VIRGINIA: IN THE CIRCUIT COURT FOR ROCKBRIDGE COUNTY AND THE CITY OF LEXINGTON

IN RE: SPECIAL GRAND JURY

ORDER

The Court, having reviewed the Report and records of the Special Grand Jury, and in consideration of the request of the Commonwealth's Attorney for Rockbridge County and the City of Lexington and other relevant considerations, it is hereby

ORDERED AND DECREED that the Report of the Special Grand Jury empanelled by order of this Court shall be unsealed and available for public inspection. All other Special Grand Jury documents, transcripts, all related papers and electronic media shall remain under seal until further order of the Court.

Endorsement waived pursuant to Rule 1:13 of the Rules of Virginia Supreme Court.

Entered this 2nd day of May 2017.

Judge Malfourd W. Trumbo, by designation

Report of the Special Grand Jury

On September 28, 2016, pursuant to §19.2-206 of the Code of Virginia and upon request of the attorney for the Commonwealth, the Circuit Court of Rockbridge County impaneled a special grand jury "to investigate and report on any condition that involves or tends to promote criminal activity..." in the Child Protective Services agency [CPS] of the Rockbridge Area Department of Social Services [RADSS]. Over the course of 7 months the Special Grand Jury [SGJ] heard sworn testimony from 12 witnesses, examined records and documents and heard from individuals knowledgeable on the workings of the Department of Social Services [DSS] resulting in more than 1,000 pages of transcripts. At the end of this period, and with legal advice requested from the attorney for the Commonwealth, the members of the SGJ unanimously concluded there was not enough clear evidence of criminal activity uncovered for sufficient probable cause to return a "true bill," as will be described more fully below.

However, the investigations of the SGJ did uncover many highly disturbing practices and activities within the CPS agency of RADSS. The SGJ found dysfunction in the CPS agency from top to bottom including the RADSS Board of Directors, both operationally and administratively.

Deficiencies in the Agency and its personnel created an environment which was not conducive for workers to properly respond to requests for services from

members of the community which could have created or exacerbated conditions and situations dangerous to children. The CPS of RADSS failed in its primary mission to our community, that of protecting the safety and well-being of our most vulnerable population: the children of the Rockbridge/Lexington/Buena Vista area.

The Virginia system for the Department of Social Services calls for "state supervised and locally administered" agencies. The SGJ found no vertical system of checks and balances in place or any authority to review and discipline or sanction local agencies found to be out of compliance with state policies. There is no state-wide requirement for a local department to have its own policy manual to conform with and enhance state policy. Only the local Board of Directors [BoD] or the Commissioner of the Department of Social Services for the Commonwealth has the authority to fire a local department director.

The state system is divided into 5 regions. RADSS is one of 24 local departments in the Piedmont Region. The region has, among other employees, one Child Protective Services Specialist. This individual can visit local agencies and provide assistance, but has no authority to correct deficiencies and certainly no authority to hire and fire. There are seemingly no checks and balances built into the Virginia system. The region can perform a Quality Management Review [QMR] upon request. In January of 2015, a Rockbridge area law enforcement official requested just such a review. The request was made following several

instances of CPS Supervisor Brenda Perry being uncooperative as well as an apparent history of being unwilling to work with local law enforcement agencies and officials. The request followed the death of an infant in August 2013. Piedmont Regional Director Susan Reese did not respond to this request in a timely fashion. In fact, a QMR request from the Shenandoah DSS in March 2015 received priority. Evidently the Piedmont Region was only capable of conducting one QMR at a time. Ms. Reese, who has since been promoted to state level, finally authorized the QMR in Rockbridge which began in late January of 2016, one year after the original request was made by Rockbridge County law enforcement. Area law enforcement was not notified when the QMR began and therefore was not able to participate in or provide input into the process. Lack of input from law enforcement prevented appropriate oversight and handling of documents, written and electronic, which later were compromised regarding legal chain of custody requirements for evidentiary purposes. Perhaps had the QMR been performed in 2015 as requested, an incidence of child abuse which lead to criminal prosecution may have been avoided and the death of another infant in April 2016 might have been prevented.

The RADSS Administrative Board of Directors [BoD] has seven (7) members appointed by the three area governing bodies. The Board has fiscal responsibility for the Department budget, the authority to hire and fire the director

and oversight responsibility for RADSS. This Board appeared to take a hands-off approach to CPS, even when board members were contacted by CPS case workers who had concerns. Even after infant deaths the Board members asked no probing questions. The SGJ investigation revealed a BoD willing to routinely receive reports from RADSS Director Meredith Downey with no way of verifying the completeness or accuracy of these reports. As far as the SGJ could determine the BoD had no written guidelines or procedures to follow, nor was there any formal training for new BoD members.

The RADSS BoD is responsible for performing an annual performance review of the RADSS Director. Examination of some of Director Meredith Downey's performance evaluations revealed nearly all areas showing the highest rating and what seemed to be the exact same language and rating year over year. Reviews of the minutes of BoD meetings provided no evidence the BoD members had provided any in-depth oversight of RADSS activities.

CPS Supervisor Brenda Perry was responsible for doing performance reviews for the workers under her supervision. The SGJ could find no evidence those reviews were done on any regular, periodic basis. It was not unusual for a worker to be evaluated only once every several years, if at all. RADSS Director Meredith Downey only assumed the supervisors of the agencies within the Department were writing annual evaluations of workers. She did not check, nor

did the BoD. The Director provided only verbal performance evaluations of her agency supervisors, nothing in writing. Testimony from several witnesses indicated Director Meredith Downey was intimidated by CPS Supervisor Brenda Perry and was unwilling to enter into any confrontations with her. Both individuals applied for the director's position in 2002 which was awarded to Ms. Downey. Reportedly the atmosphere in the organization deteriorated at some point after that event. It was reported to the SGJ that the BoD was aware of the belligerent behavior of Brenda Perry and chose to do nothing.

The QMR and interviews with CPS staff members showed that not all individuals providing CPS services had received mandated training for the work performed. Workers also said CPS Supervisor Perry denied requests for ongoing training. All intake reports by state policy are to be entered into a state-wide data base known as OASIS. One long time CPS worker was not aware for five years that all intake cases were to be entered into the state-wide OASIS automated system.

The investigation including sworn testimony heard by the SGJ revealed low morale among CPS workers. The investigation including sworn testimony heard by the SGJ revealed intimidation by Supervisor Brenda Perry. The investigation including sworn testimony heard by the SGJ revealed a lack of strong leadership by Director Meredith Downey. Testimony from several CPS workers indicated an

atmosphere of harassment, intimidation and bullying created by CPS Supervisor Brenda Perry. The SGJ also found Brenda Perry took unto herself most of the levers of power and authority, with few or any checks and balances on her actions by her immediate supervisor Director Meredith Downey. Ms. Perry tightly controlled the actions and activities taken by CPS workers. She created her own intake system which operated counter to state policy. In RADSS, CPS intake calls were written up on a form created by Supervisor Perry in a Word document and then transmitted to her electronically via email. Only Brenda Perry would determine if a referral was valid, was to be entered into OASIS and subsequently, worked as an investigation or a family assessment. State policy requires that all cases, even those determined to be invalid, are to be entered first into OASIS. Referrals ruled invalid are kept in the system for 12 months. Those referrals determined to be valid (a decision made only by the CPS Supervisor) are assigned to the family assessment or the investigation track. In either case each referral is assigned a priority rating to determine a time frame in which a CPS response must be made. R-1 is a 24 hour response window, R-2 is a 48 hour window and R-3 is a 5 day response time window. Investigations of the SGJ showed numerous times that dates were changed on case records by CPS Supervisor Brenda Perry, presumably in order to comply with state response time policy.

Sworn testimony from several CPS workers indicated a level of concern that things in RADSS were not being done properly and even worse some intake records were being destroyed/shredded by Ms. Perry and never entered into OASIS, effectively making those intake calls evaporate. If intake calls were never entered into OASIS, that lack of action artificially reduced case numbers and created less work. Testimony from a case worker quoted Brenda Perry saying "Don't write up reports. That's not a valid report. Please don't write that up. It takes a lot of work for us to enter that into the system and get it taken care of." These workers began to secretly keep copies of intake referrals some of which were found not to have been entered into OASIS.

An illustrative and disturbing case is one which came to light within the last 24 months. Sworn testimony from CPS case worker Peggy Sigler about a situation of child abuse and neglect which later resulted in criminal prosecution revealed initial reports of alleged child abuse were reported to CPS but were not entered into the OASIS system and not validated for either a follow up family assessment or investigation. When the worker inquired as to why state policy was not being followed the response from CPS Supervisor Brenda Perry was, "we don't do it that way or don't want it done that way because that's the way I want it." A follow up conversation between the worker and Department Director Meredith Downey about CPS Supervisor Brenda Perry not following state policy indicated the

Director did not want to confront Ms. Perry. The worker said "well, I'll confront her about it" and the Director said "let's not do that." It became clear to the SGJ that CPS Supervisor Brenda Perry was unwilling to work or cooperate with law enforcement. At that point CPS case worker Peggy Sigler decided she had to find her own ways to protect the children.

CPS finally opened its own investigation of the case 3 days after a request by law enforcement. Ms. Sigler went to the home and found deplorable conditions, spoke to the individuals involved, and a short time later to co-workers and concluded the children should be removed from the home. Only CPS Supervisor Brenda Perry or the RADSS Director Meredith Downey can authorize a removal and neither did. Perry said of the children "they're used to living that way so what's the big deal." Since Peggy Sigler was unable to get authorization for a removal, she filed a petition for a protective order with the court and was able to secure removal of the children under court authority and against the wishes of Ms. Perry. As CPS worker Peggy Sigler and her colleague Wade Cress went to get the children the CPS worker charged with foster care placement told them "don't bring those kids back because we have nowhere to put them." The two workers found placement for the children themselves. Ms. Sigler testified "So it's always a fight with her (Ms. Perry) and Margaret Ann and still to this day with Margaret Ann because removing children is huge, but again we don't have a lot of resources in

Rockbridge County....We have to find a place if we have to drive to Northern Virginia." Eventually, a criminal prosecution followed.

Virginia amended the law which went into effect in 2014 which requires the local department of social services to notify the local attorney for the Commonwealth and the local law enforcement agency of all complaints of suspected child abuse and neglect involving certain injuries or criminal acts immediately upon receipt of the complaint, but in no case more than two hours from receipt of the complaint. §63.2-1503 (D). Unfortunately this statute does not include any penalties for non-compliance.

The SGJ found CPS Supervisor Brenda Perry unwilling to cooperate and work constructively with other service providers in the area. Worse, in some cases, Ms. Perry refused to work cooperatively with area law enforcement. A case worker testified the atmosphere in the office was to "not work with law." Following the departure of a case worker in 2013 who had worked well with law enforcement, Ms. Perry directed that all fax referrals from law enforcement were to go directly to her.

Pertaining to an infant death on April 16, 2016, law enforcement found evidence of drug use at the scene in the home. Investigators wanted an immediate urine test for drugs performed on the parents, but were given the run around by CPS, and the validity of the urine test ran out before the test could be performed.

They were further rebuffed in requesting another type of test, a hair analysis test. This test shows long term drug use by the mother, perhaps as long as 20 weeks before birth. The private laboratories used by CPS have the capability of performing the hair test, but the state criminal laboratory does not. Law enforcement agents on April 26, 2016 formally requested of CPS all records on the case, citing a criminal investigation. It was not until May 3, 2016 that CPS provided those records and even then only records on the infant, not on the family history. The family records arrived several days later, after law enforcement appealed to Piedmont Regional for assistance. The infant born in a Charlottesville hospital was classified as "substance abused." DSS policy requires the review of a urine test of all substance exposed newborns to reveal any drugs in an infant's system. This test was positive for the existence of drugs and was reported to RADSS CPS by the hospital as required by law. But the CPS form cited a low risk assessment which limited further CPS involvement with the infant and family. That low risk assessment scoring was later revealed to be inaccurate. Had CPS worker Wade Cress accurately completed the risk assessment, and CPS Supervisor Brenda Perry not required a delay on the case waiting for a meconium test, the infant may have received a protective order and not been returned to the home. Mr. Cress had also visited the home upon a complaint being lodged several weeks prior to the child's death. He classified the home/family environment as "high risk" at

that time, but no services were offered and no follow up was made prior to the death and involvement of area law enforcement.

In cases of substance abused infants, Supervisor Brenda Perry's directions to CPS caseworkers were not to enter these reports into the system until the hospital returned the results of a meconium test. This is performed on a newborn's first bowel movement, while the urine test is almost immediate. Meconium tests are a more accurate indicator of what is in the child's system, and results take a minimum of 3-4 days and can be as long as several weeks. By that time, the child has been released to the family where on-going drug use may be occurring. Also, a newborn can be endangered by withdrawal symptoms.

Regarding the various criminal statutes that were potentially violated, the SGJ investigation, the testimony of witnesses and review of documentary evidence did not sufficiently support the filing of criminal charges for those statutes that were applicable. The SGJ looked generally at three possible avenues for criminal liability. First, the SGJ looked to the destruction of document statutes for what jury members believed would be supported by evidence that Ms. Perry shredded reports after they were delivered to her by the intake workers. Second, the SGJ looked at forgery and uttering statutes based on fraudulently altering public documents for what jury members believed would be supported by evidence that Ms. Perry significantly altered DSS documents. Third, the SGJ looked to child abuse and

neglect statutes for what jury members believed would demonstrate that the actions and/or inactions on the part of RADSS that directly led to the injuries and harm to children. After the review of the various statutes and cases that supported those statutes, and in consultation with the Commonwealth's Attorney, our legal advisor, jury members were not able to find probable cause to bring a criminal indictment under any of these sections.

The statutes which control the destruction of records are:

§ 18.2-107. Theft or destruction of public records by others than officers. — If any person steal or fraudulently secrete or destroy a public record or part thereof, including a microphotographic copy thereof, he shall, if the offense be not embraced by § 18.2-472 be guilty of a Class 6 felony.
§ 18.2-472. False entries or destruction of records by officers. — If a clerk of any court or other public officer fraudulently make a false entry, or erase, alter, secrete or destroy any record, including a microphotographic copy, in his keeping and belonging to his office, he shall be guilty of a Class 1 misdemeanor and shall forfeit his office and be forever incapable of holding any office of honor, profit or trust under the Constitution of Virginia.

The SGJ positively concluded the records involved were public records. Though the allegations of CPS Supervisor Brenda Perry shredding or secreting of documents could have led to criminal charges, it is unclear but probable that these records still existed in accessible electronic formats. The SGJ was certain that certain paper documents were shredded, but these were apparently administrative or working copies, and could not definitely be proved otherwise. As all reports were required to be e-mailed to Perry, the SGJ could not conclusively determine that these e-mailed copies were destroyed or deleted such that they no longer

existed. In fact, many of the employees in an excess of caution would maintain a copy of the file on their work-issued computer so that a copy always existed. The SGJ was likewise not able to determine conclusively that the server did not maintain copies of all documents and e-mails. Also in this regard, there was continuing control and possible access of electronic records after Perry was terminated, and other DSS employees had accessed and manipulated files so that a clear chain of custody would be impossible to determine.

The SGJ has evidence of several intake calls being recorded on Word documents and forwarded to Ms. Perry for review and possible action that were never entered into OASIS. Paper copies may have been shredded. Shredding or secreting of documents is a clear violation of state law. Without evidence that the documents shredded or secreted were the only existing records, this action alone does not indicate, support or prove an indictable criminal offense for which there could be punishment.

The statutes which control forgery and uttering of public records are:

§ 42.1-77. Definitions. — As used in this chapter:
"Public official" means all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the state government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the state government or its political subdivisions.
"Public record" or "record" means recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law

or in connection with the transaction of public business. The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record.
For purposes of this chapter, "public record" shall not include nonrecord materials, meaning materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications.
§ 18.2-168. Forging public records, etc. — If any person forge a public record, or certificate, return, or attestation, of any public officer or public employee, in relation to any matter wherein such certificate, return, or attestation may be received as legal proof, or utter, or attempt to employ as true, such forged record, certificate, return, or attestation, knowing the same to be forged, he shall be guilty of a Class 4 felony.

The SGJ has no doubt, and evidence supports, that dates were altered and changed on documents. These were without question public records. The SGJ looked at both forgery and uttering statutes, as uttering of these same records would also fall under the statute. The problem in this circumstance is a recent case from the Court of Appeals of Virginia, *Henry v. Commonwealth*, 63 Va. App. 30, 753 S.E.2d 868 (2014), where the Court stated that in order for Henry's forgery conviction to be upheld, the Commonwealth was required to prove that Henry's conduct with respect to the documents altered the genuineness and authenticity of those documents, making them not in fact what they purported to be. The Commonwealth in *Henry* argued that "[t]he true gravamen of § 18.2-168 . . . is injecting fabricated or false information into the public record, where it may be acted upon." Thus, according to the Commonwealth, "Henry's falsification was just that: a lie entered into the public record to obtain appointed counsel rather than

having to use his own assets to hire counsel." But the Court of Appeals disagreed, holding "...Rodriquez provided false and fraudulent information in order to create summonses that were entirely fraudulent and not authentic. The summonses themselves were 'lies'...Like the tax rolls in *Reese*, and unlike the summonses in *Rodriquez*, Henry's statement of indigency "merely contained a false statement of fact." "

To return an indictment for uttering faces the same issue as found in the *Henry* case. Obviously, in order to be convicted of uttering, the writing that is the basis for the conviction must, in fact, be a forgery. That is because "[t]he purpose of the statute against forgery is to protect society against the fabrication, falsification and the uttering of instruments which might be acted upon as being genuine." *Muhammad v. Commonwealth*, 13 Va. App. 194, 199, 409 S.E.2d 818, 821 (1991). One can only utter a forged document, and since the change in date alone does not materially alter the actual document, the SGJ could not pursue a charge under this same code section for uttering.

The statutes which control child abuse and neglect are:

§ 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc. — Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition that renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228 or (ii) engages in consensual sexual intercourse or anal intercourse with or performs cunnilingus, fellatio, or anilingus upon or by a child 15 or older not his spouse, child, or grandchild is guilty of a

Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§18.2-18, 18.2-19, 18.2-61, 18.2-63, and 18.2-347.

§18.2-371.1. Abuse and neglect of children; penalty; abandoned infant. —

A. Any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or willful omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child is guilty of a Class 4 felony. For purposes of this subsection, "serious injury" includes but is not limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, (vi) forced ingestion of dangerous substances, and (vii) life-threatening internal injuries. For purposes of this subsection, "willful act or willful omission" includes operating or engaging in the conduct of a child welfare agency as defined in § 63.2-100 without first obtaining a license such person knows is required by Subtitle IV (§63.2-1700 et seq.) of Title 63.2 or after such license has been revoked or has expired and not been renewed.

B. 1. Any parent, guardian, or other person responsible for the care of a child under the age of 18 whose willful act or omission in the care of such child was so gross, wanton, and culpable as to show a reckless disregard for human life is guilty of a Class 6 felony.

2. If a prosecution under this subsection is based solely on the accused parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense to prosecution of a parent under this subsection that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency medical services agency that employs emergency medical services personnel, within the first 14 days of the child's life. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

C. Any parent, guardian, or other person having care, custody, or control of a minor child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall not, for that reason alone, be considered in violation of this section.

The SGJ also examined these statutes dealing with abuse and neglect of children. Under subsections of this title, a person responsible for the care of a child under age 18 must have committed a willful act or omission in the care of such child so gross, wanton, and culpable as to show a reckless disregard for human life.

Under these code sections any CPS employee would need to be in a parental or guardianship role, which involves removing a child under court order and CPS becoming the child's legal custodian. Further actions of that custodian, parent or guardian must have been willful criminal acts with willful criminal intent, not merely negligent or reckless.

The substantial differences between the misdemeanor abuse statute in §18.2-371 and the felony abuse statute in §18.2-371.1 is that first, a one-year limitations period applies to misdemeanors, so any conduct must have occurred within one year of the date charges are brought. The second significant difference is that the language of the misdemeanor statute encompasses the class of "*Any person* 18 years of age or older, including the parent of any child..." (Italics added).

All of the conduct complained of occurred longer than a year ago, so the limitations period would have run for any misdemeanor charges. Also for the misdemeanor, the class of persons encompassed by the statutory language is actually much broader than for felony child abuse and neglect: "Any parent, guardian, or other person responsible for the care of a child under the age of 18..." The SGJ noted that this is a far more limited class than "any person" in the misdemeanor statute. The SGJ thought the definition of a parent is quite clear and should be given its ordinary usage. In looking at what makes a person a guardian, the SGJ believed it would denote legal guardianship, creating a legal status for a

non-parent, one who would step into a parental role. The SGJ considered an example of a relative where a child is placed, or a foster parent. The idea of "other person responsible for the care of a child," which is broader than the first two categories, but narrower than "any person" (as it could be a person who is not a parent or guardian, but rather one who steps into the role of a parent or guardian) still does not include the role of RADSS. The SGJ found that in the cases where jury members thought it would find abuse and neglect due to inaction of RADSS, there was no guardian role for the Agency as the children were never in the legal custody or care of RADSS. The Agency would routinely file safety plans and other mechanisms out of court, but not do anything in court that would give them custodial or any direct care for the children that came to their attention.

As the SGJ neared the conclusion of its investigation into CPS, jury members became increasingly frustrated that some evidentiary elements could either not be found or were nonexistent. For instance, although there was evidence that case documents were shredded or secreted by CPS Supervisor Brenda Perry, there was no way to prove those documents did not exist in some other form so there seemed no case for a "destruction or forging of public records" indictment. Obtaining testimonial evidence was frustrated by certain employees exercising their privilege to not incriminate themselves under the 5th Amendment. Brenda Perry, for example, exercised her privilege over 60 times throughout her

questioning. Additionally, although there was clear evidence that dates on cases were changed, presumably to conform to CPS response guidelines, under legal definitions the date changes alone did not materially alter the nature of the documents themselves so there was no case for a "forging public documents" or uttering forged documents indictment.

Members of the SGJ emphatically do not want to convey the impression that all Child Protective Services workers were ineffective. These workers do important and difficult work for the community and this investigation revealed some dedicated individuals who deserve our support. At the same time it is important to remain vigilant and provide meaningful oversight of any public agency charged with guarding and protecting the welfare and safety of our children. The SGJ has compiled a list of recommendations which it believes might help to prevent the kinds of abuses uncovered during the process of this investigation. This list is attached to this report under separate cover.

All members of the Special Grand Jury contributed to this report, and jury members are unanimous in its findings.

Recommendations from the Special Grand Jury

Immediate and open communication in a meeting between the CPS employees and the RADSS board should take place. At least one representative of the Rockbridge County Board of Supervisors, one representative of the Lexington

City Council and at least one representative of the Buena Vista City Council should be at the meeting. This meeting is a one-time event arranged by the leadership of each governing body. Notes from this meeting should be kept by the secretary of the RADSS board and submitted to the three governing bodies.

The RADSS board of directors were not engaged or well informed of the multitude of problems within RADSS for years. In order for the board to be more involved, transparent and "on top of" daily activities, the following is recommended:

- All future board candidates should be interviewed (vetted) by the governing bodies and selected using criteria developed in concert by the three jurisdictions (Board of Supervisors, Lexington City Council, Buena Vista City Council).
- A member from at least one of the three governing bodies should serve on the RADSS board to ensure accountability and transparency to strengthen the agency moving forward.
- If that is not feasible, each jurisdiction should have one member attend each monthly RADSS board meeting.
- A well-defined Board Policy & Procedure handbook should be shared with all current board members and available at all times in paper form to

reference. Each board member after reviewing should sign and date an agreement form.

•The board must understand it is a **working** board and should be actively involved with the agency and its employees.

•There should be quarterly reports to each of the three jurisdictions.

•The board should review personnel records with the director to ensure that background checks are up to date and future employees are properly checked and approved.

The RADSS should implement a system of checks and balances to ensure no referral which meets CPS validity requirements is screened out. The most appropriate action would be to have the agency director review all referrals screened out by the CPS supervisor to ensure the correct decision is being made.

The CPS supervisor should provide the CPS staff with a checklist of mandated CPS contacts and notifications required for each family assessment/investigation completed. This will assist the CPS workers and supervisor with ensuring all required contacts are successfully attempted and/or completed. All attempted and/or completed contacts and notifications shall be documented in the OASIS database.

All claimant calls are required to be entered into OASIS. To ensure this happens, a recording device should be installed and engaged to monitor and document all intakes.

•A system similar to 911 should be adopted and maintained by CPS. All calls should be maintained on record for at least a year.

•The recording of calls should be placed in the job description of each intake employee. The operation of this phone system should be monitored daily.

•As part of the employee's annual, written performance evaluation, the supervisor should evaluate the successful accomplishment of this portion of the employee's job and enter results on the employee's performance evaluation.

•All employees must successfully complete all required DSS training.

•Records of training, initial and on-going, are to be kept in employee personnel files.

•Electronic records and physical documents generated from an OASIS intake must be maintained in accordance with the CPS Process Chart (Jan. 2016) and reviewed for timeliness and accuracy as reflected in the original document.

The CPS supervisor should institute a plan of corrective action for any CPS worker routinely failing to complete their assessments/investigations within the

time period allowed by CPS policy, and this plan should be closely supervised and enforced.

Each employee's performance should be evaluated on a written, annual basis. A performance evaluation on every employee should be completed by their supervisor.

- There should be an initial performance evaluation conducted after 90 days but before 6 months of employment.
- There should be an annual written evaluation conducted on the anniversary of the date of hire followed by subsequent annual evaluations.
- There should be special evaluations for change of job or supervisor.

The DSS board should conduct an annual written performance evaluation of the director and review the written, required performance evaluations of all supervisors within the department. Completion of this task shall be noted in the director's job performance review and the board's meeting minutes.

Use the power of the purse. Grant the state DSS authority to withhold funds from local agencies found to be continually negligent in adhering to state policies. Agencies out of compliance should be given a review, warning and sufficient time and opportunity to become compliant. In particular the local administrative boards and local governing bodies should be involved in the process and assume responsibility for the local agencies. There should be a cohesive and conclusive

reporting system among the local, regional and state jurisdictions to ensure compliance with state regulations.

Legislatively, the SGJ was frustrated that there did not appear to be a criminal statute that would be directly applicable to the behavior that occurred at RADSS. In consultation with the attorney for the Commonwealth, the SGJ agrees with his recommendation that perhaps the malfeasance in office statute could be extended to cover supervisory state employees that work for agencies such as RADSS, which would also allow for a penalty of forfeiture of that individuals state pension benefits if convicted, among any other penalties.

Further, the SGJ agrees with the attorney for the Commonwealth recommendation that there should be an expansion of the range of penalties involved in violations that are grossly negligent, but not rising to the level of criminal actions. Whether this be under the authority of the OAG, another agency, or local Commonwealth Attorneys, these cases demonstrate that there needs to be an enforcement mechanism to protect such a vulnerable population from the gross negligence, dysfunctional dynamic, and rank incompetence that existed at RADSS.

A group of policy makers, legal professionals and practitioners should be convened to work in concert to draft legislation creating criminal penalties and consequences dealing with the kind of negligence and dereliction of duties by employees uncovered during the SGJ investigation of RADSS CPS.