



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

**September
2022**

Monthly Data Report

161 Delaware Avenue

Delmar, NY 12054

www.justicecenter.ny.gov

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.

Introduction

As a part of its mission, the Justice Center serves as the state's central repository for all reports of allegations of abuse and neglect involving the approximately one million adults and children who receive services from certain facilities and programs operated, licensed or certified by the state's health, human service and education agencies. The Justice Center maintains an incident management system and hotline, known as the Vulnerable Persons' Central Register, which accepts reports of all allegations and tracks them to completion.

APPROXIMATELY

1 Million

adults and children receive services from a facility or program operated, licensed or certified by the state's health, human service and education agencies under the jurisdiction of the Justice Center.¹

Justice Center Jurisdiction

The Justice Center is responsible for ensuring the safety and well-being of adults and children, who due to physical or cognitive disabilities, or the need for services or placement, are receiving care from certain facilities or provider agencies that are licensed, operated, or certified within the systems of six State Oversight Agencies. These agencies include:

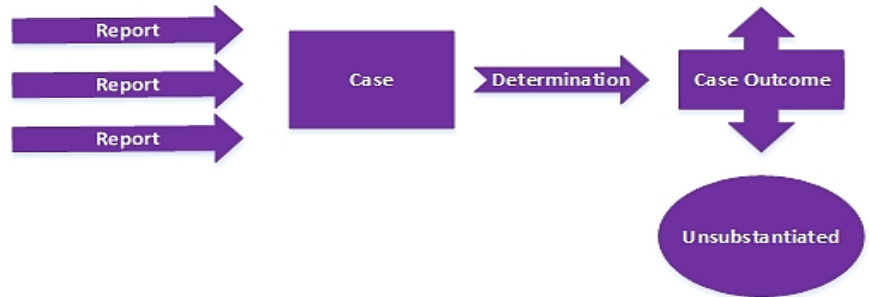
- Office for People With Developmental Disabilities (OPWDD)
- Office of Mental Health (OMH)
- Office of Addiction Services and Supports (OASAS)
- Office of Children and Family Services (OCFS) (State operated programs/facilities and certified residential programs)
- Department of Health (DOH) (Certain adult homes and summer camps)
- State Education Department (SED) (Certified residential schools and programs)

¹ "Lost in the Shadows: Willowbrook and the Era of Institutionalization" -- remarks of former Commission Chair Clarence J. Sundram presented at the conference "Willowbrook: Fulfilling the Promise" held at Albany Law School on March 22, 2013.

Justice Center Business Process

The Justice Center maintains an incident management system, known as the Vulnerable Persons' Central Register (VPCR) which accepts reports of all incidents and tracks them to completion. Multiple reports are often made for the same incident. Duplicate reports from multiple reporters are combined to create a single incident. Every allegation

Multiple Reports related to the same incident are combined into a single case.



classified as abuse or neglect reported to the Justice Center under the agency's jurisdiction is fully investigated by the Justice Center, the State Oversight Agency or the voluntary provider agency as an abuse and neglect case. The Justice Center reviews the results of the investigations of all allegations of abuse or neglect regardless of which entity conducted the investigation and makes a determination that such allegations are either substantiated or unsubstantiated.

Justice Center investigations into allegations of abuse and neglect are authorized by the Social Services Law and are considered administrative, rather than criminal proceedings. The vast majority of cases investigated by the Justice Center do not allege conduct that would support a criminal prosecution of the custodian. There are three main reasons for this:

1. Social Services Law encompasses a broader array of conduct that, while clearly unacceptable in a clinical setting, may not rise to the level of a crime as established in the Penal Law.
2. To substantiate an allegation under the Social Services Law, a less stringent standard of proof is required. This is known as the preponderance of the evidence standard, meaning it is more likely than not the alleged conduct occurred. The Penal Law, on the other hand, requires cases to be proven by the more stringent standard of *beyond a reasonable doubt*.
3. Abuse or neglect investigations are bound by the evidentiary rules for administrative proceedings, which are more relaxed than those of a criminal proceeding. For example, reliable hearsay may be introduced at an administrative hearing, meaning allegations of abuse and neglect may be substantiated even if the individual receiving services is unable or unwilling to testify. While hearsay may, under certain circumstances, be used to support evidence in a criminal case, a criminal case cannot be supported solely by hearsay.

Under certain circumstances, abuse and neglect investigations may reveal conduct by custodians that rises to the level of a crime as defined in the Penal Law. If an allegation is determined to be criminal in nature, either by the initial report or through investigation, the Justice Center notifies the local law enforcement agency and District Attorney's office. Once the notification occurs, the Justice Center works with the local law enforcement agency and local prosecutors on a joint investigation, or the Justice Center's sworn criminal investigators conduct the investigation.

Three Business Day Review

The Justice Center has implemented a review process for allegations where appropriate classification of an incident may initially be difficult to accurately determine. The three-business day assessment allows the agency to conduct a preliminary review of allegations lacking specificity by obtaining additional information from the facility or provider agency. This involves the collection of a minimum amount of documentation to accurately classify and assign an incident. This additional short step allows classification to be better informed and therefore a more accurate incident classification and a better use of investigative resources. Each SOA is notified when an incident is selected for the 3 BDR process to ensure any immediate safeguards and protections are put in place while the classification is pending review.

The three-business day assessment is available to all OPWDD, OMH, OASAS, OCFS, and SED providers.²

Three Business Day	September		2022 YTD	
Classification Total	341	100%	3,244	100%
Justice Center Abuse and Neglect	87	26%	972	30%
SOA Abuse and Neglect	56	16%	365	11%
Significant Incident	136	40%	1,315	41%
Non-NYJC Incident	62	18%	592	18%

Three Business Day	September									
	OPWDD		OMH		OASAS		OCFS		SED	
Classification Total	143	100%	121	100%	2	100%	59	100%	16	100%
Justice Center Abuse and Neglect	34	24%	27	22%	1	50%	16	27%	9	56%
SOA Abuse and Neglect	29	20%	8	7%	0	0%	19	32%	0	0%
Significant Incident	51	36%	56	46%	1	50%	22	37%	6	38%
Non-NYJC Incident	29	20%	30	25%	0	0%	2	4%	1	6%

² Percentages in tables may not sum to 100% due to rounding.

Abuse and Neglect

The Justice Center directly investigates the most serious allegations of abuse and neglect as well as allegations of abuse and neglect that occur in state-operated settings.³ In addition, allegations of abuse and neglect that occur at facilities and provider agencies operated, certified or licensed by OASAS and residential schools and programs certified by SED are investigated by Justice Center staff.

Active Cases

A case, or investigation, is created when one or more allegations of abuse or neglect are received by the Justice Center. Every allegation of abuse or neglect, both criminal and non-criminal, reported to the Justice Center that falls under the agency's jurisdiction is fully investigated.

	Created in September	Total Active
Total Active Abuse and Neglect Cases	839	2,554
State Operated	252	621
Non-State Operated	587	1,933

	Created in September	Created in September	Total Active	Total Active
Total Active Abuse and Neglect Cases	839	100.0%	2,554	100.0%
OPWDD	554	66.0%	1,638	64.1%
OMH	83	9.9%	352	13.8%
OCFS	144	17.2%	434	17.0%
OASAS	31	3.7%	78	3.1%
DOH	1	0.1%	5	0.2%
SED	26	3.1%	47	1.8%

ON AVERAGE

32%

of abuse and neglect cases are substantiated by the Justice Center each year.³

³ OPWDD investigates allegations of abuse and neglect at Intermediate Care Facilities in compliance with 42 CFR 483.420(d)(4).

⁴ Rate of substantiation based on two year moving average.

Case Outcomes

Abuse and neglect case outcomes are determined by the outcome of the allegation(s) within the case. A single case may contain multiple allegations due to multiple subjects, multiple individuals receiving services or multiple offenses. Cases with at least one substantiated allegation outcome are considered to be substantiated cases. Cases without any substantiated allegations are considered to be unsubstantiated cases. During an investigation, a small percentage of cases are discovered to be outside of the jurisdiction of the Justice Center.

Investigation Outcomes in State Operated and Non-State Operated facilities⁵

	September	September	2022 YTD	2022 YTD
State Operated Total	246	100.0%	1,769	100.0%
Substantiated	102	41.5%	533	30.1%
Unsubstantiated	144	58.5%	1,233	69.7%
No Justice Center Jurisdiction	0	0.0%	3	0.2%
	September	September	2022 YTD	2022 YTD
Non-State Operated Total	619	100.0%	5,432	100.0%
Substantiated	225	36.3%	1,776	32.7%
Unsubstantiated	391	63.2%	3,629	66.8%
No Justice Center Jurisdiction	3	0.5%	27	0.5%

⁵ Percentages in tables may not sum to 100% due to rounding.

Investigation Outcomes by State Oversight Agency⁶

	September	September	2022 YTD	2022 YTD
OPWDD Total	575	100.0%	4,630	100.0%
Substantiated	224	39.0%	1,466	31.7%
Unsubstantiated	350	60.9%	3,152	68.1%
No Justice Center Jurisdiction	1	0.2%	12	0.3%
	September	September	2022 YTD	2022 YTD
OMH Total	89	100.0%	800	100.0%
Substantiated	30	33.7%	242	30.3%
Unsubstantiated	59	66.3%	552	69.0%
No Justice Center Jurisdiction	0	0.0%	6	0.8%
	September	September	2022 YTD	2022 YTD
OCFS Total	150	100.0%	1,299	100.0%
Substantiated	57	38.0%	439	33.8%
Unsubstantiated	93	62.0%	858	66.1%
No Justice Center Jurisdiction	0	0.0%	2	0.2%
	September	September	2022 YTD	2022 YTD
OASAS Total	29	100.0%	254	100.0%
Substantiated	10	34.5%	103	40.6%
Unsubstantiated	18	62.1%	144	56.7%
No Justice Center Jurisdiction	1	3.4%	7	2.8%
	September	September	2022 YTD	2022 YTD
DOH Total	1	100.0%	16	100.0%
Substantiated	0	0.0%	1	6.3%
Unsubstantiated	1	100.0%	13	81.3%
No Justice Center Jurisdiction	0	0.0%	2	12.5%
	September	September	2022 YTD	2022 YTD
SED Total	21	100.0%	202	100.0%
Substantiated	6	28.6%	58	28.7%
Unsubstantiated	14	66.7%	143	70.8%
No Justice Center Jurisdiction	1	4.8%	1	0.5%

⁶ Percentages in tables may not sum to 100% due to rounding.

Substantiated Abuse and Neglect Cases by Category

A substantiated determination means that there is a preponderance of the evidence to support one or more of the allegations in a case. A preponderance of the evidence means that a review of the evidence indicates whether the abuse and/or neglect was *more likely than not* to have occurred. Conduct by custodians may meet the definitions of abuse or neglect when it results in actual harm to an individual receiving services or if the conduct was *likely* to result in harm to the individual receiving services.

ANNUALLY
LESS THAN

1%

of individuals receiving services under the jurisdiction of the Justice Center are associated with a substantiated abuse or neglect case.

Once the Justice Center makes the legal determination that an allegation is substantiated, a category level is assigned. The use of categories allows the Justice Center to further classify substantiated case outcomes based on the severity of harm. Categories of abuse or neglect are defined in Social Services Law §493(4).

Category Definitions

Like case outcomes, abuse and neglect case categories are determined by the outcome of the allegation(s) within the case. A single case may contain multiple substantiated allegations with multiple corresponding categories. For the purpose of this report, substantiated case categories are based on the most severe substantiated allegation within the case. For example, if a case has two substantiated allegations, one determined as a *category one* and one as a *category three*, the case would be categorized: *substantiated, category one*.

LESS THAN

2%

of substantiated abuse and neglect cases have a Category One finding.

Category One: is defined generally as serious physical abuse, sexual abuse or other serious conduct by custodians. Certain sub-categories of category one conduct may not involve actual harm to an individual receiving services; however, more often than not, category one conduct has resulted in harm.

	September	2022 YTD
Category One Cases	4	42
State Operated	1	4
Non-State Operated	3	38

In September, 1.2% of substantiated cases contained at least one Category One finding.

Examples of category one conduct:

The Justice Center has substantiated custodians for category one physical abuse when the evidence established that the custodian repeatedly struck an individual receiving services with a book, as that conduct constituted a conscious disregard of a substantial and unjustifiable risk of causing physical injury to the individual receiving services.

The Justice Center also has substantiated custodians for category one neglect when the evidence established that the custodian transported individuals receiving services in an agency van while intoxicated or under the influence of alcohol, even when the individuals receiving services were not actually harmed, because that conduct created a substantial risk of death or serious injury to individuals receiving services.

Additionally, the Justice Center has substantiated custodians for category one sexual abuse where the evidence established that the custodian had sexual contact with an individual receiving services who was incapable of consenting to such contact.

Category Two: is defined as conduct where the custodian seriously endangers the health, safety, or welfare of an individual receiving services by committing an act of abuse or neglect. Category two includes conduct that does not result in actual harm.

	September	2022 YTD
Category Two Cases	83	501
State Operated	36	143
Non-State Operated	47	358

In September, 25.4% of substantiated cases contained at least one Category Two finding.

Examples of category two conduct:

The Justice Center has substantiated a custodian for category two neglect when he failed to properly secure keys to an agency van, which the individual receiving services subsequently obtained and used to elope. While the individual receiving services was unharmed during the incident, their history of stealing cars and crashing them led the Justice Center to conclude that the custodian's failure to properly secure the keys seriously endangered the health, safety or welfare of the individual receiving services.

Similarly, the Justice Center has substantiated a custodian for category two neglect for texting while transporting individuals receiving services in an agency vehicle. The Justice Center has determined that the conduct of texting while driving seriously endangered the health, safety or welfare of an individual receiving services.

Category Three: there is a preponderance of the evidence to establish every element of at least

	September	2022 YTD
Category Three Cases	232	1,718
State Operated	65	381
Non-State Operated	167	1,337

one of the eight types of abuse or neglect defined in the Social Services Law.⁷

In September, 70.9% of substantiated cases contained at least one Category Three finding.

Examples of category three conduct:

The Justice Center has substantiated custodians for category three neglect where the evidence established the custodian failed to follow protocols for transporting an individual receiving services between different areas of the facility, resulting in the whereabouts of that individual receiving services being unknown for several hours. Even though the individual receiving services was not actually harmed during the time they were unaccounted for, the custodian violated the established transportation protocols. In this instance, the Justice Center substantiated the allegation against the custodian as the conduct was likely to result in physical injury or serious or protracted impairment.

Similarly, the Justice Center has substantiated custodians for category three physical abuse where the evidence established that the custodian struck an individual receiving services, yet there was no visible injury. The rationale for this determination was the conduct caused the *likelihood* of physical or emotional injury or serious or protracted impairment.

Category Four: this category refers to conditions at a facility or provider agency that expose individuals receiving services to harm or risk of harm, but where individual staff culpability for the abuse or neglect is mitigated by systemic problems, such as inadequate staffing, management, training or supervision. It also applies when abuse or neglect against an individual receiving services has been substantiated, but the responsible person cannot be identified. Category four findings are made against organizations and providers, not individuals.

	September	2022 YTD
Category Four Cases	8	48
State Operated	0	5
Non-State Operated	8	43

⁷ The eight types of abuse or neglect defined in Social Services Law §488(1) include: physical abuse, sexual abuse, psychological abuse, deliberate inappropriate use of restraints, use of aversive conditioning, obstruction of reports of reportable incidents, unlawful use or administration of a controlled substance, and neglect.

Investigation Categories in State Operated and Non-State Operated facilities⁸

	September	September	2022 YTD	2022 YTD
State Operated Total	102	100.0%	533	100.0%
Category One	1	1.0%	4	0.8%
Category Two	36	35.3%	143	26.8%
Category Three	65	63.7%	381	71.5%
Category Four	0	0.0%	5	0.9%
	September	September	2022 YTD	2022 YTD
Non-State Operated Total	225	100.0%	1,776	100.0%
Category One	3	1.3%	38	2.1%
Category Two	47	20.9%	358	20.2%
Category Three	167	74.2%	1,337	75.3%
Category Four	8	3.6%	43	2.4%

Substantiated Abuse and Neglect Cases by Offense

Abuse and neglect cases may include multiple allegations that are assigned to one of the following allegation types during the investigation process including: deliberate inappropriate use of restraints, neglect, obstruction, physical abuse, psychological abuse, sexual abuse, and other (includes aversive conditioning and unlawful use or administration of a controlled substance).

Upon completion, the Justice Center reviews all cases and determines whether each allegation is substantiated or unsubstantiated. Allegations that are unsubstantiated are immediately sealed. An unsubstantiated allegation of abuse or neglect does not preclude the employer from imposing other consequences for employee misconduct, such as disciplinary action.⁹

⁸ Percentages in tables may not sum to 100% due to rounding.

⁹ The Justice Center does not decide whether employees should be placed on leave, suspended or terminated when they are reported to have abused or neglected an individual receiving services. Disciplinary actions are generally at the discretion of the employing provider agency in accordance with established rules and collective bargaining agreements. The Justice Center represents State Oversight Agencies at arbitration proceedings involving the discipline of state employees who have been substantiated for abuse or neglect.

Substantiated Offense Types in State Operated and Non-State Operated facilities¹⁰

Substantiated Offense by Type	State Operated	Non-State Operated
Deliberate Inappropriate Restraint	7.5%	10.0%
Neglect	90.4%	84.6%
Obstruction	4.3%	4.8%
Other	0.8%	0.6%
Physical Abuse	10.1%	20.6%
Psychological Abuse	2.6%	2.8%
Sexual Abuse	0.4%	1.9%

Staff Exclusion List

The Justice Center maintains a statewide register known as the Staff Exclusion List which contains the names of individuals found responsible for serious or repeated acts of abuse or neglect. Individuals (subjects) who have either a *single* substantiated category one offense, or *multiple* substantiated category two offenses (in separate cases) within a three-year period, are placed on the Staff Exclusion List. These individuals are prohibited from working in settings under the Justice Center's jurisdiction. It includes individuals who have been placed on the list as well as those who face placement pending the outcome of an appeal.

860

individuals are on the Staff Exclusion List and are prevented from working in a position that serves a vulnerable person under the jurisdiction of the Justice Center.

¹⁰ Percentages based on total cases closed. Some cases contain more than one substantiated allegation.

Checks of the Staff Exclusion List

Employers are required to check the Staff Exclusion List before hiring any person who will have regular and substantial contact with an individual receiving services. This includes any employee, administrator, consultant, intern, volunteer or contractor applying for a position.

Checks of the Staff Exclusion List (Previous 12 Months)



Employee Discipline

Disciplinary or other employment actions resulting from a substantiated finding are at the discretion of the *employing provider agency* (State Oversight Agency or private provider) in accordance with established rules and collective bargaining agreements, the exception being Category 1 findings which result in placement on the Staff Exclusion List (SEL). This means in the vast majority of cases, the Justice Center is not involved in any decisions regarding the discipline of a subject. The notable exception occurs with state employees, where Justice Center attorneys work collaboratively with the State Oversight Agencies to achieve appropriate disciplinary outcomes.

State Operated Employee Discipline	September	2022 YTD	Non-State Operated Employee Discipline	September	2022 YTD
Closed Substantiated	107	359	Substantiated Actions Completed	454	2560
Termination Total	21	86	Termination	145	635
Loss of Leave Credits or Other Privileges	13	52	Counseling (Formal – Written)	78	517
Suspension	30	72	Re-training	78	458
No Penalty	24	69	Resignation/Retirement	35	192
Counsel or Train (subset of No Penalty)	22	61	Training	20	160
Letter of Reprimand	17	41	Counseling (Informal – Verbal)	43	142
Resigned	11	58	Staff Reassignment/Relocation	15	89
Fine	3	23	Letter of Reprimand	10	84
Probation Terminated	3	15	Suspension (1-14 days)	7	79
Upheld at Arbitration	0	2	Suspension (30 or more days)	11	66
Exclusion or Other	4	13	No Action	4	48
Retired	3	12	Suspension (15-30 days)	2	46
Other Penalty	0	2	Additional Staff Supervision	1	15
			Placed on Probation	2	14
			Demotion	3	10
			Employee Assistance Referral	0	3
			Fine (monetary/accruals)	0	2

Criminal Prosecutions

The Justice Center's Special Prosecutor works with county district attorneys to bring criminal charges in cases that allege that a crime has occurred against an individual receiving services by an employee of a facility or provider agency. The Justice Center notifies district attorneys of *all* allegations of abuse and neglect. Cases involving potential criminal charges can be investigated by the Justice Center, the local police, or both.

While a criminal case is being investigated and prosecuted, the same case is also investigated through the Justice Center administrative investigation process."

900 criminal prosecutions have been initiated since June 30, 2013, by the Justice Center or by local district attorney offices.

Criminal Background Checks

The Justice Center reviews and evaluates the criminal history information of all prospective employees or volunteers and advises service providers about the individual's suitability for employment. This comprehensive screening, which includes the ability to request and review information contained in identification records maintained by the Federal Bureau of Investigation, provides an additional safety net for individuals receiving services and their families, and mitigates risk for employers.

Criminal Background Checks	September	2022 YTD
Total Fingerprints Processed	8,665	76,826
Applicants Reviewed	1,049	8,402
Applicants Flagged for Additional Information	73	579
Denied Approval for Employment Consideration	27	202

Mortality Assessments and Reviews

Abuse or Neglect Cases with a Death Involved

Mandated reporters are required to report directly to the Vulnerable Persons' Central Register (VPCR) any death in both residential and non-residential programs under the Justice Center's jurisdiction – for which they have reasonable cause to suspect abuse or neglect or a significant incident may have been involved. For every death in which abuse or neglect or a significant incident is suspected, the Justice Center notifies the appropriate District Attorney and Medical Examiner. These deaths are investigated in the same manner as any other abuse or neglect case.

In 2022, the Justice Center closed 42 abuse and neglect investigation cases in which a death was involved. Of these cases, 19 had at least one substantiated allegation of abuse or neglect, which may or may not have caused or contributed to the death in question.

Executive Law § 556 Death Reviews (not abuse or neglect)

Administrators of residential programs licensed, operated, or certified by the Office for People With Developmental Disabilities (OPWDD), the Office of Mental Health (OMH), the Office of Addiction Services and Supports (OASAS), and the Office of Children and Family Services (OCFS) are required to report all deaths of residents to the Justice Center, irrespective of whether the death is unusual or expected. The purpose of this reporting is twofold: to monitor and examine whether quality of care issues may have contributed to an individual's death; and to make recommendations to improve future care of individuals receiving services and prevent the recurrences of similar issues.

All deaths subject to this mandatory reporting are referred to as Executive Law §556 deaths and each report is reviewed by investigators with program experience and health care professionals, including registered nurses. This reporting and review is in addition to the requirements to report and investigate deaths where there is reasonable cause to suspect to abuse and neglect or a significant incident.

In September 2022, the Justice Center completed 134 Executive Law §556 Death Reviews across the four agencies required to report these deaths.

Executive Law §556 Death Reviews	September	2022 YTD
Total Reviews Conducted	134	1,291
State Operated	22	276
Non-State Operated	112	1,015