



# 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](http://www.justicecenter.ny.gov)

## OUR 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.

## 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.

## OUR VALUES AND GUIDING PRINCIPLES

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|-----------------------|---|
| <b>Integrity</b>      | The Justice Center believes that all people with special needs deserve to be treated with respect and that people's rights should be protected.   |
| <b>Quality</b>        | The Justice Center is committed to providing superior services and to ensuring that people with special needs receive quality care.   |
| <b>Accountability</b> | The Justice Center understands that accountability to the people we serve and the public is paramount.  |
| <b>Education</b>      | The Justice Center believes that outreach, training, and the promotion of best practices are critical to affect systems change.   |
| <b>Collaboration</b>  | 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. |

The Justice Center is responsible for ensuring that all allegations of abuse or neglect are fully investigated. The Justice Center investigates the most serious allegations of abuse and neglect, including allegations that appear to be criminal in nature.

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.

## MAKING A REPORT

### Who can report an allegation of abuse or neglect?

Anyone can make a report to the Vulnerable Persons Central Register (VPCR). However, some people are required to report to the VPCR. These “mandated reporters” include custodians, which are people who have regular and substantial contact with individuals who receiving services, 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](http://www.justicecenter.ny.gov).

“Custodians” are defined as people who have regular and substantial contact with individuals who receive services. Custodians may include directors, operators, employees, and volunteers of a facility or agency. Custodians may also include consultants, employees, and volunteers of an entity that provides goods or services to a facility or agency. Individuals who receive services are not custodians.

The “Vulnerable Persons Central Register (VPCR)” is a statewide toll-free hotline and incident reporting system for allegations of abuse and neglect.

### What happens after a report is made?



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

The call is recorded.



The incident is then classified.

Reportable:

- Abuse or neglect
- Significant incident
- Death
- Financial

Non-reportable:

- General inquiry
- Non-Justice Center



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

The Justice Center conducts investigations for serious abuse or neglect incidents, financial misconduct, and deaths. Less serious incidents are delegated to the appropriate State Oversight Agency, which may delegate to the provider agency.

## DURING THE INVESTIGATION

### Who can be interviewed during an investigation?

For allegations of abuse or neglect, investigators will conduct interviews of people who receive services, witnesses and subjects. Most interviews are recorded.

### 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.

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

### What can I expect if I am a witness to an incident?

If you are a witness to an incident of abuse or neglect, you may be interviewed by Justice Center investigators.

### 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.

## AFTER THE INVESTIGATION IS COMPLETED

### What are the potential determinations of the investigation?

Reports of abuse or neglect are determined to be substantiated or unsubstantiated. Reports may be substantiated if an abuse or neglect investigation determines that there is a preponderance of evidence to support the allegation. Substantiated reports of abuse or neglect are classified into one of four categories. Unsubstantiated reports are immediately sealed.

A “personal representative” is someone who is legally permitted to act on behalf of the service recipient, e.g. guardian, spouse, adult child.

### Who makes the determination on the investigative findings?

The Justice Center’s Office of General Counsel (OGC) makes a final determination about whether an allegation of abuse or neglect is substantiated and, if substantiated, the category level. In every allegation of abuse or neglect, the Justice Center will issue a finding of substantiated or unsubstantiated as to each person who is a subject.

A “State Oversight Agency” licenses or certifies the provider, e.g. Office of Mental Health.

### 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.

### 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.

#### CATEGORIES OF FINDINGS AT-A-GLANCE

**Category 1** is serious physical abuse, sexual abuse or other severe conduct by a custodian. A Category 1 substantiation places the custodian on the Staff Exclusion List. It also includes a second instance of Category 2 conduct that occurs within three years of a prior Category 2 finding.

**Category 2** is when a custodian significantly endangers the health, safety or welfare of a service recipient by committing an act of abuse or neglect. A report of Category 2 conduct that is not elevated to a Category 1 finding will be sealed after five years.

**Category 3** is for less serious incidents of abuse or neglect. Reports are sealed after five years.

**Category 4** covers systemic, provider-based incidents including instances when abuse or neglect has been substantiated but staff conduct is mitigated by systemic conditions. It also includes substantiated abuse or neglect against a service recipient in which a perpetrator cannot be identified.

### 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.

## 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](http://www.justicecenter.ny.gov).

## FOR MORE INFORMATION

### How do I get more information?

For more information, please visit [www.justicecenter.ny.gov](http://www.justicecenter.ny.gov) or call 518-549-0200, available Monday to Friday, 9:00 am - 5:00 pm.

To report abuse and neglect, call the toll-free hotline, available 24/7, at 1-855-373-2122 | TTY 1-855-373-2123.

## 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** For abuse and neglect investigations, the Justice Center will assume the responsibility for investigating the most serious allegations and will delegate less severe incidents to the appropriate State Oversight Agency. If the Justice Center investigates, the case will be assigned to a Justice Center investigator.
- 4 DETERMINATION** After the investigation of abuse or neglect is completed – regardless of whether the Justice Center, the State Oversight Agency, or the service provider completes the investigation – the Justice Center’s Office of General Counsel 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 is pursued.
- 6 SEL** Custodians with Category 1 findings will be placed on the Staff Exclusion List (SEL).
- 7 APPEAL** Custodians have the right to challenge the findings of an investigation.

