



OPWDD/Justice Center - Frequently Asked Questions (FAQs)

Q - Are agencies required to continue to report incidents which may be a possible crime to local law enforcement?

A - Yes, but the requirement has changed. Requirements for reporting to law enforcement are found in subdivision 624.6(d).

(d) Reporting to law enforcement.

- (1) An appropriate law enforcement official must be contacted immediately in the event that an emergency response by law enforcement is needed.
- (2) Agencies shall report to an appropriate law enforcement official anytime a crime may have been committed against an individual by a custodian. This is in addition to reporting to the Justice Center when the event or situation is a reportable incident (if the services are certified or operated by OPWDD).
 - (i) The report to the appropriate law enforcement official shall be made as soon as practicable, but in no event later than 24 hours after occurrence or discovery.
 - (ii) Information about the report to the appropriate law enforcement official shall be entered into IRMA within 24 hours of the report being made.

Providers must use past guidance issued by OPWDD in reporting these crimes. In particular, providers should refer to the *Protocol for Reporting Crimes to Law Enforcement* for guidance. The document is found on the OPWDD website at: <http://www.opwdd.ny.gov/node/782>. Please note that the requirement for reporting to law enforcement is only applicable to crimes committed by custodians against individuals receiving services. The provisions of the *Protocol* which discuss the reporting of other crimes (e.g. crimes committed by individuals receiving services) are no longer in effect. Readers should refer to comparable provisions of the new emergency regulations. (Note that the specific regulatory citations in the protocol are out of date.) Events and situations which are not under the auspices of the agency must be handled in accordance with Part 625. If the event or situation involves a crime against an individual receiving services, and the agency is required to intervene, appropriate interventions might include notification of law enforcement. Note that notification of law enforcement is not required for all Part 625 events and situations.

Q - What, if anything has changed with respect to Willowbrook notifications?

A - There have been no changes in the requirements for Willowbrook notifications.

- Q - Additional restrictions on situations which may compromise the independence of investigators went into effect June 30, 2013. What are the new restrictions?
- A - For reportable incidents or serious notable occurrences which occurred on or after June 30, 2013, no one may conduct an investigation in which his or her spouse, domestic partner, or immediate family member provides supervision to the program where the incident took place or provides supervision to directly involved parties. A similar restriction was added concerning review by members of the Incident Review Committee.
- Q - What are the requirements for confidentiality of matters discussed at the Incident Review Committee (IRC)? How will this work for committee members who are not employees of the agency, such as individuals receiving services and members of advocacy organizations?
- A - The Protection of People with Special Needs Act and OPWDD regulations require that committee members be trained in confidentiality laws and regulations, and that members comply with Section 74 of the Public Officers Law. Confidentiality of information related to incidents is required by various laws and regulations, including Section 33.13 of the Mental Hygiene Law and HIPAA. Section 74 of the Public Officers Law includes the requirement that the person not disclose confidential information acquired during the course of official duties (e.g. as a committee member). When considering potential candidates for membership on the IRC, the agency should assess the willingness and ability of the candidate to comply with confidentiality requirements. As noted above, the member must be trained in confidentiality laws and regulations. Finally, in the event that a member demonstrates that he or she is unable or unwilling to maintain confidentiality, the member should be removed from the IRC and replaced by a more appropriate person.
- Q - The new requirements for membership on the Incident Review Committee include a requirement that at least one licensed health care practitioner be a member of the Committee. Can this be a Registered Nurse?
- A - Yes.
- Q - If an employee or other custodian allows, permits, uses, or encourages a person receiving services to engage in prostitution, how is this classified?
- A - This is classified as sexual abuse. See the definition of "sexual abuse" at paragraph 624.3(b)(2). Note that Article 230 of the Penal Law "Prostitution Offenses" is referenced in the definition.
- Q - It appears from reading the Part 624 regulations that all reportable incidents and notable occurrences (serious and minor) now require notifications under Jonathan's Law. Is this correct?
- A - Yes, this is correct. The requirements are in subdivision 624.6(f).

Q - What are the requirements for notification to Mental Hygiene Legal Services (MHLS)? Is this required in the Incident Report and Management Application (IRMA)?

A - Subdivision 624.6(a) states:

“For an allegation of abuse or neglect involving a person who resides in a facility certified or operated by OPWDD, the agency under whose auspices the event occurred and/or that is responsible for the person shall send the written initial incident/occurrence report to the Mental Hygiene Legal Service within three working days. The responsible agency or program shall inform MHLS of the results of the investigation.”

The notification to MHLS must be recorded in IRMA. This notification is a field that is required in order to close an incident in IRMA for applicable incidents.

Q - Can a provider agency reclassify an incident if the Justice Center has classified the incident as a Reportable Incident?

A - If an incident is classified as a reportable incident by the Justice Center, an agency cannot reclassify it. If the agency feels strongly that the incident is misclassified, the OPWDD Incident Management Unit should be contacted for assistance. The Incident Management Unit will review the issue raised by the agency and may contact the Justice Center to discuss a resolution.

Q - Are Events/Situations reported under Part 625 subject to Jonathan’s Law?

A - No, Part 625 events/situations are not subject to the notification requirements of Jonathan’s Law. Part 625 events/situations are also not subject to the Jonathan’s Law requirements concerning disclosure of records to qualified persons.

Q - Can you explain required background checks for voluntary provider non-certified services?

A - Staff Exclusions List (SEL), Criminal Background Check (CBC), and MHL 16.34 checks are required for non-certified services. SCR checks are not required for non-certified services provided by voluntary agencies. If the person works for a voluntary agency which also provides certified services, and there is a chance that the person could also provide services in a certified setting the agency may choose to submit the Statewide Central Register of Child Abuse and Maltreatment (SCR) check. The standard in the Social Services Law is whether the person “will have the potential for regular and substantial contact with individuals who are cared for by the agency.” If the person has the potential for such contact in a certified program, they must be checked. The agency has to decide whether the person hired for a non-certified program has the potential for such contact. If the person hired for a non-certified program June 30, 2013 or afterward is not checked, and then transfers to a certified program at the same agency, an SCR check must be requested at that point.

Q - Who are MHL 16.34 checks required for and where can providers access a list of OPWDD providers to screen out those applicants who have no employment/volunteer history disclosed?

A - MHL 16.34 checks are required for all prospective employees and volunteers in the OPWDD system. Providers cannot screen out applicants based on the employment history provided. OPWDD IMU will conduct this screening and provide a response back to the agency submitting the request if there is no employment/volunteer history in the OPWDD system.

Q - Are the Code of Conduct and SCR check required only for current and prospective employees of certified sites (i.e., certified day habilitation and residential facilities)?

A - The requirements concerning the JC code of conduct and the SCR check only apply to programs certified or operated by OPWDD. The requirements do not apply to non-certified voluntary-operated programs. However, many agencies have chosen as a best practice to utilize the Code of Conduct for all staff they employ (and volunteers). In that event, agencies may consider modifying the Code to eliminate statements about reporting to the Justice Center. Employees and others in non-certified programs are not mandated reporters and are not required to report to the Justice Center.

Q - Some of the requirements pertaining to the Justice Center seem to apply to non-certified services and some do not. Can you explain further?

A - Certain aspects of the JC functioning apply to all OPWDD services, such as processing CBC requests and SEL requests. Other aspects such as receiving reports of reportable incidents only apply to programs certified or operated by OPWDD.