



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

Mandated Reporting

An Overview of Reporting Requirements for Custodians

January 2019

**161 Delaware Avenue, Delmar, NY 12054
www.justicecenter.ny.gov**

Protection of People with Special Needs Act

The Justice Center was established by the “Protection of People with Special Needs Act”, enacted as Chapter 501 of the Laws of 2012. The intent of the act was to create a durable set of consistent safeguards for all vulnerable persons that will protect them against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment to the employees upon whom they depend.

In addition to establishing the Justice Center, the Protection of People with Special Needs Act mandates that the Justice Center operate a statewide hotline, referred to as the Vulnerable Persons’ Central Register or the VPCR, to ensure that reportable incidents are promptly reported and fully investigated, that responsible individuals are held accountable and that providers implement corrective action plans to prevent future incidents.

Further, the Protection of People with Special Needs Act identifies certain people who are defined as mandated reporters and requires these people to report reportable incidents involving vulnerable persons to the Justice Center’s Vulnerable Person’s Central Register.

Who is a Mandated Reporter?

Mandated reporters are required to report reportable incidents involving vulnerable persons.

Human Services Professional | Human services professionals are those who may not see a person receiving services on a daily basis, but who interact with the individual during the course of providing professional services. For a full list of Human Services Professionals that are considered to be mandated reporters, please see the guidance document: An Overview of Reporting Requirements for Human Services Professionals. **Social Services Law, §488*

Custodians | Custodians are individuals who are employed by, or volunteer at, state operated, licensed or certified facilities or agencies under the Justice Center’s jurisdiction. Consultants, volunteers or contractors of organizations or companies that contract with facilities and agencies under the Justice Center’s jurisdiction are also considered to be custodians if they have regular and substantial contact with a person receiving services. **Social Services Law, §488(2)*

What is a Reportable Incident?

There are three general types of reportable incidents:

Abuse
Neglect
Significant Incident

Who is a Vulnerable Person?

Individuals who may be vulnerable to abuse and neglect because of their reliance on professional caregivers in state operated, licensed or certified facilities, programs or agencies.

Vulnerable persons are not necessarily individuals with disabilities, although many are.

State Oversight Agencies

Certain facilities and provider agencies licensed, operated or certified by the following State Oversight Agencies are within the Justice Center’s jurisdiction.

Office for People With Developmental Disabilities

Office of Mental Health

Office of Addiction Services and Supports

Office of Children and Family Services

Department of Health

State Education Department

When is Reporting Required?

If you are a mandated reporter and have reasonable cause to suspect that a reportable incident has occurred and that it was committed by a custodian, you must report it to the VPCR immediately upon discovery. The person receiving services does not have to suffer harm for an incident to be reportable. The *potential* for harm must also be reported.

Even if the reportable incident occurred at a different facility or program from where you are employed, once you become aware that something reportable has occurred, you are required to report the incident to the VPCR.

Immediately

Immediately means right away. Immediate reporting may be delayed to take the necessary steps to call 9-1-1, implement safety measures to protect the individual from further harm, and to follow internal facility procedures.

However, no internal procedure should significantly delay a report to the Justice Center. Staff going “off-duty” does not justify a delay in reporting. A report that is delayed more than 24 hours may be considered obstruction.

Upon Discovery

Discovery occurs when a mandated reporter witnesses a suspected reportable incident. Discovery can also occur when another person, including a person receiving services or family member, provides the mandated reporter with reasonable cause to suspect that an individual has been subjected to a reportable incident.

Reasonable Cause

When trying to determine if you have reasonable cause to suspect an incident has occurred, review the circumstances, evidence and facts known or readily available to you.

Consider your own observations, trainings, experiences and common sense in assessing:

- Was the individual injured or was there potential for injury?
- Do you believe the explanation of how the injury occurred?
- How reliable is your information?

Each mandated reporter has a personal obligation to report a suspected reportable incident individually to the Justice Center unless multiple reports regarding the same incident would be made to the VPCR and the “Multiple Reporting Exception” is met.

Under the “Multiple Reporting Exception”, the only time you are not required to report an allegation to the VPCR is if:

- You know that the incident was already reported to the VPCR; AND
- You know that you were named in the report as a person of knowledge of the incident

If you are unsure whether you have reasonable cause to suspect a reportable incident has occurred or you are not certain the “Multiple Reporting Exception” has been met, we encourage you to report the incident to the VPCR.

Obligation to Notify Your Provider Agency

Your employer or supervisor cannot tell you that you may not report if you believe that you are required to do so. You are not obligated by the Justice Center to tell your employer that you made a report to the VPCR. However, your employer, may require you to also make an internal report of an incident.

We encourage you to speak to your supervisor about your internal reporting procedures and responsibilities.

Is it Reportable?

State Central Register Example

A 14-year old boy lives at an Office of Mental Health residential treatment facility and spends the weekends at home with his family. On Monday, his parents return him to the residential treatment facility where staff discover a cigarette burn on his neck, that was not there on Friday.

Is this reportable to the Justice Center?

NO. In this case, because there is no basis to believe that the burn was caused by a custodian, this incident would NOT be reportable to the Justice Center.

However, it would be reportable to the State Central Register of Child Abuse and Maltreatment. Suspicion of child abuse and neglect of children under the age of 18 in a daycare setting, foster home or within a family home, must continue to be reported to the Statewide Central Register of Child Abuse and Maltreatment by calling 1-800-635-1522.

Driving Example

You are riding in the agency van with people receiving services and another staff member, who is driving the van. The driver was eating a large breakfast sandwich while driving. In order to eat the sandwich, the driver used both his hands and steered with his knees. He was driving 10 miles over the speed limit in a well-populated area with lots of vehicular and pedestrian traffic. He stopped abruptly frequently. After returning to the house, some of the people riding in the van told you they were afraid they were going to get into an accident.

Is this reportable to the Justice Center?

YES. Even though there was no accident and people receiving services didn't suffer a physical injury, there was potential for harm because of the way the van was being driven.

When deciding whether there is a reasonable cause to suspect that a reportable incident occurred, you should consider your own observations, training, experience and common sense in assessing the situation. Driving with your knees and speeding in well-populated areas puts people receiving services at risk of being in a car accident. In this case, some of the people riding in the van said they were afraid they while they were riding in the van.

Different Facility or Program Example

A 25 year-old woman shows up at the day habilitation program with a bleeding gash on her arm. She lives in a facility certified by the Office for People With Developmental Disabilities as an Individual Residential Alternative. She is transported between the facility and the day habilitation program by a transportation company under contract with the facility.

Is this reportable to the Justice Center?

YES. This incident is reportable to the VPCR, even if staff at the day habilitation don't know if the individual was injured at the Individual Residential Alternative or on the van. Both are settings under the jurisdiction of the Justice Center and staff are custodians.

If you become aware that an individual has been subjected to a reportable incident at a different facility or program, you are required to report the incident to the VPCR.

Is it Reportable?

Report from Person Receiving Services

A person receiving services reports that a staff member placed his hands on her neck and squeezed it during a restraint that occurred on the previous day. You observe bruises on the individual's neck.

Is this reportable to the Justice Center?

YES. You have reasonable cause to suspect that a reportable incident occurred because the person receiving services reported to you that a staff member placed his hands on her neck and you observe bruises there.

Leaving People Receiving Services Alone in a Vehicle Example

A person receiving services tells you that when he was being driven to a medical appointment by another staff person, the staff person stopped at her house and left him alone in the car for five minutes. The person receiving services regularly engages in self-injurious behavior and requires line of sight supervision while awake.

Is this reportable to the Justice Center?

YES. Whenever a person receiving services is placed in a situation in which there is potential for harm, the incident should be reported.

In this case, the person receiving services requires line-of-sight supervision while awake because of self-injurious behaviors.

Observation Example

You observe a staff person placing a person receiving services in an authorized restraint, using the proper technique. During the restraint, the individual begins to scream "rape".

Is this reportable to the Justice Center?

NO. You observed that a staff member using the proper technique in a restraint and was merely holding the individual's legs. You witnessed a proper restraint, which is not a reportable incident.

Custodian Not Identified Example

A person receiving services has a swollen, bloody nose and "fresh" bruises on her face, chest, back and arms. The individual cannot, or will not, explain how these injuries occurred, and no other persons receiving services or staff on duty at the time can explain the injuries.

Is this reportable to the Justice Center?

YES. When deciding whether there is reasonable cause to suspect that a reportable incident occurred, you should consider your own observations, training, experience and common sense in assessing the information presented to you.

In this case, the individual has multiple injuries and no one is able or willing to provide an explanation for the injuries. Remember, conclusive evidence that the injuries were caused by a custodian is not required. Identifying who caused the injuries is also not a requirement when making a call to the VPCR.

Is it Reportable?

Supervisor States Not to Report Example

A person receiving services tells you that a staff member kicked him on his back approximately one week ago. You discover a number of bruises on his back, but are not sure if they were caused by a kick. A supervisor tells you that you do *not* need to report this incident to the Justice Center.

Is this reportable to the Justice Center?

YES. Remember, your employer or supervisor *cannot* tell you that you may not make a report to the VPCR if you believe that you are required to do so.

Further, you are not obligated from the Justice Center to *tell* your employer that you made a report to the VPCR. However, your employer, may require you to also make an internal report of an incident.

Car Accident Example

A staff person takes one of the agency vehicles for an oil change. The staff person drove by herself and there was no one who received services in the vehicle. The staff person was talking on her cell phone when she ran a red light and was hit by oncoming traffic. The staff person was taken to the hospital and issued a traffic ticket.

Is this reportable to the Justice Center?

NO. Incidents are only reportable if people receiving services are harmed or there was potential for harm. In this case, there were no people receiving services riding in the vehicle when the accident occurred.

How to Report

Mandated reporters can call the toll-free VPCR 24-hour hotline at 1-855-373-2122. For individuals using New York Relay Service, dial 7-1-1 and give the operator the phone number 1-855-373-2122. There is also a web form, as well as a mobile application, that are available for reporting abuse and neglect. For more information, visit the Justice Center's website at www.justicecenter.ny.gov.

Information You Will Be Asked to Provide

- Confirmation that immediate protections are in place for the victim; was 9-1-1 called, if necessary
- Details regarding the victim, subjects and witnesses
- Details of the incident, including the date, time, location, description of incident
- Responsible State Oversight Agency
- Name and address of the provider agency, facility and/or program
- Name, title and contact information of others who may have the same information as you
- Any other information that may assist with the investigation or review of the incident
- *You do not have to know all of the answers to these questions to make a report*

TOLL-FREE VPCR 24-HOUR HOTLINE
1-855-373-2122

What to Report

The Protection of People with Special Needs Act defines three types of incidents that must be reported: abuse, neglect and significant incidents. You are not required to know what type of incident has occurred in order to make a report.

Abuse

Abuse is an action by a custodian against a person receiving services that causes or has the potential to cause injury or serious protracted impairment of the physical, mental or emotional condition of a service recipient.

There are **seven categories of abuse**: physical abuse; sexual abuse; psychological abuse; deliberate inappropriate use of restraints; use of aversive conditioning; obstruction of reports of reportable incidents; and unlawful use or administration of a controlled substance.

Neglect

Neglect is any action, inaction or lack of attention that breaches a custodian's duty and that results in or is likely to result in death, physical injury or serious or protracted impairment of the physical, mental or emotional condition of a person receiving services.

Most commonly, neglect is the result of a custodian's lack of attention or failure to act as required by his or her responsibilities. **Neglect can include, but is not limited to:** failure to provide proper supervision; failure to provide adequate food, clothing, shelter, medical, dental, optometric or surgical care; and failure to provide access to educational instruction.

Significant Incident

Any incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of the situation, may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a person receiving services.

Types of significant incidents identified in statute:

1. Conduct on the part of a custodian that is inconsistent with an individual's treatment plan, educational program or generally accepted treatment practices.
2. Conduct between persons receiving services resulting in harm or the potential for harm.
3. ANY other conduct identified in regulations of the State Oversight Agencies.

What Happens to a Report

Intake

A trained staff person takes a full report and carefully enters all details of the incident into the VPCR. All calls are recorded and an incident number is assigned at the end of each call. The incident number gives proof that the incident was reported. This number should also be referenced by the reporter if he or she needs to add more information at a later time.

Classification

After the call, a reportable incident is classified as abuse, neglect or significant incident.

Assignment

Once the report is classified, a case is created and assigned to the appropriate entity for investigation. Once assigned, the investigation begins.

Final Determination

Regardless of who is conducting the investigation, the Justice Center reviews *all* abuse and neglect investigations and makes the final determination about whether or not the allegation is substantiated or unsubstantiated.

Once a determination is made, the Justice Center notifies the victim and his or her personal representative, the subject in the case and the provider agency director, of the outcome. Mandated reporters and witnesses are *not notified* of the outcome of the investigation.

The Justice Center does not make a determination regarding significant incidents, however, a State Oversight Agency may request that a provider agency develop a corrective action plan if there is an issue of concern.

Confidentiality of Reporting

As a mandated reporter, your identity is confidential and may not be publicly disclosed. You may ask that your identity not be disclosed but it may be necessary to disclose your identity to the person investigating the reported incident, in order to ensure that an incident is thoroughly investigated. The Justice Center makes every reasonable effort to protect the identity of mandated reporters, especially when a reporter is alleging that he or she is the victim of retaliation for making a report.

Immunity from Liability

The law grants immunity to mandated reporters from a legal claim which may arise from a good faith act of providing information to the VPCR. For example, if you make a report to the VPCR because you had reasonable cause to suspect a reportable incident has occurred, the subject of the report may not sue you if the allegation is not substantiated. Immunity will not be granted to someone found making an intentionally false report.

Protection from Retaliation

State laws protect mandated reporters from retaliation. A state agency, facility or provider agency, school, medical or other public or private institution, cannot take any retaliatory personnel action, as defined in the Labor Law, Section 740 (1)(e), against an employee or agent because that person, acting in good faith, makes a report to the VPCR.

If you believe that you are being retaliated against for making a report, you should call the VPCR.

Failure to Report

A mandated reporter who knowingly and willfully fails to report suspected abuse or neglect to the VPCR, may be subject to termination and may be sued in civil court for monetary damages for any harm caused by the failure to make a report.

Mandated Reporter Obligations

If you have a reasonable cause to suspect that a reportable incident has occurred:

- You must make a report immediately upon discovery
- Your supervisor *cannot* tell you that you can not report an incident
- Report individually unless the “Multiple Reporting Exception” applies

Resources and Contact Information

Report Abuse or Neglect: 1-855-373-2122

Report Abuse or Neglect TTY: 1-855-373-2123

For additional resources and information on the Justice Center, please visit our website at:

www.justicecenter.ny.gov