



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

**KATHY HOCHUL**  
Governor

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Executive Director

### **NYS Justice Center for the Protection of People with Special Needs Advisory Council Meeting Summary January 20, 2022**

*Advisory Council Members Present:* William Gettman (Chair), Denise Figueroa, Jason Hershberger, Jeremy Klemanski, Glenn Liebman, Joe Macbeth, Tom McAlvanah, Delores McFadden, Megan O'Connor, Kathy O'Keefe, Judith O'Rourke, Harvey Rosenthal, and Euphemia Strauchn

*Advisory Council Members Not Present:* Norwig Debye-Saxinger, Walt Joseph, Ronald Lehrer, Clint Perrin, Jeff Savoy, Mary St. Mark

*Justice Center Staff Present:* Christine Buttigieg, Director of Communications, Laura Darman, Executive Deputy Director, Denise Miranda, Executive Director, Erin Lynch, Special Counsel, Davin Robinson, Deputy Director Outreach, Prevention and Support, Jody Signoracci, Assistant Director, Outreach, Prevention and Support

#### **I. Justice Center Updates**

##### Justice Center and State Oversight Agency Staff Changes

There are two new commissioners at state agencies under the Justice Center's jurisdiction. Keri Neifeld is the Commissioner at the NYS Office for People With Developmental Disabilities and Chinazo Cunningham is the new Commissioner at the NYS Office of Addiction Services and Supports. The Justice Center has been meeting with both new commissioners.

The Justice Center has a new General Counsel, Christa Book. Ms. Book has worked in several roles at the Justice Center including most recently as the chief of investigations.

The Justice Center forensic unit, responsible for oversight of mental health services and compliance with the recently enacted HALT legislation to limit the use of solitary confinement, is in the process of hiring five additional staff.

##### Justice Center Process Improvements in 2021

###### *New Prevention Resources*

In 2021, the Justice Center developed the new toolkit "Best Practices for Body Checks". This toolkit provides information and resources to support the safety of people who are unable or require assistance to identify and report illness, injury, abuse, or neglect. Case studies are included to assist in provider agency training about the importance of body checks. Guidance is also provided on documenting findings and seeking medical assistance when required.

The Justice Center took one of our most popular Spotlight toolkits, "Maintaining Professional Boundaries", and created an online training for agency staff. Professional Boundaries are the framework within which the relationship between the service provider and the individual receiving

services occurs. This framework ensures that the relationship is professional and safe for the individual and sets parameters for services. Professional Boundaries along with the Justice Center Code of Conduct are critical tools for preventing abuse and neglect. Justice Center staff have been providing in-person training on this critical topic to state oversight and provider agency staff. In response to increasing demand for this training, the Justice Center developed an online, interactive training that can be viewed by individuals or can be used to facilitate a group discussion.

#### *Creation of Incident Management Unit*

The Justice Center created the Incident Management Unit (IMU) in 2021 to provide separation between the classification and investigation functions of the agency. The development of the unit streamlines the intake and classification process flow, allows for collaborative trainings and quality assurance efforts, centralizes reporting, and allows for centralized communications with internal and external stakeholders.

#### *Investigation Strategy Memo*

The Justice Center began issuing an investigation strategy memo for cases delegated to a State Oversight Agency for investigation beginning on February 1, 2021. The memo includes information about the required components of an investigation and the specific evidence that must be included when it is submitted back to the Justice Center for review. The memo also serves to increase communication between the agencies conducting delegated investigations and the Justice Center. As a result of these strategy memos the Justice Center has already seen a decrease in quality issues related to delegated investigations.

#### *Diversity, Equity, and Inclusion Strategy*

The Justice Center leadership team attended a Diversity, Equity, and Inclusion Strategy session in October. The session centered around understanding the complex dynamics underlying diversity challenges and opportunities within the agency. The course focused on improving engagement, counteracting unconscious bias, and fostering an inclusive climate. The leadership team created action plans that will be implemented by leadership and the Justice Center's Anti-Racism Workgroup.

#### *Transparency Plan*

The Justice Center began a comprehensive review of all agency policies related to transparency in September of 2021 and published a plan to increase transparency. The plan can be found on the agency website in the pressroom tab. As part of this plan, Advisory Council summaries will be published on the website. Summaries from 2021 Advisory Council meetings are currently available on the agency website. Additional data points and multi-agency systemic reviews will also be available on the Justice Center website.

#### *Justice Center Advisory Group Meeting in April 2022*

The Justice Center benefits from the advice and guidance of the three advisory bodies described below. There will be a joint meeting of these groups on April 7, 2022. During this meeting, each advisory body will have an opportunity to share their priorities and goals for 2022. The meeting will be held via Webex.

#### Justice Center Advisory Bodies:

1. Advisory Council - The Justice Center's Advisory Council provides guidance to the agency in the development of policies, programs, and regulations. Members include service providers, people who have or are currently receiving services, their family members, and advocates. At least half of the members must be individuals, or parents or relatives of individuals, who are receiving or have received services from programs under Justice Center jurisdiction.

2. Medical Review Board (MRB) - The Justice Center Medical Review Board (MRB) advises on cases as needed or warranted. The Board consists of up to 15 physicians with expertise in forensic pathology, psychiatry, internal medicine, and addiction medicine. The MRB is called upon for all full death reviews to give an opinion on whether the standard of care was met for the deceased. The MRB can also consult or perform a full review for any abuse and neglect cases with death involved upon request of an investigator.

3. Psychiatric Correctional Advisory Committee - The SHU Exclusion Law authorized the creation of this committee to, among other things, make recommendations about improvements to prison-based mental health care.

#### *Justice Center Operations Highlights for 2021*

There were over 90,000 reports made to the Justice Center in 2021 including 11,766 reports of abuse and neglect. In addition, the Protection of People with Special Needs Act requires the deaths of all individuals receiving services from a residential facility or program licensed, certified, or operated by OPWDD, OMH, OASAS or OCFS to be reported to the Justice Center. The death of any individual who received services from the above facilities in the 30 days prior to their death must also be reported. In 2021, the Justice Center received 1,749 reports of the death of a person receiving services. Most of the deaths reported to the Justice Center do not involve allegations of abuse and neglect.

The average case cycle time for Justice Center led investigations was 88 days and 49% of Justice Center led investigations closed within 60 days in 2021. Improving case cycle time remains a top priority for the agency in 2022.

The Justice Center performed nearly 224 CAP audits and ran more than 87,000 criminal background checks of prospective employees of provider agencies in 2021.

#### *SHU Exclusion Monitoring*

The Justice Center oversees compliance with the SHU Exclusion Law and monitors the quality of mental health care provided by the Office of Mental Health (OMH) to people who are incarcerated in state prisons.

The Justice Center reviewed the mental health care provided to incarcerated individuals who are placed in solitary confinement in SHUs in 12 facilities in 2021. In total, the Justice Center completed 436 cell-side and 62 private interviews with incarcerated individuals and referred 56 of those individuals to be evaluated by OMH. The agency also reviewed the quality of mental health care for 169 incarcerated individuals. In addition, the agency reviewed the records of over 197 incarcerated individuals placed in solitary confinement to determine if they received mental health care and assessments in accordance with the requirements of the SHU Exclusion Law. The Justice Center found that seven of the twelve Special Housing Units reviewed were following the SHU Exclusion Law.

The Justice Center also conducted a review of the quality of mental health treatment, programming, informational reports, and disciplinary sanctions received by 330 incarcerated individuals who were housed in an Intermediate Care Program (ICP) between November 2017 to July 2019. The ICP is intended to be a therapeutic community providing rehabilitative services to individuals who are incarcerated and are unable to function in general population because of their mental illness. The goal of the program is to improve a person's ability to function through programming and treatment so that they may return to general population and the community.

The Justice Center found that ICPs, when fully staffed and when OMH and DOCCS staff collaborate, provide a therapeutic environment for individuals who are incarcerated and diagnosed with a serious mental illness. However, there were significant variations in the frequency of disciplinary actions at ICPs,

including the type of sanctions imposed, and the length of time incarcerated individuals in the ICP received a segregated confinement sanction.

In 2021, the Justice Center also began preparations to implement provisions in the Humane Alternatives to Long-Term Solitary Confinement Act (HALT). The legislation will increase the agency's oversight responsibilities in 2022 to include all New York State prisons. It also expands the areas the Justice Center must assess to determine compliance. In 2021, the agency began meeting with OMH, Department of Corrections and Community Supervision, and advocates about implementation. Site visit policies are under evaluation for any needed revision.

### *Outreach*

The Justice Center made more than 50 presentations to stakeholders, including provider agencies and direct care staff and held family engagement sessions with more than 500 participants. The Justice Center will conduct a virtual statewide conference to be held in April 2022.

## **II. Justice Center Prevention Committee Update**

The Justice Center's internal abuse prevention committee charged with identifying preventative actions that can address conditions that cause or contribute to incidents of abuse and neglect held meetings in December 2021. During these meetings, the committee received updates and trends from the Justice Center Sexual Abuse Response Team, trends from abuse and neglect cases with a death involved, improvements in the investigations of injuries of unknown origins and an update on 2021 abuse prevention projects.

Each year, the Justice Center sexual abuse response team investigates approximately 600 cases involving allegations of sexual abuse. In 2021, 21 percent of the cases reviewed by this team were substantiated. Most of the substantiated cases were substantiated for neglect, primarily for failure to maintain professional boundaries.

In 2021, the Justice Center closed 66 abuse and neglect cases with a death involved and 21 of those cases had at least one allegation of neglect substantiated. There was only one case in which the neglect directly caused the death of the person receiving services. In ten cases, neglect was not a direct cause of death but contributed in some way and the in the remainder the neglect was either unrelated or undetermined if there was a causal connection between the neglect and the death. The most frequent types of neglect were inadequate medical care, choking on food and failure to do checks as required.

The Justice Center has developed many resources for investigators who are investigating injuries of unknown origin. The Justice Center defines an injury of unknown origin as an injury that either wasn't witnessed and/or can't be reasonably explained by the victim or others and raises the suspicion for abuse and neglect. These resources include recorded trainings, case worksheets and guidance on a variety of topics. There is also a peer consult and review committee for Justice Center led investigations into injuries of unknown origins.

In 2021, the Justice Center developed an internal abuse prevention resource guide to help investigators refer provider agencies to our prevention materials when appropriate. A link to the Justice Center's abuse prevention resources web page is now included in all the Justice Center's letters of determination concerning abuse and neglect allegations as well as CAP audits. The Justice Center also developed web-based interactive training for maintaining professional boundaries. Two new prevention tool kits were developed: Best Practices for Body Checks and CAP Audit Guidance.

The Justice Center regularly evaluates case data for trends that can ultimately guide needed safety improvements. Recently, the Justice Center requested that OPWDD issue an alert and guidance to the field regarding the importance of following manufacturer instructions on Hoyer lifts after noticing a series of injuries related to their use. At OPWDD's request, the Justice Center sent two years of data on incidents involving these specific lifts in OPWDD settings. OPWDD subsequently issued a Health and Safety Alert to the field titled "Important Information About the Use of Mechanical Lifts". The alert provides recommendations on implementing policies and procedures in keeping with NYS Safe Patient Handling Law and the FDA that include safe mechanical lift operation, equipment maintenance, staff training, and periodic review and revision of the policies and procedures.

In 2022, the abuse prevention committee will develop a best practice for medical care toolkit, complete a systemic review of choking incidents and develop best practices for supervision.

### **III. Overview of the Code of Ethics in Public Officers Law Section 74**

Even though members of the advisory council are not considered to be public officers under the law, it is important for members to be aware the standards of conduct and the potential for a conflict of interest. An overview of the standards included in the law was provided. Questions about conflicts or other activities that an advisory council member is concerned about should be directed to the Justice Center's ethics officer, Deirdre Keating.

### **IV. Legislation and Regulations Committee**

The committee met in November and received an overview of the four legislative proposals the Justice Center submitted to the Governor's office for consideration. A summary of the bills follows below. The Omnibus bill (NYCJ 01) is the result of outreach to stakeholders and our experience receiving, investigating, and making determinations regarding allegations of abuse and neglect. If approved by the Governor's office, these proposals will be submitted to the legislature in March of 2022.

1. NYJC 01: The omnibus bill that amends the Protection of People with Special Needs Act to, among other things, add the authority for the Justice Center to offer an expedited resolution for certain cases involving neglect where there was no serious injury or likelihood thereof to speed up the implementation of corrective and remedial measures without requiring a full investigation.
2. NYJC 02: Provides that consent for orders not to resuscitate (DNRs) obtained through the Surrogate Decision-Making Committee may be signed electronically.
3. NYJC 03: Provides that the Justice Center may enter a memorandum of understanding with one or more agencies required to perform a single criminal background check for prospective employees of certain providers.
4. NYJC 04: Expands notification of category two offenses to all SOAs under JC jurisdiction.

### **V. Workforce Issues**

The committee met in October and discussed the 2021 Code of Conduct award ceremony that was held in September. It was agreed that the ceremony would be virtual in the years to come since it allows for maximum participation for the winners and their colleagues.

The committee had a wide-ranging discussion about the difficulties provider agencies are having recruiting and keeping staff. The committee agreed that the Advisory Council should send a letter to the Governor requesting that a 5.4% cost of living increase for all human service workers be included in the 2022 budget. It was noted that the letter was sent in November and the Governor's proposed budget includes the 5.4% cost of living increase as well as retention bonuses.

## **VI. Abuse Prevention Committee**

The Abuse Prevention committee met in January and received an overview of the Justice Center Prevention Committee meetings held in December.

## **VII. Investigator and Law Enforcement Training Committee**

The Justice Center completed its annual in-service training virtually over the course of three days in September. Many staff members attended the sessions, and the most widely attended session had 230 people in attendance. A total of 44 staff from across the agency participated in the development of this year's curriculum and committee member Jason Hershberger assisted in the development and delivery of a session on mental illness. At the time of the meeting, 137 staff responded to a satisfaction survey and 60% of those responded gave positive feedback.

One of the most popular sessions was the use of photographic evidence. Plans are underway to do similar session for state oversight and provider agencies early next year. The Justice Center will also be posting this session on its website in response to this committee's recommendation to share sessions non-Justice Center investigators.

**Next Meeting  
April 7, 2022**