



# ALBANY LAW SCHOOL

## GOVERNMENT LAW CENTER

### EXPLAINER

## The New York State Justice Center for the Protection of People with Special Needs

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*The Government Law Center's explainers concisely map out the law that applies to important questions of public policy.*

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### Introduction

The New York State Justice Center for the Protection of People with Special Needs was created in 2013 to standardize oversight of the care of vulnerable people<sup>1</sup> receiving services in hundreds of programs operated, licensed, or certified by six New York State agencies.<sup>2</sup> Its authority includes investigating allegations of abuse, neglect, and other significant incidents that occur in these programs;<sup>3</sup> imposing administrative sanctions on caregivers for such conduct;<sup>4</sup> and prosecuting criminal behavior.<sup>5</sup> The Center also provides assistance and advice to individuals, families, caregivers, and government agencies,<sup>6</sup> and engages in other related activities.<sup>7</sup> This explainer examines the creation of the Center, its investigative, disciplinary, and prosecutorial roles, and its accountability in overseeing the care of vulnerable people.

### RESOURCES

For a list of the types of facilities and providers under the jurisdiction of the Justice Center, see *Who Is Protected by the Justice Center?*, <https://www.justicecenter.ny.gov/mission-vision-and-jurisdiction#jurisdiction>.

### Background

Protecting vulnerable individuals from abuse and neglect in state-operated or -licensed programs traditionally was carried out in New York by state agencies with expertise in mental health, healthcare, substance abuse, social services, and developmental disabilities.<sup>8</sup> Service providers and their employees were disciplined in accordance with regulations created by the respective agencies, and allegedly criminal conduct was generally referred to county district attorneys.<sup>9</sup> There was little independent oversight of these state agencies.<sup>10</sup> In the mid-2000s, a series of articles in the N.Y. Times reported that egregious cases of abuse and neglect of vulnerable individuals were occurring with impunity in programs overseen by these specialized state agencies.<sup>11</sup> These stories were confirmed by

a 2012 state report, *The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities Against Abuse and Neglect*.<sup>12</sup> The report showed that state regulations on what constituted abuse and neglect, and who was obligated to report and investigate such conduct, were inconsistent and inadequate, making it difficult to communicate these requirements to staff.<sup>13</sup> Reporting of improper incidents to the agencies varied considerably between different types of programs and even among the same types of programs.<sup>14</sup> The standards for referring incidents to law enforcement differed significantly; the report identified eight standards, one of which was described as “no standard.”<sup>15</sup> There was a lack of fairness and proportionality in disciplining employees; often an employee found to have abused a resident was simply transferred to another program, and another would be terminated without regard to the severity of the abuse or neglect involved.<sup>16</sup>

The report recommended numerous reforms to address these problems, including definitions of abuse and neglect common to all programs, more rigorous reporting requirements, and uniform, fair, and proportional disciplinary consequences.<sup>17</sup> These recommendations prompted the creation of the Justice Center for the Protection of People with Special Needs to serve as “a focal point” for reform.<sup>18</sup>

The Justice Center unites the specialized agencies and service providers under one set of requirements for reporting and investigation of abuse and neglect, administrative discipline, and criminal prosecution.

## Reports of Abuse and Neglect

The Center is responsible for receiving and investigating reports of abuse and neglect of people within its jurisdiction<sup>19</sup> and operates the Vulnerable Persons Central Registry, a hotline with trained staff to facilitate such reporting.<sup>20</sup> Nine types of incidents<sup>21</sup> must be reported by persons considered mandated reporters.<sup>22</sup> The nine uniformly defined categories of reportable incidents include: (1) physical abuse; (2) sexual abuse; (3) psychological abuse; (4) deliberate inappropriate use of restraints; (5) aversive conditioning; (6) obstruction of the report of a reportable incident; (7) unlawful use or administration of a controlled substance; (8) neglect; and (9) any other incident deemed significant.<sup>23</sup> The registry notifies providers and oversight agencies of the report and notifies law enforcement if there is an allegation of criminal conduct.<sup>24</sup>

### RESOURCES

The **Vulnerable Persons Central Register (VPCR)** is a toll-free hotline available 7 days a week, 24 hours a day, **1-855-373-2122**. The VPCR accepts reports from mandated reporters as well as anyone who believes that a person with special needs is being abused, neglected, or mistreated.  
<https://www.justicecenter.ny.gov/reporting-incident>

An administrative investigation is conducted for every report made to the Center.<sup>25</sup> A criminal investigation is conducted where there are allegations of potential criminal offenses.<sup>26</sup>

## Administrative Proceedings

### A. Investigations

The Center may conduct the administrative investigation itself or may delegate that responsibility to the oversight agency which may in turn delegate it to the provider, “depending on the severity and setting of the allegation.”<sup>27</sup> In any event, the Center reviews all completed investigations and makes the final determination of whether the allegations are substantiated or unsubstantiated.<sup>28</sup> A substantiated case must be supported by a preponderance of evidence.<sup>29</sup> Unsubstantiated findings are sealed immediately.<sup>30</sup>

### B. Administrative Penalties

Substantiated findings of abuse or neglect are divided into four categories, based on the severity of the conduct. Category 1 offenses of abuse and neglect include “serious physical abuse, sexual abuse or other serious conduct.”<sup>31</sup> Persons with a Category 1 finding are placed on the Staff Exclusion List (Exclusion List) which is maintained as part of the Vulnerable Persons Central Register.<sup>32</sup> The Exclusion List identifies staff who have been found responsible for either serious or repeated acts of abuse or neglect against vulnerable individuals.<sup>33</sup> People registered on the Exclusion List are “prohibited from future care of vulnerable persons in the State of New York.”<sup>34</sup>

Category 2 offenses include instances of abuse and neglect which do not fit into Category 1, but which “seriously [endanger] the health, safety or welfare of a service recipient.”<sup>35</sup> People with a Category 2 finding are subject to discipline by the provider (the agency that employs them).<sup>36</sup>

The provider agency must develop an individual training and rehabilitation plan approved by the Center or the state oversight agency.<sup>37</sup> A person with two or more substantiated findings of a Category 2 offense within a three-year period will also be placed on the Exclusion List.<sup>38</sup>

Category 3 offenses include abuse and neglect that endangers the health, safety, or welfare of a service recipient, but does not rise to the level of a Category 1 or 2 offense.<sup>39</sup> A person with a Category 3 offense will be placed on a plan of prevention and rehabilitation approved by the Center or the state oversight agency.<sup>40</sup>

Finally, Category 4 offenses apply specifically to provider agencies where systemic conditions were harmful or exposed individuals to a risk of harm so as to mitigate staff culpability.<sup>41</sup> Category 4 also includes substantiated reports where an individual perpetrator cannot be identified.<sup>42</sup> Providers with a Category 4 offense must create a plan of correction approved by the Center.<sup>43</sup> If the facility fails to follow its plan, the facility’s intake may be closed or its operating certificate terminated.<sup>44</sup>

Service providers in New York must check with the Center before hiring a prospective employee.<sup>45</sup> Disclosure to the prospective employer of a substantiated finding of abuse or neglect depends on its category. Persons registered on the Exclusion List are disclosed to the employer, who is notified that they are prohibited from future care of “vulnerable persons in the State of New York.”<sup>46</sup> Persons with a Category 2 offense are disclosed to the employer, but the offense does not bar employment.<sup>47</sup> If an employee has no additional Category 2 offenses within 3 years, the initial finding

will be sealed after five years.<sup>48</sup> A Category 3 offense is not disclosed to employers and is sealed after five years.<sup>49</sup>

### C. Administrative Review

Substantiated findings of abuse and neglect can be challenged through an administrative appeal<sup>50</sup> to the Center’s Administrative Appeals Unit.<sup>51</sup> Following that review, the party has the right to a hearing before an administrative law judge to challenge a finding that the report was substantiated.<sup>52</sup> The standard of review is *de novo*.<sup>53</sup> The Center must prove by a preponderance of the evidence that the person committed abuse and neglect.<sup>54</sup> If it fails to do so, the Center must amend its records to reflect that result and seal the record.<sup>55</sup>

## Criminal Prosecution

In addition to conducting an administrative investigation of allegedly criminal conduct,<sup>56</sup> the Center was authorized to prosecute alleged crimes of abuse or neglect through its Special Prosecutor, who is appointed by the Governor.<sup>57</sup> The Special Prosecutor could file criminal charges in any court, including a town court.<sup>58</sup> The only restriction on the special prosecutor’s authority was a requirement that “the special prosecutor consult with the district attorney of the pertinent county should the special prosecutor wish to appear in County Court or Supreme Court, or before the grand jury.”<sup>59</sup> On March 30, 2021, the New York State Court of Appeals declared the provision creating the special prosecutor’s concurrent jurisdiction with district attorneys to be unconstitutional because it infringed on the district attorney’s constitutional, statutory and common-law

discretionary power to determine whether and how to prosecute in a criminal matter.<sup>60</sup> The Court did, however, leave intact the authority of the special prosecutor “to cooperate with and assist district attorneys and other local law enforcement officials in their efforts against ... abuse or neglect of vulnerable persons,” without interfering with those efforts.”<sup>61</sup> In the Court’s view, this result continues the ultimate goals of the Center.<sup>62</sup>

## Accountability

Since its creation, the Center has published monthly data reports on the results of its investigations.<sup>63</sup> This information is also included in its annual reports to the Governor.<sup>64</sup> Center records are subject to the Freedom of Information Law,<sup>65</sup> and are available in particular circumstances under the Social Services Law.<sup>66</sup> The decisions of its administrative hearings are available online.<sup>67</sup>

Notwithstanding the detailed investigative processes mandated by its enabling legislation, the Center has come under criticism for the accuracy of information maintained on its Exclusion List, the fairness of its investigative process, and its prosecutorial role.<sup>68</sup>

## RESOURCES

The Justice Center also provides advocacy services, assistance for victims and their families, and referrals to services outside New York State. *Advocacy and Support*, <https://www.justicecenter.ny.gov/advocacy-support>

## Conclusion

New York has a long-standing policy of protecting vulnerable individuals through oversight of service programs operated, licensed, or certified by New York State. With over one million individuals receiving services in hundreds of these programs, oversight is an important obligation.

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## Endnotes

\* Rose Mary Bailly is a special consultant on aging law with the Government Law Center. Editorial assistance by Michele Monforte. This explainer is drawn in part from Rose Mary Bailly & Dena M. DeFazio, *Justice or Injustice: A History and Critique of The New York State Justice Center For The Protection of People With Special Needs*, 80 Alb. L. Rev. 1181 (2016-17).

<sup>1</sup> Vulnerable children and adults are defined as persons “who, due to physical or cognitive disabilities, or the need for services or placement, [are] receiving services from a facility or provider agency . . . .” N.Y. EXEC. LAW § 550(5).

<sup>2</sup> Chapter 501 of the Laws of 2012, Part A section 1. The state agencies over which the Justice Center has jurisdiction are the office of mental health (OMH); the office for people with developmental disabilities (OPWDD); the office of alcohol and substance abuse services (OASAS); the office of children and family services (OCFS); the department of health (DOH); and the state education department (SED). N.Y. EXEC. LAW § 550(4).

<sup>3</sup> N.Y. EXEC. LAW § 552(1); N.Y. SOC. SERV. LAW § 488(4); see *Who is Protected by the Justice Center?*, <https://www.justicecenter.ny.gov/mission-vision-and-jurisdiction#who-is-protected-by-the-justice-center->

<sup>4</sup> N.Y. EXEC. LAW § 552(1).

<sup>5</sup> N.Y. EXEC. LAW § 552(2).

<sup>6</sup> See N.Y. EXEC. LAW §§ 553(11)-(17).

<sup>7</sup> See N.Y. EXEC. LAW § 553.

<sup>8</sup> *Justice or Injustice* at 1184-89 (see first endnote for full citation).

<sup>9</sup> See Clarence J. Sundram, *The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities Against Abuse & Neglect* (April 2012) (“*Measure of a Society*”), at 26-27, available at <http://www.governor.ny.gov/sites/governor.ny.gov/files/archive/assets/documents/justice4specialneeds.pdf> (Apr. 2012).

<sup>10</sup> *Measure of a Society* at 30.

<sup>11</sup> See, e.g., *Used and Abused Series*, <http://archive.nytimes.com/www.nytimes.com/interactive/nyregion/abused-and-used-series-page.html>.

<sup>12</sup> See note 9, above.

<sup>13</sup> *Measure of a Society* at 20-24, 31.

<sup>14</sup> *Measure of a Society* at 25.

<sup>15</sup> *Measure of a Society* at 27-28.

<sup>16</sup> *Measure of a Society* at 41-42; Danny Hakim, *At State-run Homes, Abuse and Impunity*, N.Y. TIMES (Mar. 12, 2011), available at <https://www.nytimes.com/2011/03/13/nyregion/13homes.html>.

<sup>17</sup> *Measure of a Society* at 6-7.

<sup>18</sup> *Measure of a Society* at 8.

<sup>19</sup> N.Y. SOC. SERV. LAW § 492(3)(c). See note 3 *supra*.

<sup>20</sup> N.Y. EXEC. LAW § 553; N.Y. SOC. SERV. LAW § 492.

<sup>21</sup> See N.Y. EXEC. LAW § 550(3); N.Y. SOC. SERV. LAW § 488(1).

<sup>22</sup> See N.Y. SOC. SERV. LAW § 491. See N.Y. SOC. SERV. LAW §§ 488(5), (5-a) (defining “mandated reporter”). See also N.Y. SOC. SERV. LAW § 492 (discussing the Vulnerable Persons Central Register).

<sup>23</sup> See N.Y. SOC. SERV. LAW § 488(1) (describing each type of reportable incident).

<sup>24</sup> N.Y. SOC. SERV. LAW § 492(1).

<sup>25</sup> N.Y. EXEC. LAW § 552(1); N.Y. SOC. SERV. LAW § 492(3)(c).

<sup>26</sup> N.Y. EXEC. LAW § 552(2).

<sup>27</sup> *Justice Center Reporting and Investigations: Guidance for Individuals and Families 5*, <https://www.justicecenter.ny.gov/system/files/documents/2019/03/guidance-individuals-and-families.pdf>.

<sup>28</sup> N.Y. SOC. SERV. LAW § 493(1).

<sup>29</sup> See N.Y. SOC. SERV. LAW § 493(3)(a). A preponderance of the evidence means that the alleged abuse and/or neglect is more likely than not to have occurred. See The Justice Center, *What to Expect if You Are Involved in a Justice Center Investigation Guidance for Staff and Volunteers 7* (August 2018), <https://www.justicecenter.ny.gov/system/files/documents/2019/11/guidance-staff-and-volunteers.pdf>.

<sup>30</sup> N.Y. SOC. SERV. LAW § 493(3)(a).

<sup>31</sup> N.Y. SOC. SERV. LAW § 493(4)(a).

<sup>32</sup> N.Y. SOC. SERV. LAW § 495.

<sup>33</sup> N.Y. SOC. SERV. LAW § 495.

<sup>34</sup> N.Y. SOC. SERV. LAW § 495(3).

<sup>35</sup> N.Y. SOC. SERV. LAW § 493(4)(b).

<sup>36</sup> N.Y. SOC. SERV. LAW § 493(5)(b).

<sup>37</sup> N.Y. SOC. SERV. LAW § 493(5)(b).

<sup>38</sup> N.Y. SOC. SERV. LAW § 493(4)(b).

<sup>39</sup> N.Y. SOC. SERV. LAW § 493(4)(c).

<sup>40</sup> N.Y. SOC. SERV. LAW § 493(5)(c).

<sup>41</sup> N.Y. SOC. SERV. LAW § 493(4)(d).

<sup>42</sup> *Anonymous v. Molik*, 32 N.Y.3d 30 (2018).

<sup>43</sup> N.Y. SOC. SERV. LAW § 493(5)(c).

<sup>44</sup> N.Y. SOC. SERV. LAW § 493(5)(c).

<sup>45</sup> N.Y. SOC. SERV. LAW § 495(2). In reviewing the Exclusion List, the employer and prospective employee will be provided with a report summarizing any substantiated findings of abuse or neglect. N.Y. EXEC. LAW § 562.

<sup>46</sup> N.Y. SOC. SERV. LAW § 495(3).

<sup>47</sup> N.Y. EXEC. LAW § 562.

<sup>48</sup> N.Y. SOC. SERV. LAW § 493(4)(b).

<sup>49</sup> N.Y. SOC. SERV. LAW § 493(4)(c).

<sup>50</sup> N.Y. SOC. SERV. LAW § 494(1)(a).

<sup>51</sup> N.Y. SOC. SERV. LAW § 494(1)(a).

<sup>52</sup> N.Y. SOC. SERV. LAW § 494(1)(a).

<sup>53</sup> N.Y. SOC. SERV. LAW § 494(1)(a).

<sup>54</sup> N.Y. SOC. SERV. LAW § 494(1)(b).

<sup>55</sup> N.Y. SOC. SERV. LAW § 494(1)(b).

<sup>56</sup> The Justice Center, *2018 Annual Report to the Governor and Legislature 21*, <https://www.justicecenter.ny.gov/system/files/documents/2019/05/2018%20annual%20report.pdf>.

<sup>57</sup> N.Y. EXEC. LAW § 552(2); *People v. Davidson*, 27 N.Y.3d 1083 (2016).

<sup>58</sup> *People v. Davidson*, 27 N.Y.3d 1083 (2016).

<sup>59</sup> *People v. Davidson*, 27 N.Y.3d 1083 (2016). See also *People v. Hogdon*, 175 A.D.3d 65, 106 N.Y.S.3d 198 (3<sup>rd</sup> Dept. 2019) (holding that the special prosecutor's failure to obtain the formal consent of the district attorney required dismissal of the case);

<sup>60</sup> *People v. Viviani*, --- N.E.3d ---, 2021 WL 1177916, 2021 N.Y. Slip Op. 01934.

<sup>61</sup> *People v. Viviani*, --- N.E.3d ---, 2021 WL 1177916, 2021 N.Y. Slip Op. 01934, at 7 (emphasis in the original).

<sup>62</sup> *People v. Viviani*, --- N.E.3d ---, 2021 WL 1177916, 2021 N.Y. Slip Op. 01934, at 7.

<sup>63</sup> The Justice Center Pressroom, <https://www.justicecenter.ny.gov/pressroom>.

<sup>64</sup> The Justice Center Pressroom, <https://www.justicecenter.ny.gov/pressroom>.

<sup>65</sup> N.Y. Pub. Off. Law §§ 84-90.

<sup>66</sup> N.Y. Soc. Serv. Law § 496.

<sup>67</sup> The Justice Center for the Protection of People with Special Needs, *Administrative Hearing Decisions*, <https://www.justicecenter.ny.gov/administrative-hearings-decisions>.

<sup>68</sup> See, e.g., Office of the New York State Comptroller, *Justice Center for the Protection of People with Special Needs Selected Aspects of Incident Intake and Investigation* (March 6, 2017); see also Alisa Partlan, Hella Winston, *Is the Justice Center just?* CITY & STATE NEW YORK (May 9, 2019), <https://www.cityandstateny.com/articles/policy/policy/is-the-justice-center-unfair-to-the-people-it-investigates.html>.