NEW YORK STATE OF OPPORTUNITY.

Justice Center for the Protection of People with Special Needs

October 2017

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]

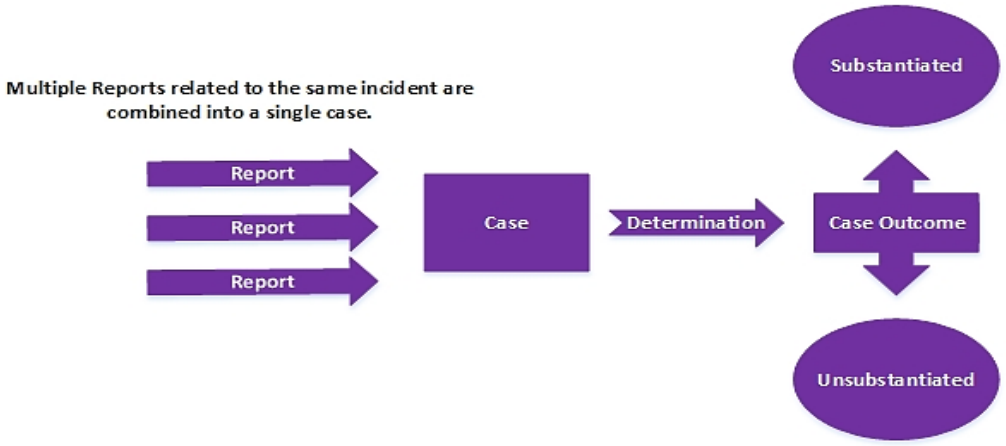
Justice Center Jurisdiction

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 October	Total Active
Total Active Abuse and Neglect Cases	**959**	**2,979**
State Operated	180	523
Non-State Operated	779	2,456

ON AVERAGE

35% **of abuse and neglect cases are substantiated by the Justice Center each year.[3]**

Case Outcomes

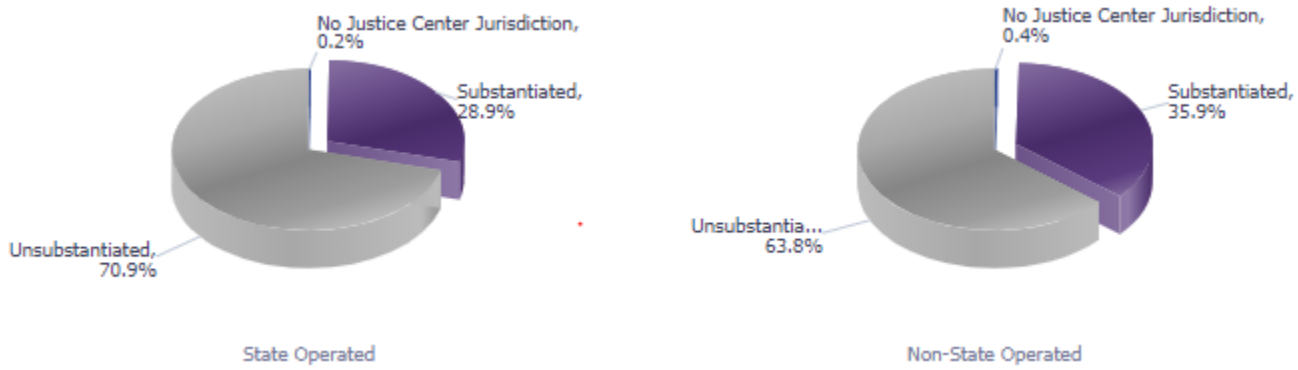
Abuse and neglect case outcomes are determined by the outcome of the allegation(s) within the case. A single case may contain multiple allegations due to multiple subjects, multiple victims or multiple offenses. Cases with at least one substantiated allegation outcome are considered to be substantiated 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."

	October	2017 YTD
Total Closed Abuse and Neglect Cases	**1,182**	**10,309**
State Operated Total	**234**	**2,216**
Substantiated	73	640
Unsubstantiated	160	1,571
No Justice Center Jurisdiction	1	5
Non-State Operated Total	**948**	**8,093**
Substantiated	381	2,903
Unsubstantiated	563	5,161
No Justice Center Jurisdiction	4	29

[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 2017[4]



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.

ANNUALLY LESS THAN **1%** **of individuals receiving services under the jurisdiction of the Justice Center are associated with a substantiated abuse or neglect case.**

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.

LESS THAN

3% 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.

	October	2017 YTD
Category One Cases	9	93
State Operated	1	15
Non-State Operated	8	78

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.

	October	2017 YTD
Category Two Cases	72	670
State Operated	15	134
Non-State Operated	57	536

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.[5]

	October	2017 YTD
Category Three Cases	362	2,692
State Operated	56	479
Non-State Operated	306	2,213

Examples of category three conduct:

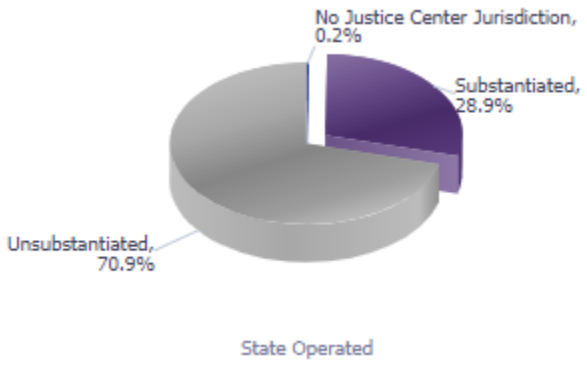
The Justice Center has substantiated custodians for category three neglect where the evidence established the custodian failed to follow protocols for transporting a service recipient between different areas of the facility, resulting in the whereabouts of that service recipient being unknown for several 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.

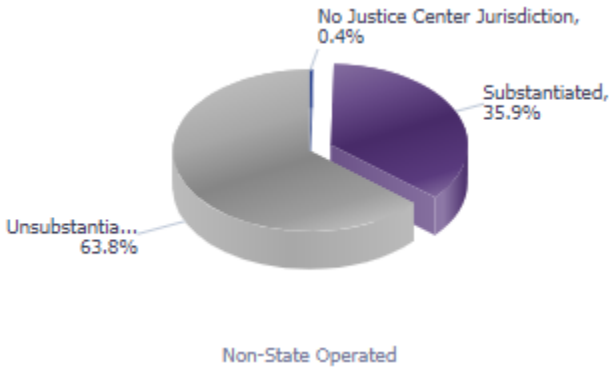
Similarly, the Justice Center has substantiated custodians for category three physical abuse where the evidence established that the custodian struck a service recipient, yet there was no visible injury. The rationale for this determination was the conduct caused the *likelihood* of physical or emotional 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.

	October	2017 YTD
Category Four Cases	11	88
State Operated	1	12
Non-State Operated	10	76

Investigation Categories in State Operated and Non-State Operated facilities are similar for 2017[6]





[5] 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.

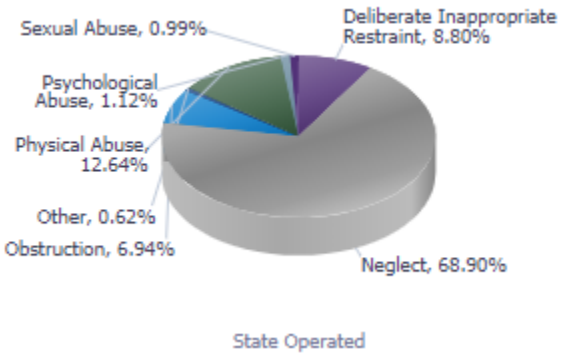
[6] Percentages in pie charts may not sum to 100% due to rounding.

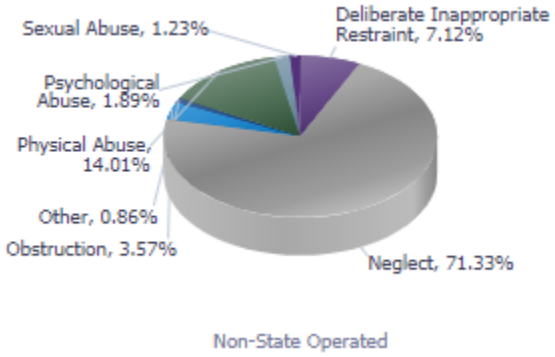
Substantiated Abuse and Neglect Cases by Offense

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.[7]

Offense Types in State Operated and Non-State Operated facilities for 2017[8]





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.

388 **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.**

[7] 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.

[8] 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.

Checks of the Staff Exclusion List (Previous 12 Months)



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.[9]

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

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	October	2017 YTD
Total Fingerprints Processed	**8,460**	**83,637**
Total Applicants Reviewed	1,119	10,372
Denied Approval for Employment Consideration	29	315

[9] 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 substantiate d for abuse or neglect.

Death Assessments and Reviews

Abuse or Neglect Cases with a Death Involved

Mandated reporters are required to report directly to the Vulnerable Persons' Central Register (VPCR) any death in both residential and non-residential programs under the Justice Center's jurisdiction – for which they have reasonable cause to suspect abuse or neglect or a significant incident may have been involved. For every death in which abuse or neglect or a significant incident is suspected, the Justice Center notifies the appropriate District Attorney and Medical Examiner. These deaths are investigated in the same manner as any other abuse or neglect case.

In 2017, the Justice Center closed 107 abuse and neglect investigation cases in which a death was involved. Of these cases, 62 had at least one substantiated allegation of abuse or neglect, which may or may not have caused or contributed to the death in question. It was determined that criminal charges were not warranted in any of these cases.

Executive Law § 556 Death Reviews (not abuse or neglect)

Administrators of residential programs licensed, operated, or certified by the Office for People With Developmental Disabilities (OPWDD), the Office of Mental Health (OMH), the Office of Alcoholism and Substance Abuse Services (OASAS), and the Office of Children and Family Services (OCFS) are required to report all deaths of residents to the Justice Center, irrespective of whether the death is unusual or expected. 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.

All deaths subject to this mandatory reporting are referred to as Executive Law §556 deaths and each report is reviewed by investigators with program experience and health care professionals, including registered nurses. This reporting and review is in addition to the requirements to report and investigate deaths where there is reasonable cause to suspect to abuse and neglect or a significant incident.

Executive Law §556 Death Reviews	October	2017 YTD
Total Reviews Conducted	**134**	**1,915**
State Operated	25	467
Non-State Operated	109	1,448

In September 2017, the Justice Center completed 134 Executive Law §556 Death Reviews across the four agencies required to report these deaths.