



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

# **PROTECTING NEW YORKERS WITH SPECIAL NEEDS**

## **Monthly Data Report**

**February 2016**

## INTRODUCTION

The following data sets represent the year-to-date, January 1, 2016 to February 29, 2016. For more information on the Justice Center for the Protection of People with Special Needs (Justice Center), view the [2015 Annual Report to the Governor and Legislature](#). The data sets in this report include:

- Reports made by Type of Incident
- Abuse and Neglect Investigations/Outcomes
- Arrests and Criminal Prosecution Activity
- Pre-employment Checks, including the Staff Exclusion List

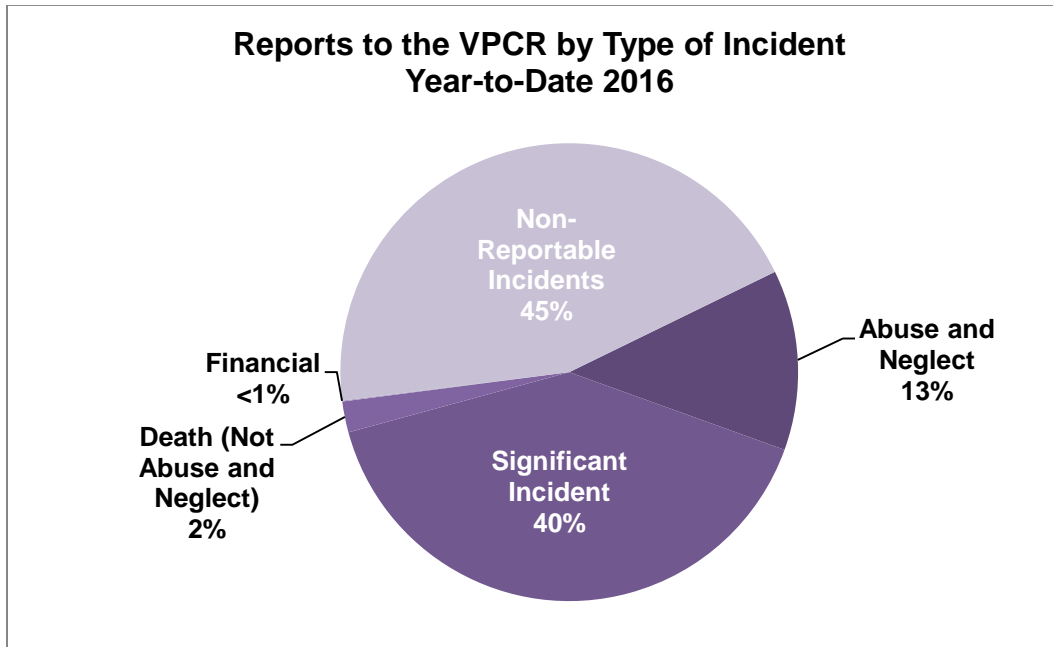
## REPORTS MADE TO THE JUSTICE CENTER

### Total Number of Reports Made to VPCR by Phone or Web Form

| Type of Incident by State Oversight Agency | 2016         |               | 2015          |
|--|--------------|---------------|---------------|
|  | Feb          | YTD           |               |
| <b>Reportable Incidents</b>                | <b>4,161</b> | <b>8,284</b>  | <b>53,549</b> |
| <b>Abuse and Neglect</b>                   | <b>972</b>   | <b>1,909</b>  | <b>15,121</b> |
| OPWDD                                      | 550          | 1,118         | 9,301         |
| OMH  | 138          | 268           | 2,460         |
| OCFS                                       | 204          | 368           | 2,506         |
| OASAS                                      | 18           | 34            | 294           |
| DOH  | 4            | 7             | 99            |
| SED  | 58           | 114           | 461           |
| <b>Significant Incident</b>                | <b>2,993</b> | <b>6,037</b>  | <b>33,816</b> |
| OPWDD                                      | 1,368        | 2,789         | 14,476        |
| OMH  | 708          | 1,435         | 8,373         |
| OCFS                                       | 683          | 1,330         | 7,347         |
| OASAS                                      | 144          | 280           | 2,413         |
| DOH  | 20           | 38            | 355           |
| SED  | 70           | 165           | 852           |
| <b>Death (Not Abuse and Neglect)</b>       | <b>191</b>   | <b>328</b>    | <b>4,500</b>  |
| OPWDD                                      | 101          | 172           | 974           |
| OMH  | 64           | 114           | 2,474         |
| OCFS                                       | 4            | 6             | 35            |
| OASAS                                      | 22           | 36            | 887           |
| DOH  | 0            | 0             | 128           |
| SED  | 0            | 0             | 2             |
| <b>Financial</b>                           | <b>5</b>     | <b>10</b>     | <b>112</b>    |
| OPWDD                                      | 3            | 4             | 54            |
| OMH  | 1            | 4             | 22            |
| OCFS                                       | 0            | 0             | 2             |
| OASAS                                      | 0            | 1             | 16            |
| DOH  | 1            | 1             | 18            |
| SED  | 0            | 0             | 0             |
| <b>Non-Reportable Incidents</b>            | <b>3,329</b> | <b>6,712</b>  | <b>36,890</b> |
| Not a Justice Center Incident              | 2,180        | 4,308         | 23,377        |
| Not an Incident                            | 1,149        | 2,404         | 13,513        |
| <b>Total</b>                               | <b>7,490</b> | <b>14,996</b> | <b>90,439</b> |

Note: Includes all reports made to the Justice Center including multiple reports of the same incident.

## REPORTS MADE BY TYPE OF INCIDENT



## CLASSIFICATION OF REPORTS

Under the guidance of the Justice Center's Call Center Director and in consultation with the Office of Investigations, intake personnel log incoming incident reports (via hotline and web form) into the Vulnerable Persons Central Register (VPCR) case management system. Staff members review the details of the incident and classify it as either a reportable incident and assign it to the Justice Center or the appropriate state agency for investigation or they classify it as a non-reportable incident.

### Reportable Incidents

Reportable incidents include any situation in which a person who is receiving supports or services in a facility or program under the Justice Center's jurisdiction may have been abused or neglected. A death is a reportable incident in the following circumstances:

- The person was enrolled in or receiving services from the facility or program at the time of the death and death was the result of a abuse, neglect or a significant incident;
- It was an apparent homicide, suicide, unexplained or accidental cause;
- It was unrelated to the natural course of illness or disease; or
- It was related to the lack of treatment provided in accordance with generally accepted medical standards.

Reportable incidents also include an incident that has the potential to result in harm to the health, safety or welfare of a person receiving services in such a facility or program.

## **Non-reportable Incidents**

Many of the calls received by the Call Center occur in facilities and programs that are outside of the Justice Center's jurisdiction or the nature of the incident does not rise to the level of a reportable incident as defined above. These calls are categorized as "Not a Justice Center Incident" or "Not an Incident."

### **Not a Justice Center Incident**

These reports do not fall within the Justice Center's jurisdiction based on where they occurred or the nature of the incident, but may require follow-up from another state agency. They may also be an incident that occurred prior to the Justice Center's effective date of June 30, 2013. Efforts are made to direct the caller to the appropriate entity.

### **Not an Incident**

Reports that are classified as "not an incident" are those where the nature of the call is not regarding a specific incident that caused harm or potential for harm, but the caller is seeking general information or contacted the Justice Center erroneously. Efforts are made to direct the caller to the appropriate entity.

## **TYPES OF REPORTABLE INCIDENTS**

The Justice Center organizes reportable incidents into two categories: abuse and neglect and significant incident.

### **Abuse and Neglect**

New York State law defines abuse and neglect in broad terms, including both actual harm and the risk of harm.

- Physical abuse: intentional or reckless contact such as hitting, kicking, shoving, corporal punishment;
- Sexual abuse: inappropriate touching, indecent exposure, sexual assault, taking or distributing sexually explicit photos, voyeurism or other sexual exploitation;
- Psychological or emotional abuse: taunting, name calling, using threatening words or gestures;
- Deliberate misuse of restraint or seclusion: use of these interventions with excessive force, as a punishment or for the convenience of staff.
- Neglect: any action, inaction or lack of attention that results in or is likely to result in physical injury or impairment such as: failure to provide supervision, adequate food, clothing, shelter, health care or access to an educational entitlement;
- Unlawful use or administration of a controlled substance;
- Aversive conditioning: the use of unpleasant physical stimulus used to modify behavior without person-specific legal authorization; or
- Obstruction: interfering with the discovery, reporting or investigation of abuse/neglect, falsifying records or intentionally making false statements.

Note: Abuse and neglect allegations may involve one or more suspects. Each suspect may be the subject of one or more allegations which may involve more than one victim.

## Significant Incident

Significant incidents, which do not constitute abuse or neglect, but have the potential to result in harm to the health, safety or welfare of a person receiving services, must also be reported by mandated reporters. Types of significant incidents include, but are not limited to:

- Use of restraint when it is avoidable, involves a banned technique or is used by inadequately trained staff;
- Unauthorized seclusion or time-out; or
- Administration of a medication which is inconsistent with a prescription or medical order that results in an adverse impact

## OTHER JUSTICE CENTER REVIEWS OR INVESTIGATIONS

### Death (not abuse or neglect)

The director of a facility or program under the jurisdiction of the Justice Center is required to immediately report (within 24 hours) the death of a person receiving services from an operated, licensed or certified facility at the time of their death or for a person who had received services within 30 days of their death. Such reports must be made upon discovery (witnessing or learning) of such death by contacting the Vulnerable Persons Central Register (VPCR) Death Reporting Line, which is separate from the VPCR Hotline used to report abuse, neglect, and significant incidents. The report must include the medically determined manner and cause of the individual's death, the location of the death, and potential occurrences immediately preceding the individual's death.

Justice Center staff nurses review all death reports to determine whether or not further review or investigation is warranted. In such cases the Justice Center will either review the facility investigation or conduct an on-site investigation of its own.

The Justice Center may conduct an on-site investigation when:

- An individual commits suicide, either while in a hospital or licensed residential facility, or within one week of discharge from the facility, or within 72 hours of presentation at a hospital emergency room;
- There is an allegation of abuse involving the circumstances of death;
- A death occurs within several days of restraint or seclusion, or after an altercation with staff or peers;
- Questions are raised regarding the quality of medical care prior to the death; or an
- Agency or individual contacts the Justice Center with concerns.

### Financial

The Justice Center reviews the cost-effectiveness of mental hygiene programs under its jurisdiction. These investigations range from reviews of service recipient personal allowance complaints to complex corporate investigations of fraud, waste, or abuse of funds. Based on its findings, the Justice Center may issue recommendations to the appropriate state oversight agency. If a crime may have been committed, the Justice Center refers its findings to local District Attorney's. Referrals are also made to appropriate state and federal regulatory or enforcement agencies (e.g., NYS Attorney General, NYS Office of Taxation and Finance, Internal Revenue Service) Chapter 501 of the Laws of 2012 <http://www.justicecenter.ny.gov/regulations-guidance/statute>.

## ABUSE AND NEGLECT INVESTIGATIONS/OUTCOMES

### Substantiated Allegations of Abuse and Neglect

| State Oversight Agency | Allegations          | 2016       |              | 2015         |
|------------------------|----------------------|------------|--------------|--------------|
|                        |                      | Feb        | YTD          | YTD          |
| <b>All Agencies</b>    | <b>Substantiated</b> | <b>623</b> | <b>1,027</b> | <b>6,017</b> |
|                        | Total Allegations    | 1,469      | 2,466        | 18,949       |
| <b>OPWDD</b>           | <b>Substantiated</b> | <b>389</b> | <b>610</b>   | <b>3,949</b> |
|                        | Total Allegations    | 894        | 1,508        | 12,300       |
| <b>OMH</b>             | <b>Substantiated</b> | <b>71</b>  | <b>108</b>   | <b>546</b>   |
|                        | Total Allegations    | 189        | 306          | 2,463        |
| <b>OCFS</b>            | <b>Substantiated</b> | <b>129</b> | <b>238</b>   | <b>1,186</b> |
|                        | Total Allegations    | 306        | 518          | 3,278        |
| <b>OASAS</b>           | <b>Substantiated</b> | <b>9</b>   | <b>18</b>    | <b>120</b>   |
|                        | Total Allegations    | 19         | 30           | 293          |
| <b>DOH</b>             | <b>Substantiated</b> | <b>2</b>   | <b>5</b>     | <b>34</b>    |
|                        | Total Allegations    | 5          | 11           | 133          |
| <b>SED</b>             | <b>Substantiated</b> | <b>23</b>  | <b>48</b>    | <b>182</b>   |
|                        | Total Allegations    | 56         | 93           | 482          |

Note: Data on allegations are preliminary and may be subject to correction.

Note: Substantiation of an allegation is based upon the results of an investigation either by the Justice Center, the SOA, or private provider; a review by the Justice Center Office of Investigations; and a determination by the Justice Center Office of General Counsel. The number of substantiated allegations is greater than the number of suspects who have an allegation substantiated against them because some *suspects have more than one allegation substantiated in a single case*.

## ABUSE AND NEGLECT INVESTIGATIONS/OUTCOMES

### Abuse and Neglect Cases with at least One Substantiated Allegation

| State Oversight Agency   | 2016  |       | 2015   |
|--|-------|-------|--------|
|  | Feb   | YTD   |        |
| Total Number of Abuse and Neglect Cases  | 1,002 | 1,681 | 13,264 |
| Total Number of Abuse and Neglect Cases with at least 1 Substantiated Allegation | 446   | 721   | 4,296  |
| OPWDD  | 289   | 457   | 3,007  |
| OMH  | 49    | 76    | 370    |
| OCFS   | 82    | 141   | 713    |
| OASAS  | 8     | 14    | 79     |
| DOH  | 2     | 4     | 25     |
| SED  | 16    | 29    | 102    |
| % with at least 1 Substantiated Allegation                                       | 45%   | 43%   | 32%    |

Note: Data on allegations are preliminary and may be subject to correction. A case may include more than one allegation.

### Substantiated Allegations of Abuse and Neglect

At the conclusion of the investigation, each allegation of abuse and neglect must be either substantiated or unsubstantiated.

The Justice Center reviews each investigation and, if appropriate, requests further investigation. When an investigation is determined to be complete, the Justice Center determines whether the report of abuse or neglect is substantiated, meaning that there is a preponderance of evidence to support the allegation and either a specific individual or the facility or program is found responsible for such act or acts of abuse or neglect. If it is substantiated that a vulnerable person was the victim of abuse or neglect, but no suspect can be identified, a substantiated finding is made against the facility or program.

### Substantiated Determination Consequences

If an allegation of abuse or neglect is substantiated, the subject of that finding has a right to appeal the determination before an administrative law judge.



## ARRESTS AND CRIMINAL PROSECUTION ACTIVITY

### Arrests and Criminal Prosecution Activity

| Prosecution Records     | 2016     |           | 2015      |
|-------------------------|----------|-----------|-----------|
|                         | Feb      | YTD       |           |
| <b>Arrests</b>          | <b>2</b> | <b>10</b> | <b>89</b> |
| Justice Center          | 2        | 4         | 17        |
| Other Law Enforcement   | 0        | 6         | 72        |
| <b>Prosecutions</b>     | <b>2</b> | <b>10</b> | <b>89</b> |
| Justice Center          | 2        | 5         | 16        |
| Local District Attorney | 0        | 5         | 73        |

Note: Prosecutions being handled jointly by the local District Attorney and the Justice Center Special Prosecutor are listed as Justice Center Prosecutions. Arrests handled jointly by Justice Center and local police department listed as Justice Center arrests.

Note: Arrests and prosecutions previously reported but re-categorized as non-Justice Center or transferred between the local District Attorney's Office to the Justice Center Special Prosecutor to proceed with the prosecution will not be reported again in arrest/prosecution detail, but will be adjusted in the year to date totals.

### Abuse and Neglect Investigations

The Justice Center investigates the most serious allegations of abuse and neglect. Its criminal investigators have full police powers to investigate cases that may involve criminal activity that could result in an arrest and prosecution. Investigators work with local law enforcement agencies on these cases and provide assistance when requested.

### Criminal Prosecutions

Allegations that rise to the level of a criminal offense are prosecuted by the Justice Center's Special Prosecutor/Inspector General. The Office of the Special Prosecutor collaborates with the Justice Center Investigations staff, local law enforcement and district attorney's across the state to bring charges and hold individuals accused of endangering people with special needs who were under their care accountable. If an investigation results in an arrest, either by Justice Center Criminal Investigators 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 be subject to placement on the Staff Exclusion List (Category 1 and 2 see Abuse and Neglect Investigations/Outcomes), and may also face disciplinary action.

## PRE-EMPLOYMENT CHECKS

| Requests for SEL Check     | 2016   |        | 2015    |
|----------------------------|--------|--------|---------|
|                            | Feb    | YTD    |         |
| Total SEL Checks Performed | 21,180 | 41,986 | 244,692 |
| OPWDD                      | 7,057  | 13,808 | 77,709  |
| OMH                        | 3,386  | 6,305  | 34,096  |
| OCFS                       | 8,459  | 16,941 | 99,003  |
| OASAS                      | 1,555  | 3,304  | 20,220  |
| DOH                        | 215    | 446    | 6,172   |
| SED                        | 508    | 1,182  | 7,492   |

### Pre-Employment Criminal Background Checks and Arrest Notices of Current Employees

| Background Check Activity                    | 2016  |        | 2015   |
|--|-------|--------|--------|
|  | Feb   | YTD    |        |
| Fingerprints Processed                       | 7,259 | 13,761 | 85,821 |
| OPWDD  | 5,027 | 9,432  | 59,954 |
| OMH  | 1,597 | 3,075  | 18,462 |
| OCFS   | 635   | 1,254  | 7,405  |
| Applicants Reviewed                          | 1,018 | 1,988  | 11,010 |
| Denied Approval for Employment Consideration | 31    | 49     | 285    |
| OPWDD  | 14    | 29     | 145    |
| OMH  | 10    | 13     | 89     |
| OCFS   | 7     | 7      | 51     |
| Arrest Notices of Current Employees          | 370   | 732    | 4,420  |

Note: Candidates with a New York State and FBI reportable criminal histories are reviewed, either automatically through the Justice Center's Criminal Background Check (CBC) System or after the Justice Center CBC Unit rectifies all incomplete or inaccurate arrest information.