NEW YORK STATE OF OPPORTUNITY.

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

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161 Delaware Avenue, Delmar, New York 12054
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www.justicecenter.ny.gov

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 or certified by OPWDD

Office of Mental Health (OMH)

- Facilities and programs that are operated or licensed by OMH

Office of Alcoholism and Substance Abuse Services (OASAS)

- Facilities and service providers 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 juveniles
- 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, which 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 in 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.

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 get additional information.

The **"Vulnerable Persons Central Register (VPCR)"** is a toll-free hotline and incident reporting system for allegations of abuse and neglect available 24 hours a day, 7 days a week.

1-855-373-2122
1-855-373-2123 (TTY)

MAKING A REPORT

Who can report an allegation of abuse or neglect?

Anyone can make a report to the Vulnerable Persons Central Register (VPCR) hotline. However, some people are required to report to the VPCR. These "mandated reporters" include provider agency staff and human service professionals, who by nature of their job must report allegations of abuse and neglect.

When should mandated reporters contact the VPCR?

Whenever a mandated reporter has reasonable cause to suspect an 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, but a report must be made to the VPCR within 24 hours of the mandated reporter's discovery of the allegation that a reportable incident has occurred. Failure by a mandated reporter to report suspected abuse or neglect to the VPCR is a serious matter and possible consequences include discipline, termination, and prosecution. For more information on the requirements of mandated reporters, please visit 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.

A "**State Oversight Agency**" licenses or certifies the provider agency.

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.

INTAKE

A trained call center representative collects information from the reporter and an incident number is assigned. Confidentiality laws protect reporters.

The call is recorded.

CLASSIFICATION

The incident is then classified.

Reportable:
- Abuse or neglect
- Significant incident
- Death (administrative)
- Financial

Non-reportable:
- General inquiry
- Not under the jurisdiction of the Justice Center

ASSIGNMENT

The incident is then assigned to the appropriate entity for investigation or review.

The Justice Center conducts investigations of abuse or neglect incidents (based on severity and/or setting), financial misconduct, and deaths. Less serious incidents may be delegated to the appropriate State Oversight Agency, which may further delegate to the provider agency.

DURING THE INVESTIGATION

Who can be interviewed during an investigation?

Investigators will interview people who receive services who may have been victims or witnesses, and other people who witnessed or may otherwise have information about an incident. Investigators will interrogate subjects (e.g., employee, volunteer, intern, consultant, contractor) who are alleged to have committed the act of abuse or neglect. Most interviews are recorded.

A "**subject**" refers to the individual named in the allegation as committing the act of abuse or neglect. Only staff may be considered to be subjects; not service recipients.

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

When you are a subject in an abuse or neglect investigation, you will receive a notification from your employer. This notification will indicate that you are a subject and it 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 case.

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

If you are a witness 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 what allegedly happened. Your will be notified of the location, date, and time of the interview.

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

As part of the investigation, Justice Center investigators will obtain and review documentation from the facility, and elsewhere, when appropriate. Interviews for non-criminal investigations typically occur at the facility or program of your employment. Interviews for criminal investigations may occur at the facility or program, at a Justice Center office, or at a local police station, depending on the circumstances. Investigators will inform you of the location.

It is important not to provide false documentation or information during an investigation. This applies to everyone involved in an investigation, not just subjects. Interfering with the discovery, reporting or investigation of abuse or neglect, falsifying records or intentionally making false statements is obstruction. This conduct can be classified as abuse and can be prosecuted.

Can I have representation or legal counsel with me during an interview?

For non-criminal investigations, you may not have representation or legal counsel during an interview unless you are a member of a union and representation is allowed under 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.

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 those constitutional rights.

Witness interviews do not require the presence of a representative or legal counsel. Custodians are duty-bound to cooperate with an investigation regarding the abuse or neglect of vulnerable persons. However, under some collective bargaining agreements, if the employee believes he or she is at risk of an adverse employment consequence then he or she has a right to request union representation.

What happens during a criminal case?

The Office of the Special Prosecutor helps to coordinate the investigation and leads the prosecution of abuse and neglect cases where the alleged conduct rises to the level of a criminal offense. A team of Special Prosecutors and Justice Center Investigators work together to gather evidence to support an arrest, file formal criminal charges and obtain a conviction or plea to ensure that justice is served. Criminal investigations typically include interviewing victims and witnesses. Additionally, the Justice Center works with local District Attorneys and law enforcement agencies to prosecute criminal matters.

AFTER THE INVESTIGATION IS COMPLETED

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 evidence to support the allegation. Preponderance of the evidence means that a review of the evidence shows whether the abuse and/or neglect was more likely than not to have occurred. Substantiated reports of abuse or neglect are classified into one of four categories depending on the severity. Unsubstantiated reports are immediately sealed. An unsubstantiated finding does not preclude other consequences, including disciplinary action.

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 had 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.

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.

How will I find out the results of an investigation?

If you are the subject of an investigation, a letter of findings will be issued to you directly. This letter is sent to your residential address. On the same date, the Justice Center will notify the director of your facility or provider, the State Oversight Agency that licenses or certifies your facility or provider and the service recipient named as a victim in the investigation or their personal representative of the outcome of the investigation. These same parties are notified whether the allegation is substantiated or unsubstantiated.

A "**personal representative**" is someone who is legally permitted to act on behalf of the service recipient.

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

How will I know if I have been placed on the Staff Exclusion List?

The letter you receive at the conclusion of an investigation will tell you if you have been found responsible for a Category 1 substantiated offense. If you receive such a finding, you have been placed on the Staff Exclusion List, subject to your appeal of that finding.

CATEGORIES OF FINDINGS AT-A-GLANCE

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 offences are sealed after five years.

Category 3: Less serious incidents of abuse or neglect. Reports are sealed after five years.

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.

YOUR 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 40 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's Administrative Appeals Unit reviews the record on appeal which includes: the investigative file; substantiated report; your request for amendment; and any additional evidence you submit.

The Administrative Appeals Unit 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 Administrative Appeals Unit'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 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 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 to the New York courts by bringing an "Article 78 Proceeding." Article 78 of the New York Civil Practice Law establishes the rules for this kind of case.

For more information, please visit the *Frequently Asked Questions for the Administrative Appeals Process* available at www.justicecenter.ny.gov.

FOR MORE INFORMATION

How do I get more information?

For more information, please visit 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 toll-free, 24/7, at 1-855-373-2122 or 1-855-373-2123 (TTY).

INCIDENT REVIEW PROCESS

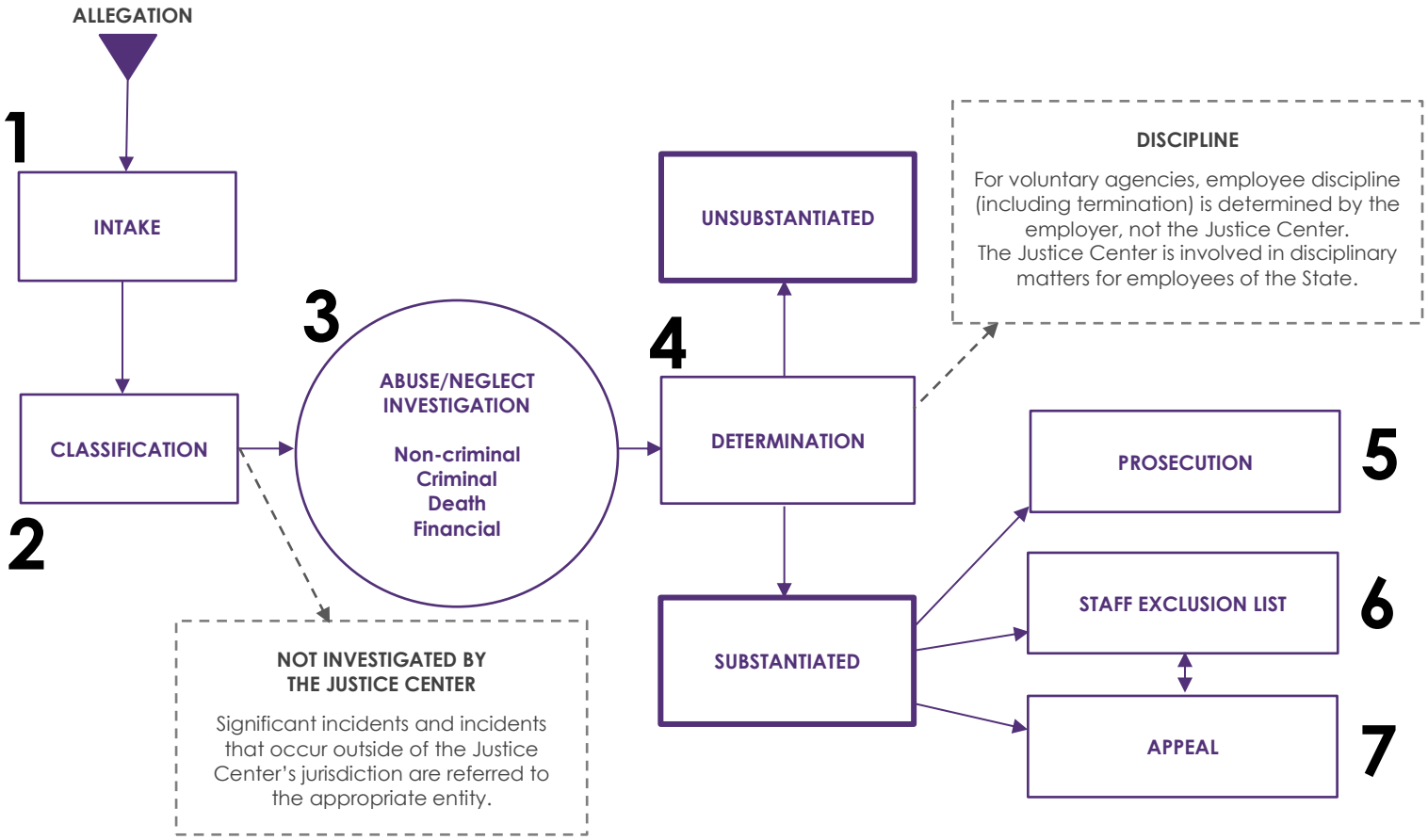
1 INTAKE An allegation is reported to the Vulnerable Persons Central Register.

2 CLASSIFICATION The allegation is classified as either a reportable incident (e.g., incident of abuse) or a non-reportable incident (e.g., general inquiry).

3 INVESTIGATION The Justice Center conducts investigations of abuse or neglect incidents (based on severity and/or setting), financial misconduct, and deaths. Less serious incidents may be delegated to the appropriate State Oversight Agency, which may further delegate to the provider agency.

4 DETERMINATION After the investigation 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 case and determines whether each allegation shall be **substantiated or unsubstantiated**. Reports that are unsubstantiated are immediately sealed. An unsubstantiated finding does not preclude other consequences, including disciplinary action.

5 PROSECUTION For substantiated criminal cases, prosecution may be pursued.

6 SEL Subjects with Category 1 findings will be placed on the Staff Exclusion List (SEL).

7 APPEAL Subjects have the right to challenge the findings of an investigation.