NEW YORK STATE OF OPPORTUNITY.

Justice Center for the Protection of People with Special Needs

Justice Center Reporting and Investigations: Guidance for Individuals and Families

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VISION

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

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.

VALUES AND GUIDING PRINCIPLES

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

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

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

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

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

JURISDICTION

The Justice Center oversees facilities and programs within the systems of six State Oversight Agencies (SOAs):

Office for People With Developmental Disabilities (OPWDD)

- Facilities and programs that are operated or certified by OPWDD

Office of Mental Health (OMH)

- Facilities and programs that are operated or licensed by OMH

Office of Alcoholism and Substance Abuse Services (OASAS)

- Facilities and service providers 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 juveniles
- Family-type homes for adults
- OCFS certified runaway and homeless youth programs
- OCFS certified youth detention facilities

Department of Health (DOH)

- Adult care facilities licensed by DOH that have over 80 beds, and where at least 25% of the residents are persons with serious mental illness and where fewer than 55% of beds are designated as Assisted Living Program 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 for special education services or programs
- Residential schools or facilities located outside of New York State that serve New York State residents

The Justice Center's goal is to prevent mistreatment of people with special needs and ensure that all allegations of abuse or neglect are fully investigated. The Justice Center investigates, reviews and makes findings in allegations of abuse and neglect by staff—including employees, volunteers, interns, consultants, or contractors— against individuals who receive services. The Justice Center does not interrogate, arrest, or prosecute individuals who receive services.

This document explains the reporting and investigation process and how to obtain additional information if you, or your family member, is involved in a Justice Center investigation as a victim or a witness.

MAKING A REPORT

The **"Vulnerable Persons Central Register (VPCR)"** is a toll-free hotline and incident reporting system for allegations of abuse and neglect available 24 hours a day, 7 days a week.

1-855-373-2122
1-855-373-2123 (TTY)

Who can report an allegation of abuse or neglect?

Anyone – including a parent, advocate, or guardian – can make a report to the Vulnerable Persons Central Register (VPCR) hotline and is encouraged to make a report when they have knowledge or have reason to believe that a person with special needs has been abused, neglected or mistreated.
However, some people are required to report to the VPCR. These "mandated reporters" include provider agency staff and human service professionals, who by nature of their job must report allegations of abuse and neglect.

Can I find out who called in a report to the VPCR Hotline?

The Justice Center cannot release the name(s) of the person(s) who made the report to the VPCR hotline or the name(s) of any person(s) who cooperated in the investigation.

What happens after a report is made?

A call center representative will first determine if an emergency responder is necessary and/or if the person receiving services is in danger or needs immediate assistance. If it is an emergency situation, the call center representative will instruct the caller to hang up and dial 9-1-1. The reporter should then call back to complete the report once the emergency situation has been addressed.

A "**State Oversight Agency**" licenses or certifies the provider agency.

INTAKE

A trained call center representative collects information from the reporter and an incident number is assigned. Confidentiality laws protect reporters.

The call is recorded.

CLASSIFICATION

The incident is then classified.

Reportable:
- Abuse or neglect
- Significant incident
- Death (administrative)
- Financial

Non-reportable:
- General inquiry
- Not under the jurisdiction of the Justice Center

ASSIGNMENT

The incident is then assigned to the appropriate entity for investigation or review.

The Justice Center conducts investigations of abuse or neglect incidents (based on severity and/or setting), financial misconduct, and deaths. Less serious incidents may be delegated to the appropriate State Oversight Agency, which may further delegate to the provider agency.

What are the different types of classifications?

- **Abuse**: Abuse can be physical, sexual, or psychological. It can also include the deliberate misuse of restraint or the obstruction of an investigation.
- **Neglect**: Neglect is the failure to provide supervision, or adequate food, clothing, shelter, health care or access to education.
- **Significant Incident**: A significant incident has the potential to result in harm to the health, safety or welfare of a person receiving services.
- **Death (administrative)**: The death of a person receiving services from a facility or program under the death reporting jurisdiction of the Justice Center must be reported immediately to the Justice Center. All deaths reported to the Justice Center are reviewed to determine whether further investigation is necessary. If someone suspects that the death may have been the result of abuse or neglect, it must be reported separately to the VPCR hotline.
- **Fiscal Misconduct**: Allegations involving the theft of a service recipient's personal funds or the mismanagement of public funds used to support the programs that serve them are reviewed by the Justice Center and referrals are made to the Office of Medicaid Inspector General and other appropriate law enforcement agencies, as necessary.

DURING THE INVESTIGATION

Who can be interviewed during an investigation?

Investigators will interview people who receive services who may have been victims or witnesses, and other people who witnessed or may otherwise have information about an incident. Investigators will interrogate subjects (e.g., employee, volunteer, intern, consultant, contractor) who are alleged to have committed the act of abuse or neglect.

A "**subject**" refers to the individual named in the allegation as committing the act of abuse or neglect. Only staff may be considered to be subjects; not service recipients.

What can I expect if I am interviewed as a victim or witness?

The purpose of the interview is to learn what you know about what allegedly happened. Your will be notified of the location, date, and time of the interview. Your interview is voluntary and you may take breaks during the interview. You should let the investigator know if you need an accessibility accommodation during the interview or if you do not understand something that is said.

As part of the investigation process, investigators collect materials and documents. Investigators may ask to see personal items if they are needed to complete the investigation.

How will I know if I am identified as a victim?

If you are identified as a victim in an allegation of abuse or neglect, the facility or program will notify you within 24 hours. You will be provided with a confirmation number from the VPCR. Please use this number if you have additional information related to the report or you are seeking information from the Justice Center about the report.

Do parents, guardians or personal representatives of the alleged victim receive notification when a report has been made?

Yes. The program or provider agency notifies the legal guardian or personal representative after the program or provider learns that an allegation was reported to the VPCR hotline.

A "**personal representative**" is someone who is legally permitted to act on behalf of the service recipient.

What happens during an investigation?

An investigator is assigned to the investigation. Depending on severity and setting of the allegation, the investigation will be conducted by the Justice Center, the State Oversight Agency, or the provider. Once the investigation is completed – regardless of who conducted the investigation – the Justice Center reviews the investigation. At the conclusion of the review process, the allegations are substantiated or unsubstantiated by the Justice Center.

How can a parent, guardian or other person legally responsible for an individual find out the results of an investigation?

A service recipient's parent, guardian or other person legally responsible for the individual will be notified in writing by the Justice Center of the findings of an investigation. The determination letter will indicate whether the allegation(s) of abuse and/or neglect were substantiated or unsubstantiated. The findings of all investigations are maintained in the Vulnerable Persons Central Register (VPCR). Legal guardians may also request additional information once the determination has been finalized. Reports provided will be redacted to remove personally identifying and confidential information. Due to the sensitive and confidential nature of the information and the challenge of verifying a caller's identity, details of the report itself and additional investigative information cannot be disclosed over the phone.

What is Jonathan's Law?

Facilities operated, licensed or certified by the Office for People With Developmental Disabilities (OPWDD), the Office of Mental Health (OMH) and the Office of Alcoholism and Substance Abuse Services (OASAS) must notify and inform parents and legal guardians of children and adults receiving services by telephone of accidents or injuries. The law also allows qualified persons to access certain documents pertaining to such incidents. For more information on this process: www.justicecenter.ny.gov/resources/brochures/jonathans-law

"**Qualified persons**" are defined in Jonathan's Law as:

- Parents or other legal guardians of minor patients;
- Parents, legal guardians, spouses, or adult children of adult patients who are legally authorized to make health care decisions on behalf of the adult patient; or
- Adult patients who have not been determined by a court to be legally incompetent.

What happens during a criminal case?

The Office of the Special Prosecutor helps to coordinate the investigation and leads the prosecution of abuse and neglect cases where the alleged conduct rises to the level of a criminal offense. A team of Special Prosecutors and Justice Center Investigators work together to gather evidence to support an arrest, file formal criminal charges and obtain a conviction or plea to ensure that justice is served. Criminal investigations typically include interviewing victims and witnesses. Additionally, the Justice Center works with local District Attorneys and law enforcement agencies to prosecute criminal matters. If a prosecution is pursued by the Justice Center, coordination of victim services will be provided by the Individual and Family Support Unit in collaboration with the Prosecutions Unit.

AFTER THE INVESTIGATION IS COMPLETED

What are the potential determinations of the investigation?

Allegations of abuse or neglect are determined to be **substantiated** or **unsubstantiated**. Allegations may be substantiated if an abuse or neglect investigation determines that there is a preponderance of evidence to support the allegation. Preponderance of the evidence means that a review of the evidence shows whether the abuse and/or neglect was more likely than not to have occurred. Substantiated reports of abuse or neglect are classified into one of four categories depending on the severity. Unsubstantiated reports are immediately sealed. An unsubstantiated finding does not preclude other consequences, including disciplinary action

CATEGORIES OF FINDINGS AT-A-GLANCE

CATEGORY 1: Serious physical abuse, sexual abuse or other severe conduct by a subject. A Category 1 substantiation places the subject on the Staff Exclusion List (SEL). It also includes a second instance of Category 2 conduct that occurs within three years of a prior Category 2 finding. Subjects on the SEL remain on the list forever.

CATEGORY 2: A subject significantly endangers the health, safety or welfare of a service recipient by committing an act of abuse or neglect. Category 2 offences are sealed after five years.

CATEGORY 3: Less serious incidents of abuse or neglect. Reports are sealed after five years.

CATEGORY 4: Conditions at a program or facility expose people receiving services to harm or risk of harm. Category 4 also includes instances in which it has been substantiated that an individual receiving services has been abused or neglected, but a perpetrator cannot be identified.

Why would an allegation of abuse or neglect be determined to be "unsubstantiated"?

An allegation may be determined to be "unsubstantiated" for a variety of reasons. There might not have been enough evidence to confirm that an incident of abuse or neglect had occurred or a specific individual was not found responsible for the incident. An unsubstantiated finding does not prevent other consequences which may include employee discipline, additional supervision, training or other corrective actions.

Who makes the determination on the investigative findings?

The Justice Center makes a final determination about whether an allegation of abuse or neglect is substantiated and, if substantiated, the category level. The Justice Center will issue a substantiated or unsubstantiated finding for each allegation associated with any person who is a subject.

How will I find out the results of an investigation?

If you are the **victim**, a letter of findings (called a “letter of determination”) will be issued to you or your personal representative. On the same date, the Justice Center will notify the director of your facility or program, the State Oversight Agency that licenses or certifies your facility or program, and the subject(s) (e.g., employee, volunteer, intern, consultant, contractor) of the outcome of the investigation. These same parties are notified whether the allegation is substantiated or unsubstantiated. If you are interviewed as a **witness**, you will not receive information about the investigative findings.

What does the notification about an “appeal” mean?

Subjects (e.g., employee, volunteer, intern, consultant, contractor) of a substantiated report of abuse or neglect have the right to challenge the findings and must do so within 40 days. Any substantiated report may be challenged, regardless of the category determination. Personal representatives of service recipients will be notified if a subject pursues the appeals process. A notification will also be sent after the appeals process indicating the findings. For more information on the appeals process for subjects, please visit the *Frequently Asked Questions for the Administrative Appeals Process*: www.justicecenter.ny.gov/investigations-prosecution/adjudication/admin-appeals-faq.

What happens to staff found responsible for a Category 1 offense?

The Justice Center maintains a statewide register known as the Staff Exclusion List (SEL) that contains the names of subjects (e.g., employee, volunteer, intern, consultant, contractor) found responsible for Category 1 offenses, which include certain serious acts of abuse or neglect. In addition, two Category 2 offenses within three years is elevated to a Category 1, and the subject is placed on the SEL. Individuals on the SEL will be prohibited from being hired by any state operated, certified or licensed agency or provider that serves people with special needs.

Service providers are required to check the SEL before hiring staff. The SEL is not a public list and only authorized individuals at provider agencies have access to the SEL as part of pre-employment screening.

FOR MORE INFORMATION

What assistance is provided by the Justice Center for individuals and families?

The Individual and Family Support Unit (IFSU) is a resource for victims of abuse or neglect, their families, personal representatives and guardians. IFSU advocates provide assistance in a variety of areas, including:

- guidance and information about the reporting and investigative process
- support during criminal cases and proceedings
- victim interview accompaniment
- case status updates

All services are free.

The Individual and Family Support Unit is staffed Monday to Friday, 8:30 a.m. to 4:30 p.m. To contact an advocate:

Call:	Toll-free at 1-800-624-4143 and request Individual and Family Support. Relay users, please dial 7-1-1 and give the operator 1-800-624-4143. Translation services are also available.
E-mail:	supportcoordinator@justicecenter.ny.gov
Fax:	(518) 457-5180
Web form:	www.justicecenter.ny.gov/contact-individual-and-family-support-unit

Where can I obtain assistance about disability-related issues and services?

The Justice Center's Information and Referral Unit is available for people who have questions or concerns about disability-related issues and connects individuals to the appropriate program or service. Information and Referral Unit representatives are available Monday to Friday, 8:30 a.m. to 4:30 p.m. Call toll-free 1-800-624-4143 or email infoassistance@justicecenter.ny.gov.

How can I report abuse or neglect?

To report abuse and neglect, call toll-free, 24/7, at 1-855-373-2122 or 1-855-373-2123 (TTY).

INCIDENT REVIEW PROCESS

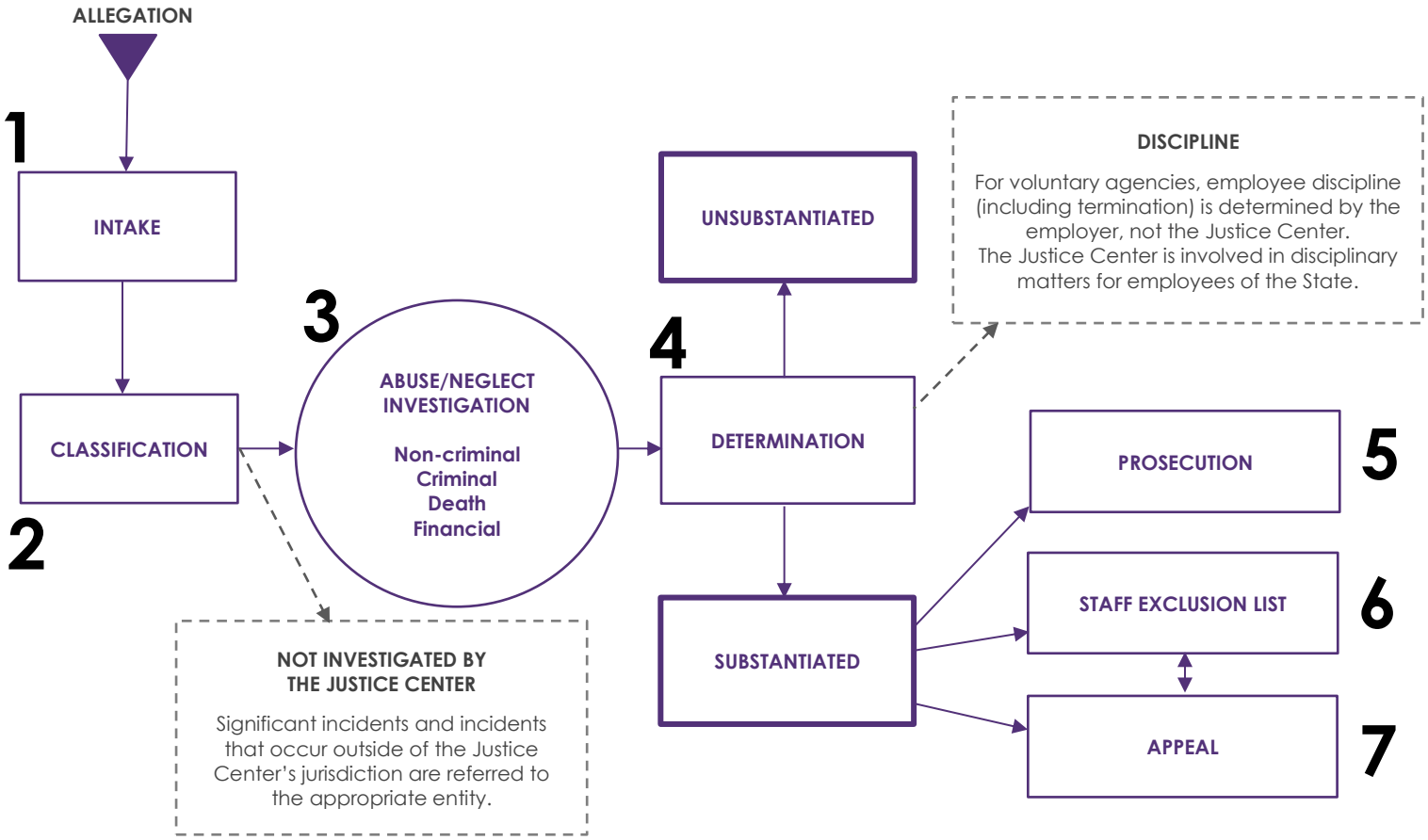
1 INTAKE An allegation is reported to the Vulnerable Persons Central Register.

2 CLASSIFICATION The allegation is classified as either a reportable incident (e.g., incident of abuse) or a non-reportable incident (e.g., general inquiry).

3 INVESTIGATION For abuse and neglect investigations, the Justice Center will assume the responsibility for investigating the most serious allegations and will delegate less severe incidents to the appropriate State Oversight Agency. If the Justice Center investigates, the case will be assigned to a Justice Center investigator.

4 DETERMINATION After the investigation of abuse or neglect is completed – regardless of whether the Justice Center, the State Oversight Agency, or the service provider completes the investigation – the Justice Center reviews the case and determines whether each allegation shall be **substantiated or unsubstantiated**. Reports that are unsubstantiated are immediately sealed. An unsubstantiated finding does not preclude other consequences, including disciplinary action.

5 PROSECUTION For substantiated criminal cases, prosecution may be pursued.

6 SEL Subjects with Category 1 findings will be placed on the Staff Exclusion List (SEL).

7 APPEAL Subjects have the right to challenge the findings of an investigation.