

N.Y.S. Protection of People with Special Needs Act

Notice to Mandated Reporters

Justice Center Guidance — June 25, 2013



Purpose of this Notice

This Notice provides Mandated Reporters with an overview of their legal duties under the New York State Protection of People with Special Needs Act (the Act) to report Abuse, Neglect and Significant Incidents involving vulnerable persons to the Vulnerable Persons' Central Register (VPCR), a 24/7 hotline operated by the Justice Center for the Protection of People with Special Needs (Justice Center).

The effective date of this new reporting requirement is June 30, 2013.

Protection of People with Special Needs

3) Implements Proportional and Progressive Discipline

Distinguishes between serious transgressions and repeated misconduct that warrants termination and lesser offenses that call for progressive discipline or reforming practices at a facility



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What are Mandated Reporters Required to Report?

Effective June 30, 2013, Mandated Reporters have a legal duty to:

- Report to the Justice Center if they have reasonable cause to suspect ***abuse or neglect of a Vulnerable Person*** -- including a child receiving residential services in a facility or from a provider.
- Reports must be made by calling the VPCR Hotline at 1-855-373-2122. Certain Mandated Reporters may also submit reports by completing a form available on the Justice Center website.
- Also report all ***Significant Incidents*** to the Justice Center by calling the Hotline or by completing the form on the center's website.

Child Abuse Reports

- Mandated Reporters are also legally required to call the Statewide Central Register of Child Abuse and Maltreatment (SCR) if they have reasonable cause to suspect abuse or maltreatment of children in family and foster homes, and in day care settings. Suspicion of child abuse or neglect in a day care setting, foster family boarding homes, or within a family home must continue to be reported to the SCR at:

1-800-635-1522

Who are Mandated Reporters?

Mandated Reporters are (1) Custodians and (2) Human Service Professionals

1. Custodians:

- Employees, volunteers, directors and operators of covered facilities and programs, and;
- External staff who have regular and substantial contact with the people being served.

Who are Mandated Reporters? (cont.)

2. Human Service Professionals:

Child Care or Foster Care Worker; Chiropractor; Christian Science Practitioner; Coroner; Dental Hygienist; Dentist; District Attorney or Assistant District Attorney; Emergency Medical Technician; Hospital Personnel engaged in the admission, examination, care, or treatment of persons; Intern; Investigator employed in the office of the district attorney; any other Law Enforcement Official; Licensed Creative Arts Therapist; Licensed Marriage and Family Therapist; Licensed Mental Health Counselor; Licensed Occupational Therapist; Licensed Physical Therapist; Licensed Practical Nurse; Licensed Psychoanalyst; Licensed Speech/Language Pathologist/Audiologist; Medical Examiner;

Who are Mandated Reporters? (cont.)

2. Human Service Professionals: (cont.)

Mental Health Professional; Nurse Practitioner; NYS Office of Alcoholism and Substance Abuse — all persons credentialed by OASAS; Optometrist; Osteopath; Peace Officer; Physician; Podiatrist; Police Officer; Psychologist; Registered Nurse; Registered Physician's Assistant; Resident (medical); Social Services Worker; Social Worker; Surgeon, and School Official, including but not limited to: School Teacher, School Guidance Counselor; School Psychologist; School Social Worker; School Nurse; School Administrator; or other school personnel required to hold teaching or administrative license or certificate.

What Information Should a Mandated Reporter be Ready to Provide the Justice Center?

- Details regarding the victim(s), suspect(s) and witnesses(s).
- Details of the incident, including the date and time, location, description of incident and injury/impact to the victim.
- The name of the State agency responsible for oversight of the agency, facility and/or program.

What Information Should a Mandated Reporter be Ready to Provide the Justice Center? (cont.)

- Name and address of the agency, facility and/or program.
- Confirmation that immediate protections are in place for the victim(s), if applicable.
- Any other information that may assist with the investigation or review of the incident.

Note: Mandated Reporters are required to notify the VPCR even if they do not have all of this information.

When is Reporting Required?

...whenever Mandated Reporters have reasonable cause to suspect a Reportable Incident has involved a vulnerable person, they are required to make a report to the VPCR immediately upon discovery.

- **Reasonable Cause** means that -- based on your observations, training and experience -- you have a suspicion that a vulnerable person has been subjected to abuse or neglect. Significant incidents that may place a vulnerable person at risk of harm must also be reported.

Reasonable cause can be as simple as doubting the explanation given for a Vulnerable Person's injury.

When is Reporting Required?

- **Immediately** means “*right-away*;” however reporting may be delayed to prevent harm (e.g., for as long as it takes to call emergency responders and/or address the need to maintain safety and supervision.)

Staff going “off-duty” *does not* justify a reporting delay.

In any event, reports must be made to the VPCR *within 24 hours* of discovery of an incident.

When is Reporting Required?

- **Upon Discovery** means when you witness an incident or situation of abuse or neglect -- or when the vulnerable person or another individual comes to you and the available information they provide indicates reasonable cause to suspect abuse or neglect.

Remember...

Reporting to the VPCR ***is an additional reporting requirement*** and ***does not*** relieve Mandated Reporters of any other reporting requirements or duties that may be required by law, regulation or policy.

Who Else Should Report?

- **Anyone** who has reasonable cause to suspect a Reportable Incident involving a Vulnerable Person should also call the VPCR immediately.

If in Doubt...

If a Mandated Reporter or any other person has doubts about whether the available information indicates reasonable cause to suspect abuse or neglect, they should call the VPCR.

Who are Vulnerable Persons?

The Act 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 within the systems of the State Oversight Agencies (SOA).

What Facilities & Programs are Covered by the Act?

- Facilities and programs that are operated, certified, or licensed by the ***Office for People With Developmental Disabilities*** (OPWDD);
- Facilities and programs that are operated, certified, or licensed by the ***Office of Mental Health*** (OMH), except Article 10 Secure Treatment Facilities and programs located in correctional facilities;
- Facilities and programs that are operated, certified, or licensed by the ***Office of Alcoholism and Substance Abuse Services*** (OASAS);

Also Covered by the Act...

- **Adult homes (including Enriched Housing programs) licensed by the Department of Health (DOH)** that have over 80 beds, and where at least 25% of the residents are persons diagnosed with a serious mental illness and have fewer than 55% beds designated as Assisted Living Program (ALP) beds.
- Overnight summer day and traveling summer day camps for children with developmental disabilities under the jurisdiction of DOH;
- New York State School for the Blind; New York State School for the Deaf; State-supported (4201) schools that have a residential component; special act school districts; and in-state private residential schools approved by the **New York State Education Department (NYSED)**

Also Covered by the Act...

- Facilities and programs operated by the ***Office of Children and Family Services*** (OCFS) for youth placed in the custody of the Commissioner of OCFS;
- OCFS licensed or certified residential facilities that care for abandoned, abused, neglected, and dependent children, Persons In Need of Supervision, or juvenile delinquents;
- Family Type Homes for Adults;
- OCFS certified runaway and homeless youth programs, and;
- OCFS certified youth detention facilities.

As a Mandated Reporter, What Are My Obligations to Notify Law Enforcement?

Possible crimes should be immediately reported to law enforcement.

If Law enforcement has not already been called when a report is received by the VPCR, staff can consult with supervisors to decide if local police should be contacted,

What Constitutes Abuse or Neglect?

The Act defines Abuse and Neglect of Vulnerable Persons in broad terms, including both actual harm and the risk of harm:

Terms	Examples of Custodian Behaviors
Physical Abuse	Intentional contact (hitting, kicking, shoving, etc.) corporal punishment, injury which cannot be explained and is suspicious due to extent or location, the number of injuries at one time, or the frequency over time
Psychological Abuse	Taunting, name calling, using threatening words or gestures

What Constitutes Abuse or Neglect?

Terms

Examples of Custodian Behaviors

Sexual Abuse

Inappropriate touching, indecent exposure, sexual assault, taking or distributing sexually explicit pictures, voyeurism or other sexual exploitation. All sexual contact between a Custodian and a service recipient is sexual abuse, unless the Custodian is also a person receiving services

Neglect

Failure to provide supervision, or adequate food, clothing, shelter, health care; or access to an educational entitlement

What Constitutes Abuse or Neglect?

Terms	Examples of Custodian Behaviors
Deliberate misuse of restraint or seclusion	Use of these interventions with excessive force, as a punishment or for the convenience of staff
Controlled Substances	Using, administering or providing any controlled substance contrary to law

What Constitutes Abuse or Neglect?

Terms	Examples of Custodian Behaviors
Aversive conditioning	Unpleasant physical stimulus used to modify behavior without person-specific legal authorization
Obstruction	Interfering with the discovery, reporting or investigation of abuse/neglect, falsifying records or intentionally making false statements

What Constitutes a Significant Incident?

New York State law also recognizes that ***Vulnerable Persons*** can be harmed or put at risk in many types of circumstances.

The Act defines a ***Significant Incident*** as an incident that is not abuse or neglect, but has the potential to result in harm to the health, safety or welfare of a person receiving services.

What Constitutes a Significant Incident?

Examples may include, but are not limited to the following:

- The use of restraint when it is avoidable, involves a banned technique, or is used by inadequately trained staff;
- Unauthorized seclusion or time-out;
- Harmful interactions between Vulnerable Persons that could reasonably have been prevented; and,

What Constitutes a Significant Incident?

Examples may also include:

- Administration of a medication contrary to a medical order resulting in an adverse impact.
- Any other conduct identified in regulations of the State Oversight Agency, according to guidelines or standards established by the Justice Center.

What Happens When a Report is Made to the VPCR?

- 1) Trained VPCR staff will take a full report over the phone or via a web form.
- 2) Based upon the information provided, the VPCR will categorize the reportable incident as abuse, neglect, or a significant incident.
- 3) The VPCR will notify the appropriate SOA.
- 4) The Justice Center will be responsible for ensuring that the reportable incident is investigated or reviewed by the appropriate entity.

What Protections and Liabilities Do Mandated Reporters Have?

- **Immunity from Liability —**

The law grants immunity to Mandated Reporters and other reporters from any legal claims which may arise from a good faith act of providing information to the VPCR.

- **Protection from Retaliatory Personnel Action —**

The law prohibits an employer or agency from taking any retaliatory personnel action against a person as a result of a good faith act of providing information to the VPCR.

What Protections and Liabilities Do Mandated Reporters Have?

- **Confidentiality** —

The law provides protections against the disclosure of the reporter's identity, subject to limited exceptions (e.g., the reporter's consent, a court order).

- **Failure to Report** —

Failure by a Mandated Reporter to report suspected Abuse or Neglect to the VPCR is a serious matter and possible consequences include administrative discipline, termination, civil liability and criminal prosecution.

Where Can I Get More Information?

Contact the Justice Center



1-518-549-0200.

We will be pleased to answer any questions you may have.