



# Justice Center for the Protection of People with Special Needs

## What to Expect if You Are Involved in a Justice Center Investigation Guidance for Staff and Volunteers

August 2018

## 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, certified, or licensed by OPWDD

### **Office of Mental Health (OMH)**

- Facilities and programs that are operated, certified, or licensed by OMH

### **Office of Addiction Services and Supports (OASAS)**

- Facilities and programs 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)**

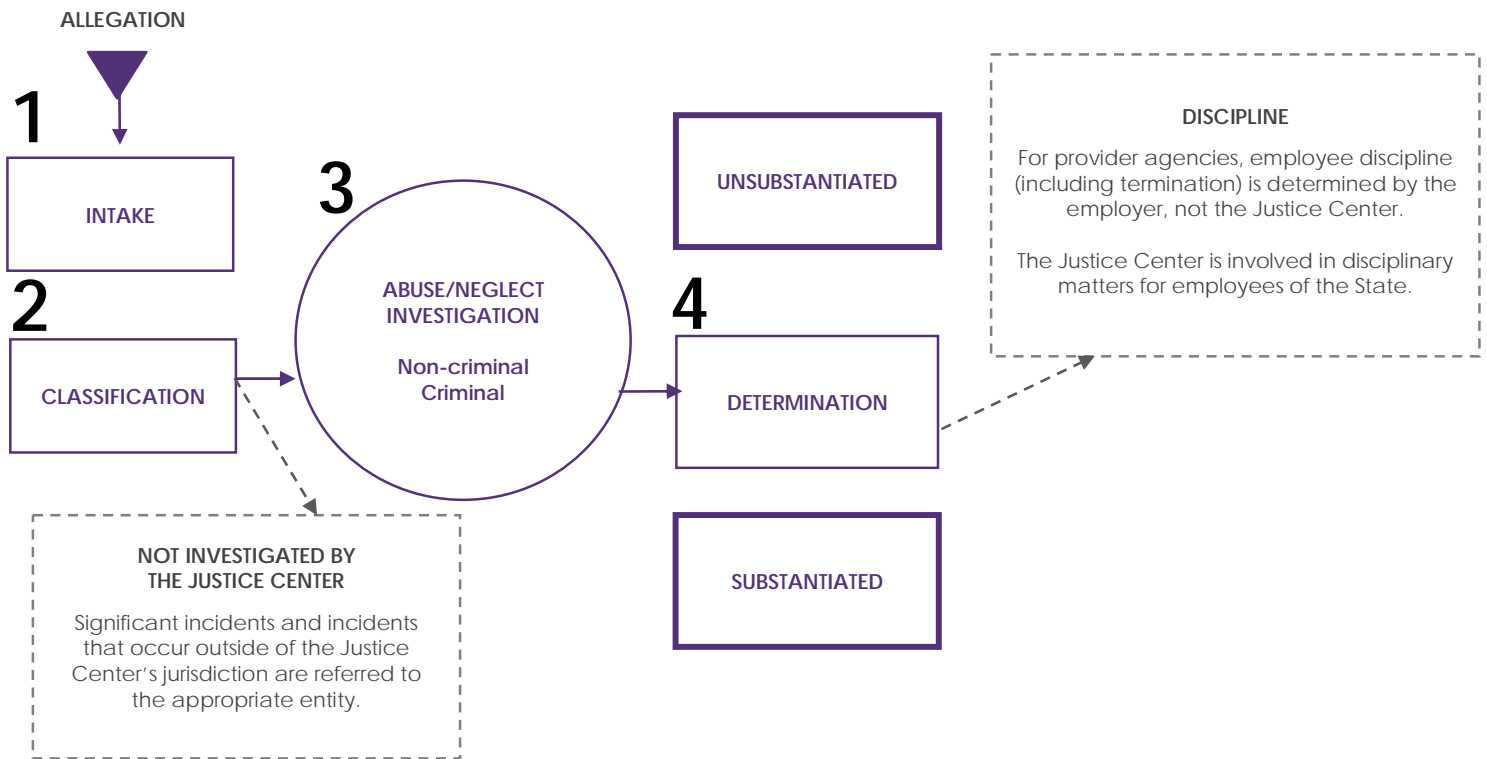
- Adult care facilities licensed by DOH that have over 80 beds, and where at least 25% of the residents are persons with serious mental illness and where fewer than 55% of beds are designated as Assisted Living Program beds
- Overnight, summer day and traveling summer day camps for children with developmental 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 that 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 on 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. The Justice Center also does not investigate allegations of significant incidents. Significant incidents are delegated to the appropriate State Oversight Agency for review. If you are involved in a Justice Center investigation, either as a subject or as a witness, the following information explains the reporting and investigation process, the appeals process, and how to obtain additional information.

## Process of a Justice Center Investigation



## MAKING A REPORT

### Who can report an allegation of abuse or neglect?

Anyone can make a report to the Vulnerable Persons' Central Register (VPCR) 24-hour, toll-free hotline at 1-855-373-2122. However, some people are required to report to the VPCR due to the nature of their jobs. These "mandated reporters" include direct support and human service professionals. Reportable incidents include allegations of abuse and neglect and significant incidents.

### When should mandated reporters contact the VPCR?

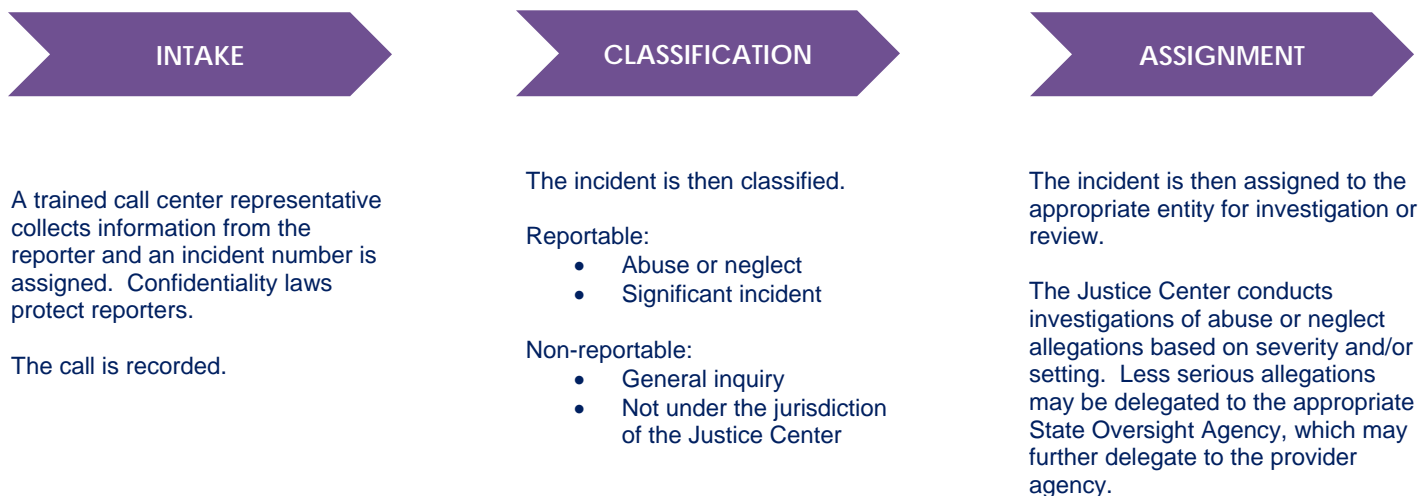
Whenever a mandated reporter has reasonable cause to suspect a reportable incident occurred, he or she is required to immediately report to the VPCR. Reporting may be delayed to ensure the safety of staff and people receiving services, including calling 9-1-1. However, a report must be made to the VPCR within 24 hours of the mandated reporter's discovery of a reportable incident. For more information on the requirements of mandated reporters, please visit [www.justicecenter.ny.gov](http://www.justicecenter.ny.gov).

### 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.



## DURING THE INVESTIGATION

### **The importance of being truthful.**

It is important not to provide false documentation or information during an investigation. This applies to everyone involved in an investigation, both witnesses and subjects. Interfering with the discovery, reporting or investigation of abuse or neglect, falsifying records or intentionally making false statements is obstruction and may cause a witness to become a subject of an investigation.

### **Who can be questioned during an investigation?**

Investigators will question subjects (e.g., employee, volunteer, intern, consultant, contractor) who are alleged to have committed the act of abuse or neglect as well as people who receive services who may have been victims or witnesses, and other people who witnessed or may otherwise have information about an incident. Only staff may be considered to be subjects of an investigation, not service recipients. All interviews and interrogations conducted by the Justice Center are recorded.

### **How will I know if I am the subject of an investigation?**

If you are a subject in an abuse or neglect investigation that is being conducted by the Justice Center, you will generally receive written notification from the Justice Center that you are the subject of the investigation. This notification will include either an incident or case serial number from the VPCR. Please use this incident number or case serial number when seeking information from the Justice Center about the investigation. If you are unsure about your status in an investigation, you should ask the investigator at the interview.

### **What can I expect if I am a subject of an investigation?**

If you have been identified as a subject of an allegation of abuse or neglect reported to the Justice Center, you can expect to be questioned as part of the investigation. Justice Center investigators will obtain and review documentation, interview witnesses and give you an opportunity to explain the allegations made against you.

### **What can I expect if I am interviewed as a witness?**

If you are a witness to or may have information relevant to an incident of abuse or neglect, you may be interviewed by Justice Center investigators. The purpose of the interview is to learn what you know about the incident that was reported to the Justice Center. In most cases, your employer will notify you of the location, date, and time of the interview.

### **Can I have representation or legal counsel with me during questioning?**

If you are a member of a union and your collective bargaining agreement provides for legal counsel or a union representative to be present during questioning for non-criminal investigations, the Justice Center will follow the rights in your collective bargaining agreement. Please contact your union representative or your employer, if you have questions about what is permitted in your collective bargaining agreement or contract.

If you are not a member of a union, you may have an attorney accompany you during questioning. In order to protect your interests, the Justice Center will take steps to ensure that you are aware of any conflicts the attorney representing you may have (e.g., if the attorney representing you also works for your employer).

In any criminal investigation, you have certain constitutional rights, which may include a right to have legal counsel present under some circumstances. The Justice Center will respect, and advise you of, those constitutional rights as required by law.

## **What happens during a criminal investigation?**

Allegations that rise to the level of a criminal offense are prosecuted by the Justice Center's Special Prosecutor/Inspector General or the local District Attorney. Some criminal cases are jointly prosecuted by the Justice Center and the local District Attorney.

## AFTER THE INVESTIGATION IS COMPLETED

### **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.

### **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 the evidence to support the allegation. Preponderance of the evidence means that a review of the evidence shows that the allegation of abuse and/or neglect was more likely than not to have occurred. If there is not a preponderance of the evidence, an allegation of abuse or neglect must be unsubstantiated. Substantiated allegations of abuse or neglect are classified into one of four categories depending on the severity. Unsubstantiated allegations are not made public and cannot be accessed by future employers.

### **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 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 by your employer.

## CATEGORY LEVELS

**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 offenses are sealed after five years and are not publicly available.

**Category 3:** Less serious incidents of abuse or neglect. Reports are sealed after five years. Future employers do not receive any information about these incidents and they are not publicly available.

**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.

### How will I find out the results of an investigation?

If you are the subject of an investigation, a letter of determination will be mailed to your residential address. On the same date, the Justice Center will notify the director of your facility or provider agency, the State Oversight Agency that licenses or certifies your facility or agency, the service recipient named as a victim in the investigation and/or their personal representative<sup>1</sup> of the outcome of the investigation. A notification is made whether the allegation is substantiated or unsubstantiated.

### Who has access to information about the investigation?

State law provides for confidentiality protections and identifies who can obtain records pertaining to substantiated and unsubstantiated reports. The Justice Center's records of investigations are confidential, but can be given to certain authorized persons, including the subject of the investigation.

### What happens if I am 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 custodians (e.g., employee, volunteer, intern, consultant, contractor) found responsible for Category 1 offenses, which include certain serious or repeated acts of abuse or

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<sup>1</sup> **Social Services Law section 488 (10)** "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



neglect. Individuals on the Staff Exclusion List are prohibited from being hired by any state operated, certified or licensed provider agencies or providers that serve people with special needs.

## **How will I know if I have been placed on the Staff Exclusion List (SEL)?**

The letter of determination you receive at the conclusion of an investigation will tell you if you have been found responsible for a Category 1 substantiated offense and, if so, that you have been placed on the SEL.

## RIGHT TO APPEAL

If you are the subject of a substantiated report of abuse or neglect, you have the right to challenge the findings within 30 days. Any substantiated report may be challenged, regardless of the category determination. Information about the appeals process will be included in your findings letter.

### **Step 1: Administrative Review**

The first step is to submit a written request for an administrative review. The Justice Center reviews the record on appeal which includes: the investigative file; substantiated report; your request for amendment; and any additional evidence you submit.

The Justice Center determines whether there is a preponderance of the evidence to uphold the finding that you committed an act or acts of abuse or neglect as indicated in the substantiated report. If the report of abuse or neglect is substantiated, you have the right to a hearing before an Administrative Law Judge (see Step 2). If the report of abuse or neglect is unsubstantiated, the report will be sealed.

### **Step 2: Administrative Hearing**

After the Justice Center's review, if the report remains substantiated, you have the right to a hearing before an Administrative Law Judge. You may retain counsel for the pre-hearing conference and the hearing. At the hearing, the Justice Center will be required to produce evidence to support the findings of the investigation. The questions to be addressed at the hearing are whether there is a preponderance of the evidence to support a finding of abuse or neglect, and the category level of abuse or neglect.

At the conclusion of the hearing, the Administrative Law Judge will issue a report and recommendation to the Executive Director of the Justice Center. The Executive Director or his/her designee will make a final determination (issued in the form of an Order), which is not subject to further administrative review.

You can appeal this decision by bringing an Article 78 proceeding of the New York Civil Practice Law and Rules which establishes the procedure for challenging administrative determinations.

For more information, please visit the *What I Need to Know About the Appeals Process*, available at [www.justicecenter.ny.gov](http://www.justicecenter.ny.gov).

## FOR MORE INFORMATION

## How do I get more information?

For more information, please visit the Justice Center's website at [www.justicecenter.ny.gov](http://www.justicecenter.ny.gov) or call 518-549-0200 Monday to Friday, from 9:00 am to 5:00 pm.

## How can I report abuse or neglect?

To report abuse and neglect, call the Justice Center's toll-free hotline, 24/7 at 1-855-373-2122.

## 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, neglect or a significant incident) or a non-reportable incident (e.g., general inquiry).
- 3 INVESTIGATION** The Justice Center conducts investigations of abuse or neglect allegations based on severity and/or setting. Less serious allegations may be delegated to the appropriate State Oversight Agency, which may further delegate to the provider agency.
- 4 DETERMINATION** After the investigation of an allegation of abuse or neglect is completed – regardless of whether the Justice Center, the State Oversight Agency, or the provider agency completes the investigation – the Justice Center reviews the investigation and determines whether each allegation should be substantiated or unsubstantiated. Reports that are unsubstantiated are immediately sealed. An unsubstantiated finding does not preclude other consequences, including disciplinary action.