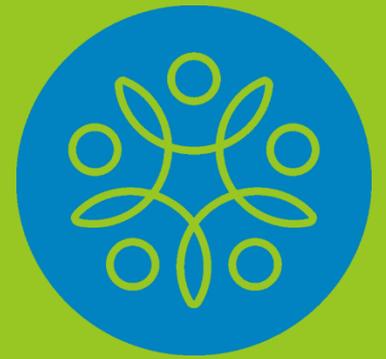


PROTECTION OF PEOPLE WITH SPECIAL NEEDS

2016 UPDATES



BACKGROUND

- Tens of thousands of New Yorkers, including advocates and families of people with special needs, came together to support this crucial legislation, which was passed by the State Legislature on June 20, 2012.
- This legislation will standardize regulation of multiple agencies within New York State.
- The Justice Center for the Protection of People with Special Needs will transform how our state protects over one million New Yorkers under the care or jurisdiction of six state agencies.

BACKGROUND



WHAT DOES THE JUSTICE CENTER PROVIDE?

- **24/7 Hotline to Report Abuse:** The Justice Center operates an around-the-clock hotline that immediately classifies the allegations and routes reports to law enforcement agencies, when appropriate.
- **Comprehensive Database:** The Justice Center created a comprehensive statewide abuse database to track and monitor abuse complaints in order to spot trends.
- **Statewide Abuse Register:** The Justice Center created a register of workers who have committed serious acts of abuse who will be prohibited from ever being hired again in any position where they would work with people with disabilities or special needs.
- **Consolidation of Background Checks:** The Justice Center reviews and evaluates the criminal history for individuals applying for a job or other position dealing with people with special needs and disabilities.

WHAT DOES THE JUSTICE CENTER PROVIDE OPWDD AGENCIES?

- **Code of Conduct:** All individuals working with people with special needs and disabilities are required to sign and are held accountable to a code of basic ethical standards.
- **Special Prosecutor:** The Justice Center has a special prosecutor who will investigate and prosecute allegations of abuse and serious neglect that rise to the level of criminal offenses as well as a team of investigators and lawyers.
- **Standardized Definitions for Abuse and Neglect:** The Governor's legislation created standardized definitions of abuse and neglect regarding children and adults in covered facilities and programs to enable the Justice Center to more easily process and address instances of abuse.
- **Strengthened Anti-Abuse Laws:** The legislation increased criminal penalties for endangering the welfare of people with disabilities and special needs, and strengthens a prosecutor's ability to prove that any of these individuals in a facility operated, licensed or certified by the State was a victim of sexual abuse.

MANDATED REPORTING OF INCIDENTS PROCESS

- First, **immediately intervene** and **STOP** the abuse.
 - Ensure persons safety
- **One Eyewitness** with first hand knowledge must report incidents, but include all the names of the witnesses present
 - **EXAMPLE:** If 4 people witness an incident
 - Contact immediate supervisor or next level of supervision
 - 1 staff must then notify the JC via a call or web form and disclose the names of all witness present at the time of the incident.

If someone we support tells you about an incident of abuse that occurred, you must report it even if you did not witness it firsthand.

DEFINITIONS



REGULATION

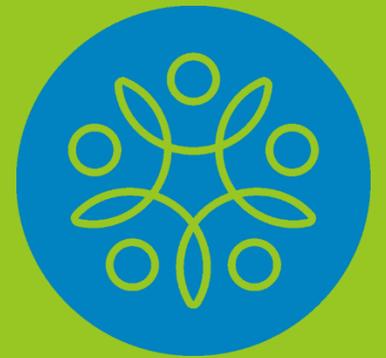
- **NYS Regulation Part 624**
- **NYS Regulation Part 625**

PART 624

- Reportable Incidents of Abuse and Neglect
- Reportable Significant Incidents
- Serious Notable Occurrences
- Minor Notable Occurrences



**Reportable Incidents
Of
Abuse and Neglect**



PHYSICAL ABUSE

- shall mean conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental, or emotional condition of the individual receiving services, or causing the likelihood of such injury or impairment. Such conduct may include, but shall not be limited to: **slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting, or the use of corporal punishment.**
- **Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any party.**

SEXUAL ABUSE

1. any conduct by a custodian that subjects a person receiving services to any offense defined in article 130 or section 255.25, 255.26, or 255.27 of the penal law, or any conduct or communication by such custodian that allows, permits, uses, or encourages a person receiving services to engage in any act described in articles 230 or 263 of the penal law.
2. any sexual contact between an individual receiving services and a custodian of the program or facility which provides services to that individual whether or not the sexual contact would constitute a crime (see especially section 130.05(i) of the penal law). However, if the individual receiving services is married to the custodian the sexual contact shall not be considered sexual abuse. Further, for purposes of this subparagraph only, a person with a developmental disability who is or was receiving services and is also an employee or volunteer of an agency shall not be considered a custodian if he or she has sexual contact with another individual receiving services who is a consenting adult who has consented to such contact.

PSYCHOLOGICAL ABUSE

- includes any verbal or nonverbal conduct that may cause significant emotional distress to an individual receiving services.
- 1. Examples include, but are not limited to, taunts, derogatory comments or ridicule, intimidation, threats, or the display of a weapon or other object that could reasonably be perceived by an individual receiving services as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury.
- 2. In order for a case of psychological abuse to be substantiated after it has been reported, the conduct must be shown to intentionally or recklessly cause, or be likely to cause, a **substantial diminution of the emotional, social or behavioral development or condition of the individual receiving services.** Evidence of such an effect must be supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor.

DELIBERATE INAPPROPRIATE USE OF RESTRAINTS

- shall mean the use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is deliberately inconsistent with an individual's plan of services (e.g. individualized service plan (ISP) or a habilitation plan), or behavior support plan, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other party. For purposes of this paragraph, a restraint shall include the use of any manual, pharmacological, or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.

USE OF AVERSIVE CONDITIONING

- shall mean the application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services. Aversive conditioning may include, but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, and the withholding of meals and the provision of substitute foods in an unpalatable form. The use of aversive conditioning is prohibited by OPWDD.

OBSTRUCTION OF REPORTS OF REPORTABLE INCIDENTS

- shall mean conduct by a custodian that impedes the discovery, reporting, or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment, or supervision of an individual receiving services; actively persuading a custodian or other mandated reporter (as defined in section 488 of the Social Services Law) from making a report of a reportable incident to the statewide vulnerable persons' central register (VPCR) or OPWDD with the intent to suppress the reporting of the investigation of such incident; intentionally making a false statement, or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with OPWDD regulations, policies or procedures; or, for a custodian, failing to report a reportable incident upon discovery.

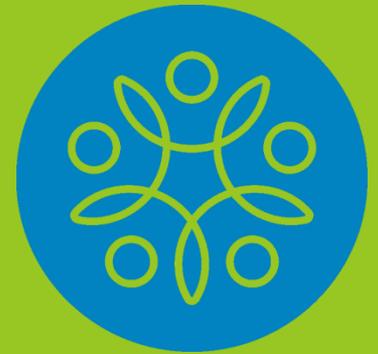
UNLAWFUL USE OR ADMINISTRATION OF A CONTROLLED SUBSTANCE

- shall mean any administration by a custodian to a service recipient of a controlled substance as defined by article 33 of the public health law, without a prescription, or other medication not approved for any use by the federal food and drug administration. It also shall include a custodian unlawfully using or distributing a controlled substance as defined by article 33 of the public health law, at the workplace or while on duty.

NEGLECT

- shall mean any action, inaction, or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental, or emotional condition of a service recipient. Neglect shall include, but is not limited to:
 1. failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse as described in paragraphs (1) through (7) of this subdivision if committed by a custodian;
 2. failure to provide adequate food, clothing, shelter, or medical, dental, optometric or surgical care, consistent with Parts 633, 635, and 686, of this Title (and 42 CFR Part 483, applicable to Intermediate Care Facilities), and provided that the agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric, or surgical treatment have been sought and obtained from the appropriate parties; or
 3. failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article 65 of the education law and/or the individual's individualized education program.

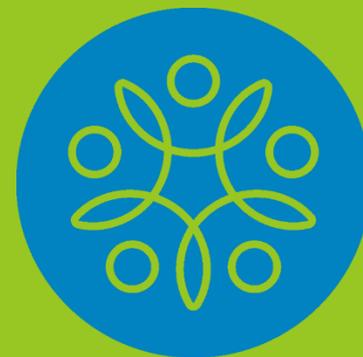
Reportable Significant Incidents



Reportable Significant Incidents

- Conduct between persons receiving services that would constitute abuse
- Seclusion and Unauthorized use of Time Out
- Medication Error with Adverse Effect
- Inappropriate Use of Restraints
- Missing Person
- Unauthorized Absence
- Choking, with known or no known risk
- Self-abusive behavior, with injury
- Injury with hospital admission
- Theft/Financial Exploitation by staff or of \$100+
- Mistreatment
- Other significant incident – doesn't involve staff conduct

Notable Occurrences



Notable Occurrences

Serious Notable

- Death
- Sensitive Situations

Minor Notable

- Injury
- Theft/Financial Exploitation, \$100 or less

PART 625



DEFINITIONS OF 625 EVENTS AND SITUATIONS

Physical Abuse	The non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.
Sexual Abuse	Non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.
Emotional Abuse	The willful infliction of mental or emotional anguish by threat, humiliation, intimidation, or other abusive conduct, including but not limited to, frightening or isolating an adult.
Active Neglect	The willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.
Passive Neglect	The non-willful failure of a caregiver to fulfill care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.

DEFINITIONS OF 625 EVENTS AND SITUATIONS

Self-Neglect	An adult's inability, due to physical and/or mental impairments, to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being, and general safety; or managing financial affairs.
Financial Exploitation	The use of an adult's funds, property, or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers, or denial of access to assets.
Death	The end of life, expected or unexpected, regardless of cause.

JUSTICE CENTER

All Justice Center Notifications can be made by:

Calling

1-855-373-2122

Webform

<https://vpcr.justicecenter.ny.gov/wi>

JONATHAN'S LAW



- **All types of Part 624 Incidents and Allegations of Abuse/Neglect require Jonathan's Law Notification.**

INVESTIGATIONS



INVESTIGATIONS

- Justice Center will determine who will conduct investigations
- Voluntary agencies must carry out investigations of abuse and neglect or significant events delegated to them by the Justice Center
- Reports have to be in the specified format (OPW 149)
- The Justice Center must receive all investigation reports and documentary evidence of all abuse/neglect investigations in certified settings upon completion.
- Employees will be notified by their supervisor if they have been identified as a subject at the onset of an investigation. Employees who become a subject during the investigation process will be notified as well by their supervisor. ([Refer to Employee Notification FAQ](#))

INTERNAL INVESTIGATION

- Conducted at arms length and objectively
- All potential witnesses are interviewed
- All possible evidence is collected
- A written final report is generated, including:
 - Conclusions drawn from the majority of evidence
 - Recommendations to prevent recurrence

INVESTIGATIONS FINDINGS

- Are required for all allegations of abuse or neglect
- Will either be substantiated or unsubstantiated based on the preponderance of evidence gathered during the investigation.
- A concurrent finding can also be made to the finding if a system problem contributed to the occurrence.
- The agency's has an Incident Review Committee but their role is limited for any investigation conducted by OPWDD or the JC.
- The Justice Center forwards all substantiated investigations of abuse/neglect to the Office of General Council to determine the category of substantiated abuse.
 - Category 1, 2, 3, 4
 - If substantiated as Category 1, employee is placed on Staff Exclusion List (SEL)

WHAT ARE CATEGORIES PERTAINING TO SUBSTANTIATIONS OF ABUSE AND NEGLECT?

1

Substantiated serious physical abuse, sexual abuse or other serious conduct. Employee is placed permanently on the SEL and is terminated immediately, if not already.

2

Conduct that seriously endangers health, safety or welfare of a service recipient and requires progressive discipline and a plan by the provider agency for training and prevention of reoccurrences. A category 2 may become a category 1 if another category 2 incident occurs within 3 year. A category 2 may be sealed after five years if no other incidents occur.

3

Abuse or neglect not to the level of category 1 or 2 and requires a prevention plan by the provider agency and remediation. A category 3 will be sealed after five years if no other incidents occur.

4

Service recipient was exposed to harm, or risk of harm, but staff culpability may have been mitigated by systemic problems or perpetrator cannot be identified. Provider agency must develop a plan for prevention and remediation.

FOR MORE INFORMATION

<http://www.opwdd.ny.gov>

<https://www.justicecenter.ny.gov/>

Please click the link below to complete this training.

<https://docs.google.com/forms/d/1InIA-uYipYimv0Jlx4fmZSdMzqVnh6R1lhEjYMT3He4/viewform>