



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

Mandated Reporting

**An Overview of Reporting Requirements for
Human Service Professionals**

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www.justicecenter.ny.gov**

Protection of People with Special Needs Act

The Justice Center was established by the “Protection of People with Special Needs Act”, enacted as Chapter 501 of the Laws of 2012. The intent of the act was to create a durable set of consistent safeguards for all vulnerable persons that will protect them against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment to the employees upon whom they depend.

In addition to establishing the Justice Center, the Protection of People with Special Needs Act mandates that the Justice Center operate a statewide hotline, referred to as the Vulnerable Persons’ Central Register or the VPCR, to ensure that reportable incidents are promptly reported and fully investigated, that responsible individuals are held accountable and that providers implement corrective action plans to prevent future incidents.

Further, the Protection of People with Special Needs Act identifies certain people who are defined as mandated reporters and requires these people to report reportable incidents involving vulnerable persons to the Justice Center’s Vulnerable Person’s Central Register.

Who is a Mandated Reporter?

Mandated reporters are required to report reportable incidents involving vulnerable persons. Human Services Professionals, as defined below, are Mandated Reporters.

Human Services Professionals | Human services professionals are those who may not see a service recipient on a daily basis, but who interact with the individual during the course of providing professional services. They are required to report when, while acting in their official or professional capacity, they are presented with information which gives them reasonable cause to suspect a reportable incident has occurred.

**Social Services Law, §488(5)(a)*

Medical/ Clinical Professionals

- | | | |
|----------------------|--------------------------|---|
| Physician | Medical Examiner | Emergency Medical Technician |
| Resident | Coroner | Person Credentialed by OASAS |
| Intern | Dentist | Hospital Personnel Engaged in the Admission, Examination, Care or Treatment |
| Reg. Physician Asst. | Dental Hygienist | Licensed Creative Arts Therapist |
| Surgeon | Registered Nurse | Licensed Marriage and Family Therapist |
| Podiatrist | Licensed Practical Nurse | Licensed Mental Health Counselor |
| Chiropractor | Nurse Practitioner | Licensed Behavior Analyst & Certified Behavior Analyst Assistant |
| Osteopath | Mental Health Prof. | Licensed Speech/Language Pathologist or Audiologist |
| Optometrist | Licensed Psychoanalyst | Licensed Physical Therapist |
| Social Worker | Christian Science Prof. | Licensed Occupational Therapist |

Education Professionals

- | | |
|------------------------|---------------------------|
| School Social Worker | School Teacher |
| School Nurse | School Guidance Counselor |
| Social Services Worker | School Psychologist |
| School Administrator | |
- Other School Personnel required to hold a teaching or administrative license or certificate
 - Full or part-time compensated school employee required to hold a temporary coaching license or prof. coaching certificate
 - Any other Child Care or Foster Care Worker

Law Enforcement Personnel

- Peace Officer
- Police Officer
- District Attorney or Assistant District Attorney
- Investigator employed in the office of a District Attorney
- Any other Law Enforcement Official

Who is a Vulnerable Person?

Individuals who may be vulnerable to abuse and neglect because of their reliance on professional caregivers in state operated, licensed or certified facilities, programs or agencies.

Vulnerable persons are not necessarily individuals with disabilities, although many are.

State Oversight Agencies

Certain facilities and provider agencies licensed, operated or certified by the following State Oversight Agencies serve vulnerable persons with whom you may come into contact.

Office for People With Developmental Disabilities (OPWDD)

Some examples include but are not limited to:

Community Residences (CR)
Individualized Residential Alternatives (IRA)
Certified Day Habilitation Programs
Article 16 Clinics

Office of Mental Health (OMH)

Some examples include but are not limited to:

Licensed Mental Health Clinics
Community Residences
Residential Treatment Facilities for Children & Youth
Inpatient Psychiatric Units at a general hospital

Office of Children and Family Services (OCFS)

Some examples include but are not limited to:

Youth Detention Centers
Residential Treatment Centers (RTC)
Homeless Youth and Runaway Programs
Family Type Homes for Adults

Office of Addiction Services and Supports (OASAS)

Some examples include but are not limited to:

Addiction Treatment Centers
Intensive Residential Rehabilitation Programs
Outpatient Services
Hospital-based Inpatient Detox Programs

Department of Health (DOH)

Some examples include but are not limited to:

Adult Homes or Enriched Housing Programs that have a licensed capacity of 80 or more beds, in which at least 25% of the residents are persons with a serious mental illness.
Summer Day Camps
Overnight Camps
Traveling Summer Day Camps

* Nursing Homes and Hospitals are NOT covered

State Education Department (SED)

The Justice Center has jurisdiction over residential schools that provide education to students with disabilities. Some examples include but are not limited to:

NYS School for the Blind
NYS School for the Deaf
State Supported (4201) Schools
Approved Residential Schools (In-State and Out-of-State)

* Public schools are NOT covered

What is a Reportable Incident?

The Protection of People with Special Needs Act defines three types of incidents that must be reported: abuse, neglect and significant incidents. You are not required to know what type of incident has occurred in order to make a report.

Abuse

Abuse is an action by a custodian against a service recipient, that causes or has the potential to cause injury or serious protracted impairment of the physical, mental or emotional condition of a service recipient.

There are **seven categories of abuse**:

physical abuse; sexual abuse; psychological abuse; deliberate inappropriate use of restraints; use of aversive conditioning; obstruction of reports of reportable incidents; and unlawful use or administration of a controlled substance.

Neglect

Neglect is any action, inaction or lack of attention that breaches a custodian's duty and that results in, or is likely to result in, death, physical injury or serious or protracted impairment of the physical, mental or emotional condition of a service recipient.

Most commonly neglect is the result of a custodian's lack of attention or failure to act as required by his or her responsibilities. **Neglect can include, but is not limited to:** failure to provide proper supervision; failure to provide adequate food, clothing, shelter, medical, dental, optometric or surgical care; and failure to provide access to educational instruction.

Significant Incident

Any incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of the situation, may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a person receiving services.

Types of significant incidents identified in statute:

1. Conduct on the part of a custodian that is inconsistent with an individual's treatment plan, educational program or generally accepted treatment practices.
2. Conduct between persons receiving services resulting in harm or the potential for harm.
3. ANY other conduct identified in regulations of the State Oversight Agencies.

How to Report

Mandated reporters can call the toll-free VPCR 24-hour hotline at 1-855-373-2122. For individuals using New York Relay Service, dial 7-1-1 and give the operator the phone number 1-855-373-2122. There is also a web form, as well as a mobile application, that are available for reporting abuse and neglect. For more information, visit the Justice Center's website at www.justicecenter.ny.gov.

Information You Will Be Asked to Provide

- Confirmation that immediate protections are in place for the victim; was 9-1-1 called, if necessary
- Details regarding the victim, subjects and witnesses
- Details of the incident, including the date, time, location, description of incident
- Responsible State Oversight Agency
- Name and address of the provider agency, facility and/or program
- Name, title and contact information of others who may have the same information as you
- Any other information that may assist with the investigation or review of the incident
- *You are not required to know all of the answers to these questions to make a report*

TOLL-FREE VPCR 24-HOUR HOTLINE
1-855-373-2122

When is Reporting Required?

If you are a mandated reporter and have reasonable cause to suspect that a reportable incident has occurred and that it was committed by a direct support staff, you must report it to the VPCR immediately upon discovery. The service recipient does not have to suffer harm for an incident to be reportable. The *potential* for harm must also be reported.

Immediately

Immediately means right away. Immediate reporting may be delayed to take the necessary steps to call 9-1-1, implement safety measures to protect the service recipient from further harm, or to follow internal facility procedures.

However, no internal procedure should significantly delay a report to the Justice Center. Staff going “off-duty” does not justify a delay in reporting. A report that is delayed more than 24 hours may be considered obstruction.

Upon Discovery

Discovery occurs when a mandated reporter witnesses a suspected reportable incident. It can also mean another person, including a service recipient or family member, provides the mandated reporter with reasonable cause to suspect that a service recipient has been subjected to a reportable incident.

Reasonable Cause

When trying to determine if you have reasonable cause to suspect an incident has occurred, review the circumstances, evidence and facts known or readily available to you.

Consider your own observations, trainings, experiences and common sense in assessing:

- Was the service recipient injured or was there potential for injury?
- Do you believe the explanation of how the injury occurred?
- How reliable is your information?

If you are unsure whether there is reasonable cause to suspect that a service recipient was subjected to a reportable incident, we encourage you to report the incident to the Justice Center. Each mandated reporter has a personal obligation to report a suspected reportable incident individually to the Justice Center.

Confidentiality of Reporting

As a mandated reporter, your identity is confidential and may not be publicly disclosed. You may ask that your identity not be disclosed but it may be necessary to disclose your identity to the person investigating the reported incident, in order to ensure that an incident is thoroughly investigated. The Justice Center makes every reasonable effort to protect the identity of mandated reporters, especially when a reporter is alleging that he or she is the victim of retaliation for making a report.

Immunity from Liability

The law grants immunity to mandated reporters from a legal claim which may arise from a good faith act of providing information to the VPCR. For example, if you make a report to the VPCR because you had reasonable cause to suspect a reportable incident has occurred, the subject of the report may not sue you if the allegation is not substantiated. Immunity will not be granted to someone found making an intentionally, false report.

Is it Reportable?

State Central Register Example

A 14-year old boy lives at an Office of Mental Health residential treatment facility and spends the weekends at home with this family. He has a scheduled therapy session in your office and you discover a cigarette burn on his neck that was not there the previous week.

Is this reportable to the Justice Center or the State Central Register of Child Abuse?

In this case, the cigarette burn could have been caused by a custodian at the residential treatment facility or by someone in his family.

If you are unsure where to report, we encourage you to make a report to the Justice Center — we work with the State Central Register to ensure that incidents of abuse and neglect are properly reported and investigated.

Service Recipient Reports Example

A 16-year old girl who lives in an Office of Children and Family Services residential treatment center visits your office for a dental procedure and you observe bruises on the service recipient's neck. She tells you that yesterday, a staff member placed his hands on her neck and squeezed it.

Is this reportable to the Justice Center?

YES. You have reasonable cause to suspect that a reportable incident occurred because the service recipient reported to you that a staff members placed his hands on her neck and you observe bruises there.

Custodian Not Identified Example

A 60-year old man who resides in an Office For People With Developmental Disabilities community residence is admitted to the hospital. During your examination, you determine that he is severely malnourished, dehydrated and has bedsores. The service recipient cannot, or will not, discuss his current condition.

Is this reportable to the Justice Center?

YES. You should consider your own observations, training, experience and common sense in assessing the reliability of information presented to you.

Although the service recipient is not discussing his condition, he has suffered multiple injuries. Remember, conclusive evidence that the injuries were caused by a custodian is not required. Identifying the custodian is also not a requirement when making a call to the VPCR.

What Happens to a Report

Intake

A trained staff person takes a full report and carefully enters all details of the incident into the VPCR. All calls are recorded and an incident number is assigned at the end of each call. The incident number gives proof that the incident was reported. This number should also be referenced by the reporter if he or she needs to add more information at a later time.

Classification

After the call, a reportable incident is classified as abuse, neglect or significant incident.

Assignment

Once the report is classified, a case is created and assigned to the appropriate entity for investigation. Once assigned, the investigation begins.

Final Determination

Regardless of who is conducting the investigation, the Justice Center reviews *all* abuse and neglect investigations and makes the final determination about whether or not the allegation is substantiated or unsubstantiated.

Once a determination is made, the Justice Center notifies the victim and his or her personal representative, the subject in the case and the provider agency director, of the outcome. Mandated reporters and witnesses are *not notified* of the outcome of the investigation.

The Justice Center does not make a determination regarding significant incidents, however, a State Oversight Agency may request that a provider agency develop a corrective action plan if there is an issue of concern.

Failure to Report

A mandated reporter who knowingly and willfully fails to report suspected abuse or neglect to the VPCR, may be subject to termination and may be sued in civil court for monetary damages for any harm caused by the failure to make a report.

In addition, any human services professional required by law to report a case of suspected abuse or neglect who knowingly and willfully fails to do so, may be prosecuted for a Class A misdemeanor.

Multiple Reporting Exception

Each mandated reporter has a personal obligation to report a suspected reportable incident individually to the Justice Center unless multiple reports regarding the same incident would be made to the VPCR and the “Multiple Reporting Exception” is met.

Under the “Multiple Reporting Exception”, the only time you are not required to personally report an allegation to the VPCR is if:

- You know that the incident was already reported to the VPCR; AND
- You know that you were named in the report as a person of knowledge of the incident

If you are unsure whether you have reasonable cause to suspect a reportable incident or you are not certain the “Multiple Reporting Exception” has been met, we encourage you to report the incident to the VPCR.

Resources and Contact Information

Report Abuse or Neglect: 1-855-373-2122

Report Abuse or Neglect TTY: 1-855-373-2123

For additional resources and information on the Justice Center, please visit our website at:

www.justicecenter.ny.gov

Code of Conduct for Custodians of People with Special Needs

Introduction

The Code of Conduct, as set forth in the Code of Conduct itself, sets forth a framework intended to assist impacted employees to help people with special needs “live self-directed, meaningful lives in their communities, free from abuse and neglect, and protected from harm,” in addition to the specific guidance provided by the agency’s policies and training.

Similarly, the Notice to Mandated Reporters contains guidance designed to assist mandated reporters and is intended to provide a summary of reporting obligations for mandated reporters. It is not intended to supplement or in any way add to the reporting obligations provided by law, rule, or regulation.

As provided by law, rule, or regulation, only custodians who have or will have regular and direct contact with vulnerable persons receiving services or support from facilities or providers covered by the Justice Center Act must sign that they have read and understand the Code of Conduct.

The framework provides:

1. Person-Centered Approach

My primary duty is to the people who receive supports and services from this organization. I acknowledge that each person of suitable age must have the opportunity to direct his or her own life, honoring, where consistent with agency policy, their right to assume risk in a safe manner, and recognizing each person’s potential for lifelong learning and growth. I understand that my job will require flexibility, creativity and commitment. Whenever consistent with agency policy, I will work to support the individual’s preferences and interests.

2. Physical, Emotional and Personal Well-being

I will promote the physical, emotional and personal well-being of any person who receives services and supports from this organization, including their protection from abuse and neglect and reducing their risk of harm to others and themselves.

3. Respect, Dignity and Choice

I will respect the dignity and individuality of any person who receives services and supports from this organization and honor their choices and preferences whenever possible and consistent with agency policy. I will help people receiving supports and services use the opportunities and resources available to all in the community, whenever possible and consistent with agency policy.

4. Self-Determination

I will help people receiving supports and services realize their rights and responsibilities, and, as consistent with agency policy, make informed decisions and understand their options related to their physical health and emotional well-being.

5. Relationships

I will help people who receive services and supports from this organization maintain or develop healthy relationships with family and friends. I will support them in making informed choices about safely expressing their sexuality and other preferences, whenever possible and consistent with agency policy.

6. Advocacy

I will advocate for justice, inclusion and community participation with, or on behalf of, any person who receives services and supports from this organization, as consistent with agency policy. I will promote justice, fairness and equality, and respect their human, civil and legal rights.

7. Personal Health Information and Confidentiality

I understand that persons served by my organization have the right to privacy and confidentiality with respect to their personal health information and I will protect this information from unauthorized use or disclosure, except as required or permitted by law, rule, or regulation.

8. Non-Discrimination

I will not discriminate against people receiving services and supports or colleagues based on race, religion, national origin, sex, age, sexual orientation, gender identity, economic condition, disability, or any other protected class under the law.

9. Integrity, Responsibility and Professional Competency

I will reinforce the values of this organization when it does not compromise the well-being of any person who receives services and supports. I will maintain my skills and competency through continued learning, including all training provided by this organization. I will actively seek advice and guidance of others whenever I am uncertain about an appropriate course of action. I will not misrepresent my professional qualifications or affiliations. I will demonstrate model behavior to all, including persons receiving services and supports.

10. Reporting Requirement

As a mandated reporter, I acknowledge my legal obligation under Social Services Law § 491, as may be amended from time to time or superseded, to report all allegations of reportable incidents immediately upon discovery to the Justice Center's Vulnerable Persons' Central Register by calling 1-855-373-2122.