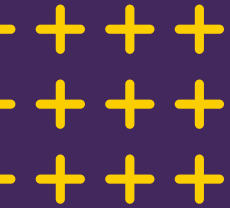




Justice Center for the
Protection of People
with Special Needs



Reporting and Investigations
Guidance for

INDIVIDUALS & FAMILIES

justicecenter.ny.gov



OUR VISION

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

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.

Prevention, investigation, and accountability are the keys to safeguarding vulnerable populations in New York.



OUR 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

Safeguarding 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 Protection of People with Special Needs Act established the Justice Center for the Protection of People with Special Needs as an executive agency responsible for protecting the safety and well-being of the approximately 1 million 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 by six state agencies. These agencies include:

1 Office for People with Developmental Disabilities (OPWDD)

2 Office of Mental Health (OMH)

3 Office of Addiction Services and Supports (OASAS)

4 Office of Children and Family Services (OCFS)

- Facilities and programs operated by OCFS for the youth placed in the custody of the Commissioner of OCFS
- OCFS licensed or certified residential facilities that care for children and youth.
- Family-type homes for adults
- OCFS certified runaway and homeless youth programs
- OCFS certified youth detention facilities
- Specialized-secure detention for pre-adjudicated adolescent offenders jointly administered by designated county agency and the county sheriff

5 Department of Health (DOH)

- Overnight and traveling summer day camps for children with developmental disabilities under DOH jurisdiction and certain adult homes that meet census criteria for the number of beds and percentage of residents with serious mental illness.



6 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

MAKING A REPORT

Who can make a report of abuse and/or neglect?

Anyone, including a parent or guardian, advocate, or person receiving services can make a report to the Justice Center's Vulnerable Persons Central Register (VPCR) when they have knowledge or have reason to believe that a person receiving services has been abused, neglected or mistreated. Some people are required by law to report to the Justice Center. These "mandated reporters" include provider agency staff and human services professionals who, by nature of their job, must report allegations of abuse or neglect.

Can I find out who called in a report to the Justice Center?

The Justice Center cannot release the name of any person involved in an investigation, including the person who made the report.

What happens when I make a report?

All calls are answered by a trained Justice Center staff member. At the end of the call, you will receive a confirmation number. Please use this number if you have additional information or questions for the Justice Center about the report.

Anyone can report abuse or neglect to the Justice Center. Simply dial 1-855-373-2122 – our call center representatives are available 24/7.



INTAKE

Justice Center staff are available 24 hours a day, seven days a week, 365 days a year to receive reports. The number to contact the toll-free hotline to make a report is 855-373-2122. A web-based reporting form and a mobile application are also available for use.

In the event of an emergency, the caller is instructed to hang up and call 9-1-1. The reporter should then call back once the emergency is over to file the report. If no emergency exists, the call center representative will collect information from the reporter and assign an incident number.

CLASSIFICATION

Once the allegation is assigned an incident number, it is then classified into one of the following categories:

Abuse

- Physical: intentional contact (hitting, kicking, shoving, etc.), corporal punishment, injury which cannot be explained and is suspicious due to extent or location, the number of injuries at one time or the frequency over time
- Psychological: taunting, name calling, using threatening words or gestures
- Sexual: includes inappropriate touching, sexual assault, and sexual contact with a person incapable of consent
- Deliberate misuse of restraint: use of these interventions with excessive force, as a punishment or for the convenience of staff
- Controlled substances: using, administering, or providing any controlled substance contrary to the law
- Aversive conditioning: unpleasant physical stimulus used to modify behavior without person-specific legal authorization.

Neglect

Any breach of a direct care employee's duty which includes action, inaction, or lack of attention on the part of the employee that results in or is likely to result in physical injury or serious impairment to the person's physical, mental, or emotional condition.

Death

The Protection of People with Special Needs Act requires certain deaths be reported to the Justice Center. These include the death of an individual receiving services from a residential facility or program that is licensed, certified, or operated by OPWDD, OCFS, OMH and OASAS.

Significant Incident

Incidents other than an incident of abuse or neglect that, because of its severity or the sensitivity of the situation, may result in or has the reasonably foreseeable potential to result in harm to the health, safety or welfare of a person receiving services. Examples include conduct between persons receiving services and conduct of an employee that is inconsistent with an individual's treatment plan.

Non-NYJC Incident

The nature of the incident is not reportable to the Justice Center because the incident is not a reportable incident or because it did not occur at a provider over which the Justice Center has jurisdiction. Cases that require follow-up are referred to the appropriate State Agency.

Not an Incident

Calls that do not allege any type of incident but instead may be general inquiries or incorrectly routed calls. The Justice Center will refer to a relevant agency or entity if available.

ASSIGNMENT

The incident is then assigned for investigation or review. The Justice Center conducts investigations of abuse and neglect allegations based on severity and setting. Less serious incidents may be assigned to the appropriate State Agency (e.g. OPWDD, OMH) which may delegate the investigation to the provider agency. The Justice Center also investigates any abuse and neglect allegations concerning the death of a person receiving services.

DURING THE INVESTIGATION

Who can be interviewed during an investigation?

Investigators may interview anyone who has knowledge or information about the allegation(s). This can include people receiving services, employees, volunteers, interns, consultants, contractors, subjects and family members.

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

The facility or provider agency should let you know within 24 hours if you are identified as a victim in an allegation of abuse and neglect.

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

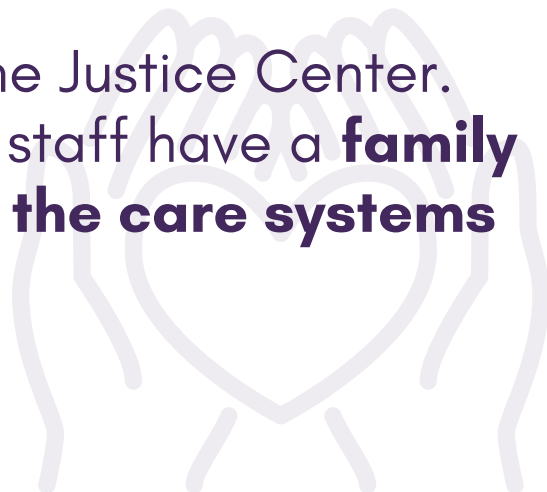
The purpose of the interview is to learn what you know about what happened. Your interview is voluntary.

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

What type of support is available to me?

The Justice Center has advocates available to help victims and their families. During the interview you may take breaks, receive any appropriate accommodations, receive clarification if you do not understand something, and receive any additional support.

This work is very personal to the Justice Center. **Roughly 40%** of the agency's staff have a **family member** receiving services **in the care systems** under our jurisdiction.



Do parents, guardians, and/or any person legally responsible for an individual receive notification when a report has been made?

Yes. The program or provider agency notifies the legal guardian or other person legally responsible for an individual after the provider agency learns that an allegation was reported to the Justice Center. In addition, they may be asked about the most effective way to communicate with the person receiving services.

A **“subject”** refers to the individual named in the allegation as **committing the act of abuse and neglect**. Only staff may be considered subjects.

What happens during an investigation?

An investigator will be assigned to conduct the investigation. Depending on severity and setting of the incident, the investigation will be conducted by the Justice Center, the State Agency, or the provider agency. The Justice Center reviews the investigation regardless of who led it. At the end of the review process, the allegations are either substantiated or unsubstantiated.

What happens during a criminal case?

The Justice Center’s Special Prosecutor works with county district attorneys to bring criminal charges in cases that allege that a crime has occurred against an individual receiving services by an employee of a facility or provider agency. The Justice Center notifies district attorneys of all allegations of abuse and neglect. Cases involving potential criminal charges can be investigated by the Justice Center, the local police, or both.

While a criminal case is being investigated and prosecuted, the same case is also investigated through the Justice Center administrative investigation process.

AFTER THE INVESTIGATION IS COMPLETE

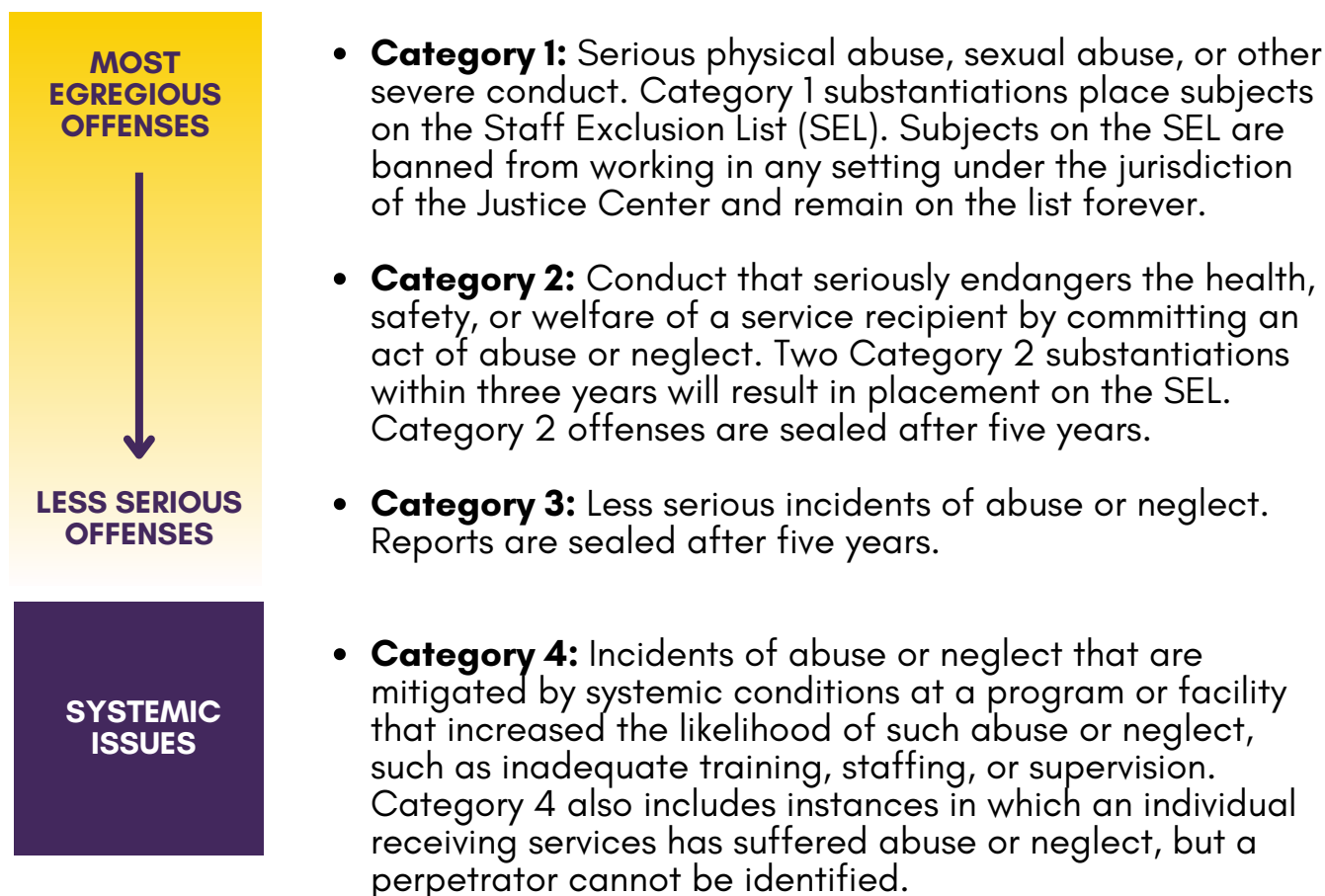
What are the potential outcomes of the investigation?

Administrative cases conclude by either being substantiated or unsubstantiated. The Justice Center makes the final determination regardless of which agency completed the investigation. The standard of proof for a Justice Center administrative case is a preponderance of the evidence. This means a review of the evidence shows the allegation of abuse or neglect was more likely than not to have occurred.

Unsubstantiated: the case is not made public and cannot be accessed by future employers; a letter of determination is sent to the subject, victim and provider agency letting them know the finding.

Substantiated: the case is classified into one of four categories depending on the severity.

OFFENSE CATEGORIZATION



Who makes the determination of the investigative findings?

The Justice Center makes a final determination about whether an allegation of abuse and 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 a victim of abuse and neglect, a letter of determination will be sent to you. If you are a legal guardian or other person legally responsible for an individual, you will also receive a letter of determination. The Justice Center will also notify the director of the provider agency the State Oversight Agency that licenses or certifies the facility or program, and the subject(s) of the outcome of the investigation. People who are interviewed as witnesses will not receive information about the investigative outcome.

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

A parent, legal guardian, or other person legally responsible for the individual will be notified in writing by the Justice Center of the findings of an investigation. This will indicate if the allegation(s) or abuse and neglect were substantiated or unsubstantiated.

Parents and 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, certain investigative information cannot be disclosed over the phone.

The Justice Center is much more than an abuse and neglect hotline.

What is Jonathan's Law?

This is the law that requires notification and access to information about incidents occurring in provider agencies operated, licensed, or certified by the Office for People with Developmental Disabilities (OPWDD), the Office of Mental Health (OMH) and the Office of Addiction Services and Supports (OASAS). These agencies must notify and inform parents, siblings, 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. The Justice Center's website has more information on this process.

Scan for
Information on
Jonathan's Law



“Qualified Persons” are defined in Jonathan's Law as:

- Parents or other legal guardians of minors
- Parents, legal guardians, spouses, siblings, 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 does the notification about an “appeal” mean?

Subjects of a substantiated report of abuse and neglect have the right to appeal the findings. An appeal by the subject must be filed within 30 days of receiving the letter of determination. The person receiving services, their legal guardian or other person legally responsible for an individual will receive notification of an appeal. (add QR code for appeals)

For more information on the appeals process, please visit the Justice Center's website.

What happens to staff found responsible for a Category 1 substantiated finding?

The Justice Center maintains the Staff Exclusion List (SEL). The names of staff found responsible for Category 1 offenses are placed on the SEL. People on the SEL are 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 provider agency staff have access to the SEL as part of pre-employment screenings.



MORTALITY REVIEW

The deaths of certain individuals receiving residential services under Justice Center jurisdiction are required to be reported to the Justice Center. All deaths reported to the Justice Center are reviewed and if there are any concerns regarding the quality of care, the Justice Center will make a report and, where appropriate, make recommendations to prevent future lapses in care. The report is issued to the director of the facility or provider agency, the State Oversight Agency, and the legal guardian or other person legally responsible for an individual. If someone suspects that the death may have involved abuse or neglect, it must be reported separately to the Justice Center's VPCR hotline. The agency screens all death reports to determine if further investigation is warranted. The Justice Center may conduct an on-site investigation when:

- An individual dies by suicide, either while in a hospital or licensed residential facility, or shortly after discharge from the facility;
- There is an allegation of abuse or neglect;
- A death appears to be the result of restraint or seclusion; and/or
- A death appears to be a result of inadequate supervision or medical care from a residential setting.

Who reviews death reports?

Every report is reviewed by investigators with human service program experience and health care professionals, including nurses. The Justice Center is also assisted by its Medical Review Board whenever a medical opinion is required to determine the standard of care.

What does the Justice Center do with reports of death?

The Justice Center receives information about the cause and manner of death as well as specific information about the person's medical, psychiatric, and behavioral presentation 90 days prior to their death. The circumstances surrounding the death of a person are examined to assess whether there were any quality of care issues and to make recommendations to improve care.

If there are any concerns regarding the quality of care, the Justice Center will issue a report and, make recommendations to prevent future lapses in care. The report is issued to the director of the facility or provider agency, the State Oversight Agency, and the legal guardian or other person legally responsible for an individual.

Mortality Review Continued

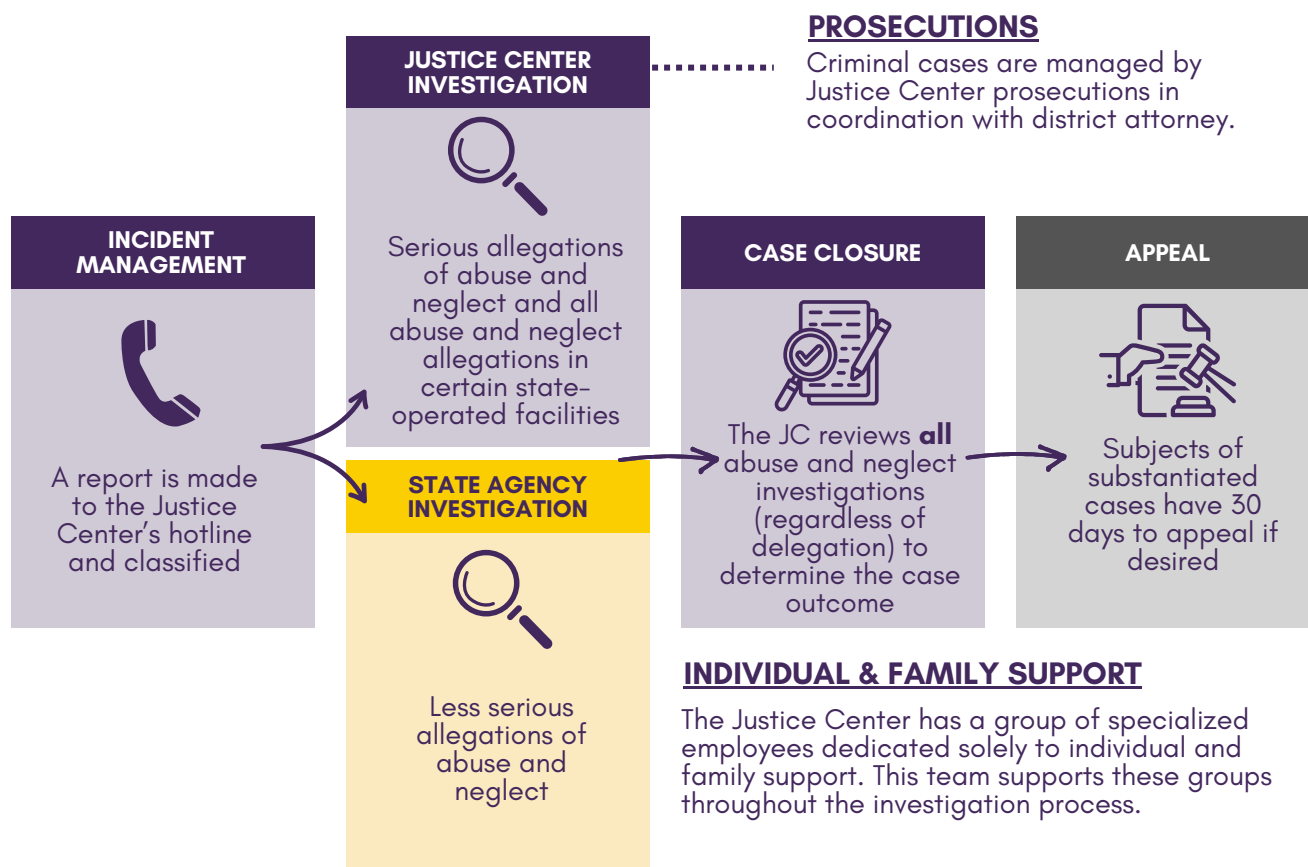
What if there is an allegation of abuse or neglect?

The Justice Center notifies the appropriate district attorney and medical examiner if there is any reason to suspect abuse or neglect. The Justice Center also launches its own investigation in the same manner as any other abuse or neglect allegation.

Does a parent, legal guardian, or other person legally responsible for an individual receive notification when a death has been reported?

The program or provider agency is required to notify the legal guardian or other person legally responsible for an individual, after learning of a death or learning of an allegation that was reported to the Justice Center.

CASE PROCESS OVERVIEW



INFORMATION

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

The Justice Center has advocates available to help victims and their families, legal guardians or other persons legally responsible for an individual. Advocates can answer questions about the processes of the agency as well as Justice Center investigations, and give case updates.

The Justice Center supports victims and their families during the reporting and investigation process. Agency advocates are available to accompany victims to interviews and criminal court proceedings stemming from Justice Center investigations to provide comfort in an unfamiliar situation.

Justice Center advocates can connect individuals with needed services and resources. This can include referring individuals receiving services to other services offered through New York State.

All services are free. Advocates are available during regular business hours.

ADVOCACY & SUPPORT CONTACT

E-Mail: supportcoordinator@justicecenter.ny.gov

Fax: (518) 457-5180

GENERAL INFORMATION

Call: 1-800-624-4143

Relay users, please dial 7-1-1 and give the operator 1-800-624-4143

Translation services are also available.

E-Mail: infoassistance@justicecenter.ny.gov

DISABILITY RESOURCES

The Justice Center's website provides information about disability-related programs, services, laws, and regulations. The website provides links to resources from local, state, federal, and national agencies, as well as nonprofit organizations. This information may be helpful to people with disabilities, their families, caregivers, and advocates.

REPORT ABUSE/NEGLECT

Call: 1-855-373-2122

Our reporting line operates 24/7 - all calls are toll-free

Scan to Access our Disability Resources

