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# Overview of the NYS Justice Center for the Protection of People with Special Needs

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# Overview of the Justice Center for the Protection of People with Special Needs

## Agenda

February 9, 2018 from 3:00 – 5:00 pm

**Presenters:** Laura Darman, Esq. Rachel Dunn, Esq. and Deirdre Keating, Esq.

### Justice Center Overview

3:00 – 3:50 P.M.

- Functions of the Justice Center
- Jurisdiction
- Incident Reporting
- What Happens to a Report?
- What Happens in a Criminal Case?
- Abuse Prevention
- Death Reviews
- Additional Responsibilities

### Break

3:50 – 4:00 P.M.

### Special Prosecutor Inspector General

4:00 – 4:30 P.M.

- Jurisdiction
- Changes to Existing Law
- Life of a Justice Center Criminal Case
- Challenge to Authority to Independently Prosecute

### Pre-Employment Checks

4:30 – 5:00 P.M.

- Staff Exclusion List
- Pre-Employment Checks for OPWDD Providers
- Criminal Background Checks
- Medicaid Fraud Checklist

# Overview of the NYS Justice Center for the Protection of People with Special Needs

February 9, 2018

## SPEAKER BIOGRAPHIES

**LAURA DARMAN, ESQ.** is the Executive Deputy Director of the New York State Justice Center for the Protection of People with Special Needs. Laura most recently served as the Director of Intergovernmental Affairs at the Justice Center. Prior to joining the Justice Center in August of 2014, Laura provided legal counsel and governmental relations assistance to a range of clients at the law firm of Malkin & Ross. Her work focused on the areas of health care, social services and state budget advocacy. Laura received her B.A in Psychology, magna cum laude from Russell Sage College in May 2001, and her J.D., cum laude from Albany Law School in May 2003.

**RACHEL DUNN, ESQ.** is Special Prosecutor/Inspector General at The New York State Justice Center for the Protection of People with Special Needs Office of the Special Prosecutor/Inspector General. Rachel joined the Justice Center in 2014, and became the agency's Special Prosecutor/Inspector General in 2017. She manages a team of attorneys who oversee investigations and litigation pertaining to allegations of abuse and neglect committed by caregivers against vulnerable persons throughout New York State. She and members of her team prosecute cases state-wide that rise to the level of criminal conduct, and defend the agency's civil adjudications under the Social Services law. Prior to joining the Justice Center's Office of the Special Prosecutor/Inspector General, Rachel worked as an agency attorney for the New York City Department of Education handling special education administrative cases. In that role she litigated due process claims pertaining to special educational planning processes, procedural violations, and legality of corresponding school placements and therapeutic services. Before her move to New York City, Rachel served as an Assistant District Attorney in Erie County, where she practiced in the office's general felonies bureau. She is a graduate of Southern Methodist University's Dedman School of Law, and the Georgia Institute of Technology. She is an Air Force brat, who enjoys spending as much time as possible outdoors. [rachel.dunn@justicenter.ny.gov](mailto:rachel.dunn@justicenter.ny.gov)

**DEIRDRE KEATING, ESQ.** is the Director of the Criminal Background Check Unit at the NYS Justice Center for the Protection of People with Special Needs. Among other duties, this Unit is responsible for reviewing the criminal history and making employment suitability determinations on those applying to work with vulnerable populations served by providers under the jurisdiction of the Justice Center. Prior to joining the Justice Center, Deirdre served as a Senior Attorney with the NYS Division of Criminal Justice Services with a primary focus on access to criminal history information issues. After graduation from Albany Law School and working in private practice, she joined the Counsel's Office of the NYS Department of Correctional Services and worked in the Legislative and Intergovernmental Affairs Unit. She has also served as the Town Prosecuting Attorney for Ravena, NY and the Planning and Zoning Attorney for Rensselaerville, NY.



Justice Center for the  
Protection of People  
with Special Needs

# Overview of the Justice Center

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# Key Drivers That Led to the Justice Center

- Impossible to prevent staff who committed acts of abuse from getting another job working with people with special needs
- Inconsistent laws, rules, regulations, requirements and standards
- Limited capacity for statewide oversight
- Inability to identify and predict future areas of risk across systems

# 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.

# Key Functions of the Justice Center



**Advocate** on behalf of people with special needs and provide oversight of quality of care



Operate a centralized, statewide **24-hour hotline** and incident reporting system staffed by trained personnel



Maintain **state-wide register** that contains the names of individuals found responsible for serious or repeated acts of abuse or neglect



Centralize and perform functions relating to criminal history **background checks**



Develop and implement **consistent standards** for investigative activities including staff qualifications and training, and training for mandated reporters



Prosecute and assist as needed in **criminal investigation and prosecution**. Analyze **abuse patterns and trends** in order to prevent future occurrences

# Justice Center Regions





# Jurisdiction

# State Oversight Agencies



Office for People With Developmental Disabilities

Office of Mental Health

Office of Alcoholism and Substance Abuse Services

Office of Children and Family Services

Department of Health

State Education Department

*Social Services Law § 488 (4-a)*



Justice Center for the  
Protection of People  
with Special Needs

# Office for People With Developmental Disabilities (OPWDD)

All state-operated facilities and related programs

All certified/licensed facilities or programs

## Examples:

Intermediate Care Facilities (ICFs)

Individual Residence Alternative and Family Care Homes

Developmental Centers

Day Habilitation

Article 16 clinics

# Office of Mental Health (OMH)

All state-operated facilities and related programs

All licensed programs

## Examples:

- Inpatient hospital psychiatric units
- Community residences
- Partial hospitalization and outpatient clinics
- Assertive Community Treatment programs

## Exceptions:

- State correctional programs or facilities under the jurisdiction of the DOCCS
- Secure treatment facilities

*Social Services Law § 488 (a)*

# Office of Alcoholism and Substance Abuse Services (OASAS)

All state operated facilities and related programs and all certified facilities or programs treating chemical dependence, alcoholism and gambling

## Examples:

Addiction Treatment Centers (ATC)

Medically Supervised or Monitored Inpatient Withdrawal & Stabilization

Intensive Residential Rehabilitation & Supportive Living Services

Community Residential Services

Methadone treatment programs

*Social Services Law §488 (a)*



# Office of Children & Family Services (OCFS)

All state-operated juvenile justice facilities and related programs and certified detention facilities or programs

## Examples:

- Residential secure, limited secure, non-secure facilities for court-placed youth
- Residential and youth detention facilities for children
- Residential Treatment Centers
- Residential programs for runaway and homeless youth
- Family-type homes for adults

*Social Services Law §488 (4)(b)*



# Department of Health (DOH)

DOH permitted overnight, summer day and travelling day camps that serve children with developmental disabilities

DOH Licensed adult homes or enriched housing facilities with over 80 beds where at least 25% of residents have serious mental illness

## Exceptions:

- Nursing Homes

- Hospitals (with exception of OMH and OASAS licensed or certified units as outlined in Social Services Law section 488 (a))

- Adult homes or enriched housing facilities that are authorized to have more than 55% assisted living beds

# State Education Department (SED)

Approved Private Residential, Special Act, State-Operated and State-Supported Schools in New York State

## Examples:

NYS School for the Blind (Batavia)

NYS School for the Deaf (Rome)

Special Act School Districts

4201 Schools

853 Schools

Approved Out-of-State Schools

*Social Services Law § 488 4 (e)*



# Incident Reporting

# Who is a Mandated Reporter?

Social Services Law section 488 (5) defines a Mandated Reporter as a:

1. Human Services Professional *SSL 488 (5-a)*
2. Custodian *SSL 488 (2)*

# Who is a Vulnerable Person?

The law defines a vulnerable person as a person who, due to physical or cognitive disabilities, or the need for services or placement, is receiving care from a facility or provider agency under the jurisdiction of the Justice Center

*Social Services Law section 488 (15)*

# What must the Custodian report?

Social Services Law section 491 requires that mandated reporters to report “reportable incidents” involving “vulnerable persons” to the Justice Center

- Abuse and Neglect (15,950 reports in 2017)
- Significant incidents (34,578 reports in 2017)

# Abuse

- Physical abuse
- Sexual abuse
- Psychological abuse
- Deliberate inappropriate use of restraints
- Use of aversive conditioning
- Obstruction of reports of reportable incidents
- Unlawful use or administration of a controlled substance

*SSL § 488 (1)*

# Neglect

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.

*SSL § 488 (1) (h)*

# Types of Neglect Identified in Statute

Neglect can include, but is not limited to:

- Failure to provide proper supervision
- Failure to provide adequate food, clothing, shelter, medical care, etc.
- 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.

*SSL § 488(1)(i)*



# 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, including but not limited to:
  - Unauthorized seclusion
  - Use of time-out
  - Inconsistent administration of medication
  - Inappropriate use of restraints

# Types of Significant Incidents Identified in Statute *(con't)*

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

# What Happens to a Report

# After the Report is Received



**CLASSIFICATION**

The report is classified

## **Reportable:**

- ✓ Abuse
- ✓ Neglect
- ✓ Significant Incident

## **Non-Reportable:**

- ✓ General Inquiry
- ✓ Outside of Justice Center Jurisdiction



# Once Classification is Made



The report is assigned to the appropriate entity for investigation

# When the Investigation is Complete



FINAL  
DETERMINATION

## The Justice Center:

- Reviews all abuse and neglect investigations
- Makes a final determination
- Makes appropriate notifications
- Oversees corrective action plans

# Unsubstantiated Reports of Abuse and Neglect

- Unsubstantiated allegations (including false allegations) are not publicly available and cannot be accessed by future employers *SSL § 493(d)*
- Employee may still be subject to employment action by their employer, including termination, if his/her actions constituted “misconduct” or if he/she is not protected by a Collective Bargaining Agreement

# Category 1

- Serious physical abuse, sexual abuse or other serious conduct by custodians *SSL § 493(4)(a)*
- 14 types of conduct defined in statute
- Results in placement on the Staff Exclusion List *SSL § 493 (5)(a)*



# Category 2

- Conduct in which the custodian “seriously endangers the health, safety or welfare of a service recipient by committing an act of abuse or neglect”
- Two Category 2 findings in a 3-year period results in a Category 1 finding and placement on Staff Exclusion List
- Category 2 findings not elevated to Category 1 are not publicly available

SSL § 493 (4)(b)

# Category 3

- Substantiated findings of abuse or neglect but the conduct does not meet the definition of Category 1 or 2
- Substantiated Category 3 findings are not publicly available and cannot be accessed by future employers

*SSL § 493 (c)*

# Category 4

- Made against a facility or provider agency, NOT a custodian *SSL § 493 (d)*
- Two types:
  - Staff culpability mitigated by systemic problems at a facility or provider agency
  - Abuse or neglect substantiated but perpetrator can't be identified (Currently on hold pending litigation)

# Staff Exclusion List

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

*SSL § 495*

# Notifications at Conclusion of Investigations

- Family Members and/or Victims
- Providers
- State Oversight Agency
- Subjects

*SSL § 496*

# Appeal Process

The subject of a substantiated report of abuse or neglect, regardless of the category of finding, has the right to challenge the findings within 30 days.

Visit our website under Resources/Guidance Documents for more information on the Administrative Appeals Process

# What Happens in a Criminal Case

# Criminal Investigations

- Allegations that rise to level of criminal offense may be prosecuted by Justice Center's Special Prosecutor or local District Attorney
- Local district attorney notified of every case of abuse and neglect in their jurisdiction
- Justice Center prosecutors provide assistance to local district attorneys, as needed
- All criminal cases are also administratively reviewed



# Abuse Prevention



# Abuse Prevention

- Pre-Employment Checks and Code of Conduct
- Reporting and Data Analytics
- Audit and Review
- Prevention of Abuse and Neglect Work Group (cross-agency)
- Web-based Prevention Resources

# Death Reviews

# Justice Center Death Jurisdiction

## What is Reported?

- Executive Law § 556/557: All deaths in residential settings licensed, operated or certified by OPWDD, OASAS, OCFS and OMH are reported to the Justice Center
- Required for any death in these settings 30 days post discharge

# Reports of Death

Abuse and Neglect Allegation, death involved (average 60 -70 per year)

- Justice Center abuse and neglect investigation
- Law enforcement and medical examiners notified

Death with NO allegation of abuse/neglect (Approximately 5,000 per year)

- Justice Center reviews the quality of care before death
- Consults with Justice Center Medical Review Board
- This review can result in the initiation of an abuse and neglect investigation

# Additional Responsibilities

# Advisory Council

- 22 members with expertise in all service systems. 60%+ are parents or individuals who have or currently receive services
- Appointed by Governor, approved by Senate
- Advises and assists in developing policy and programs
- May consider any matter related to improving the quality of life of people with disabilities and advise the Justice Center

*Executive Law § 561*

# Forensic Oversight

- The Justice Center monitors compliance with Special Housing Unit Exclusion Law in the 31 SHU/Long Term Keep Locks in NYS
- The Justice Center also reviews the quality of mental health care inmates receive in prison

*Executive Law § 553 (24) and Correction Law § 137 (6) and § 401*





# Individual & Family Support Services

The Individual and Family Support Unit guides individuals receiving services and families through the reporting, investigation, final determination and/or criminal processes.

- Makes referrals and serves as a liaison
- Promotes responsive and efficient communication
- Conducts outreach
- Tracks data and information

# Surrogate Decision Making Committee

- Provides medical decision-making for residents or former residents of OPWDD, OMH, or OASAS programs
- Alternative approach to the court system for obtaining informed decisions regarding non-emergency major medical treatment and in some cases end of life decisions.

*Executive Law § 553 (15) and MHL Article 80*

# Technology-Related Assistance for Individuals with Disabilities (TRAID)

- TRAID coordinates statewide activities to increase access to, and acquisition of, assistive technology for individuals of all ages and disabilities.
- The Justice Center supports 12 Regional TRAID Centers (RTCs) which provide information, training, device demonstration, reuse, exchange, and loans.

# Special Prosecutor/ Inspector General

# Legislative Intent of the Protection of People with Special Needs Act

To bolster the ability of the state to respond more effectively to abuse and neglect of vulnerable persons, without creating additional burdens on local law enforcement, the justice center will have concurrent authority with district attorneys to prosecute abuse and neglect crimes committed against such persons.

*2012 N.Y. ALS 501, 2012 N.Y. LAWS 501, 2011 N.Y. S.N. 7749*

# Criminal Jurisdiction

The Justice Center is a Law Enforcement Agency

Exec. Law §552(2)(a):

Special Prosecutor and Inspector General

- (i) Investigate and prosecute offenses involving abuse and neglect
- (ii) to cooperate with and assist district attorneys and other local law enforcement officials . . .

# Statewide Criminal Jurisdiction

Criminal Procedure Law §1.20(32) and §1.20(34)(g)

District attorney is defined to include the special prosecutor/inspector general and her assistants.

- DA's Office with Concurrent Jurisdiction in all 62 counties
- JC Investigators analogous to DA Investigators

# Justice Center Jurisdiction

## Victim must be a Vulnerable Person

a person who, due to physical or cognitive disabilities, or the need for services or placement, is receiving services from a facility or provider [as defined in social services law] . . .

*Executive Law § 550(5)*

## Subject must be a Custodian

employee or volunteer of a facility or provider agency; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a facility or provider agency pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the facility or provider agency

*Social Services Law § 448(2)*



# The Impact of the Protection of People with Special Needs Act on Criminal Prosecution

# The Law

The following articles have had sections amended under the Protection for People with Special Needs Act:

- Executive Law
- Criminal Procedure Law
- Corrections Law
- Education Law
- Mental Hygiene Law
- Penal Law
- Social Services Law
- Vehicle and Traffic Law

# Penal Law Amendments

Sex Offenses; Lack of Consent *PL § 130.05(3)*

Subdivisions (h) and (i) are added expanding “statutory rape” to certain vulnerable persons

*PL § 130.05(3)(h) & (i)*



# Penal Law Amendments

Sex Offenses; Lack of Consent

Non-Residential Facilities *PL § 130.05(3) (h)*

Victim must be: client or patient

Actor must be: health care provider or mental health care provider

*Health Care Provider: as defined in PL 130.00(12)*

*Mental Health Care Provider: as defined in PL 130.00(13)*



# Penal Law Amendments

Sex Offenses; Lack of Consent

Non-Residential Facilities *PL § 130.05(3) (h)*

The Offense: must occur during a treatment session, consultation, interview or examination

- Rape in the third degree (*PL § 130.25*)
- Criminal sex act in the third degree (*PL § 130.40*)
- Sexual abuse in the third degree (*PL § 130.55*)
- Aggravated sexual abuse in the fourth degree (*PL § 130.65-A*)

# Penal Law Amendments

Sex Offenses; Lack of Consent

Inpatient or Residential Facilities *PL § 130.05(3) (i)*

Victim must be: client or patient

Facility: Residential/Inpatient facility operated, licensed or certified by:

- OMH
- OPWDD
- OASAS

# Penal Law Amendments

Sex Offenses; Lack of Consent

Inpatient or Residential Facilities *PL § 130.05(3) (i)*

Actor must be: an employee of the facility

The Offense: no requirement regarding when/where

- Rape in the third degree (*PL § 130.25*)
- Criminal sex act in the third degree (*PL § 130.40*)
- Sexual abuse in the third degree (*PL § 130.55*)
- Aggravated sexual abuse in the fourth degree (*PL § 130.65-A*)

# Penal Law Amendments

Falsely reporting an incident in the third degree  
*PL § 240.50*

Subdivision 4 is added to include false reports made to the VPCR.

Class A Misdemeanor



# Penal Law Amendments

Endangering the welfare of an incompetent or physically disabled person in the second degree

*PL § 260.24*

Reckless

Class A Misdemeanor



# Penal Law Amendments

Endangering the welfare of an incompetent or physically disabled person in the second degree

*PL § 260.25*

Knowingly

Class E Felony

# Liability for Custodians and Human Services Professionals (non JC Jurisdiction)

## Criminal:

A Human Services Professional who fails to report a suspected case of abuse and neglect to the VPCR

Class A Misdemeanor

Failure must be knowing and willful

*Social Services Law §491(3)(a)*

# Liability for Custodians and Human Services Professionals (non JC Jurisdiction)

## Civil:

A Mandated Reporter who fails to report a suspected case of abuse and neglect to the VPCR may be subject to termination

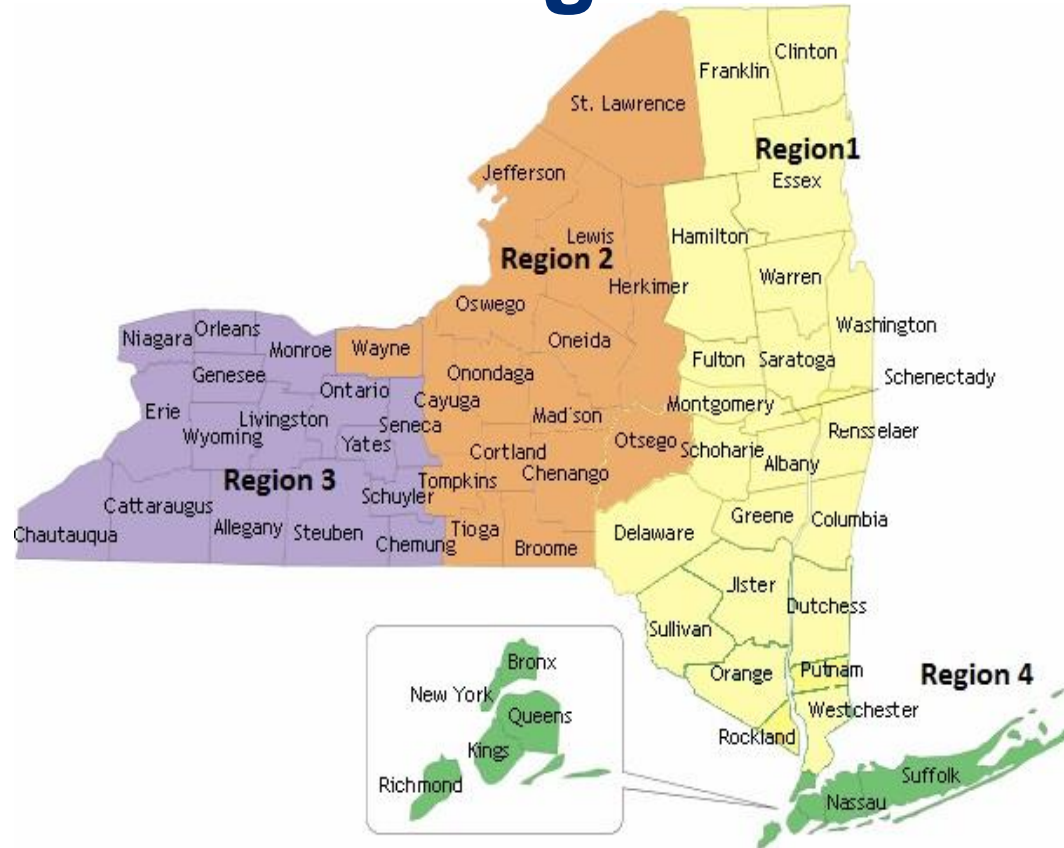
Any person or official required under Article 11 of the Social Services Law to report to the VPCR and fails to do so, is civilly liable for the damages proximately caused by such failure

Failure must be knowing and willful

*Social Services Law §491(3)(b)*

# The Life of a Justice Center Criminal Case

# Justice Center Regions



# Criminal Investigations

Investigation:

Local LE

Joint

JC Criminal Investigation\*

\*always be a concurrent civil investigation

Prosecution:

DA prosecution

JC prosecution

Joint prosecution

# MDT Approach

## The Vulnerable Person Task Force

- Interviews
- Limit Overlap
- CAC and Special Victims Units



# Exchange of Information

## Investigations:

- Arrest Reports and Charging Documents
- Investigation Reports
- Interviews
- Transcripts

## Prosecutions

- Local Court Practice
- Grand Jury
- Forms and formatting

# Challenging Authority to Independently Prosecute

Only case to date to reach Court of Appeals:  
People v. Davidson, 27 N.Y.3d 1083 (2016)

## Majority Decision

- Constitutional Challenge Unpreserved

## Take away: Issue must be preserved

- Post conviction 440s to raise constitutional challenge should not prevail
- Raising the constitutional issue for the first time on appeal should not prevail

## Dissent

- Statute is Constitutional if prosecution brought with consent of the DA
- Includes additional language about the “retention of ultimate prosecutorial authority”

# Albany County Cases

## 3 indictments in Albany County dismissed

- All felony sex crimes
- In all cases, Justice Center consulted with ACDA prior to charging and then proceeded independently

## Follow dissent in Davidson

- Require DA's consent
- Require retention of ultimate prosecutorial authority to remain with DA without defining the term

## People's Appeal to be filed in the Third Department

# Bronx Supreme Court Case

People v. Akande, Judge Fabrizio JSC Bronx  
decided November 2017

- Finds statute constitutional following Davidson dissent
  - Consent of DA found in Justice Center's normal practice
- Explains “ultimate prosecutorial authority” as general obligation of DA citing DA's ability to step in during the pendency of the case

# Lower Court Decisions

- Generally requiring DA's consent and finding it in Justice Center's regularly practice of consultation (Nassau, Brooklyn, Tomkins)
- Hearings have been ordered to detail consent (Nassau, Brooklyn)
- All use some version of consent with retention of authority requirement

# Pre-Employment Checks

# Pre-Employment Checks

- Staff Exclusion Checklist
- Statewide Central Registry for Child Abuse and Maltreatment (SCR) Check
- MHL § 16.34 Check (OPWDD Providers)
- Executive Law § 562 Check (OPWDD Providers)
- Criminal Background Check (CBC)
- Medicaid Exclusion List Check

# Staff Exclusion List

- The Staff Exclusion List (SEL) check is the first step in the pre-employment check process.
- The SEL is part of the Vulnerable Persons Central Register (VPCR) maintained by the Justice Center

*Social Services Law (SSL) § 495(2)*



# Staff Exclusion List

- Individuals on the SEL are ineligible to work in certain positions involving regular and substantial contact with a service recipient
- Someone with a final substantiated Category 1 level offense, or two substantiated Category 2 offenses within a 3 year period, is placed on the SEL
- Certain entities must request a check of the SEL when seriously considering an applicant for employment

# Entities Required to Request SEL Check

- Facilities and Provider Agencies, as defined in *SSL § 488(4)*;
- Providers of services to vulnerable persons in programs licensed, certified or funded by a State Oversight Agency (SOA) *SSL § 488(4-a)*; and
- Other Providers or Licensing Agencies required to conduct an inquiry of the SCR

# Facility or Provider Agency

As defined in *SSL § 488 (4)*

- a) Facility or program operated, licensed or certified by OMH, OPWDD and OASAS
- b) Facility or program operated by OCFS for youth in OCFS custody; Residential programs for children licensed or certified by OCFS; including family type homes for adults
- c) DOH adult care facilities (80+ beds with at least 25% residents with serious mental illness)
- d) Overnight summer camps for children with developmental disabilities regulated by DOH
- e) State operated schools for the Deaf/Blind
- f) State supported schools with a residential component
- g) Special Act school districts
- h) In-state private special education schools with residential programs



# SEL Check

- Free
- Provider submits Authorized Person Form
- Automated Online webform
- Mandatory bar to hiring for some Providers, others have discretion to hire
- Need Social Security Number (SSN) to do it online
- 14 NYCRR Part 702 requires submission of SSN for purpose of SEL check
- If applicant does not have SSN, manual process

# SEL Check

## In 2017

- 288,911 SEL checks conducted
- 97 notifications sent to Providers that an applicant was on, or pending placement on, the SEL
- 171 notifications sent to OPWDD Providers that an applicant had a final Category 2 finding

# SCR Check

State Central Register of Child Abuse and Maltreatment (SCR) inquiry is conducted with OCFS – an existing check but it is new for some Providers

- Online check
- Indicated report not a bar to hiring

*SSL § 424-a (3) & (4)*

# Pre-Employment Checks for OPWDD Providers Only

- OPWDD performs the Mental Hygiene Law (MHL) § 16.34 check for reports of instances of abuse and neglect from previous employers prior to 2013
- During the SEL check, the Justice Center performs an Executive Law § 562 check for OPWDD Providers for applicants that have a final substantiated Category 2 finding

# Criminal Background Check (CBC)

- Ch. 643 Laws of 2003, added Executive Law § 845-b, Mental Hygiene Law §16.33 and § 31.35, and Article 28-E of the Public Health Law
- In 2005, DOH, OMH and OPWDD began doing fingerprint-based Criminal Background Checks for Providers' applicants who had regular and substantial unsupervised and unrestricted contact with service recipients



# Criminal Background Check

- In 2013, the Justice Center became responsible for the existing CBC for OMH and OPWDD Providers
- In addition, applicants with Providers for residential programs for children licensed or certified by OCFS are now covered by the Justice Center CBC; as are employees who work in juvenile justice programs operated by OCFS
- OASAS also began conducting CBC for its Providers

# Criminal Background Check

## Number of checks per year:

- July 1, 2013 - June 30, 2014, the Justice Center processed approximately 76,000 CBC.
- January 1, 2017 - December 31, 2017, we processed 98,323 CBC; 12,207 had a criminal history; and of that number we denied 369 employment.

# Criminal Background Check Process

- Providers send applicants to be fingerprinted
- State and Federal criminal histories are returned to the Justice Center via eJustice portal maintained by DCJS
- Records with no criminal history are automatically updated in the CBC system - 88% of applicants
- CBC Unit reviews those with a criminal history and performs a Correction Law Article 23-A review

# Criminal Background Check Process

- Providers are sent an email advising that the determinations are in the Justice Center's web-based secure CBC system
- They are required by regulation to update employment status within 14 days of a change in status

*14 NYCRR Part 701*

# Medicaid Fraud Checklist

- If a Medicaid provider is excluded from participation in the Medicaid program, he or she cannot be paid with Medicaid funds
- The burden is on the providers/employers to ascertain whether their prospective employees are on the Medicaid exclusion/termination list

# Medicaid Fraud Checklist

The list is maintained by OMIG and is accessible to providers via the link below:

<http://www.omig.ny.gov/index.php/fraud/medicaid-terminations-and-exclusions>

# Contact Information

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

General Information : 1-800-624-4143

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

# Thank you!

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