



Frequently Asked Questions (FAQs)

September 27, 2013

Please visit www.justicecenter.ny.gov for additional information and access to forms, webinars, regulations and more.

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PART 1. JUSTICE CENTER GENERAL INFORMATION

1.1 What are the responsibilities of the Justice Center for the Protection of People with Special Needs?

The Justice Center was created in legislation known as the “Protection of People with Special Needs Act” to establish the strongest standards and practices in the nation for protecting people with special needs. It serves both as a law enforcement agency and as an advocate for people with special needs. The Justice Center’s responsibilities include:

- Advocating on behalf of people with special needs and overseeing the quality of care they receive;
- Ensuring that all allegations of abuse and neglect are fully investigated. The Justice Center has legal authority to investigate incidents involving people with special needs. Its Special Prosecutor/Inspector General has the authority to prosecute allegations that rise to the level of criminal offenses;
- Operating a 24/7 Hotline which receives reports of allegations of abuse, neglect and significant incidents. Reports are made by service providers and others who are “mandated reporters,” as well as by any individual who witnesses or suspects the abuse or neglect of a person with special needs;
- Maintaining a comprehensive statewide database that tracks cases until they are resolved and allows the Justice Center to monitor trends and develop abuse prevention initiatives;
- Maintaining a “Staff Exclusion List” of individuals found responsible for the serious abuse or neglect of a person with special needs. Anyone entered into this statewide register is prohibited from ever working again with people with special needs in New York;
- Operating an Information and Referral Line to respond to general disability-related inquiries;
- Continuing existing advocacy programs including the Developmental Center Ombudsman Program, Surrogate Decision-Making, Technology Related Assistance for Individuals with Disabilities (TRAID), and Adult Homes Advocacy;
- Administering the Inter-agency Coordinating Council for Services to Persons Who are Deaf, Deaf-Blind or Hard of Hearing;
- Monitoring the quality of mental health care in New York State correctional facilities; and
- Promoting the inclusion of people with special needs in all aspects of community life.

For more information on the Justice Center’s advocacy programs, visit the Justice Center [website](#).

1.2 What is the number to contact to report an incident of abuse or neglect involving a person with special needs?

The toll-free 24/7 Vulnerable Persons Central Register (VPCR) hotline is **1-855-373-2122**. The teletypewriter (TTY) service is available by calling **1-855-373-2123**.

1.3 What is the number to contact regarding disability services and advocacy?

The Justice Center operates a toll-free Information and Referral (I&R) Line, a statewide service that provides assistance to callers who have questions or concerns about disability services or issues. The I&R Line is staffed by trained professionals who can be reached during normal business hours (M-F, 8:30 am to 4:30 pm). For voice calls, dial **1-800-624-4143**. For TTY calls, dial 7-1-1 for the NYS Relay and give the operator **1-800-624-4143**. To contact I&R staff by email: infoassistance@justicecenter.ny.gov.

1.4 What is the contact information for the Justice Center?

The Justice Center is located at 161 Delaware Avenue, Delmar, NY 12054. For general information, call 518-549-0200 during normal business hours (M-F, 8:30 am-5:00 pm).

PART 2. JUSTICE CENTER JURISDICTION

2.1 Who is protected by the Justice Center and what programs does it oversee?

The Act defines a “vulnerable person” as a person who, due to physical or cognitive disabilities or the need for services or placement, is receiving care from a facility or provider within the systems of the State Oversight Agencies (SOA):

- **Office for People With Developmental Disabilities (OPWDD)**
 - Facilities and programs that are operated, certified, or licensed by OPWDD
- **Office of Mental Health (OMH)**
 - With some exceptions, facilities and programs that are operated, certified, or licensed by OMH
- **Office of Alcoholism and Substance Abuse Services (OASAS)**
 - Facilities and provider agencies that are operated, certified, or licensed by OASAS
- **Office of Children and Family Services (OCFS)**
 - Facilities and programs operated by OCFS for youth placed in the custody of the Commissioner of OCFS
 - OCFS licensed or certified residential facilities that care for abandoned, abused, neglected, and dependent children, Persons in Need of Supervision, or juvenile delinquents
 - Family-type homes for adults
 - OCFS certified runaway and homeless youth programs
 - OCFS certified youth detention facilities
- **Department of Health (DOH)**
 - Adult homes licensed by DOH that have over 80 beds, and where at least 25 percent of the residents are persons with serious mental illness and where fewer than 55 percent of beds designated as Assisted Living Program (ALP) beds
 - Overnight, summer day and traveling summer day camps for children with developmental disabilities under the jurisdiction of DOH
- **State Education Department (SED)**
 - New York State School for the Blind
 - New York State School for the Deaf
 - State-supported (4201) schools, which have a residential component
 - Special Act School Districts
 - In-state private residential schools approved by SED
 - Residential schools or facilities located outside of New York State that serve New York State residents

2.2 Do early intervention agencies and SED-approved preschools need to report incidents to the Justice Center?

No. However, they are required to conduct a Staff Exclusion List check under Social Services Law §424-a.

2.3 Are secure facilities operated by OMH required to report incidents to the Justice Center under the law?

Yes, except for Sex Offender Treatment Program (SOTP) units and Office of Mental Health satellite units operating in New York State correctional facilities.

2.4 What is the Justice Center's jurisdiction over hospitals?

The Justice Center does not have jurisdiction over hospital departments that are not licensed by OMH, OASAS or OPWDD. The Justice Center has jurisdiction over facilities or programs that are operated, licensed or certified by OMH, OASAS or OPWDD including, but not limited to psychiatric centers, and inpatient psychiatric units of a general hospital.

2.5 Are day students who attend a school on the grounds of a residential facility covered by the Justice Center?

Yes. Allegations of abuse, neglect and significant incidents must be reported to the Justice Center for all students who attend a residential school, even if they are day students. Allegations of abuse, neglect and significant incidents do not have to be reported to the Justice Center for students who attend free-standing day schools (i.e. those without a residential component), even if those schools are operated by an agency that also operates a residential school.

PART 3. JUSTICE CENTER CODE OF CONDUCT

3.1 Who must sign the Justice Center Code of Conduct?

The law requires that the Justice Center Code of Conduct be read and signed by any "[custodian](#)" who will have both regular and substantial contact with people with special needs covered by the Act. Custodians include directors, operators, employees, or volunteers of a facility or agency as well as consultants, employees, and volunteers of any corporation, organization or governmental agency that provides goods or services to a facility or agency.

The employer must determine, based upon their knowledge of the type and frequency of contact by staff, contractors and volunteers, who has regular and substantial contact with people receiving services.

3.2 Are electronic signatures acceptable for the Justice Center Code of Conduct?

Yes. Electronic signatures are acceptable for the Justice Center Code of Conduct.

3.3 When should the Justice Center Code of Conduct be signed?

The Justice Center Code of Conduct should be signed at the time of employment and at least annually thereafter.

3.4 Where should the Justice Center Code of Conduct be stored once signed?

The Justice Center Code of Conduct should be filed in the personnel record of the individual who signed it, and/or other human resources or training record or equivalent database. It must be maintained for presentation upon demand. Signed Justice Center Codes of Conduct should *not* be sent to the Justice Center.

PART 4. MANDATED REPORTER AND INCIDENT REPORTING

4.1 Who is a Mandated Reporter?

Mandated Reporters are “custodians” and “human service professionals.”

- **Custodians:** Employees, volunteers, directors and operators of covered facilities and programs, as well as external staff who have regular and substantial contact with the people being served.
- **Human service professionals:** child care or foster care worker; chiropractor; Christian science practitioner; coroner; dental hygienist; dentist; District Attorney or Assistant District Attorney; emergency medical technician; hospital personnel engaged in the admission, examination, care, or treatment of persons; intern; investigator employed in the office of the District Attorney; any other law enforcement official; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed occupational therapist; licensed physical therapist; licensed practical nurse; licensed psychoanalyst; licensed speech/language pathologist/audiologist; medical examiner; mental health professional; nurse practitioner; all persons credentialed by the NYS Office of Alcoholism and Substance Abuse Services; optometrist; osteopath; peace officer; physician; podiatrist; police officer; psychologist; registered nurse; registered physician’s assistant; resident (medical); social services worker; social worker; surgeon, and school official, including but not limited to: school teacher, school guidance counselor; school psychologist; school social worker; school nurse; school administrator; or other school personnel required to hold teaching or administrative license or certificate.

4.2 What are Mandated Reporters required to report?

Reports should be made regarding any situation in which a person who is receiving services or supports is experiencing abuse, neglect, sexual, financial or emotional exploitation, or is at risk of experiencing any of the following reportable incidents in one of the settings that falls within the Justice Center’s jurisdiction.

Types of abuse and neglect to be reported include:

- **Physical abuse:** intentional contact such as hitting, kicking, shoving, corporal punishment or an injury which cannot be explained and is suspicious due to extent or location;
- **Sexual abuse:** inappropriate touching, indecent exposure, sexual assault, taking or distributing sexually explicit photos, voyeurism or other sexual exploitation;
- **Psychological or emotional abuse:** taunting, name calling, using threatening words or gestures;
- **Deliberate misuse of restraint or seclusion:** use of these interventions with excessive force, as a punishment or for the convenience of staff;
- **Neglect:** failure to provide supervision, or adequate food, clothing, shelter, health care or access to an educational entitlement;
- **Aversive conditioning:** Unpleasant physical stimulus used to modify behavior without person-specific legal authorization; or
- **Obstruction:** Interfering with the discovery, reporting or investigation of abuse/neglect, falsifying records or intentionally making false statements.

Types of significant incidents to be reported include:

- Use of restraint when it is avoidable, involves a banned technique or is used by inadequately trained staff;
- Unauthorized seclusion or time-out;
- Harmful interactions between people with special needs that could reasonably have been prevented;
- Administration of a medication contrary to a medical order resulting in an adverse impact; or
- Any other conduct identified in regulations of the State Oversight Agency, pursuant to guidelines or standards established by the Justice Center Executive Director.

4.3 How is a report made?

- Call the VPCR hotline at **1-855-373-2122** (TTY **1-855-373-2123**).
- Or, custodians may submit a web form. Only custodians have the option to submit reports to the Justice Center via the web form. Custodians are encouraged to use the web form to report significant incidents. [Web form](#) and [instructions](#) are available on the Justice Center website.

4.4 When is reporting required?

Whenever a Mandated Reporter has reasonable cause to suspect a reportable incident involving a person with special needs, He/She is required to make a report to the VPCR immediately upon discovery.

- **Reasonable cause** means that, based on the reporter’s observations, training and experience, the reporter has a suspicion that a vulnerable person has been subject to abuse or neglect as described below. Significant incidents that may place a vulnerable person at risk of harm must also be reported. Reasonable cause can be as simple as doubting the explanation given for an injury.
- **Immediately** means “right-away;” however, reporting may be delayed to prevent harm (e.g., for as long as it takes to call emergency responders and/or address the need to maintain supervision). Staff “going off-duty” does not justify a reporting delay. In any event, reports must be made to the VPCR within 24 hours.
- **Discovery** comes from witnessing the situation or when the vulnerable person or another individual comes to the reporter and the available information indicates reasonable cause.

In addition to Mandated Reporters, anyone who has reasonable cause to suspect a reportable incident involving a person with special needs may call the VPCR. If a Mandated Reporter or any other person has doubts about whether the available information indicates such reasonable cause, he or she should call the VPCR.

Reporting to the VPCR is an additional reporting requirement and does not relieve the Mandated Reporter of any other reporting requirements or duties that may be required by law, regulation or policy.

4.5 Does every Mandated Reporter who is a witness to an incident have to report it to the Justice Center?

All direct witnesses must report to the Justice Center. In addition, first line supervisors who witness or are notified of an incident must also independently report to the Justice Center. “Group reporting” is not permitted. In instances involving multiple witnesses who are custodians, only one witness is required to submit the report by phone and the remaining witnesses are encouraged to submit a report using the web form.

4.6 Would a significant incident include peer-to-peer altercations between service recipients?

Yes. Significant incidents include peer-to-peer altercations when the incident represents potential for harm to the health safety or welfare of the service recipient(s), including actions of a nature that if they were committed by a custodian, would be classified as abuse.

4.7 What protections do Mandated Reporters have?

- **Immunity from liability:** The law grants immunity to Mandated Reporters and other reporters from any legal claims which may arise from a good faith act of providing information to the VPCR.
- **Protection from retaliatory personnel action:** The law prohibits an employer or agency from taking any retaliatory personnel action against a person as a result of a good faith act of providing information to the VPCR.
- **Confidentiality:** The law provides protections against the disclosure of the reporter's identity, subject to limited exceptions (e.g. the reporter's consent, a court order, etc.).

4.8 What if a Mandated Reporter fails to make a required report?

Failure by a Mandated Reporter to report suspected abuse or neglect to the VPCR is a serious matter – possible consequences include administrative discipline, termination, civil liability and criminal prosecution.

4.9 Section §488 of the Social Services Law provides that incidents involving possible psychological abuse should be reported where there is a “substantial diminution of a service recipient’s emotional, social or behavioral development or condition, supported by a clinical assessment.” Does this require a clinical assessment of the individual prior to reporting?

No. For purposes of reporting, no clinical assessment of diminution is required. Such an assessment is, however, required to substantiate an allegation of psychological abuse.

4.10 Are Mandated Reporters required to report incidents involving children to the Statewide Central Register of Child Abuse and Maltreatment (SCR)?

Reasonable cause to suspect abuse or neglect of a child receiving residential services in a listed facility or provider must be reported to the Justice Center, and need not be reported to the Statewide Central Register of Child Abuse and Maltreatment (SCR). However, suspicion of child abuse or neglect in a day care setting, foster family boarding homes, or within a family home must continue to be reported to the SCR at **1-800-635-1522**.

4.11 Are incidents also required to be reported to the applicable State Oversight Agency?

Reporting to the VPCR is an additional reporting requirement and does not relieve the Mandated Reporter of any other reporting requirements or duties that may be required by law, regulation or policy.

4.12 Are deaths required to be reported?

Every director (or their designee) of a facility or program under the jurisdiction of the Justice Center is required to immediately report the death of a vulnerable person upon discovery (witnessing or learning) of such death, and in no event later than 24 hours after discovery. This immediate report of death shall be made by calling the Vulnerable Persons Central Register (VPCR) Death Reporting Line **1-855-373-**

2124, which is a distinct reporting line and is separate from the VPCR Hotline to report abuse, neglect, and significant incidents. [Instructions](#) for reporting deaths can be found on the Justice Center website.

4.13 If a person receiving services dies due to illness or natural causes, is that still reportable to the Justice Center?

Yes.

4.14 How will the Justice Center work with other law enforcement agencies to pursue criminal charges involving abuse or neglect?

In criminal cases, the Justice Center collaborates with State Police, local law enforcement agencies and district attorneys to pursue prosecution to the extent allowed by the law. Justice Center staff includes trained investigators with the authority to make arrests.

The Justice Center also has a Special Prosecutor/Inspector General who can bring criminal charges in courts across the state. The Special Prosecutor/Inspector General is not intended to replace local law enforcement, but to provide additional resources to law enforcement agencies and district attorneys in investigating and prosecuting cases of abuse and neglect involving people with special needs.

PART 5. PRE-EMPLOYMENT BACKGROUND CHECKS

PRE-EMPLOYMENT BACKGROUND CHECKS (For prospective staff hired on or after 6/30/2013)

The chart below sets forth the entities that must request the Justice Center to request a check of the Staff Exclusion List (SEL) before determining whether to hire or otherwise allow “any person” with the potential to have regular and substantial contact with a service recipient. “Any person” can include an employee, administrator, consultant, intern, volunteer or contractor.

If the applicant is **not** on the SEL, a criminal history background check (CBC), if required, and an inquiry of the Statewide Central Register of Child Abuse and Maltreatment (SCR), if required, must be conducted.

Entities that must request an pre-employment background check	SEL check	CBC ¹ by Justice Center	SCR check ²	If on SEL - mandatory no hire	If on SEL - discretion to hire ³
1. Facility/Provider Agency (defined Social Services Law §488[4]):					
a. Facility or program operated, licensed or certified by OMH, ⁴ OPWDD and OASAS	X	X	X	X	
b. Facility or program operated by OCFS for youth in OCFS custody; Residential programs for children licensed or certified by OCFS; ⁵ including family-type home for adults certified by OCFS	X	X No CBC for family-type home for adults	X	X	
c. DOH adult care facilities (80+ beds with at least 25 percent residents)	X		X	X	

¹ The standard for conducting a CBC is regular and substantial unsupervised or unrestricted physical contact with service recipients as provided for in Mental Hygiene Law §§16.33, 19.20, 19.20-a and 31.35.

² If an applicant has a finding of abuse or maltreatment on the SCR, the provider still has discretion to hire.

³ Discretion in determining whether to hire is to be made in accordance with guidelines developed by OCFS for evaluating the subject of an indicated report of child abuse or maltreatment.

⁴ Except for MLH Art 10 secure treatment facilities and programs operated by OMH located in DOCCS’ facilities.

⁵ Except for foster family homes and residential programs for victims of domestic violence.

Entities that must request an pre-employment background check	SEL check	CBC ¹ by Justice Center	SCR check ²	If on SEL - mandatory no hire	If on SEL - discretion to hire ³
with serious mental illness)					
d. Overnight summer camps for children with developmental disabilities regulated by DOH	X		X	X	
e. State operated schools for Deaf/Blind					
f. State supported schools with a residential component	X		X	X	
g. Special act school districts					
h. In-state private special education schools with residential programs					
2. Other providers of services in programs licensed or certified by State Oversight Agency (SOA)	X		X	X	
3. Other providers of services in programs funded by SOA	X	X For certain OMH OPWDD providers			X
4. Provider or provider agencies defined in Social Services Law §424-a(3) that are not otherwise covered by 1 or 2 above, such as:⁶					
a. Authorized agencies defined in Social Services Law §371(10)	X		X		X
b. OCFS	X		X		X
c. Licensed child day care centers	X		X		X
d. Early intervention service	X		X		X
e. Approved 4410 providers (preschool special education) Municipalities that contract for related services for preschool children with disabilities	X		X		X
f. School-age child care programs	X		X		X
5. Licensing Agency defined in Social Services Law §424-a(4) not otherwise covered in 1 or 2 above, such as:⁷					
a. An authorized agency defined in Social Services Law §371(10) which:					
i. has received an application to become an adoptive parent; or	X		X		X
ii. has received an application for a certificate or license to receive, board of keep any child; or	X		X		X
iii. has received an application from a relative of parent or step-parent; or the child’s legal guardian for approval to receive, board or keep such child	X		X		X
b. A state or local government agency that receives an application to provide:					
i. child day care services in a child day care center, or	X		X		X
ii. school age child care program, or	X		X		X
iii. family day care home or group family day care home	X		X		X
c. NYC DOHMH when it receives an application for certificate of approval to provide child day care services in a child day care center	X		X		X
d. OMH or OPWDD when it receives an application for an operating certificate to operate a family care home	X	X	X	X	
e. A state or local government official who receives an application for a permit to operate a camp which is subject to Public Health Law Article 13-A or 13-B	X		X	X If state official is DOH, then mandatory	X
f. OCFS when it has received an application for a certificate to receive, board or keep any child at a foster home (Executive Law Articles 19G and H)	X		X	X	

⁶ If a provider agency included in Social Services Law §424-a(3) is otherwise covered in category 1 or 2 on this chart, it is not included under category 4 of this chart.

⁷ If a licensing agency included in Social Services Law §424-a(4) is otherwise covered in category 1 or 2 on this chart, it is not included under category 5 of this chart.

STAFF EXCLUSION LIST (SEL)

5.1 What is the Staff Exclusion List?

The Justice Center maintains a Staff Exclusion List (SEL), a statewide register that contains the names of individuals found responsible for serious or repeated acts of abuse or neglect as defined by law. Individuals on the SEL will be prohibited from being hired by any facility or provider agency identified in [Question 2.1](#) (except for residential schools or facilities located outside of New York State), and all other providers of services licensed or certified by a State Oversight Agency that serve people with special needs. The exclusion process is governed by regulations that implement the *Protection of People with Special Needs Act*. The names of individuals on the SEL will not be made available to the public.

5.2 Who is required to check the SEL?

Entities required to check the SEL are identified in the [Pre-Employment Background Check Chart](#).

5.3 If an individual is placed on the SEL but an administrative appeal has not been concluded, does the employer continue to keep the individual employed?

Employers can make employment decisions concerning their staff, up to and including termination, in accordance with their own collective bargaining agreements and human resources policies.

5.4 Who handles the disciplinary actions for custodians that work in private agencies?

Each private provider or agency is responsible for the discipline of its own employees.

5.5 Can an individual's name be expunged from the SEL portion of the VPCR?

No. Under the law, VPCR records are not expunged or deleted. However, unsubstantiated cases are sealed. Category 2 abuse cases not elevated to Category 1, as well as Category 3 abuse cases, are sealed after five years.

5.6 How does an employer check the SEL?

Forms and instructions for the SEL can be found on the Justice Center [website](#). Prior to submitting fingerprints for a criminal background check (CBC), a provider's "authorized person" shall submit the SEL Check Request form via fax to the Justice Center CBC Unit at 518-549-0462 or 518-549-0464.

If the applicant is on the SEL, a facility, provider agency and all other providers of services in programs operated, licensed or certified by any SOA shall not hire or otherwise allow such a person to have regular and substantial contact with a service recipient. If the applicant is on the SEL, there is no need to conduct a CBC.

TEMPORARY GUIDANCE EFFECTIVE AUGUST 8, 2013

Until a person is placed on the SEL, providers may comply with the law requiring a check of the SEL, prior to hiring or otherwise allowing an individual to have the requisite level of contact with a service recipient, by checking the Justice Center [website](#) and printing a copy of the Interim SEL Check web page with the employment application for each applicant for whom a provider or agency is mandated to conduct an SEL check. The copy of the webpage must be available for auditing purposes by your program's State Oversight Agency.

When someone is placed on the SEL, the Justice Center's web page will change to reflect that fact and providers then will be required to submit an SEL Check Request form for every applicant and receive a Justice Center response before proceeding with the hiring process or otherwise allowing that person to have regular and substantial contact with a service recipient.

CRIMINAL HISTORY BACKGROUND CHECK (CBC)

5.7 What is a criminal history background check?

A criminal history background check (CBC) is a request for information regarding pending criminal charges and criminal convictions of a prospective employee or volunteer who will have regular and substantial unsupervised contact with persons receiving services through a service provider. Although it is the responsibility of each provider of services to decide whether a position for which persons are applying will have this type of contact, generally speaking, these positions would involve in-person, face-to-face communication or interaction with service recipients, or the reasonable opportunity for such communication or interaction, while not in the reasonable physical proximity of another person, who is employed or under contract with the provider of services. For more information on CBC, visit the Justice Center [website](#).

5.8 Who is required to undergo a CBC?

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 programs and OCFS residential programs for children are required to have their criminal history information obtained and reviewed by the Justice Center. An individual who meets the following criteria is referred to as a "subject individual" under the law:

- Prospective employees that are contractors or consultants who will have the same level of client contact. This may include persons who were already employed by a provider before the law went into effect (June 30, 2013), but who seek to move to a different position within the same provider where they will now have the requisite level of contact.
- If the aforementioned employee's job responsibilities will change significantly, or if the client population with whom the s/he has contact changes (e.g., if the current position involves contact with adults but in the future, you wish to change the job responsibilities of this individual to include contact with children), please contact the Justice Center's CBC Unit for further guidance.

5.9 Who is required to request a CBC?

Entities required to request a CBC are identified in the [Pre-Employment Background Check Chart](#).

5.10 How are requests made for a CBC?

Requests for a criminal history background check are made through the Justice Center's CBC Unit to the Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI). Fingerprints are submitted to DCJS and the FBI through a Justice Center process. The results of the fingerprint submission are sent to the CBC Unit, which reviews the information and advises the service provider as to whether or not the applicant has a criminal history and, if so, whether such criminal history precludes the individual from being hired.

5.11 What types of crimes can lead the Justice Center or provider to reach a determination that an applicant is not suitable for employment?

The law specifies crimes that "presumptively" disqualify an applicant from further consideration. The Justice Center has authority to make determinations with regard to other crimes. The "presumptively disqualifying" crimes listed in the statute are:

- A felony conviction at any time for a sex offense;
- A felony conviction within the past ten years involving violence;
- A conviction pursuant to Penal Law (PL) section(s) 260.00, 260.25, 260.32 or 260.34; or
- Any similar offense in any other jurisdiction outside of New York State.

If an applicant's criminal history reveals a conviction for any of these types of crimes, s/he cannot be hired unless the Justice Center determines that the health, safety and welfare of the provider's clients would not be jeopardized.

In addition, the Justice Center may issue a denial based on any criminal conviction (misdemeanor or felony), consistent with factors that support State policy to encourage the employment of people with criminal convictions as defined by Article 23-A of the Correction Law. Mitigating factors include whether there is a direct relationship between the previous criminal activity and the position being sought. Other factors, such as the amount of time that has elapsed since the commission of the offense are also to be considered.

5.12 When should a CBC occur?

The CBC should occur after the SEL has been checked. If the applicant is not on the SEL then the authorized provider must complete a CBC. The prospective employee/volunteer should be the "final" candidate for the position. The criminal history background check process should not be used as a screening tool for candidates.

5.13 What forms must be submitted?

Once it has been determined that an applicant meets the criteria for a CBC, the applicant must complete the Applicant Consent for Fingerprinting Form. This form must be kept on file by the provider's authorized person(s), and must be available if so requested by the Justice Center or the State Oversight Agency. Specific information about CBC forms can be found on the Justice Center's [website](#).

5.14 What is the process for fingerprint submission?

OMH and OPWDD: Service providers for OMH and OPWDD can schedule an appointment to have fingerprints taken at a "LIVESCAN" location. The list of sites can be obtained for OMH providers by viewing the list on the Justice Center CBC system under the tab for fingerprint locations; and for OPWDD providers by visiting the OPWDD [website](#) in the "Information for Providers" section under "Criminal history record checks."

OCFS: The list of sites can be obtained by visiting the Identogo [website](#) or by calling MorphoTrust's toll free number at 1-877-472-6915. Providers of residential programs for children licensed or certified by OCFS can schedule an appointment on the Identogo [website](#). The applicant must bring necessary identification (picture ID) in order to be fingerprinted.

5.15 Is there a fee for the fingerprint process?

There is no out-of-pocket charge for prints taken for OMH or OPWDD applicants. For applicants for a residential provider licensed or certified by OCFS, there is a fee of \$102.25.

5.16 How are the results of the CBC received?

Results will be sent electronically, through a secure message system, to the work email address provided by the authorized person(s). Depending on the provider, the results will advise the provider of the determination or provide information on how to access the determination in the Justice Center's CBC system.

5.17 How long will it take to receive the results of the CBC?

If there is no criminal history, results are typically available 2-3 days after the fingerprints are processed.

5.18 What are the possible results of the CBC?

The Justice Center CBC Unit will notify the authorized person(s) indicating one of the following determinations:

- denial;
- pending (indicated by a notice that the application is "being processed");
- held in abeyance (meaning that a determination cannot be made at the present); or
- non-denial for each employee.

At the time of notification, the CBC Unit will also inform the authorized person what actions shall or may be taken by the provider regarding the person. A summary of the subject individual's New York State criminal history will be included in the determination. Federal law prohibits dissemination of information obtained from an FBI check.

5.19 Are persons who provide services to a provider through a third party contractor, such as a staffing agency, subject to a CBC?

Persons who provide services to a provider through a third party contract are not subject to the Justice Center criminal history background check requirements unless the contracts at issue are for mental health services (e.g., examination, diagnosis, care, treatment, rehabilitation, or training of service recipients) and the contracts are approved or are otherwise authorized by the appropriate State Oversight Agency (e.g., OMH, OPWDD or OCFS monitors the contract services provided under the contract, or otherwise approves how the money is spent).

5.20 Can a service provider hire an individual to work with persons receiving services prior to receiving the results of the CBC?

After an applicant has been physically fingerprinted, while awaiting the response from the Justice Center, providers may "temporarily approve" the applicant and permit him/her to begin performing services, provided that he/ she does not have unsupervised or unrestricted physical contact with the provider's clients.

Because temporary approval status is only available pending a determination from the Justice Center, the provider may be able to discover this history by requesting information directly from the applicant about past criminal history in its initial application process. Also, if the Justice Center receives a criminal

history record that includes a conviction or pending charge for any of the aforementioned crimes, the Justice Center will check to ensure the person has not been placed in temporary approval status. If so, the Justice Center will immediately contact the provider to ensure that s/he is removed from temporary approval status.

5.21 What can an applicant do if the Justice Center indicates it intends to issue a denial based on the CBC?

The Justice Center will afford the applicant an opportunity to explain, in writing, why the application should not be denied prior to making a determination. The law requires that any information produced by the applicant, or produced on his/her behalf, that demonstrates his/her rehabilitation and good conduct must be considered.

5.22 What forms must a service provider keep on file?

1. Authorized Person Designation form must be kept on file for six years following the removal of the party as an authorized person or designee;
2. Applicant Consent for Fingerprinting form must be kept on file for six years after the party ceases to be a subject party (generally, when he or she is no longer an employee); and
3. Justice Center determination letter and new arrest notice must be kept on file for one year after it is sent by the CBC unit and must be destroyed at that time in a confidential manner.

5.23 What steps must be taken when a person separates from service or is not hired (or a volunteer stops volunteering)?

The Justice Center CBC Unit must be notified when an individual ceases to be employed by or affiliated with the provider, or is not hired by the provider. In the case of an OPWDD and OCFS provider, the Subject Party Change in Status form must be submitted within 14 days as indicated on the form.

If the subject party is taking a leave of absence, the provider is not required to submit such form. If a provider hires a seasonal employee and the employee is expected to return the next year, the provider does not have to submit the form. If a seasonal employee is not expected to return, the form must be submitted.

In the case of an OMH provider, the service provider must immediately, but no later than 14 days after the event, inform the Justice Center via cbc@justicecenter.ny.gov that:

- an application has been withdrawn;
- an individual has been hired or not hired; or
- an individual whose criminal history was reviewed by the Justice Center has left the provider's employ. This can also be accomplished by simply updating the Employment Status option in the CBC system.

5.24 What happens if an individual has a subsequent arrest?

The criminal history information originally obtained by the Justice Center will continue to be updated, but only with respect to arrest activity in New York State. The Justice Center CBC Unit will send notice to the provider's authorized party if the subject individual is arrested after the original determination.

The service provider is responsible for conducting a safety assessment of the service environment and taking all appropriate steps to protect the health and safety of persons receiving services. In addition, the provider is responsible for inquiring about the outcome of any pending charge if the individual

remains in service with the provider. The safety assessment must be documented, maintained for one year, and if requested, forwarded to the audit unit of the applicable State Oversight Agency.

5.25 What if a service provider decides not to retain the individual after an arrest notification is received?

Justice Center regulations require that if a person is no longer subject to a criminal history record check, the CBC Unit must be notified within 14 days of the event as outlined in question [5.23](#).

5.26 Where can more detailed instructions on filling out the required forms be found?

The forms and more detailed information regarding the forms and information regarding CBC policies and procedures can be found on the Justice Center [website](#) or by contacting the Justice Center CBC unit at 518-549-0361.

STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT (SCR)

5.27 Who is required to check the Statewide Central Register?

Entities required to check the SCR are identified in the [Pre-Employment Background Check Chart](#).

5.28 How does an employer check the Statewide Central Register?

If the agency does not have a Resource ID (or RID) number, one can be obtained by e-mailing OCFS at ocfs.sm.conn.app@ocfs.state.ny.us with the following information:

- agency name;
- agency address;
- agency telephone number;
- contact person information;
- a statement to describe the category listed under Section 424-A of the Social Security Law;
- the name and the telephone number of a contact person in the State Oversight Agency who can verify the status of the organization; and
- a copy of the license, certification, or other official documentation of approval by the relevant State or local agency.

This process can take 2-4 weeks. Once the RID# is obtained, the “Agency Information Registration Sheet” must be completed. Once completed, the form must be sent via fax as per instructions on the form. OCFS advises that providers should receive a username and password within a couple of business days.

For assistance regarding the completion of any of these steps, contact OCFS at 518-474-1567, ext. 19586. For additional assistance or questions regarding the OCS application, e-mail OCFS at ocfs.sm.ocs.user.assistance@ocfs.state.ny.us.

PART 6. INVESTIGATIONS

6.1 How are investigation findings classified?

Substantiated reports of abuse or neglect are categorized into one or more of the four categories below.

Category 1 conduct is:

- serious physical or sexual abuse or other serious intentional or reckless acts of abuse, when *they cause* physical injury or serious physical injury as referenced in SSL §493(4)(a)(i) and (ii), or *demonstrate a conscious disregard* for a substantial and unjustifiable risk of physical injury or serious physical injury;
- criminal sexual conduct, including prostitution related offenses or promoting a sexual performance; encouraging, facilitating or permitting another to engage in conduct in violation of PL 130.00 with a service recipient where it is inconsistent with an individual’s treatment plan, federal or state law regulations or policies; or encouraging or permitting another to promote a sexual performance by a service recipient [PL 263(1)], or permitting or using a service recipient to engage in any prostitution-related offense;
- the knowing, reckless or criminally negligent *failure to perform a duty* that *causes* serious physical injury or physical injury that creates a substantial risk of death, or causes death or serious disfigurement; causes the substantial and protracted diminution of psychological or intellectual function (determined by a clinical assessment) as described in SSL §493(4)(a)(ii) and (iii), or that is *likely to cause* such injury or diminution;
- controlled substance offenses as described in SSL §493(4)(a)(viii) or (ix);
- abuse as an obstruction of the investigation, including:
 - intentionally falsifying records related to the safety, treatment or supervision of a service recipient with the intent to mislead an investigation of a reportable incident *and* the false statement *may endanger* health safety or welfare of the service recipient;
 - the knowing and willful failure to report Category 1 abuse or neglect;
 - intentional materially false statement during an investigation of Category 1 abuse or neglect with the intent to obstruct the investigation;
 - intimidating mandated reporters with the intent to prevent reporting of Category 1 abuse or neglect, including the intentional falsification of records described above, or retaliation against a custodian making a good faith report of such conduct; and,
 - supervisory failure to act on reported Category 1 abuse or neglect, including the intentional falsification of records described above, as directed by regulation, policy or procedure.

Category 2 conduct is abuse or neglect that *seriously endangers the health, safety or welfare* of a service recipient but that is NOT serious physical, psychological or sexual abuse or other Category 1 conduct.

Category 3 abuse or neglect endangers the health, safety or welfare of a service recipient, *but not seriously and is not category 1 or 2 conduct*, but is, nevertheless, abuse or neglect.

Category 4 conduct refers to conditions at a facility or provider agency that expose service recipients to harm or risk of harm to an extent that causes staff culpability for abuse or neglect to be mitigated by systemic problems such as inadequate staffing, management, training or supervision. It also applies when abuse or neglect against a service recipient has been substantiated but the responsible person has not been identified.

6.2 How many days does the Justice Center have to complete an investigation of abuse and neglect?

The Justice Center has 60 days to enter findings into the VPCR.

6.3 How many days does an SOA have to complete an investigation of a significant incident?

An SOA has 60 days to complete an investigation of a significant incident.

6.4 Who is available to provide technical assistance with the Vulnerable Persons Central Register reporting system?

For technology related issues with the VPCR, contact the ITS Customer Care Center at **518-408-6487** or toll-free at **1-800-697-1323**.

For more information on investigations, view the “investigations training webinar” available on the Justice Center [website](#).

PART 7. FREEDOM OF INFORMATION REQUESTS

7.1 What is the process for requesting records pertaining to abuse and neglect allegations?

The Protection of People with Special Needs Act provides that access to records relating to the abuse or neglect of vulnerable persons may be obtained from facilities or provider agencies as defined in subdivision (4) of section 488 of the Social Services Law that are not agencies of state government. The Justice Center shall receive, process and respond to requests for access to facility or provider agency records in accordance with regulations posted on the Justice Center [website](#).

7.2 Does this new process replace current Jonathan’s Law procedures?

Jonathan’s Law prescribes the procedure regarding requests of information from providers of services. It requires that a provider agency notify the parent or legal representative of any incident and investigation. The Justice Center legislation does not alter this procedure.