

Office for People With Developmental Disabilities Protocol for Reporting Potential Crimes to Law Enforcement

Developed in Consultation with the New York State Police

August 18, 2011

Pursuant to the New York State Mental Hygiene Law, every provider of services, whether state-operated or non-state-operated, must make a report to law enforcement if it appears that a crime (misdemeanor or felony) may have been committed against an individual who receives services from the provider.

Abuse reported pursuant to 14 NYCRR Part 624 may also be a crime which must be reported to law enforcement. The following is to be used as a guideline for those allegations of abuse which must be reported to law enforcement by the Developmental Disabilities Services Offices (DDSO) or other agencies. Many of the terms used in the following are taken from definitions of crimes in the New York State Penal Law and are not found in OPWDD regulations in Part 624.

1. Any intentional hitting, slapping, pinching, kicking, hurling, strangling or shoving of an individual receiving services by a staff member, intern, contractor, consultant or volunteer of a DDSO or provider entity, except for those instances in which the action was taken to prevent injury to the individual receiving services or any other person, whether or not such action causes injury, may be a crime and must be reported to law enforcement.
2. Any intentional hitting, slapping, pinching, kicking, hurling, strangling or shoving of an individual receiving services by another individual receiving services, where the individual who performs the abusive action intends to cause physical injury to the other individual and causes such physical injury, may be a crime and must be reported to law enforcement. Physical injury is defined as impairment of physical condition or substantial pain.
3. Any unauthorized or unnecessary use of restrictive personal intervention techniques, including the use of more physical force than is necessary for the safety of the individual receiving services, by a staff member, intern, contractor, consultant or volunteer, where the staff member, intern, contractor, consultant or volunteer knowingly acts in a manner likely to cause injury to the physical or mental welfare of the person receiving services, may be a crime and must be reported to law enforcement.

OPWDD Protocol for Reporting Potential Crimes to Law Enforcement
August 18, 2011
Page 2

4. Any unauthorized or inappropriate use of restraint where the staff member, intern, contractor, consultant or volunteer knowingly acts in a manner likely to cause injury to the physical or mental welfare of the person receiving services may be a crime and must be reported to law enforcement. This includes the use of mechanical restraining devices or medication to control a person's behavior without the necessary permissions (see paragraph 624.4(c)(5)).
5. Any sexual abuse, as defined by 14 NYCRR Part 624.4(c)(2), between a person receiving services and an employee, intern, consultant, contractor or volunteer of an agency may be a crime and must be reported to law enforcement. An exception is made when "a person with a developmental disability who was a service recipient becomes an employee of a service provider organization and already has a relationship with another service recipient of the same or another service provider organization."¹
6. Any sexual contact between two persons receiving services in which one person receiving services uses force or coercion may be a crime and must be reported to law enforcement.
7. Any sexual contact between two persons receiving services, in which at least one person has not been determined to be capable of consenting to sexual contact may be a crime and must be reported to law enforcement. A sexual consent determination is completed to determine whether an individual is legally capable of consenting to sexual contact. If a sexual consent determination has not been completed for an individual, or if an individual's condition has changed such that there is any question as to the individual's ability to consent, clinical staff should be immediately consulted to complete a sexual consent determination. If a sexual consent determination cannot be completed within 24 hours, the agency must report to law enforcement as soon as it is evident that the sexual consent determination cannot be completed within that timeframe. If force or coercion is not involved, and both individuals have been determined to be capable of consenting to sexual contact no report would be made to law enforcement. In addition, if force or coercion is not involved, and both individuals have been determined to be incapable of consenting to sexual contact, no report would be made to law enforcement. If one person is determined to be capable of consenting to sexual contact, and one person is determined to be incapable of consenting to sexual contact, a crime may have occurred and must be reported to law enforcement.

¹ As used throughout this document, sexual abuse is defined in OPWDD regulations (paragraph 624.4(c)(2)) as sexual contact in specific circumstances. Sexual contact is defined as the "touching or fondling of the sexual or other intimate parts of a person, not married to the actor, for the purpose of gratifying the sexual desire of either party, whether directly or through clothing. Sexual contact also includes causing a person to touch anyone else for the purpose of arousing or gratifying personal sexual desires."

OPWDD Protocol for Reporting Potential Crimes to Law Enforcement
August 18, 2011
Page 3

8. Any sexual contact between a person receiving services and a person not receiving services who is not an employee, intern, consultant, contractor or volunteer of an agency, where the person receiving services has not been determined to be capable of consenting to sexual contact may be a crime and must be reported to law enforcement. A sexual consent determination is completed to determine whether an individual is legally capable of consenting to sexual contact. If a sexual consent determination has not been completed for an individual, or if an individual's condition has changed such that there is any question as to the individual's ability to consent, clinical staff should be immediately consulted to complete a sexual consent determination. If a sexual consent determination cannot be completed within 24 hours, the agency must report to law enforcement as soon as it is evident that the sexual consent determination cannot be completed within that timeframe. If force or coercion is not involved, and the individual receiving services has been determined to be capable of consenting to sexual contact no report would be made to law enforcement. If the person receiving services is determined to be incapable of consenting to sexual contact, a crime may have occurred and must be reported to law enforcement. However, an exception is made if force or coercion is not involved, and both individuals have been determined to be incapable of consenting to sexual contact. No report would be made to law enforcement in that situation.
9. Engaging in a pattern of conduct (more than an isolated incident of misconduct) which may include the use of verbal threats, screaming, taunting or shouting at a person receiving services by a staff member, intern, contractor, consultant or volunteer, with the intent of causing ridicule, humiliation, scorn, contempt, pain or dehumanization to an individual or individuals receiving services which causes emotional pain to such individual(s) may be a crime and must be reported to law enforcement.
10. Any situation in which a staff member, intern, contractor, consultant or volunteer knowingly acts, or fails to act, in a manner likely to be injurious to the physical or mental welfare of an individual unable to care for himself or herself may be a crime and must be reported to law enforcement.

In addition to reporting allegations of abuse to law enforcement as noted above, potential crimes against individuals receiving services which may not meet the definitions of abuse must also be reported to law enforcement. These include but are not limited to:

1. Any instance in which an individual dies in a manner in which the cause of death is unknown, or in which the individual is not under the care of a physician and the death is not due to natural causes must be reported to law enforcement.
2. Theft and property crimes against individuals receiving services.

OPWDD Protocol for Reporting Potential Crimes to Law Enforcement
August 18, 2011
Page 4

Furthermore, OPWDD regulations require that possible criminal acts by individuals receiving services also be reported to law enforcement (See subdivision 624.6(d)).

DDSOs must and voluntary agencies are strongly encouraged to reach out to the law enforcement entities to which they report crimes to develop procedures for reporting the above incidents to law enforcement. OPWDD would encourage that these conversations include such matters as the process for reporting incidents, the procedures for investigating incidents and the identification of specific persons to act as a liaison with the law enforcement entity. For additional information on establishing such procedures, see the commentary for Subdivision 624.6(d) in the Part 624 Handbook.

If any questions arise as to whether a report to law enforcement is required, please contact the OPWDD Incident Management Unit at incident.management@opwdd.ny.gov or (518) 474-3625.