

Justice Center Reporting and Investigations: Guidance for Individuals and Families



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

161 Delaware Avenue, Delmar, New York 12054

1-800-624-4143

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 people who provide services.

MISSION

The Justice Center supports and protects the health, safety, and dignity of all people with special needs and disabilities through advocacy of their civil rights, prevents mistreatment, and investigates all allegations of abuse and neglect so that the right actions are taken.

JURISDICTION

The Justice Center oversees facilities and programs under six State Oversight Agencies.

Office for People with Developmental Disabilities (OPWDD)

- Facilities and programs that are run or overseen by OPWDD

Office of Mental Health (OMH)

- Facilities and programs that are operated, certified, or licensed by OMH

Office of Addiction Services and Supports (OASAS)

- Facilities and provider agencies 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
- 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 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



OUR GOAL

The Justice Center's goal is to prevent mistreatment of people with special needs and make sure that all reports of abuse and/or neglect are fully investigated. The Justice Center investigates, reviews, and makes findings in reports of abuse and/or neglect against people who receive services.

The Justice Center does not interrogate, arrest, or prosecute people who receive services.

This document explains the reporting and investigation process and how to get additional information.

MAKING A REPORT

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

Anyone- including a parent, advocate, or guardian can make a report to the Justice Center hotline when they know or think that a person with special needs has been abused, neglected, or mistreated.

Some people are required to report to the hotline. These “mandated reporters” include provider agency staff and human service professionals, who because of their job must report allegations of abuse and/or neglect.

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

The Justice Center cannot release the name(s) of the person(s) who made the report to the Hotline or the name(s) of any person(s) who cooperated in the investigation.

What happens when I make a report?

Hotline calls are answered by a call center staff member.

You will be asked if there is an emergency. If there is, you will be instructed to call 911 and report it and call the Justice Center back.. Justice Center Hotline staff will ask you questions to find out what you know about the incident. 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.

The next page shows the process followed once a report is filed.

The Justice Center operates a toll-free hotline and for allegations of abuse and neglect available 24 hours a day, 7 days a week.

1-855-373-2122

Relay users, please dial 7-1-1 and give the operator 1-855-373-2122



INTAKE

A trained call center staff member collects information from the caller and an incident number is assigned. Confidentiality laws protect callers.

The call is recorded.

CLASSIFICATION

The incident is then classified.

- Reportable: Abuse, neglect, significant incident
 - Non-reportable: General inquiry, or not under the legal power of the Justice Center
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ASSIGNMENT

The incident is then assigned to the appropriate agency for investigation or review. The Justice Center conducts investigations of abuse and/or neglect allegations based on severity and/or setting. Less serious incidents may be assigned to the appropriate State Oversight Agency (OPWDD, OMH, etc.), and they may assign the investigation to the provider agency. The Justice Center also investigates any abuse or neglect allegation concerning the death of an individual receiving services.



What are the different types of classifications?

Abuse:

Abuse can be physical, sexual, or psychological. It can also include the misuse of restraint or the obstruction of an investigation.

Neglect:

Neglect is the failure to provide supervision, the right food, clothing, shelter, health care, or access to education.

Significant Incident:

A significant incident has the potential to result in harm to the health, safety, or welfare of a person

DURING THE INVESTIGATION

Who can be interviewed during an investigation?

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

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, and you may take breaks. You should tell the investigator if you need any accommodations during the interview or if you do not understand something that is said.

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

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

The facility or program will let you know within 24 hours if you are identified as a victim in an allegation of abuse and/or neglect.

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

Do parents, guardians, or personal representatives of the victim receive notification when a report has been made?

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

What happens during an investigation?

An investigator is assigned to conduct the investigation. Depending on severity and setting of the incident, the investigation will be conducted by the Justice Center, the State Oversight Agency, or the provider. 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..

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

A parent, 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) of abuse and/or neglect were substantiated or unsubstantiated.

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, investigative information cannot be disclosed over the phone.

What is Jonathan's Law?

Jonathan's Law is a law that requires notification and access to information about incidents involving people with special needs. Facilities 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) 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.

"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 happens during a criminal case?

When an allegation of abuse and/or neglect rises to the level of a criminal offense, the Justice Center's Office of the Special Prosecutor helps to coordinate the investigation.. A team of special prosecutors and Justice Center investigators can 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.

Additionally, the Justice Center works with local district attorneys and law enforcement agencies to prosecute criminal matters. If a prosecution is pursued by the Justice Center, victim services will be provided by Justice Center advocates.

AFTER THE INVESTIGATION IS COMPLETED

What are the potential determinations of the investigation?

Allegations of abuse and/or neglect are determined to be substantiated or unsubstantiated.

A substantiated allegation means that an investigation determined that there is enough evidence to support a finding that abuse or neglect is more likely than not to have happened. Substantiated reports of abuse and/or neglect are classified into one of the four categories below, depending on severity or risk of harm to the person receiving services. Unsubstantiated reports are immediately sealed, meaning the information is not available to future employers.

“Preponderance of the evidence” means that a review of the evidence shows that the abuse and/or neglect was more likely than not to have occurred.

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 subjects with a second instance of Category 2 conduct that occurs within three years of a prior Category 2 finding. Subjects on the SEL cannot work with people receiving services and 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 and/or neglect. Category 2 offenses are sealed after five years.

CATEGORY 3: Less serious incidents of abuse and/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.

Why would an allegation of abuse and/or neglect be determined to be “unsubstantiated”?

An allegation may be determined to be “unsubstantiated” for a variety of reasons. There might not be enough evidence to show that an incident of abuse and/or neglect occurred, or a specific individual was not found responsible for the incident. An unsubstantiated finding does not prevent other consequences. This may include employee discipline, additional supervision, training, or other follow-up.

Who makes the determination on the investigative findings?

The Justice Center makes a final determination about whether an allegation of abuse and/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 victim, a letter of findings (called a “letter of determination”) will be issued to you or your personal representative. The Justice Center will also notify the director of the facility or program, the State Oversight Agency that licenses or certifies the facility or program, and the subject(s) of the outcome of the investigation.

If you are interviewed as a witness or are the personal representative or guardian of a witness, you will not receive information about the investigative findings.

What does the notification about an “appeal” mean?

Subjects of a substantiated report of abuse and/or neglect have the right to appeal the findings. An appeal must be filed within 30 days of receiving the findings. The personal representatives of the individual receiving services will be notified if an appeal is filed. A notification will also be sent about the final outcome of the appeal.

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



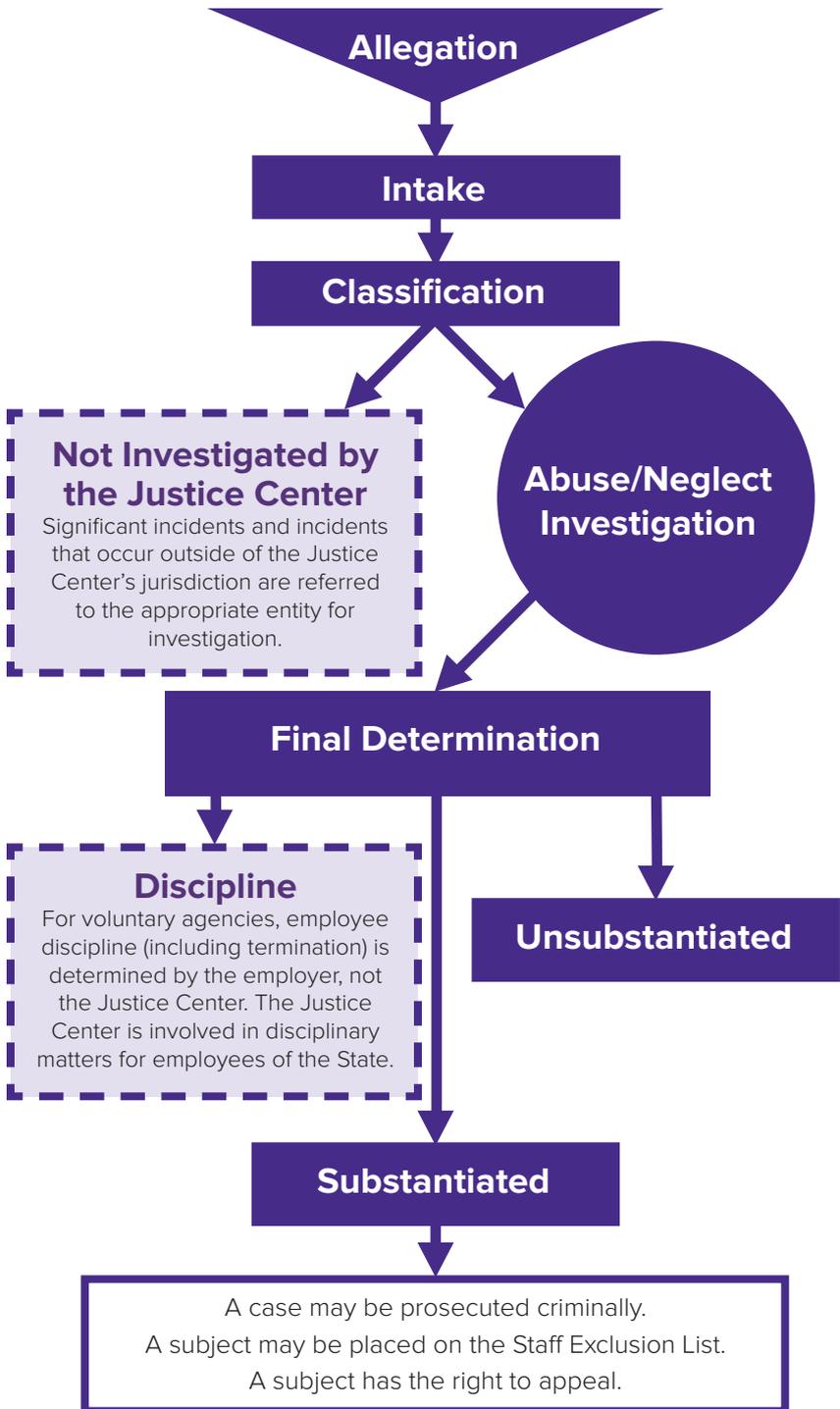
What happens to staff found responsible for a Category 1 offense?

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.

INCIDENT REVIEW PROCESS

- INTAKE:** Abuse or neglect is reported to the Justice Center hotline.
- CLASSIFICATION:** The report is classified as either a reportable incident (e.g., incident of abuse) or a non-reportable incident (e.g., general inquiry)
- DETERMINATION:** After the investigation of abuse and/or neglect is completed, the Justice Center reviews the case and decides whether each allegation shall be substantiated or unsubstantiated.
- PROSECUTION:** For criminal cases, the Justice Center or local courts may take the lead to bring charges and prosecute.
- STAFF EXCLUSION LIST:** Subjects with Category 1 findings will be placed on the Staff Exclusion List (SEL).
- APPEAL:** Subjects have the right to challenge the findings of an investigation.



FOR MORE INFORMATION

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

The Individual and Family Support Unit (IFSU) is a resource for victims of abuse and/or neglect, their families, personal representatives, and guardians. Advocates provide assistance in a variety of areas, including:

- guidance and information about the reporting and investigative process
- support during criminal cases and proceedings
- victim interview accompaniment
- case status updates

All services are free.

The Individual and Family Support Unit is staffed Monday to Friday, 9:00 a.m. to 5:00 p.m. To contact an advocate:

Call: Toll-free at 1-800-624-4143 and request Individual and Family Support. Relay users, please dial 7-1-1 and give the operator 1-800-624-4143. Translation services are also available.

E-mail: supportcoordinator@justicecenter.ny.gov

Fax: (518) 457-5180

Web form: www.justicecenter.ny.gov/contact-individual-and-family-support-unit

Where can I obtain assistance about disability-related issues and services?

The Justice Center's Disability Resource Clearinghouse has information about disability-related programs, services, laws and regulations. The Clearinghouse links to resources from local, state, federal, and national agencies, as well as nonprofit organizations. The Justice Center provides a wide-range of information that may be helpful to people with disabilities, their families, caregivers and advocates. For more information go to:

<https://www.justicecenter.ny.gov/disability-resource-clearinghouse> or call toll-free 1-800-624-4143 or email infoassistance@justicecenter.ny.gov

How can I report abuse and/or neglect?

To report abuse and neglect, call toll-free, 24/7, at 1-855-373-2122 or 7-1-1 (TTY).