicate with each other and share information regarding the abuse and neglect of children. Therefore, in the case of A, the west coast state was relegated to relying upon the due diligence of SCO to provide such information.

V. The Aftermath of A's Arrest

Upon the disclosure of the allegations that ultimately led to A's arrest, SCO called in a hotline report to the SCR, and immediately removed the three children that it had placed in A's home. SCO then suspended any further placements and, once A was arrested, closed his home.

Once A had been arrested, ACS and OCFS conducted investigations, and SCO conducted an internal investigation. As a result of these investigations, both ACS and OCFS imposed corrective action plans upon SCO, and SCO implemented self-imposed corrective actions.

A. The OCFS Corrective Action Plan

OCFS found five areas where corrective action was needed by SCO:

1. SCO failed to adequately assess the safety of children in A's foster home on an ongoing basis for a period of years, and take appropriate action when necessary. OCFS found that SCO was aware of sixteen of the eighteen SCRs against A alleging child abuse and maltreatment, some of which involved sexual abuse. OCFS also found that Suffolk DSS would not allow any of the children in their custody to be placed in A's home due to concerns about these reports. In spite of this, SCO failed to undertake any independent investigation of the safety of A's home;
2. Following SCO's 2013 internal investigation, OCFS opined that SCO should have either stopped placing children in the home or simply closed it;
3. There were deficiencies in the certification of A's home. SCO did not make re-evaluation visits to the home, or at least did not document such. SCO certified the home for seven children in violation of law; certifications were cut and pasted two years in a row; and SCO failed to talk to children in the home to evaluate the quality of care, except on one or two occasions;

4. SCO failed to take appropriate steps to address A's refusal to allow SCO staff access to the home and children for about a year; and
5. SCO's written policies regarding foster care were out of date or did not incorporate changes in the law, and required revision and/or updating.

SCO has been fully cooperative with OCFS, and has been diligently complying with the corrective action plan imposed upon it. It is in its third iteration of upgrading its foster care manual, providing drafts to OCFS and its legal team for revision and approval. Once the training curriculum aspect of this manual has been fully approved by OCFS, SCO plans to provide it to all staff members (line staff, caseworkers, supervisors, and directors) that are likely to come into contact with SCO children. Pursuant to the OCFS corrective action plan, SCO has contracted with an independent oversight monitor for a year. The monitor is experienced in working with the child welfare system in a leadership role, and will be reporting back not only to SCO, but to OCFS as well. SCO has developed a protocol regarding the notification of all appropriate entities when SCO is made aware of suspected abuse or maltreatment of one of its children.

B. The ACS Corrective Action Plan

When ACS learned of A's arrest, it looked into SCO's practice with A, and then conducted a review of approximately four hundred of SCO's non-kinship foster homes. ACS interviewed all of the children and foster parents in these homes, and surveyed the physical safety of each. This review left ACS satisfied that the placements in these homes were appropriate. The review did, however, result in a few hotline reports being made to the SCR, one of which ultimately resulted in the removal of two children from one of SCO's foster homes.

There were three major findings as a result of ACS's investigation:

1. ACS agreed with OCFS with regard to SCO's 2013 internal investigation of A's home. In the view of ACS, the concerns identified in the report of that investigation were significant enough to warrant SCO leadership to close the home;
2. Suffolk CPS and SCO had failed to notify ACS of the many SCR investigations conducted regarding A's foster home, even though ACS children were residing in the home; and
3. There is ambiguity in the law regarding notification: When the subject of an SCR report is a foster parent, and there is an ACS child residing in the home, but the child is not named as the abused child in the report, it is not clear whether ACS has the right to know or receive notification of that report. However, when the subject of an SCR report is a foster parent, and there is an ACS child residing in the home who is listed on the report as the abused or maltreated child, then Suffolk CPS must notify ACS. Suffolk CPS failed to make this notification.

As a result of these findings, ACS imposed an extensive corrective action plan upon SCO. In summary, ACS directed that SCO:

1. Train staff in areas of safety, risk management, sexual abuse, recognizing signs of sexual abuse, as well as managing critical incidents;
2. Update all certification files to ensure compliance with relevant guidelines, and put appropriate processes in place for certification of foster homes going forward;
3. Create a Family Foster Care Program-wide Incident Review Committee, and improve quality improvement tools; and

4. Develop a better process for handling critical incidents involving a foster home that do not necessarily rise to the level of an SCR, but raise concerns about the home.

SCO self-imposed its own corrective action plan which, at its request, was incorporated into the plan imposed upon it by ACS. Among the actions suggested by SCO were: (a) the hiring of an outside law firm to perform an independent review of SCO's handling of A's foster home; (b) the hiring of a risk management company to help SCO mitigate and prevent the potential risk of sexual abuse occurring; (c) the implementation of changes in SCO's information technology system to help prevent SCO from placing children beyond a foster home's licensing capacity; (d) mandating caseworkers to make unannounced visits to foster homes; and (e) the increase of Quality Improvement oversight in the foster care area.

During the implementation of the corrective actions, ACS required, and SCO provided, bi-weekly status reports. To their credit, SCO has self-imposed more corrective actions than required by ACS. SCO has requested that Suffolk DSS change its policy regarding notification. The rules and regulations do not require that Suffolk CPS notify upper management at SCO of an SCR report regarding one of their foster homes/parents. Suffolk CPS is now honoring SCO's request, and notifying one of its directors of any SCR report involving one of its foster homes/parents.

SCO has been diligently implementing all the various corrective actions that have been self-imposed and imposed upon it by ACS. It has re-trained hundreds of its staff members and foster parents, reviewed certification files for compliance, created an internal incident review committee, updated its information technology system, dedicated Quality Improvement specialists to their therapeutic home-finding unit, instituted daily and monthly Quality Improvement reviews, instituted quarterly Quality Improvement meetings, and hired both an

outside law firm and risk management company. As a result, SCO is in substantial compliance with the ACS corrective action plan.

Significantly, all of the SCO executives chiefly involved in the decision to keep A's foster home open, after the issuance of the internal investigation report in 2013, are no longer employed at SCO.

VI. SCO Continues Operating

The allegations surrounding A's foster home are so egregious, that the question of whether to close SCO's foster home program must be addressed. ACS has taken the position that it wishes to renew its contract with SCO for the provision of foster care services. Prior to 2016, SCO serviced approximately ten percent of the 10,000 ACS children in foster care. ACS is now rebalancing the distribution of its foster children across the twenty-seven non-profit foster care agencies to ensure that no one agency is overburdened. As a result, SCO will be responsible for three hundred fewer foster care placements. The consequences of not renewing the contract between SCO and ACS could be detrimental on many levels. For example, allowing the contract to expire would almost surely result in the approximately one thousand foster children being displaced, ultimately delaying potential permanency.

OCFS agrees with this point of view. There are between 17,000 and 18,000 children in foster care in New York State. SCO services approximately 1200 of these children. Both OCFS and ACS conducted reviews of SCO's foster care, and neither agency found any widespread or systemic problems across the program. OCFS therefore has taken the position that, given the size of SCO's operation, and the fact that this case may represent an anomaly, it would be an overreaction to close SCO at this time.

This Grand Jury agrees with the conclusions of ACS and OCFS, and does not recommend the closure of SCO's foster care program.

VII. The Financial Component

Voluntary authorized agencies providing foster care and adoption services, such as SCO, are paid for certifying and overseeing homes as well as supervising placements of children. Foster care parents are reimbursed for the maintenance of their foster children at rates that are established by OCFS.⁶⁶ There are different reimbursement rates, dependent upon the level of care of the child in question. The rates paid to therapeutic foster parents are significantly higher than those paid to regular foster parents. There is also a Federal adoption subsidy program⁶⁷ administered by OCFS available to adoptive parents who adopt children who are handicapped or hard to place.⁶⁸ Adoptive parent reimbursement rates are also established by OCFS, and, similar to foster parent reimbursement rates, they are dependent upon the needs of the child.⁶⁹

A. Payment to SCO for the Administration of Foster and Adoptive Care

Local departments of social services will outsource foster care due to the fact that it is cost-effective. It is less costly for a voluntary authorized agency to operate a foster care program than a local department of social services. This is due, generally speaking, to the fact that

⁶⁶ N.Y. SOC. SERV. LAW § 398-a(2).

⁶⁷ 42 U.S.C. § 673 (2016).

⁶⁸ N.Y. SOC. SERV. LAW § 451(2) (McKinney 2016) states: “ ‘Handicapped child’ shall mean a child who possesses a specific physical, mental or emotional condition or disability of such severity or kind which, in accordance with regulations of the department, would constitute a significant obstacle to the child’s adoption.” N.Y. SOC. SERV. LAW § 451(3) (McKinney 2016) states: “ ‘Hard to place child’ shall mean a child, other than a handicapped child, (a) who has not been placed for adoption within six months from the date his guardianship and custody were committed to the social services official or a voluntary authorized agency, or (b) who has not been placed for adoption within six months from the date a previous adoption placement terminated and the child was returned to the care of the social services official or a voluntary authorized agency, or (c) who possesses or presents any personal or familial attribute, condition, problem or characteristic which, in accordance with regulations of the department, would be an obstacle to the child’s adoption, notwithstanding the child has been in the guardianship and custody of the social services official or a voluntary authorized agency for less than six months.”

⁶⁹ See N.Y. SOC. SERV. LAW § 453(1), (3) (McKinney 2016).

voluntary authorized agencies do not compensate their employees as well, and do not provide the same level of benefits that a governmental agency provides. It is also a question of resources; outsourcing this function enables a department of social services to take staff and resources that would otherwise be dedicated to the myriad of tasks associated with recruiting, certifying, training and overseeing foster homes, and utilize them for other functions performed by the department.

Most counties in New York contract with non-profit agencies to provide foster care services. ACS does this exclusively. Similarly, Suffolk DSS contracts with voluntary authorized agencies to provide foster care, but only for their therapeutic population. Suffolk DSS takes the position that it does not have the ability to invest in the requisite training for the level of care required for its therapeutic foster children. Less than ten percent of Suffolk DSS's foster care population is outsourced to voluntary authorized agencies.

Between July 1, 2011 and June 30, 2016, ACS had a contractual agreement with SCO to provide regular family foster care services at a cost not to exceed \$145,833,024.00. That contract was modified on June 19, 2015, for purposes of increasing the number of funded foster homes. The new contract monetary amount was \$156,341,117.00. In addition, ACS had a contract with SCO for the purchase of family foster care services for children with moderate to severe emotional disorders for the same period, totaling \$37,805,928.00.

Since July 1, 2012, and up until June 30, 2017, Suffolk DSS has a contractual agreement with SCO for the purchase of foster care services. This contract provides for payments not to exceed \$6,500,000.00 per year.

OCFS establishes the reimbursement rates for foster homes, as well as the residential facilities that it licenses.⁷⁰ There are three rates: basic, special and exceptional. The rates are dependent upon the needs of the child. A therapeutic foster parent will, at a minimum, receive the “special” rate, but usually is paid at the “exceptional” rate. Agencies administering foster care or adoptions, such as SCO, are also paid administrative rates. These rates do not vary depending upon the needs of the child.

Payment is disbursed as follows: the voluntary authorized agency, such as SCO, directly pays the foster parent on a monthly basis. The foster parent is paid a per diem rate for each child. The voluntary authorized agency then submits, for reimbursement, to the custodial social services district, such as ACS or Suffolk DSS, for monies paid to the foster parent as well as the administrative fee. The custodial social services district then reimburses the voluntary authorized agency. The voluntary authorized agency, such as SCO, retains a portion of the monies paid by the custodial social services district as its administrative fee. This arrangement is often referred to as “pass-through payments,” as the voluntary authorized agency acts as the conduit between the custodial social services district and the foster parent. Conversely, adoption subsidy payments are not “pass-through payments,” as the monies are directly paid to the adoptive parent by the custodial social services district.

The voluntary authorized agencies use their administrative payments to cover various costs incurred in running their foster care program. For example, these monies pay staff salaries such as caseworkers, supervisors, directors, education specialists, socio-therapists, and parent advocates. The administrative fees also pay for building costs, cars to transport children, training, public housing advocates for families, as well as household items for kinship foster

⁷⁰ N.Y. COMP. CODES R. & REGS. tit. 14, § 578.4(i) (2016) states “Residential treatment facility is an inpatient psychiatric facility which provides active treatment under the direction of a physician for children are under 21 years of age and is issued an operating certificate pursuant to this Part.”

homes. These monies are also used to cover additional costs pertaining to a foster child, including, but not limited to, school tutoring, driver's education, day camp, and iPads for college students.

SCO operates an immense foster care program. During the five-year time period of July 1, 2011 through June 30, 2016, SCO provided in excess of \$190,000,000.00 in foster care services to children in ACS custody. As part of its efforts to fulfill its contractual obligations, SCO relied upon A's foster home. A encouraged SCO to place difficult male children in his home, and was always willing to accept placements. SCO utilized A's willingness to accept difficult children, so much so that SCO was even willing to exceed the legally certified capacity of the home for two years in row. After conducting its own 2013 internal investigation, and ceasing placement of children in A's home, SCO allowed for the pre-adoptive placement of a special needs child from a west coast state. SCO, in total, placed an astonishing number of children in A's home, approximately 106.

B. The Financial Incentive for A to Foster and Adopt Children

This Grand Jury finds that foster care and adoption subsidies encourage well-intentioned people to provide homes for children. These subsidies make it possible for people to foster children, who otherwise would not be in a financial position to do so. That being said, this Grand Jury finds that A had a powerful financial incentive to foster and adopt as many children with special needs as the system would allow.

1. A Earns \$1.5 Million as a Foster and Adoptive Parent

Over the twenty-year period that A operated as a foster and adoptive parent, he was paid an exorbitant amount of money by a variety of agencies. Between September 1, 2010 and February 22, 2016, the west coast state paid him \$229,330.02. Between January 16, 1997 and

February 16, 2016, SCO paid him \$595,724.54. Between February 6, 1997 and November 25, 2002, Suffolk DSS paid him \$143,136.12. And between December 1, 2006 to December 31, 2015, ACS paid him \$575,368.35. The total combined amount A received from all four entities was \$1,543,559.03. All of this money is non-taxable. Adoption subsidy, as well as foster care payments, are not taxed by the Federal or New York State government.

Even after receiving this substantial amount of tax-free money, A filed for bankruptcy in August of 2013. In his bankruptcy petition, A listed his occupation as a self-employed foster care provider, and claimed that his sole source of income was the \$6,600.00 per month that he received in that role. An official from OCFS expressed concern to this Grand Jury and opined that:

If a foster parent is going through bankruptcy, it's going to at least call into question their ability to properly provide for the maintenance of any of [sic] foster children in the home. . . . [b]ecause they might be tempted to take the maintenance payments, which are supposed to cover the cost of care of the foster child and use them for other purposes, thereby not using the funds for the purposes for which they are legally intended, which is care of the children in foster care.

Although it is legally permissible for a foster parent's sole source of income to be foster care payments, SCO requires that foster parents demonstrate income independent of monies they receive for being a foster parent. SCO imposes this more stringent requirement to ensure that monthly foster care payments are properly used for their intended purpose, which is taking care of the child. A consistently represented to SCO, in his yearly certification documents, that he derived independent income from his own pet food and grooming business. However, as represented in his bankruptcy petition, A identified his sole source of income as foster care payments. At no point during the certification process did A advise SCO that he had filed for bankruptcy.

This Grand Jury finds that A's sole source of income appears to have been his foster and adoption subsidies. As a result, A was highly motivated to maximize the number of children placed in his home, at the highest possible payment rate.

2. *A Exploits the Adoption Subsidy Laws*

New York State's adoption subsidy program is partly federally-funded, and partly state-funded. An adopted child automatically qualifies to receive this adoption subsidy if that child has certain disabilities or special needs. Additionally, a child who is hard to place also qualifies for this subsidy. This program encourages individuals to adopt children who are less likely to be adopted.⁷¹

If an adoption subsidy is in place, a payment line is generated in *CONNECTIONS*. There is no supervision and no in-person contact with the adopted parent, since the child is treated as though he or she is the biological child of the adoptive parent. Thus payment is made automatically.

There are occasions when an adopted child will no longer be residing in the adoptive home. For example, an adopted therapeutic child who requires a higher level of care could be admitted to a residential treatment facility. Regardless of the absence of the child from the adoptive home, the adoptive parent continues to receive the adoption subsidy. This payment continues so long as the adoptive parent provides any support for that child.⁷² That support can be an inconsequential amount, even as little as a dollar each month. Once a child is adopted, that child is, for all intents and purposes, considered a biological child of the adoptive parent. As a result, the local social services district and/or the voluntary authorized agency no longer provide any oversight or supervision of the home. Therefore, the agency responsible for payment of the

⁷¹ 42 U.S.C. § 673 (2016).

⁷² *Id.*

adoption subsidy would never know that the child had been placed outside of the adoptive home. There is currently no provision in the law requiring an adoptive parent to report to the agency paying the adoption subsidy that the child lives in a residential facility, or is no longer in the home.

The Grand Jury received evidence of three instances in which *A* exploited this aspect of the adoption subsidy law. First, *A*'s adopted child, *J*, was placed in a residential treatment facility from May of 2007 through April of 2008. Suffolk DSS was financially responsible for paying the facility, and paid \$109,927.45 directly to the facility. At the same time, ACS made adoption subsidy payments to *A*, totaling \$17,568.00.

Second, *A*'s adopted child *D* was placed in a residential treatment center by the child's school district from April of 2009 through June of 2013. The school district paid for the educational component of that placement during the regular school year, and Suffolk DSS paid for the housing and maintenance component. The school district was responsible for both components during the summer months. The school district paid approximately \$5,000.00 per month to the facility during the school year, and \$10,000.00 per month for July and August. During the overlapping time period of November 5, 2008 through June 29, 2013, ACS made adoption subsidy payments to *A*, totaling \$101,316.52.

During the four years that *D* resided in the treatment center, there was an occasion upon which he returned to visit *A*'s home for the weekend. *A* spoke with a school district official, inquiring as to why he was not receiving any money from the school district for *D*'s care for that weekend. The school district official explained to *A* that the school district paid a flat fee directly to the residential treatment center for *D*'s care. The official clarified for *A* that he was not entitled to any money for taking care of his own son for a weekend. This Grand Jury finds

that this clearly demonstrates, amongst other reasons, A's financial motivation to adopt the children.

Third, A's adopted son *I*, from the west coast state, was hospitalized and eventually placed in a residential facility in December of 2013. Upon A's adoption of *I*, a contract was executed between A and the Department of Social and Health Services from the west coast state. This agreement mandated A to notify that state immediately, in writing, should *I* no longer be residing in the home. A failed to notify that state of *I*'s change of residence, as per this contractual obligation. In February of 2015, the west coast state learned that *I* was no longer living in A's home, and suspended all adoption support payments.

A challenged the west coast state's decision to terminate his adoption payments. An administrative hearing was conducted by the state's Office of Administrative Hearings for the Department of Social and Health Services. A testified at this administrative hearing. He argued that the placement of *I* in a residential treatment facility should be considered temporary. A further alleged that he was maintaining one of his seven certified foster beds in anticipation of *I*'s return to the home, thereby implying a loss of a potential foster care placement.

The court presiding over this hearing, however, disagreed. Specifically the court referenced A's most recent home study submission to the west coast state, for the potential adoption of yet another boy with special needs. This home study contained a list of all household members, and *I* was specifically excluded. The court found that this contradicted A's assertions that *I*'s placement was temporary, or that another child could not be placed in the home. The court also reasoned that A had minimal financial responsibility to *I*, since all of his basic expenses for food, shelter, education, and treatment were paid for by the school district and Medicaid. The court, therefore, upheld the suspension of A's adoption support payments, and

ordered reimbursement to the west coast state in the amount of \$25,425.00, representing overpayment for the period of December of 2013 through February 28, 2015.

VIII. Conclusions

This Grand Jury makes the following conclusions based upon the stated findings of fact:

A was a sexual predator who preyed on mentally and intellectually disabled young boys. Agencies tasked with the protection of children unwittingly supplied him with over one hundred potential victims. Over the course of approximately twenty years, A exploited a system, designed to protect children, and, instead, made a career of fostering and adopting children whom he emotionally, physically, and sexually abused, all while collecting over \$1.5 million in taxpayer dollars.

- There were clear warning signs of abuse, which should have triggered efforts to scrutinize A's fitness to be a foster or adoptive parent. The sheer number of SCR reports, the magnitude and similarity of the allegations, along with the number of victims, should have prompted a greater response from each child welfare agency.

- A was highly skilled in manipulating his victims, allowing him to successfully abuse them with impunity. He knew exactly what type of victim to choose; a young boy, suffering with mental illness and/or an intellectual disability that made it less likely that the child would disclose the abuse, or be found credible if he was to disclose.

- Many of the laws, rules and regulations regarding notifications of SCR hotline reports to involved agencies are confusing and ambiguous.

- The communication amongst the agencies in the child welfare system was abysmal.

- The Office of Children and Family Services provides state oversight of an immense child welfare system, which includes hundreds of thousands of children and hundreds of agencies. OCFS's oversight of the local social service districts and voluntary authorized agencies is inadequate.

- The laws, rules and regulations governing the confidentiality of SCR hotline reports impede the ability of child welfare agencies, as well as certain courts, to assess the propriety of allowing an individual to be a foster and/or adoptive parent.

- The laws, rules and regulations governing the confidentiality of SCR hotline reports increase the likelihood of a foster child being placed in a home currently under investigation for child abuse, neglect and/or maltreatment.

- The laws, rules and regulations which permit a child to be placed in a home during an active investigation of allegations of abuse or maltreatment create an unnecessary risk with the safety of children.

- The laws, rules and regulations governing child welfare allow a foster and/or adoptive parent to financially exploit the system.

- Current New York State law permits a maximum capacity of six foster children to reside in a single home. The law, however, fails to prescribe how many of those six children may be therapeutic foster children. This failure does not take into account the greater level of care required to parent a therapeutic foster child.

- The current New York State Penal Law and Criminal Procedure Law fail to take into account the inherent dynamics of child sexual abuse, thereby limiting the number and quality of successful prosecutions of such cases.

This Grand Jury finds that the failures of the Child Welfare System must be addressed, and the inadequacies of the New York State Penal and Criminal Procedure Laws must be remedied. This case demonstrates that the system failed to protect children. This Grand Jury finds that, had the recommendations contained in this report been in place, this tragedy could have been prevented. Each agency involved is accountable for failing to adequately supervise *A*'s home, resulting in almost twenty years of devastation.

IX. Recommendations

Based upon the stated findings of fact and all of the evidence heretofore had before this Grand Jury and in order to protect foster and adopted children from sexual and physical abuse and maltreatment at the hands of foster and adoptive parents charged with their care; to provide improved access to and sharing of information with individuals and institutions responsible for children in order to enhance their ability to identify patterns of behavior that evidence a likelihood that abuse or maltreatment of such children is occurring; to provide increased accountability of such individuals and institutions; to provide improved statutory remedies when child sexual abuse occurs; to aid in the prosecution of individuals who sexually abuse children; and to avoid government overspending of foster care and adoption subsidies NOW THEREFORE, by the authority vested in this Grand Jury by Criminal Procedure Law 190.85(1)(c), the following legislative, executive and administrative actions are recommended in the public interest.

Legislative

I. New York State Criminal Procedure Law Section 30.10 shall be amended to eliminate the statute of limitations in cases involving a sexual offense, as defined in Article 130 of the New York State Penal Law, committed against a child less than the age of seventeen.

II. The New York State Legislature shall eliminate the civil statute of limitations in cases involving a sexual offense, as defined in Article 130 of the New York State Penal Law, committed against a child less than the age of seventeen.

III. The New York State Legislature shall enact a statute which provides that when a defendant is charged with a sexual offense under Article 130 of the New York State Penal Law, against a child less than seventeen (17) years old, the evidence of the defendant's commission of another sex offense(s) shall be admissible at trial. For purposes of this statute, "sex offense" shall be defined as any sexual conduct between the defendant and another person which commences when the other person is less than seventeen (17) years old.

IV. New York State Penal Law Article 130 shall be amended to include a new crime of Course of Sexual Conduct Against a Child, which shall provide that a person is guilty of this crime when, over a period of time not less than three months in duration, he or she engages in two or more acts of sexual conduct with a child thirteen (13) years old or more, but less than seventeen (17) years old. This new crime shall be a felony.

V. The New York State Legislature shall mandate that no child be placed in a foster home or potential adoptive home during the pendency of a state central register report, wherein the foster parent(s) or potential adoptive parent(s) is/are the named subject(s) of the report.

VI. The New York State Legislature shall modify the New York State Social Services Law to permit access to unfounded state central register reports to adoption courts, the local

social services district having custodial responsibility for a foster child, the voluntary authorized agency with responsibility for a foster child, and the licensing agencies for foster homes.

VII. The New York State Legislature shall eliminate the ability of the Office of Children and Family Services to expunge state central register reports of sexual abuse.

VIII. The New York State Legislature shall establish a central register of foster homes to be monitored by the Office of Children and Family Services. This system shall be equipped with an alert system whereby the State will be notified of a pattern of foster care agency shopping by a foster parent(s) or potential adoptive parent(s), or instances of safety concerns raised by any child welfare agency.

IX. The United States Congress shall establish a nationwide central register of foster homes available to all state child welfare agencies. This register shall be equipped with an alert system whereby the Federal Government will be notified of a pattern of agency shopping on the part of a foster parent(s) or potential adoptive parent(s), or instances of safety concerns raised by any child welfare agency.

X. The New York State Legislature shall enact a statute mandating child welfare training for all workers and supervisors employed by a local department of social services and/or voluntary authorized agency, which provide foster care services.

XI. Section 673 of Title 42 of the United States Code shall be amended to provide that, in circumstances in which an adopted child is placed in a residential treatment facility, the adoptive parent must immediately notify the agency making adoption subsidy payments for that child. The adoptive parent must, thereafter, provide documentation for any financial support that the parent provides to the child while the child is residing outside of the home, and the adoption subsidy payments shall be adjusted accordingly.

XII. The New York State Legislature shall modify the New York State Social Services Law to require that all foster and/or pre-adoptive parent(s), provide any and all tax returns filed in the year of, as well as the year immediately preceding initial certification, and annually thereafter.

XIII. The New York State Legislature shall modify the New York State Social Services Law to require that all foster and/or pre-adoptive parent(s) execute written authorizations allowing all federal, state, and/or local taxing authorities to release certified copies of any and all tax returns filed in the year of, as well as the year preceding, certification to the certifying agency.

Executive

I. The Governor of the State of New York shall introduce legislation consistent with the legislative recommendations in this report or, in the alternative, support legislation introduced by others. The Governor shall commit appropriate budgetary resources necessary to improve the legislative and administrative recommendations.

II. The Governor of the State of New York shall form a task force comprised of experts in the fields of child abuse and foster care, staff from the Office of Children and Family Services, local departments of social services, voluntary authorized agencies overseeing foster care, Family Court Judges, and any other appropriate members to issue a public report, determining whether any legislative or administrative changes shall be made based upon their review of the following issues:

- a. Whether it is ever appropriate to waive the local department of social services case management function, and if so, under what circumstances;
- b. Whether it is appropriate to limit the number of therapeutic foster children and/or adoptive children who may reside in a foster home comprised of one, two, or multiple foster parents, respectively;
- c. Whether the current legislation governing the child welfare system can be drafted in a more simplistic fashion;
- d. Whether New York State shall require a prospective adoptive parent to provide specific identifying personal information, including, but not limited to, full name, date of birth, address, and social security number, in order to obtain access to the New York State OCFS Adoption Album Photolisting;

- e. Whether legislation shall be promulgated establishing a maximum number of SCR hotline reports, whether indicated or unfounded, involving a single foster home and/or parent, that would mandate the removal of all foster and/or pre-adoptive children;
- f. Whether legislation shall be promulgated requiring an adoptive parent, upon admission of his or her adopted child to a residential treatment facility, to directly notify OCFS, and any agency responsible for paying the adoption subsidy for that child, of such admission. The Legislature shall determine when such notification must be made; and
- g. Whether the evidentiary standard of “some credible evidence” needs to be defined.

III. The Suffolk County Executive shall commit appropriate funding to increase the number of child protective services caseworkers so as to reduce the individual caseloads to the State recommended number of twelve, and to hire additional bilingual (Spanish/English) personnel.

IV. The President of the United States shall introduce, before the Congress, legislative recommendations regarding the creation of a nationwide central register of foster homes, or, in the alternative, shall support similar legislation introduced by others. The President shall commit appropriate budgetary resources necessary to establish this nationwide register.

V. The President of the United States shall introduce, before the Congress, a legislative recommendation regarding an amendment to Section 673 of Title 42 of the United States Code, or, in the alternative, shall support similar legislation introduced by others. The President shall commit appropriate budgetary resources necessary to enforce this new legislation.

Administrative

I. State and local agencies affected by the changes implied in the legislative recommendations shall be given the necessary authority to adopt administrative rules and regulations necessary for the effective implementation and execution of the legislative recommendations.

II. The Office of Children and Family Services shall, in the case of a foster parent with at least three (3) state central register reports, whether indicated or unfounded, conduct the following:

- a. Review the uniform case record and family assessment service plan of every child currently in the foster home;
- b. Review the foster parent certification files; and
- c. Contact, in person, the foster parent and any foster child residing in the home at the time of the most recent central register report.

III. The Office of Children and Family Services shall issue an administrative directive requiring local departments of social services and voluntary authorized agencies providing foster care to conduct a multi-level supervisory review of any foster home or foster parent being the subject of at least three prior state central register reports.

IV. The Office of Children and Family Services shall establish a department tasked with the responsibility of directly overseeing, monitoring, and evaluating all agencies providing foster care services in New York State. This department shall be responsible for fully documenting all of its functions.

V. The Office of Children and Family Services shall conduct annual evaluations of all local departments of child protective services engaged in the investigation of SCR reports. The scope of these evaluations and the required documentation shall be determined by the State.

VI. The Office of Children and Family Services shall implement a mechanism, within the *CONNECTIONS* system, whereby a child protective specialist is notified upon receipt of a state central register report, regarding any foster parent or foster home that has been the subject of at least three prior state central register reports.

VII. The Office of Children and Family Services shall review certification files on every foster home on regular intervals to be determined by the State.

VIII. The Office of Children and Family Services shall issue an administrative directive requiring that the following language be included in contracts between a foster parent and any foster care providing agency:

- a. A foster parent must, within two (2) business days, notify the foster care agency of any significant financial reversal the foster parent experiences, including, but not limited to a bankruptcy filing and/or a mortgage foreclosure;
- b. The foster parent must, within two (2) business days, notify the foster care agency of any state central register report wherein the foster parent or foster home is the subject of that report; and
- c. Any false statements or material misrepresentations made by the foster parent in the application process and/or annual certification process shall permit the foster care providing agency to nullify and void this contract.

IX. The Office of Children and Family Services shall issue an administrative directive that upon placement of a foster child outside the custodial department of social services' jurisdiction, that custodial department of social services and/or the voluntary authorized agency must notify the local social services department in the county of placement.

X. The Office of Children and Family Services shall amend and update the Child Protective Services Program Manual to address any ambiguities.

XI. The Office of Children and Family Services shall issue an administrative directive requiring a residential treatment facility, upon admission of an adopted child to that facility, to directly notify OCFS, and any agency responsible for paying the adoption subsidy for that child, of such admission. OCFS shall determine when such notification must be made.

XII. The Office of Children and Family Services shall amend the Child Protective Services Program Manual to require CPS investigators, upon receipt of any SCR hotline report, to conduct the interview of any foster child(ren) residing in the home at a location other than the subject home, and outside the presence of the foster parent, when practicable and in the best interests of the child(ren).

XIII. The Office of Children and Family Services shall amend the Child Protective Services Program Manual to require CPS investigators, during the course of their investigation of an SCR hotline report, to make a minimum of one (1) unannounced visit to the subject foster home.