



Justice Center for the
Protection of People
with Special Needs

July 2016

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

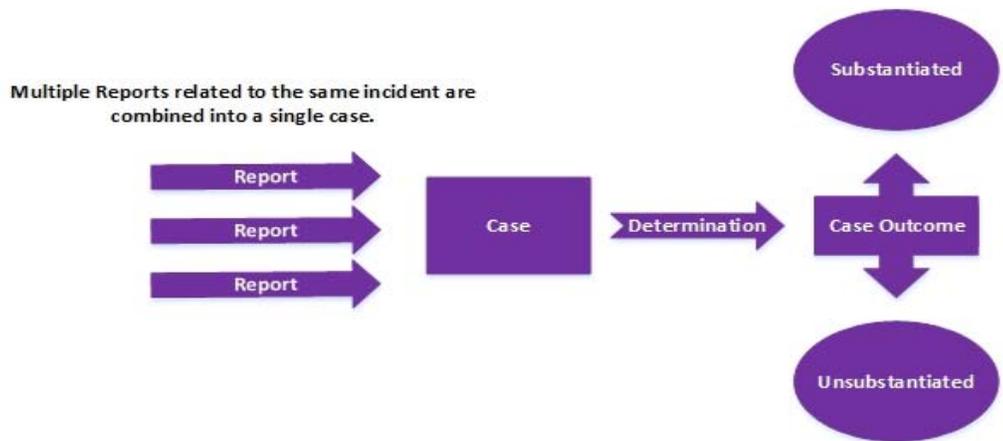
The Justice Center is responsible for ensuring the safety and well-being of adults and children, who due to physical or cognitive disabilities, or the need for services or placement, are receiving care from certain facilities or provider agencies that are licensed, operated, or certified within the systems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

- Office for People With Developmental Disabilities (OPWDD)
- Office of Mental Health (OMH)
- Office of Alcoholism and Substance Abuse Services (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



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 victim 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.

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.² 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 July | Total Active |
|---|--------------------|--------------|
| Total Active Abuse and Neglect Cases | 876 | 3,256 |
| State Operated | 196 | 622 |
| Non-State Operated | 680 | 2,634 |

reported to the Justice Center that falls under the agency's jurisdiction is fully investigated.

ON AVERAGE

34%

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

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 victims 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. These cases are classified as "No Justice Center Jurisdiction."

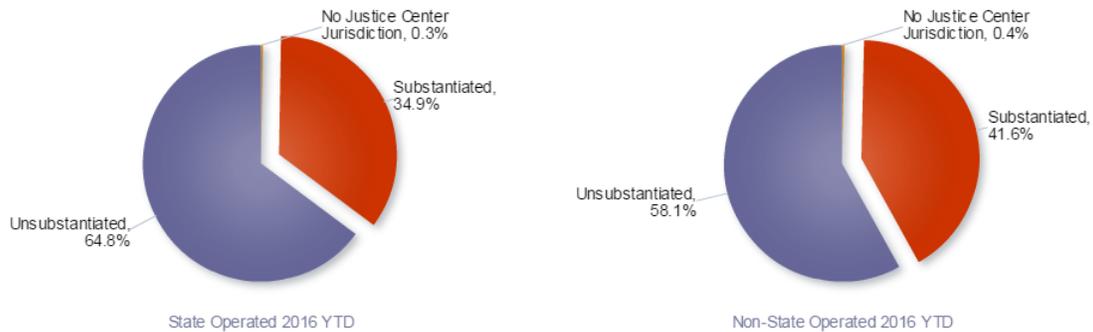
| | July | 2016 YTD |
|---|------------|--------------|
| Total Closed Abuse and Neglect Cases | 733 | 6,452 |
| State Operated Total | 163 | 1,695 |
| Substantiated | 51 | 591 |
| Unsubstantiated | 112 | 1,099 |
| No Justice Center Jurisdiction | 0 | 5 |
| Non-State Operated Total | 570 | 4,757 |
| Substantiated | 233 | 1,978 |
| Unsubstantiated | 335 | 2,762 |
| No Justice Center Jurisdiction | 2 | 17 |

During an investigation, a small percentage of cases are discovered to be outside of the jurisdiction of the Justice Center. These cases are classified as "No Justice Center Jurisdiction."

² OPWDD investigates allegations of abuse and neglect at Intermediate Care Facilities in compliance with 42 CFR 483.420(d)(4).

³ Rate of substantiation based on two year moving average.

Investigation Outcomes in State Operated and Non-State Operated facilities are similar for 2016⁴



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 a service recipient or if the conduct was *likely* to result in harm to the service recipient.

LESS THAN
1%

of individuals receiving services under the jurisdiction of the Justice Center are associated with a substantiated abuse or neglect case.⁵

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*.

⁴ Percentages in pie charts may not sum to 100% due to rounding.

⁵ Percentage based on the 1 million approximate individuals receiving services (ref. footnote 1). The 2015 data reflects substantiated cases with 6,140 victims and 4,971 subjects.

LESS THAN

4% 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 a service recipient; however, more often than not, category one conduct has resulted in harm.

| | July | 2016 YTD |
|---------------------------|----------|-----------|
| Category One Cases | 9 | 86 |
| State Operated | 1 | 17 |
| Non-State Operated | 8 | 69 |

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 a service recipient with a book, as that conduct constituted a conscious disregard of a substantial and unjustifiable risk of causing physical injury to the service recipient.

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

Additionally, the Justice Center has substantiated custodians for category one sexual abuse where the evidence established that the custodian had sexual contact with a service recipient 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 a service recipient by committing an act of abuse or neglect. Category two includes conduct that does not result in actual harm.

| | July | 2016 YTD |
|---------------------------|-----------|------------|
| Category Two Cases | 32 | 361 |
| State Operated | 7 | 97 |
| Non-State Operated | 25 | 264 |

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 service recipient subsequently obtained and used to elope. While the service recipient 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 service recipient.

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

Category Three: there is a preponderance of the evidence to establish every element of at least one of the eight types of abuse or neglect defined in the Social Services Law.⁶

| | July | 2016 YTD |
|-----------------------------|------------|--------------|
| Category Three Cases | 236 | 1,910 |
| State Operated | 43 | 420 |
| Non-State Operated | 193 | 1,490 |

Examples of category three conduct:

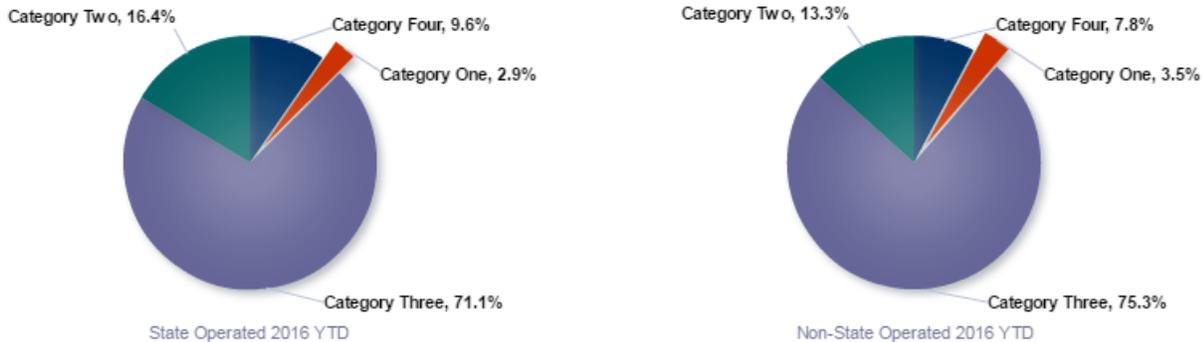
The Justice Center has substantiated custodians for category three neglect where the evidence established the custodian failed to follow protocols for transporting a service recipient between different areas of the facility, resulting in the whereabouts of that service recipient being unknown for several hours. Even though the service recipient 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 a service recipient, 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 service recipients 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 a service recipient has been substantiated, but the responsible person cannot be identified. Category four findings are made against organizations and providers, not individuals.

| | July | 2016 YTD |
|----------------------------|----------|------------|
| Category Four Cases | 7 | 211 |
| State Operated | 0 | 57 |
| Non-State Operated | 7 | 154 |

Investigation Categories in State Operated and Non-State Operated facilities are similar for 2016⁷



⁶ 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.

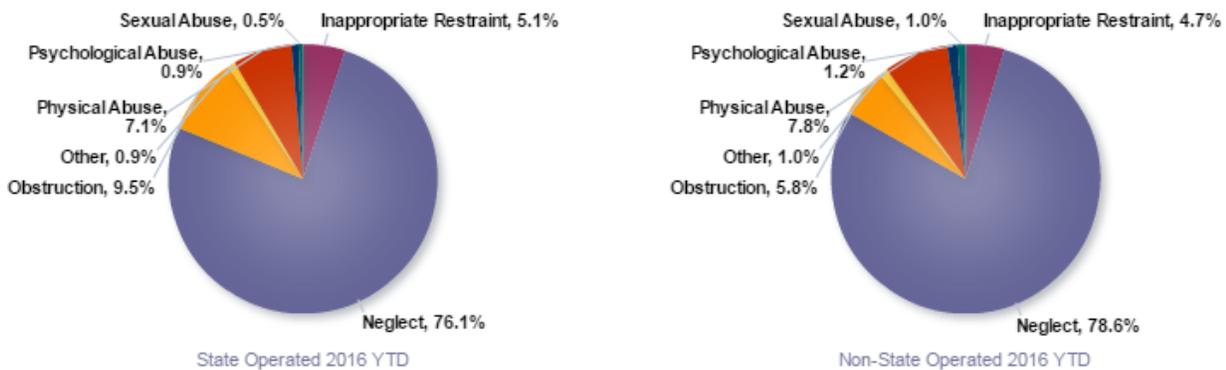
⁷ Percentages in pie charts may not sum to 100% due to rounding.

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.⁸

Offense Types in State Operated and Non-State Operated facilities for 2016⁹



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.

279

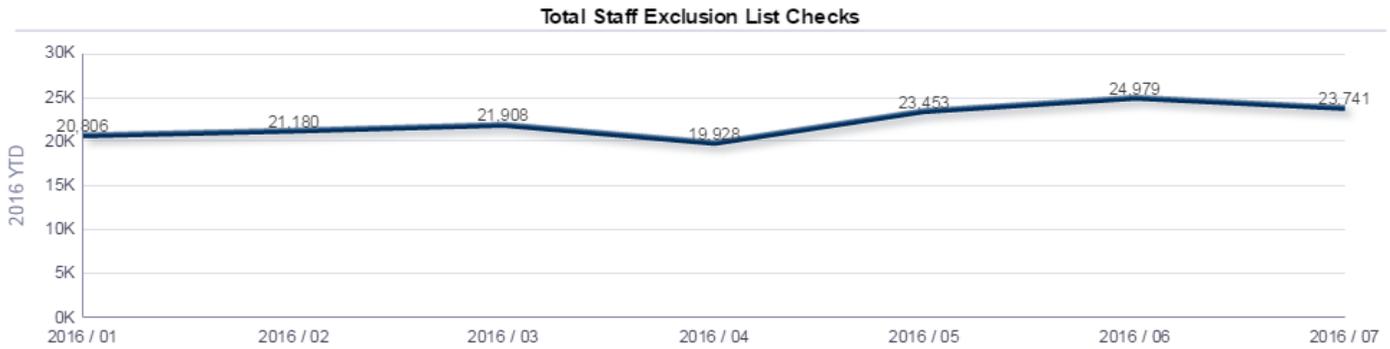
individuals have been placed on the Staff Exclusion List since June 30, 2013, preventing them from ever securing a position in an agency that serves vulnerable populations.

⁸ 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 a service recipient. 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.

⁹ Percentages in pie charts may not sum to 100% due to rounding.

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 a service recipient. This includes any employee, administrator, consultant, intern, volunteer or contractor applying for a position.



Criminal Prosecutions

The Justice Center Special Prosecutor is a unique enhancement, created to provide technical assistance to county district attorneys and to protect vulnerable populations by bringing criminal prosecutions when appropriate. The Special Prosecutor collaborates with Justice Center investigators, local law enforcement and county district attorneys across the state to bring charges and hold custodians who criminally endanger people with special needs under their care accountable.

If an investigation results in an arrest, either by the Justice Center or by other law enforcement agencies, Justice Center prosecutors are empowered to handle all aspects of criminal prosecutions from arraignment to trial or plea bargain. Justice Center prosecutors may also provide assistance as needed to local district attorneys. In addition to criminal penalties, defendants in criminal cases may face administrative penalties for substantiated abuse or neglect, including placement on the Staff Exclusion List (see Abuse and Neglect Case Outcomes), as well as disciplinary action.¹⁰

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

¹⁰ Disciplinary or other employment 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.

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 | July | 2016 YTD |
|--|--------------|-----------------|
| Total Fingerprints Processed | 7,619 | 53,517 |
| Total Applicants Reviewed | 928 | 7,241 |
| Denied Approval for Employment Consideration | 28 | 225 |

Death Cases

There are two types of death tracked by the Justice Center, each defined separately. The first type of death results from alleged abuse or neglect and is reported as abuse and neglect with a death involved (see Abuse and Neglect Cases). The second type, referred to as an *Administrative Death*, includes any death of a patient or resident in specific types of residential facilities.

Abuse or Neglect Cases with a Death Involved

A small sub-set of abuse and neglect cases involve the death of a service recipient. For every abuse and neglect case with a death involved, the Justice Center notifies the appropriate medical examiner or coroner and the appropriate District Attorney's office. These cases are investigated in the same manner as any other abuse or neglect case and as such are included in the section of this report regarding abuse and neglect cases and outcomes (see Abuse and Neglect Cases). So far in 2016, 45 abuse and neglect cases involved the death of a service recipient, of which 13 were substantiated. Even if an allegation of abuse or neglect is substantiated in one of these cases, the investigation may find that the service recipient's death was not a result of the alleged abuse and neglect. For example, the Justice Center has investigated cases in which service recipients have been found to have died during the night, and has substantiated subjects for neglect for failing to conduct required bed checks. If the investigation concludes that the service recipient died of a sudden medical event, and medical experts and/or coroners have concluded that it is unlikely that the subject could have prevented the death if the bed check had occurred, this conduct would typically be categorized as category three neglect. In other cases, however, the Justice Center has substantiated category two neglect when staff has failed to conduct required bed checks and, during the time the checks were not performed, the service recipient took steps to facilitate committing suicide and did commit suicide.

As with any other abuse or neglect case, substantiated allegations of abuse and neglect with a death involved may not rise to the level of criminality required for a prosecution under the Penal Law. Abuse and neglect cases that do meet the criteria established by the Penal Law are referred for prosecution (see Criminal Prosecutions).

Administrative Death Reviews

Executive Law §557 requires directors of residential facilities operated, licensed or certified by the Office for People With Developmental Disabilities, the Office of Mental

Health, the Office of Alcoholism and Substance Abuse Services, and the Office of Children and Family Services to report deaths of a patient or resident to the Justice Center. The officials in charge of these facilities, or their designee, must report all deaths of residents or patients to the Justice Center. These reports are also required for deaths of former patients and residents within 30 days after discharge. Should there be reasonable cause to believe such death be the result of alleged abuse or neglect, an additional report of abuse and neglect must also be made to the VPCR.

| Administrative Death (not Abuse or Neglect) | July | 2016 YTD |
|---|------------|--------------|
| Total Administrative Death Reviews Completed | 243 | 1,746 |
| State Operated | 51 | 310 |
| Non-State Operated | 192 | 1,436 |

Executive Law §555 establishes a Medical Review Board within the Justice Center, and section §556 defines its powers and duties - among them to make preliminary determinations whether an administrative death in a residential facility is unusual or reasonably appears to have resulted from other than natural causes and warrants investigation.

All administrative death reports are reviewed by the Justice Center Death Review Unit, comprised of investigators with program experience and health care professionals, including registered nurses. 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 service recipients and prevent the recurrences of similar issues.

Once the death review unit receives a report, an initial assessment is made to determine the need for further information, for example: information necessary to verify that the death occurred in a residential program required to report administrative death as well as autopsy and/or death certificates. Upon review of this information, the death review unit will:

1. Close the case with a summary report based on a determination that the documentary evidence supports that the death was from natural or expected causes. The vast majority of administrative death reports are closed in this manner; or
2. Obtain additional documentation, including clinical information, and consult with the Justice Center's Medical Review Board to determine whether the causes of and circumstances surrounding the death are unusual and/or whether any quality of care issues may have contributed to the death. If so, a full report is made, including recommendations for corrective actions; or
3. Commence a full investigation of the circumstances of any death for which there is reasonable cause to suspect abuse or neglect may have been involved; this type of investigation will result in findings as to whether abuse or neglect can be substantiated by a preponderance of the evidence, and may result in any type of sanction available in any abuse or neglect case (e.g., placement on the Staff Exclusion List, criminal charges, discipline of the employee).