



**Justice Center for the
Protection of People
with Special Needs**

Protecting People with Special Needs

**A Five-Year Progress Report on Changes
Implemented to Protect Vulnerable Populations**

Summer 2018

The Justice Center's Promise to New Yorkers with Special Needs and Disabilities

OUR VISION

People with special needs shall be protected from abuse, neglect and mistreatment. This will be accomplished by assuring that the state maintains the nation's highest standards of health, safety and dignity; and by supporting the dedicated men and women who provide services.

OUR MISSION

The Justice Center is committed to supporting and protecting the health, safety, and dignity of all people with special needs and disabilities through advocacy of their civil rights, prevention of mistreatment, and investigation of all allegations of abuse and neglect so that appropriate actions are taken.

OUR VALUES AND GUIDING PRINCIPLES

Integrity: The Justice Center believes that all people with special needs deserve to be treated with respect and that people's rights should be protected.

Quality: The Justice Center is committed to providing superior services and to ensuring that people with special needs receive quality care.

Accountability: The Justice Center understands that accountability to the people we serve and the public is paramount.

Education: The Justice Center believes that outreach, training, and the promotion of best practices are critical to affect systems change.

Collaboration: Safe-guarding people with special needs is a shared responsibility, and the Justice Center is successful because it works with agencies, providers, people who provide direct services, and people with special needs to prevent abuse and neglect.

A Message from Executive Director Denise Miranda

Under the leadership of Governor Andrew M. Cuomo, New York became the first state in the nation to create an independent state agency dedicated to safeguarding people with special needs and disabilities. The NYS Justice Center for the Protection of People with Special Needs (Justice Center) began operations on June 30, 2013 and immediately put in place long overdue protections to safeguard the more than one million adults and children who receive services from programs or facilities operated, licensed, or certified by the Office of Mental Health, the State Education Department, the Office of Alcoholism and Substance Abuse Services, the Office for People With Developmental Disabilities, the Office of Children and Family Services and the Department of Health.

The Justice Center has worked diligently over the past five years to restore public confidence and trust in the state's ability to ensure that individuals in its care are protected from abuse and neglect. With the standards and practices now firmly established, those providing care to this vulnerable population are being held to the highest level of oversight and accountability in the nation.

A key function of the Justice Center is operation of its statewide hotline and centralized incident reporting system. The call center, which is staffed by highly-trained professionals, receives reports of allegations of abuse and neglect 24-hours a day, seven days a week, 365 days a year. Nearly 243,000 distinct reportable incidents were logged over the five-year period. Of these, 75,000 were for allegations of abuse and neglect. This is a clear indication that a culture of reporting abuse has taken hold. Reporters who notify the Justice Center do so with the certainty that all allegations will be fully investigated. A small percentage of these reports are criminal in nature, and the Justice Center has the authority to prosecute these offenses. More than 550 prosecutions have been commenced since June 30, 2013, many in conjunction with state and local police agencies. As a result, the service system is safer today than it was before the Justice Center.

Many of the incidents reported to the Justice Center would have gone unreported in the past. As a result of investigations into allegations reported to the Justice Center, nearly 450 people who have been found responsible for serious or repeated acts of abuse and neglect were placed on a statewide Staff Exclusion List (SEL). Placement on this list prohibits them from providing care to people with special needs in the service systems under the jurisdiction of the Justice Center.

In addition to removing staff who have committed serious acts of abuse and neglect, the Justice Center conducts systemic reviews to identify problems and potential risks to the health, safety and welfare of people receiving services. With guidance from our Advisory Council and the State agencies under our jurisdiction, the Justice Center develops and promotes strategic prevention initiatives. These efforts have included guidance, training and resources to help individuals, family members, and staff to take a proactive approach to creating safe, supportive abuse-free environments. Materials include self-assessments, best practices, and toolkits.

With ongoing support from Governor Cuomo, the Legislature, state oversight agencies, service providers, law enforcement, and other stakeholders, we will continue to work to achieve our shared goal of eradicating abuse and neglect in these settings.

ACTIONS TAKEN TO IMPROVE THE HEALTH, SAFETY AND WELFARE OF NEW YORKERS WITH SPECIAL NEEDS

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I. INTRODUCTION

In an effort to ensure the health and safety of people with special needs and disabilities, Governor Andrew M. Cuomo and the Legislature enacted legislation which established the Justice Center.

On June 30, 2013, the Justice Center began serving as the state's central reporting agency for incidents of abuse or neglect for individuals who receive services from a facility or program operated, licensed, or certified by six different state agencies: the Office for People With Developmental Disabilities (OPWDD), the Office of Mental Health (OMH), the Office of Children and Family Services (OCFS), the Office of Alcoholism and Substance Abuse Services (OASAS), the Department of Health (DOH), and the State Education Department (SED). The Justice Center and these state oversight agencies work together to ensure allegations of abuse and neglect are reported and appropriate actions are taken in response to all allegations.

This report chronicles the Justice Center's progress over the past five years in implementing a comprehensive system for incident reporting, investigations, disciplinary processes, and prosecutions. The Justice Center is also engaged in efforts to prevent abuse through analysis of data to identify and mitigate risk factors across systems and promote good practices for individuals, families, program staff and service providers. The efforts in total are aimed at reducing the abuse and neglect of individuals with special needs.

JUSTICE CENTER QUICK FACTS

Initiatives:

- Developed consistent definitions of abuse and neglect
- Launched *Vulnerable Persons Central Register (VPCR)*, a statewide 24/7 toll-free hotline that standardized the reporting of allegations of abuse and neglect
- Implemented mandated reporting for all individuals who have significant contact with people with special needs
- Established the *Code of Conduct* and electronic training module
- Enacted consistent discipline for state employees and training for all arbitrators
- Developed the *Staff Exclusion List*, which prohibits people found responsible for serious or repeated acts of abuse and/or neglect from providing care in the service systems under the jurisdiction of the Justice Center
- Instituted criminal background check process for staff
- Began specialized unit of attorneys trained to handle cases involving vulnerable populations to aid in prosecution of criminal offenses
- Provided support and guidance to victims of abuse and neglect and/or their families

Highlights:

- 46,000 investigations into abuse/neglect allegations
- 16,000 cases substantiated
- 1,153,000 checks of the *Staff Exclusion List* by providers
- 440 former staff barred from working with people with special needs
- 100 application denials because of *Staff Exclusion List* placement
- 439,000 background checks run through centralized system
- 1,500 applicants denied because of past criminal history
- 550 arrests made because of allegations reported to the Justice Center
- 85% prosecutorial conviction rate
- 8,000 individuals and families of people with special needs assisted
- 175 investigators dedicated to agency investigations
- 3,300 investigators trained by agency Law Enforcement Training Academy
- 420 highly-skilled staff members
- 16 regional offices

II. 24/7 INCIDENT REPORTING

❖ Reporting Requirements

➤ **Before June 30, 2013** - *Reporting practices and definitions for abuse and neglect varied widely among service systems and there were barriers and disincentives to reporting incidents. In the absence of a comprehensive incident management system, providers often missed opportunities to identify and appropriately respond to abuse, neglect, or other incidents that may have the potential to cause harm to people with special needs.*

➤ **Today**

◆ Vulnerable Persons Central Register

The Justice Center's Vulnerable Persons Central Register (VPCR) is a statewide toll-free hotline, staffed 24 hours a day, 7 days a week, 365 days a year by highly-trained call center representatives, which receives reports of incidents. Reports can also be made by web form or with a mobile application. Reports are made by individuals receiving services, family members, direct support professionals, and others who witness or suspect abuse.

Every allegation, even conduct which is not classified as abuse and neglect, is recorded within the VPCR. Each is assigned an individual case number for tracking and record-keeping purposes. The Justice Center also keeps records of findings in all cases in which the Justice Center has jurisdiction.

In the past five years, the call center has received nearly 243,000 distinct reports of abuse and neglect, resulting in nearly 46,000 investigations.

◆ Mandated Reporting

Direct support professionals and other custodians are now required by law to report any suspected incidents of abuse or neglect to the Justice Center. The threshold for mandated reporting is defined as: having a reasonable cause to suspect that a reportable incident has occurred and that it was committed by a custodian. The service recipient does not have to suffer harm for an incident to be reportable, the potential for harm must also be reported. This applies even to incidents occurring a facility other than that at which the mandated reporter is employed.

The identity of mandated reporters is kept confidential. Mandated reporters are granted immunity from a legal claim which may be the result of a good faith act of providing information to the VPCR. State law also protects mandated reporters from retaliation.

III. PREVENTION OF ABUSE AND NEGLECT

❖ Pre-Employment Background Checks

➤ **Before June 30, 2013** - *State oversight agencies and provider agencies needed consistent procedures for pre-employment background checks for direct care workers. In addition, there was no mechanism in place to prevent staff who committed serious or repeated acts of abuse or neglect from getting another job working with people with special needs.*

➤ **Today**

◆ **Staff Exclusion List**

Anyone who has committed serious or repeated acts of abuse or neglect is barred for life from working in the service systems under the Justice Center's jurisdiction. All state operated facilities and all facilities and programs that are licensed or certified by the six state oversight agencies must check the Justice Center's Staff Exclusion List before hiring anyone who will have regular and substantial contact with people who receive services. Placement on the Staff Exclusion List (SEL) occurs after a thorough investigation. In the five years since this list was created, it has been checked by employers more than 1,153,000 times and nearly 440 people have been placed on the list. Significantly, there have been nearly 120 times an employer has been notified an applicant was on the list, and therefore barred from employment. Below are two examples:

A staff member at a school overseen by the New York State Education Department initiated inappropriate sexual contact with a 16-year-old female student. This included taking her to his home while his wife and children were away and performing oral sex on the student. The staff member was substantiated for a Category 1 Sexual Abuse and placed on the Staff Exclusion List

A staff member came to work intoxicated and transported several service recipients in an agency van. Blood alcohol testing showed the subject had a blood alcohol content of 0.3%, many times more than the legally permissible limit of 0.08%. The staff member was substantiated for a Category 1 neglect and placed on the Staff Exclusion List.

◆ Criminal Background Check

Applicants for employment or volunteers for a position that involves regular and substantial unsupervised or unrestricted contact with persons receiving services in OMH and OPWDD facilities and programs as well as OCFS residential programs for children are required to have their criminal history information obtained and reviewed by the Justice Center. To date, nearly 439,000 background checks have been run. Of those, more than 1,450 applicants were rejected for employment because of criminal convictions including assault, rape, and murder. Below are two examples:

A recent applicant for the position of direct care working with individuals with developmental disabilities had a criminal history that included the following convictions: manslaughter, possession of a dangerous weapon, and attempted rape. The Justice Center rendered a decision the provider could not hire the applicant as a direct care employee.

A person applying to be a direct care youth specialist for two residential programs had the following convictions: criminal sale of narcotics, criminal sale of controlled substances, conspiracy to possess with intent to distribute crack cocaine, and use of a firearm in relation to drug trafficking crimes. The agency further determined some of the offenses occurred during or shortly after release from incarceration and/or parole supervision. The Justice Center rejected this application from employment.

❖ Standardized Expectations

➤ **Before June 30, 2013** - *The state's care system needed a uniform set of expectations and ethical standards that individuals working with people with special needs would be required to meet.*

➤ **Today**

◆ Abuse and Neglect Definitions

The Protection of People with Special Needs Act standardized the legal definitions of abuse and neglect. These include both actual harm and the risk of harm. Categories include: physical abuse, psychological abuse, sexual abuse, neglect, deliberate misuse of restraint or seclusion, controlled substances, aversive conditioning, and obstruction.

◆ Code of Conduct

The Justice Center's Code of Conduct articulates the core values that guide the delivery of services and supports to people with special needs, including a duty to report all incidents. All employees who have regular and substantial contact with people receiving services must adhere to the Code of Conduct and sign it on an annual basis. The Justice Center offers electronic Code of Conduct training. The interactive course standardizes the instructions to all workers about each element of the Code of Conduct, then tests their knowledge to ensure understanding.

❖ Trend Analysis and Prevention Tools

➤ **Before June 30, 2013** - *The state needed the capability to track incidents across service systems to identify systemic issues and inform abuse prevention.*

➤ **Today**

◆ Corrective Action Plans

When conditions at a facility or provider agency expose individuals with special needs to harm or risk of harm because of systemic problems, such facilities or providers are required to develop and implement a plan to correct such issues. The Justice Center conducts audits on these corrective action plans. The agency also analyzes data contained in the VPCR to identify systemic concerns that may cause or contribute to abuse, neglect, and other forms of mistreatment. Findings are communicated to state oversight agencies and provider agencies along with suggested corrective measures to improve safeguards and quality of care. Below are two examples:

The Justice Center found a mental health provider had insufficient staffing levels along with ineffective and confusing documentation procedures for staff when there was an incident. Following the Justice Center's review, the Office of Mental Health worked to establish appropriate staffing levels, hired new investigators, and created new procedures to address the deficiencies in the investigation process.

The Justice Center discovered several serious deficiencies in an inpatient detox/rehab facility. As a result, the Office of Alcoholism and Substance Abuse Services halted admissions and placed a program monitor at the facility to oversee corrective actions.

◆ Spotlight on Prevention

Information developed from VPCR analysis of systemic concerns and trends is also used to develop *Spotlight on Prevention* toolkits. *Spotlights* have focused on the dangers of caregiver fatigue, service recipients being left unattended in vehicles, and reducing the use of restraints. These toolkits provide resources for service providers, front line staff as well as families, people receiving services and their advocates and help them take a proactive approach to creating safe and supportive programs and services. These efforts are also informed by a workgroup of State agencies and the Justice Center's Advisory Council.

Further, the Justice Center website contains a wealth of prevention resources including self-assessment tools for provider agencies to use to prevent abuse and neglect, an abuse prevention sample policy, and best practices to promote an abuse-free environment. The website also contains links to more than a half dozen trauma informed care resources.

IV. IMPROVED INVESTIGATIONS, TRACKING, AND ENFORCEMENT

❖ Investigative Consistency

- **Before June 30, 2013** – *Investigations of abuse and neglect allegations were conducted by many different agencies and were often inconclusive. There was no centralized tracking of abuse or neglect investigations and outcomes and very few cases were reviewed by an independent agency to ensure that each allegation was thoroughly investigated.*

➤ **Today**

◆ **100% Investigation Rate**

Every allegation of abuse or neglect that is reported to the Justice Center -- whether criminal or non-criminal-- is fully investigated and either substantiated or unsubstantiated. The Justice Center conducts investigations of abuse or neglect based on severity and/or setting. The agency conducts all investigations of abuse and neglect in state operated settings under its jurisdiction. Allegations of abuse and neglect that occur in non-state operated settings may be conducted by the Justice Center, the State Oversight Agency or the provider agency depending on the severity of the allegations. Regardless of which entity conducts the investigation, the Justice Center reviews the findings of the investigation. After the review process, the allegations are substantiated or unsubstantiated by the Justice Center. To date, 33 percent of abuse or neglect cases were substantiated. A category offense level is then assigned to all substantiated allegations, with Category 1 being the most egregious. Less than three-percent of cases fall into this category.

◆ **Specially Trained Investigators**

The Justice Center employs 175 investigators who are trained in investigative techniques specific to working with special populations, current case law, and legal issues. The Justice Center's experienced investigators have been deployed to regional offices across the state to directly investigate allegations of abuse and neglect. The team work in cooperation with state or local law enforcement agencies to ensure criminal cases involving victims with cognitive or other disabilities are investigated and handled appropriately.

◆ **Training Initiatives**

The Justice Center provides training for local law enforcement agencies through its Law Enforcement Training Academy. Curriculum offerings include an overview of disabilities, the Justice Center's jurisdiction, and changes to the laws protecting people receiving services. Nearly 3,300 investigators have taken part in these trainings. Further, the Justice Center also offers the "Forensic Interviewing Best Practices for Vulnerable Persons" training course. This free multi-day course is designed to offer practical guidance and skills on obtaining credible and reliable information during the interview of a vulnerable person that will withstand judicial scrutiny. The curriculum focuses on persons with disabilities, youth in state care, persons with substance abuse disorders, persons with mental health diagnosis, and older adults. The three-day course is offered to outside law enforcement agencies, State Oversight Agency investigators as well as Justice Center staff. More than 250 people have participated thus far.

V. MORE EFFECTIVE EMPLOYEE DISCIPLINE

❖ Case Outcomes

➤ **Before June 30, 2013** - *State agencies' efforts to terminate State employees found responsible for the serious abuse or neglect of people with special needs were often unsuccessful because no single entity was charged with overseeing the disciplinary process and tracking outcomes. In addition, there was inconsistency in the penalties sought for similar types of employee misconduct.*

➤ **Today**

◆ Consistent Disciplinary Action

The Justice Center provides legal support to State Oversight Agencies seeking to terminate or discipline employees found responsible for abuse or neglect. Justice Center attorneys represented the state in nearly 800 disciplinary hearings to ensure the process is expeditious, consistent, and produces a successful outcome. The Justice Center has brought increased rigor and consistency to investigations, which has resulted in a better ability to prove the need for termination in the most serious cases of abuse. The Justice Center seeks termination for all state employees substantiated for a Category 1 offense. A table of penalties which was agreed upon between the Governor's Office of Employee Relations and the Civil Service Employees Association has been adopted and is now binding in disciplinary arbitrations of allegations of abuse and neglect. In addition, the Justice Center has trained arbitrators around the state on the new definitions of abuse and neglect to ensure consistency across agencies when disciplinary action is sought.

Over the past five years, a range of penalties have been imposed on state employees who abuse and neglect individuals with special needs. Below are two examples:

An employee sexually assaulted a patient in a secure setting. Local authorities declined to take the case. The Justice Center led the investigation. During the investigation, it was discovered the employee had assaulted additional patients. The Justice Center sought and successfully obtained a termination in this case.

An employee left a service recipient unattended when the service recipient required a one-to-one supervision. As a result of the employee's failure to maintain the appropriate supervision level, the service recipient was found wandering outside in 20-degree weather without any clothing. The Justice Center sought and successfully obtained a termination in this case.

VI. PROSECUTING CRIMINAL ACTS

❖ Criminal Prosecutions

➤ **Before June 30, 2013** - *Employees found to have committed criminal acts of abuse or neglect were often not charged with crimes or prosecuted.*

➤ **Today**

◆ **Special Prosecutor/Inspector General**

The Justice Center's Office of the Special Prosecutor/Inspector General has concurrent authority with District Attorneys across the state and works to ensure equal justice for people with special needs by prosecuting criminal activity involving the victimization of people who receive services by their caregivers.

The Justice Center's specially trained prosecutors pursue cases that can often be difficult to prove, such as when victims are non-verbal or have an intellectual disability. As a result, suspicious deaths, sexual assaults, and other challenging cases are consistently being investigated, and individuals are being held accountable for their actions.

The Justice Center also assists local district attorneys' offices in cases involving individuals with special needs. The Justice Center's Special Prosecutors work closely with district attorneys, offering insight, assistance and specialized knowledge for the effective investigation and prosecution of these cases.

Nearly 80% of all cases substantiated by the Justice Center fall into Category 3 or 4, meaning they are the less serious offense types. This means the number of cases that would rise to the level of criminal prosecution is limited. Nonetheless, investigations launched by an allegation called into the VPCR have resulted in 550 arrests. The Justice Center's Special Prosecutor Unit has an 85% conviction rate. Below are two examples:

Two staff members failed to seek medical attention for an elderly, non-verbal man who suffered two broken ribs in a fall. After helping the victim get back on his feet, the staff members failed to seek medical care or alert anyone that he could possibly be injured. Both were arrested and pled guilty to endangering the welfare of an incompetent or physically disabled person and both were placed on the Staff Exclusion List.

A staff member left a person with an intellectual disability in her care alone in a car to visit an inmate at a correctional facility and later purchased and smoked marijuana in the car while the victim remained in the back seat. The staff member was arrested and pled guilty to endangering the welfare of an incompetent or physically disabled person and placed on the Staff Exclusion List.

❖ Case Coordination

➤ **Before June 30, 2013** - Law enforcement agencies, prosecutors' offices, victims' services organizations, health professionals, and treatment providers were not communicating with each other. There were often parallel investigations which both duplicated efforts, but more problematically, required the victim to be interviewed multiple times.

➤ **Today**

◆ Vulnerable Persons Task Force

The Justice Center has established county and regional Vulnerable Person Task Forces which bring together professionals from government agencies and the non-profit and private sector who work to ensure a more effective response to reports of abuse and neglect. These teams are comprised of highly trained, caring professional who address the unique issues that often arise in cases involving victims who have physical and/or cognitive disabilities. This community-based, collaborative, victim-centered approach helps foster a seamless response to incidents and improve the likelihood of successful criminal investigations and prosecutions involving special victims.

The VPTF's initial focus has been on the development of best practices and regional trainings for law enforcement, prosecutors, and victim services professionals specific to investigations of crimes committed against these individuals.

VII. HELP FOR INDIVIDUALS WHO RECEIVE SERVICES AND FAMILIES

❖ Support and Guidance

➤ **Before June 30, 2013** – Victims of abuse and neglect and their families had limited support and often encountered difficulties finding out what supports were available to them and what to expect during an investigation.

➤ **Today**

◆ Individual and Family Support Unit

The Justice Center provides a wide range of supports and assistance to individuals who have experienced abuse, and to family members, to help them through each stage of the process including court-related assistance, and referrals. The Justice Center has provided assistance to more than 8,000 families, service recipients, and crime victims.

The Justice Center also assumed many of the advocacy functions that had been performed by the Commission on Quality of Care and Advocacy for Persons with Disabilities. These include: technology-related assistance for people with disabilities, education, referrals, training, and technical assistance to support and empower individuals with disabilities of all ages in all settings.