



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

Justice Center Protocols for Interviewing People who Receive Services

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These protocols were developed by the New York State Justice Center for the Protection of People with Special Needs (Justice Center) in consultation with the Justice Center's statutorily created Advisory Council and the relevant State Oversight Agencies. These agencies include: the Office of Mental Health, the State Education Department, the Office of Alcoholism and Substance Abuse Services, the Office for People With Developmental Disabilities, the Office of Children and Family Services and the Department of Health. The development of protocols to ensure the safety of service recipients during interviews is required by Executive Law section 553(28). The protocols and procedures outlined below apply to all investigations of abuse and neglect conducted by the Justice Center, State Oversight Agencies and the facilities and programs defined in section 488(4) of the Social Services Law when acting as the delegate investigatory entity.

Important: Nothing herein shall impede the Justice Center's or a delegate investigatory entity's statutory obligation to conduct timely investigations of alleged abuse and neglect. These protocols are designed to establish guidelines for interactions with service recipients in the course of investigations of alleged abuse and neglect. Although these protocols are not required to be followed in criminal investigations, if a criminal investigation is conducted by Justice Center investigators, these protocols shall serve as a guide for how investigators conduct interviews with service recipients during the course of a criminal investigation. Moreover, nothing in these protocols shall impede efforts by the Justice Center or a delegate investigatory entity to take immediate investigatory actions to ensure the safety of service recipients.

1. Key Terms

- a. **Delegate Investigatory Entity.** For the purposes of these protocols the term "delegate investigatory entity" shall mean a facility or provider agency, or any other entity authorized by the regulations of a state oversight agency or the Justice Center for the Protection of People with Special Needs to conduct an investigation of a reportable incident [Social Services Law section 488 (7)].
- b. **Personal Representative.** For the purposes of these protocols the term "personal representative" shall mean a person authorized under state, tribal, military or other applicable law to act on behalf of a vulnerable person in making health care decisions or, for programs that serve children under the jurisdiction of the State Education Department or the Office of Children and Family Services, the service recipient's parent, guardian or other person legally responsible for such person [Social Services Law section 488(10)].

- c. **Potential Witness.** For the purposes of these protocols the term “potential witness” shall mean any service recipient known by the service provider to be physically present in the place and at the time of the alleged abuse or neglect. It can also include any service recipient who has information that could be useful to an investigation.
- d. **Service Recipient.** For the purposes of these protocols the term “service recipient” shall mean an individual who resides or is an inpatient in a residential facility or who receives services from a facility or provider agency [Social Services Law section 488(9)]. The term service recipient is used throughout this document to describe both alleged victims and potential witnesses in abuse and neglect investigations.

2. Notification

a. Alleged Victim Notification

- i. **Timing.** When a service provider is notified that a report of alleged abuse or neglect has been accepted by the Justice Center about an incident in their program, the service provider shall immediately attempt to notify service recipients who are alleged victims and their personal representative that an interview may take place.¹ “Immediately” shall mean within 24 hours following notification from the service provider’s State Oversight Agency that an incident of abuse and neglect has been accepted into the Justice Center’s Vulnerable Persons Central Register (VPCR). If such notification from a State Oversight Agency to a service provider occurs after 5 p.m. on a Friday or during a period of time when the service provider is not operating, the service provider should attempt to make such notification on the next business day. If circumstances exist that do not allow such notification within the required timeframe, this shall not delay the interview of a service recipient who is an alleged victim.
- ii. **Exemptions.** There shall be no notification of a personal representative if the alleged victim objects to such notification. Objections to notification of a personal representative should be

¹ Complying with this requirement shall not impede an investigation into an incident at an Intermediate Care Facility as required by 42 C.F.R. § 483.420.

reviewed on an individual basis consistent with the existing standards a service provider uses to determine the ability of a service recipient to consent to services, programs and treatment. Additionally, there shall be no notification of the personal representative if providing such notification to the personal representative would compromise the investigation, violate relevant confidentiality laws, be contrary to court order, or otherwise contrary to the best interests of the alleged victim. However, service providers who are required to provide notifications pursuant to section 33.23 of the Mental Hygiene Law (Jonathan's Law) must do so regardless of the notification requirements in the Justice Center Protocols for Interviewing People who Receive Services.

- iii. **Method.** Such notification may be completed through oral communication or in writing.

- iv. **Documentation.** The service provider must document in writing that notice was given or that a diligent effort to make such notification was made. This documentation should be included in the investigative record. For those service providers who do not have access to the investigative record, the documentation should be given to the investigator for inclusion in the investigative record. Documentation should include:
 - the date notice was given;
 - the name of the service provider employee who made or attempted the notification;
 - the method of communication;
 - the name and contact information of the personal representative; and
 - the information provided by the personal representative per section 2(a)(v).

If, for the reasons stated in section 2(a)(ii), the alleged victim's personal representative is not notified, the service provider must document the reason. The Justice Center shall provide an optional template form that service providers may use to document this information. Service providers who are required to provide notifications pursuant to section 33.23 of the Mental Hygiene Law (Jonathan's Law) are not required to provide additional notification under the Justice Center Protocols for Interviewing People who Receive Services.

- v. **Inquiry of personal representative.** If the personal representative is contacted, the service provider shall ask the personal representative if he or she has additional information not known to the service provider regarding the most effective ways to communicate with the service recipient in order to support the interview process. For example: the personal representative may want to share information about assistive technology needs or environmental factors (e.g., lighting) that may impact effective communication with the service recipient during an interview.
- vi. **Additional alleged victims.** Nothing in these protocols shall prohibit an investigator from identifying additional alleged victims during the course of an investigation. If, during the course of an investigation, the names of additional alleged victims are identified, the service provider must promptly notify such additional alleged victims and their personal representatives and document according to section 2(a)(iv).
- vii. **Exception.** If an alleged victim does not have a personal representative, there is no need for the service provider to comply with documentation requirements in section 2(a)(iv).

b. Potential Witness Notification

- i. **Timing.** The service provider should notify service recipients who are potential witnesses to an alleged abuse or neglect incident and their personal representatives that such service recipients may be interviewed as part of an investigation. Attempts to make such notification should be made by the service provider within forty-eight hours following notification from the service provider's State Oversight Agency that an incident of abuse and neglect has been accepted into the Justice Center's Vulnerable Persons Central Register (VPCR). If such notification from a State Oversight Agency to a service provider occurs after 5 p.m. on a Friday or during a period of time when the service provider is not operating, the service provider should attempt to make such notification on the next business day. If circumstances exist that do not allow the provision of such notification within the required timeframe, this shall not delay the interview of a service recipient who is a potential witness.

- ii. Exemptions.** There shall be no notification of a personal representative if the potential witness objects to such notification. Objections to notification of a personal representative should be reviewed on an individual basis consistent with the existing standards a service provider uses to determine the ability of a service recipient to consent to services, programs and treatment. Additionally, there shall be no notification of the personal representative if providing such notification to the personal representative would compromise the investigation, violate relevant confidentiality laws, be contrary to court order, or otherwise contrary to the best interests of the potential witness.
- iii. Method.** Such notification may be completed through oral communication or in writing.
- iv. Documentation.** The service provider must document in writing that notice was given or that a diligent effort to make such notification was made. This documentation should be included in the investigative record. For those service providers who do not have access to the investigative record, the documentation should be given to the investigator for inclusion in the investigative record. Documentation should include:
- the date notice was given;
 - the name of the service provider employee who made or attempted the notification;
 - the method of communication;
 - the name and contact information of the personal representative; and
 - the information provided by the personal representative per section 2(b)(vi).

If, for the reasons stated in section 2(b)(ii), the potential witness' personal representative is not notified, the service provider must document the reason. The Justice Center shall provide an optional template form that service providers may use to document this information. Service providers who are required to provide notifications pursuant to section 33.23 of the Mental Hygiene Law (Jonathan's Law) are not required to provide additional notification under the Justice Center Protocols for Interviewing People who Receive Services.

- v. **Confidentiality.** If the personal representative of a potential witness is contacted, the service provider must not disclose confidential information regarding the allegation of abuse or neglect (e.g., detailed circumstances of the incident, names of subjects or victims, etc.) to such personal representative. The service provider shall inform the potential witness' personal representative that the potential witness may have information regarding an incident involving another unnamed service recipient who is the alleged victim and that the incident does not involve harm to the potential witness.
- vi. **Inquiry of personal representative.** The service provider shall ask the personal representative if he or she has additional information not known to the service provider concerning the most effective ways to communicate with the service recipient in order to support the interview process. For example: the personal representative may want to share information about assistive technology needs or environmental factors (e.g., lighting) that may impact effective communication with the service recipient during an interview.
- vii. **Additional potential witnesses.** Nothing in these protocols shall prohibit an investigator from identifying additional potential witnesses during the course of an investigation. If, during the course of an investigation, the names of additional potential witnesses are identified, the service provider must promptly notify such additional potential witnesses and their personal representatives and document according to section 2(b)(iv).
- viii. **Exception.** If a potential witness does not have a personal representative, there is no need for the service provider to comply with documentation requirements in section 2(a)(iii).

3. Interview Protocol

- a. **Determinations.** To determine if an interview of a service recipient can be conducted in a safe and timely manner, an investigator may:
 - review the setting where and circumstances under which the interview is to be conducted;
 - consult with a service recipient's personal representative;
 - ascertain the service recipient's diagnosis;

- consult with the service recipient’s licensed health professional;
- review the service recipient’s files;
- observe the service recipient’s behavior;
- speak with service provider employees;
- consider the service recipient’s capability to provide information to assist the investigation; and
- engage in preliminary inquiries with service recipients to establish that proceeding with an interview would be appropriate.²

A formal clinical assessment is not required prior to interviewing a service recipient.³

- b. Information from service provider.** An investigator must notify a service provider if he or she will need specific information from a service provider to determine whether to proceed with an interview.⁴ The service provider shall supply the Justice Center or the delegate investigatory entity with the requested information within 72 hours of receiving notification from an investigator. This information may be conveyed verbally or in writing.
- c. Exceptions.** If conducting an interview of the service recipient would be clinically contraindicated, despite the provision of appropriate accommodations, the interview shall not take place.⁵ However, the investigator may proceed with an interview, even when contraindicated, where certain circumstances exist. These circumstances include but shall not be limited to:
- an investigator believes that a service recipient has information relevant to maintaining or securing the safety of service recipients;
 - an investigator believes that failure to interview a service recipient may allow for the destruction of evidence by a subject;
 - the delay of interviewing a service recipient may allow a subject to evade law enforcement; and
 - an investigator has been directed by his or her supervisor to proceed with the interview.⁶

² Executive Law §553(28)(a)(i)

³ Executive Law §553(28)(a)

⁴ Executive Law §553(28)(c)

⁵ Executive Law §553(28)(a)(ii)

⁶ Executive Law §553(28)(a)(ii)

The investigator must document in the investigative record the reason why it was appropriate to proceed with the interview under these limited circumstances.

d. Communication. If an investigator determines that a service recipient may have difficulty comprehending questions due to cultural or linguistic barriers, such investigator shall work with a service provider to ensure that the service recipient is provided with the means to communicate with the investigator.⁷

e. Personal representative presence at an interview.

- i. Exceptions.** A personal representative may be permitted to accompany a service recipient who is an alleged victim or a potential witness during an interview, except under the following circumstances:
- the service recipient objects to the personal representative being present during the interview; or
 - the investigator believes the presence of the personal representative would impede the investigation.⁸

Objections by a service recipient to a personal representative being present during an interview should be reviewed on an individual basis consistent with the existing standards a service provider uses to determine the ability of a service recipient to consent to services, programs and treatment.

ii. Confidentiality. Even if the personal representative requests to be present for an interview, the request need not be honored if the confidential nature of the information that would be disclosed during the interview would preclude the personal representative's presence.

iii. Conduct. If a personal representative is allowed to be present during an interview, the personal representative may not interfere with the interview. If an investigator believes that the personal representative is interfering with the interview, the investigator may take appropriate actions to stop the interview. If an investigator determines that a personal representative should not be present or should leave an interview once it is underway, the investigator must document the rationale for such decision in the investigative record.

⁷ Executive Law §553(28)(b)(ii)

⁸ Executive Law §553(28)(b)(iv)

iv. Logistics. If a personal representative lives such a distance away that he or she cannot attend an interview in a timely manner, the service provider shall provide appropriate technology to allow the personal representative to participate in the meeting. This may entail the use of a conference call line or a video conference if available. An investigator shall not be required to unreasonably delay an interview to allow for a personal representative to participate.

f. Information for service recipients. Prior to beginning an interview with a service recipient, the investigator shall advise service recipients and their personal representatives about what to expect in an interview. The investigator shall explain that participation in an interview is voluntary. In addition, the investigator shall advise the service recipient and their personal representative about searches of the service recipient's personal property and searches of the service recipient's person for the purposes of non-criminal investigations. These protocols do not impact the ability of a service provider to conduct searches in accordance with existing standards and policies. The current legal standards for searches of property or persons in the programs under Justice Center jurisdiction remain in effect. An investigator shall clarify that in programs where such searches are voluntary, nothing in these policies change the voluntary nature of such searches.

4. Training. The Justice Center will develop training for investigators employed by the Justice Center, State Oversight Agencies and the facilities and programs defined in section 488(4) of the Social Services Law when acting as the delegate investigatory entity to support compliance with these protocols.⁹ The Justice Center will work with the State Oversight Agencies to create training guidelines and the most effective method to deliver such training to investigators.

5. Implementation.

These protocols should be followed beginning on July 1, 2015.

⁹ Executive Law §553(4)