Administrative Directive

<table>
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<th>Transmittal:</th>
<th>15-OCFS-ADM-08</th>
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| To:         | Commissioners of Social Services  
              Executive Directors of Voluntary Authorized Agencies  
              Directors of Runaway and Homeless Youth Programs  
              Directors of Juvenile Detention Programs  
              Directors of Family-type Homes for Adults  
              Directors of Supervised Independent Living Programs |
| Issuing Division/Office: | Strategic Planning and Policy Development |
| Date:       | June 30, 2015 |
| Subject:    | Required Notifications for Abuse and Neglect Reports from the Justice Center |
| Suggested Distribution: | Directors of Social Services  
                          Staff Development Coordinators |
| Contact Person(s): | Questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services:  
                          Buffalo Regional Office-Dana Whitcomb (716) 847-3145  
                          Dana.Whitcomb@ocfs.ny.gov  
                          Rochester Regional Office-Karen Buck (585) 238-8201  
                          Karen.Buck@ocfs.ny.gov  
                          Syracuse Regional Office-Sara Simon (315)  423-1200  
                          Sara.Simon@ocfs.ny.gov  
                          Albany Regional Office-Kerri Barber (518) 486-7078  
                          Kerri.Barber@ocfs.ny.gov  
                          Spring Valley Regional Office-Yolanda Désarmé (845) 708-2498  
                          Yolanda.Desarme@ocfs.ny.gov  
                          New York City Regional Office-Raymond Toomer (212) 383-1788  
                          Raymond.Toomer@ocfs.ny.gov  
                          Native American Services-Heather LaForme (716) 847-3123  
                          Heather.LaForme@ocfs.ny.gov |
| Attachments: | Attachment A: Justice Center Protocols for Interviewing People Who Receive Services (available online only, at the Justice Center website)  
                  Attachment B: Documentation of Notifications to Service Recipients and Personal Representatives  
                  Attachment C: Notification of the Personal Representative of a Witness  
                  Attachment D: Plan of Program Protocols for Providing Notifications of a Justice Center Investigation  
                  Attachment E: FAQs for Chapter 394 |
Filing References

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I. Purpose

The purpose of this Administrative Directive is to inform the agencies caring for vulnerable persons for which the New York State Office of Children and Family Services (OCFS) has oversight about procedures they must follow in order to implement the requirements of Chapter 394 of the Laws of 2014.

II. Background

Chapter 501 of the Laws of 2012, the Protection of People with Special Needs Act (Chapter 501), was enacted to strengthen and standardize the safety net for vulnerable persons, both adults and children, who receive care from New York’s human service agencies and programs. This legislation created the Justice Center for the Protection of People with Special Needs (Justice Center), which came into operation on June 30, 2013. It also established a set of uniform safeguards to protect vulnerable persons, to be implemented by the Justice Center in partnership with state agencies, including OCFS, that care for vulnerable persons in residential care. The Justice Center was charged with the following tasks, among others, in order to protect vulnerable persons:

- Operate a hotline to receive reports of abuse, neglect, and significant incidents involving vulnerable persons in certain residential and non-residential facilities and programs;
- Develop a register containing the names of individuals found responsible for egregious or repeated acts of abuse or neglect of a vulnerable person(s). This register is known as the Vulnerable Persons Central Register (VPCR);
- Develop a code of conduct for workers who have regular contact with vulnerable persons; and
- Maintain overall responsibility for the investigation of reports alleging abuse, neglect, or a significant incident involving a vulnerable person(s).

Two years after the enactment of Chapter 501, the law was amended to specify that investigations must be conducted so as to avoid jeopardizing the health, safety, and welfare of vulnerable persons the law is designed to protect. Such vulnerable persons may be named as victims in a report to the Justice Center or may be witnesses with information relevant to investigations of reports made to the Justice Center. Chapter 394 of the Laws of 2014 (Chapter 394) was enacted, amending section 553 of the Executive Law, to protect the health and safety of vulnerable persons in the event that it is necessary to obtain information from such a person for the purposes of conducting an investigation.

Chapter 394 requires the Justice Center and each state agency caring for vulnerable persons to: 1) develop protocols and procedures to determine under what circumstances obtaining information from an individual with a disability is clinically contraindicated and to develop safeguards to ensure that the individual's safety and well-being are protected in light of
clinically relevant information; and 2) develop procedures to determine if the individual has the legal capacity to understand the interview process and/or questions being asked of him or her, inform the individual of what to expect during an interview, develop appropriate means of interviewing the individual in light of his or her capacity to comprehend, and develop and implement procedures for the notification and appropriate involvement of parents, legal guardians and others with a relationship to the individual.

III. Program Implications

The Justice Center, in consultation with its statutorily created Advisory Council and relevant state oversight agencies, has developed a set of protocols, set out in the document “Justice Center Protocols for Interviewing People who Receive Services” (see Attachment A), which must be used with vulnerable persons who are alleged victims named in a report to the Justice Center or who may have information pertinent to the investigation of such a report. These protocols are applicable to all investigations of abuse or neglect of vulnerable persons in residential programs and facilities operated, licensed or certified by OCFS, excluding foster family homes and residential programs for victims of domestic violence. The protocols are designed to protect the health, safety, and well-being of persons whom the Justice Center was created to protect. These protocols go into effect on July 1, 2015.

The need for these protocols is especially clear when there is a need to safely and effectively obtain information from a person with a disability, including an intellectual disability, necessary to conduct an investigation. Such an individual may lack the ability to understand questions or his or her rights when being interrogated, and may be traumatized by interviews or interrogations that are clinically contraindicated. The well-being of such persons often depends on the relationship with and protection of a parent, family member, or legal guardian. Further, the parents and/or legal guardians of such individuals are likely to have a legal, moral, or emotional obligation to their loved one. Such obligation can only be fulfilled if they receive prior notice that their loved one may need to answer questions or give information necessary for the success of an investigation. Further, involvement of parents or guardians may be critical in order to obtain accurate information critical to an investigation.

IV. Required Action

Starting July 1, 2015, all service providers under the jurisdiction of both the Justice Center and OCFS must adhere to the protocols described in this section whenever there is an investigation of a report to the VPCR.

These protocols address notifications of the report that must be made to:

- Every service recipient (defined as an individual who resides in a facility or who receives services from a facility or service provider agency) who is:
  - an alleged victim in the report; or
  - a potential witness
- The service recipient’s personal representative (defined as a person authorized under state, tribal, military or other applicable law to act on behalf of a vulnerable person in making health care decisions or, for programs serving children under the jurisdiction of OCFS, the service recipient’s parent, guardian or other person legally responsible for such person); and
Any additional service recipients who are identified as alleged victims or potential witnesses during the course of an investigation; the same protocols must be used for these persons.

The protocols also address:

- Interviewing service recipients with consideration to protecting the health, safety, and well-being of service recipients and maintaining the integrity of investigations of abuse and neglect.

A. Notifications of Alleged Victims and Their Personal Representatives

1. Timing
   - A service provider who has been notified that a report has been accepted by the Justice Center must attempt to notify the alleged victim(s) within 24 hours.
   - OCFS regional office staff will provide written notification to the victim’s personal representative within 24 hours of receiving the report, at the same time as they provide notification to that individual of the existence of the report. This will serve as the required notification. OCFS will provide a copy of the notification to the service provider.
   - If the service provider receives notification of the VPCR report during a period of time when the service provider is not operating, the attempt to notify the victim should be made on the next business day.
   - The inability to provide notification within the required timeframe shall not delay the interview of an alleged victim.
   - If any additional alleged victims are identified during the course of an investigation, the same timeframes apply to the notifications provided to them and their personal representatives.

2. Method – While the law provides for either oral or written notifications, best practice is for the service provider to notify the victim orally. The OCFS regional office will provide notification to the personal representative of the victim in writing. The regional office will give the service provider a copy of the notification.

3. Documentation – The service provider must document in writing that notice was given to the alleged victim and the victim’s personal representative, or that a diligent effort was made to provide those notifications. The service provider should give the investigator documentation of these notifications for inclusion in the record of the investigation. Documentation should include:
   - The date the notice was given
   - The name of the employee who gave or attempted to give the notification
   - The method of the notification
   - Name and contact information for the personal representative (unless there is no personal representative)
   - Relevant information provided by the personal representative

OCFS has developed a form titled *Documentation of Notifications to Service Recipients and Personal Representatives*, which service providers may use to facilitate their documentation (see Attachment B). Use of this form is optional.
Exception – When an alleged victim does not have a personal representative, there is no need to comply with these documentation requirements for the personal representative. Such records must still be kept for the alleged victim.

B. Notifications of Potential Witnesses and Their Personal Representatives

1. Timing – Within 48 hours of receiving notification that a report has been accepted by the Justice Center, service providers should notify service recipients who are potential witnesses to an alleged abuse or neglect incident and their personal representatives that the service recipient may be interviewed as part of the investigation of the report. If the notification of the Justice Center report is made to the service provider at a time when the service provider is not operating, the service provider should attempt to make the notification(s) to potential witnesses and their representatives on the next business day. However, the inability of a service provider to provide notification within the required timeframe shall not delay the interview of a potential victim.

2. Exemptions – No notification should be made to the personal representative if a potential witness who is 18 years or older objects to such notification. However, any such objection should be reviewed on an individual basis consistent with the existing standards the service provider uses to determine the ability of a service recipient to consent to services, programs, and treatment. Also, no notification should be made to the personal representative if such notification would compromise the investigation, violate relevant confidentiality laws, be contrary to court order, or otherwise be contrary to the best interests of the alleged victim.

3. Method – Notification to potential witnesses and their personal representatives will be made by the service provider and may be communicated orally or in writing. While not required, it can be good practice to provide written notification following any verbal notification to a personal representative. OCFS has created a model letter that services providers may use to provide the required notification to the personal representatives of potential witnesses (see Attachment C: Notification of the Personal Representative of a Witness.) The use of this template by service providers is optional.

4. Questioning personal representatives – The service provider must ask the personal representative of a potential witness, if he or she has information that may not be known to the service provider regarding the most effective ways to communicate with the witness in order to support the interview process. As an example, there may be technology needs or environmental factors that could impact effective communication with the service recipient.

5. Documentation – The service provider staff must document in writing that notice was given to service recipients who are potential witnesses and their personal representatives, or that a diligent effort was made to provide those notifications. Please see above, section A.3 for requirements and information regarding such documentation.

Exception – When a potential witness does not have a personal representative, there is no need to comply with these documentation requirements for the personal representative. Such records must still be kept for the witness.
6. Additional potential witnesses - If, during the course of an investigation, any additional potential witnesses are identified, all protocols described in section B must be used with those potential witnesses and their personal representatives.

C. Interview Protocols

1. Communication between the investigator and service provider – Upon receiving a request from an investigator for specific information needed to determine whether to proceed with an interview of a service recipient (either an alleged victim or a potential witness), a service provider must provide the Justice Center or delegated investigatory agency with the requested information within 72 hours. The information may be conveyed verbally or in writing.

2. Investigators must assess the viability of conducting an interview – A determination must be made as to whether an interview with a service recipient can be conducted in a safe and timely manner. There is no requirement that a formal clinical assessment be made prior to interviewing a service recipient. To make this determination, an investigator may:
   - Review the setting and circumstances in which the interview would be conducted
   - Review the service recipient’s diagnosis
   - Review the service recipient’s files
   - Consult with the service recipient’s personal representative
   - Consult with the service recipient’s licensed health professional
   - Observe the service recipient’s behavior
   - Speak with service provider employees
   - Consider the service recipient’s capability to provide information to assist the investigation; and
   - Engage in preliminary inquiries with the service recipient to establish whether it would be appropriate to proceed with an interview.

3. Exceptions – If conducting an interview with a service recipient would be clinically contraindicated, despite the provision of appropriate accommodations, the interview shall not take place. However, the investigator may proceed with the interview, even where contraindicated, where certain circumstances exist, including, but not limited to:
   - An investigator believes that a service recipient has information relevant to maintaining or securing the safety of services recipients
   - An investigator believes that failure to interview a service recipient may allow for the destruction of evidence by a subject
   - The delay of interviewing service recipient may allow a subject to evade law enforcement
   - An investigator has been directed by his or her supervisor to proceed with the interview.

4. Communication needs – If a service recipient may have difficulty comprehending questions due to cultural or linguistic barriers, the investigator shall work with the service provider to provide the service recipient with the means to communicate with the investigator. Whenever possible, the service provider should inform the investigator in advance if an alleged victim or potential witness may need such assistance.
All service provider agencies caring for vulnerable persons under the jurisdiction of both the Justice Center and OCFS must develop a protocol documenting how they will fulfill their requirement to notify alleged victims, potential witnesses, and the personal representatives of potential witnesses when they receive a report from the Justice Center alleging abuse or neglect. OCFS has developed a template form to be used for this purpose (see Attachment D: Plan of Program Protocols for Providing Notifications of a Justice Center Investigation.) Service providers must complete this document and submit it to their OCFS regional office by July 15, 2015.

V. Systems Implications

There are no systems changes required by this policy.

VI. Additional Information

Attachment E (FAQs for Chapter 394) is a memorandum that provides questions and answers about the requirements of Chapter 394.

VII. Effective Date

This policy goes into effect on July 1, 2015.

Thomas R. Brooks

Issued By:
Name: Thomas R. Brooks
Title: Deputy Commissioner
Division/Office: Strategic Planning and Policy Development
**DOCUMENTATION OF NOTIFICATIONS TO SERVICE RECIPIENTS AND PERSONAL REPRESENTATIVES RE: JUSTICE CENTER ABUSE AND NEGLECT INVESTIGATION**

**IMPORTANT**: When contacting personal representatives of potential witnesses, the program must not disclose confidential information regarding the allegation (e.g., detailed circumstances of the incident, names of subjects or victims) to such personal representative. The program shall inform the personal representative of potential witnesses that the potential witness may have information regarding an incident involving another unnamed service recipient who is the alleged victim and that the incident does not involve harm to the potential witness.

| NAME OF ALLEGED VICTIM: __________________________ | Date Notified: ________________ | Notified By: __________________ |
| Additional victims: | | |

| PERSONAL REPRESENTATIVE OF ALLEGED VICTIM NOTIFIED BY __________________ REGIONAL OFFICE VIA LETTER |
| (location) | |

| NAME OF SERVICE RECIPIENT/POTENTIAL WITNESS: | Date Notified: ________________ | Notified By: __________________ |
| | | Title: __________________ |

| NAME OF PERSONAL REPRESENTATIVE: | Address of Personal Representative: | Phone: ________________ |
| Employee who initiated notification: | Date: ________________ | Method of contact: ☐ Phone ☐ Mail |

If personal representative was not notified, why not? ☐ Youth objected to notification ☐ Notification may compromise investigation

Note any information provided by the personal representative regarding the most effective way to communicate with the service recipient during an interview:

| NAME OF SERVICE RECIPIENT/POTENTIAL WITNESS: | Date Notified: ________________ | Notified By: __________________ |
| | | Title: __________________ |

| NAME OF PERSONAL REPRESENTATIVE: | Address of Personal Representative: | Phone: ________________ |
| Employee who initiated notification: | Date: ________________ | Method of contact: ☐ Phone ☐ Mail |

If personal representative was not notified, why not? ☐ Youth objected to notification ☐ Notification may compromise investigation

Note any information provided by the personal representative regarding the most effective way to communicate with the service recipient during an interview:

| NAME OF SERVICE RECIPIENT/POTENTIAL WITNESS: | Date Notified: ________________ | Notified By: __________________ |
| | | Title: __________________ |

| NAME OF PERSONAL REPRESENTATIVE: | Address of Personal Representative: | Phone: ________________ |
| Employee who initiated notification: | Date: ________________ | Method of contact: ☐ Phone ☐ Mail |

If personal representative was not notified, why not? ☐ Youth objected to notification ☐ Notification may compromise investigation

Note any information provided by the personal representative regarding the most effective way to communicate with the service recipient during an interview:
### Attachment B

If personal representative was not notified, why not? ☐ Youth objected to notification ☐ Notification may compromise investigation

Note any information provided by the personal representative regarding the most effective way to communicate with the service recipient during an interview:

<table>
<thead>
<tr>
<th>NAME OF SERVICE RECIPIENT/POTENTIAL WITNESS</th>
<th>Date Notified: _________________</th>
<th>Does youth want personal representative notified: ☐ Yes ☐ No</th>
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<td>Notified By: ___________________</td>
<td></td>
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<td>Title: ________________________</td>
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<tr>
<th>NAME OF PERSONAL REPRESENTATIVE:</th>
<th>Address of Personal Representative:</th>
<th>Phone: _________________</th>
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<tbody>
<tr>
<td>Employee who initiated notification:</td>
<td>Date: ______________________</td>
<td>Method of contact: ☐ Phone ☐ Mail</td>
</tr>
</tbody>
</table>

If personal representative was not notified, why not? ☐ Youth objected to notification ☐ Notification may compromise investigation

Note any information provided by the personal representative regarding the most effective way to communicate with the service recipient during an interview:

If you require additional space, please attach information to this form.

### INFORMATION FROM SERVICE PROVIDER

At the request of the Justice Center or delegate investigatory entity, the service provider shall provide the investigating agency with pertinent information necessary to safely conduct an interview.

☐ Check here if this information has been provided to the Justice Center or delegate investigatory entity.

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<th>Date information was provided:</th>
<th>Method of delivery:</th>
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Additional comments (optional):
DATE

Personal Representative  NAME
Personal Representative  ADDRESS

RE:   VPCR Incident Number (if known)

Dear ,

, a resident at  has been named as a possible witness in an incident report of suspected abuse or neglect registered by the Justice Center for the Protection of People with Special Needs (Justice Center).

The Justice Center has asked that we notify you that an incident report has been made and provide you with some information on the process and who you can contact if you would like further information.

An investigation of the incident will be conducted by staff of the Justice Center or the New York State Office of Children and Family Services (OCFS). During the investigation of the incident an investigator may interview the youth named above as a possible witness to the incident. Please feel free to contact the Justice Center or OCFS if you wish to share any information that you believe an investigator should know about the most effective way to communicate with the youth named above.

Please contact OCFS at: (insert appropriate Regional Office IAB Sup name & address)

Information about the Justice Center and the investigatory process is also available at:  
http://www.justicecenter.ny.gov/home

The Justice Center may be contacted at:

NYS Justice Center for the Protection of People with Special Needs
161 Delaware Ave
Delmar, NY 12054-1310
(518) 549-0200

Sincerely,
Plan of Program Protocols for Providing Notifications of a Justice Center Investigation
to Alleged Victims, Potential Witnesses and Personal Representatives

PROTOCOLS

1. Who will be designated to begin the notification procedures once the program
   receives notification of a Justice Center abuse/neglect investigation from the
   OCFS regional office?
   A. Who will notify the alleged victim and potential witnesses?
   B. Who will notify the personal representatives of potential witnesses?
   C. If notifications to personal representatives are made via the optional OCFS-
      provided form letter, who will complete the letters and mail them?

2. Who will be responsible for maintaining a file that includes documentation for
   notifications for each investigation? Who will be the backup person?
   A. Primary responsibility
   B. Backup

3. Where will the files be maintained?

4. How will the program be sure that there is a complete documentation file for each
   abuse/neglect case? What is the system for checks and balances?

5. Who is the point person (and back up) to provide the investigators with a copy of
   this documentation upon request?
   A. Point person
   B. Backup

Maintain a copy of this document for program use at program site.
Submit a copy to the appropriate
OCFS regional office responsible for
licensing and oversight of your program.
Submitted to:
Date Submitted:
Memorandum – FAQs for Chapter 394

To: Commissioners of Social Services  
Executive Directors of Voluntary Authorized Agencies  
Directors of Runaway and Homeless Youth Programs  
Directors of Juvenile Detention Programs  
Directors of Family-type Homes for Adults  
Directors of Supervised Independent Living Programs

From: Laura Velez, Deputy Commissioner  
Division of Child Welfare and Community Services

Re: New Justice Center Requirements for Notifications

Date: June 30, 2015

Chapter 394 of the laws governing the Justice Center for the Protection of People with Special Needs (Justice Center) require the development of protocols to ensure the safety of service recipients (youth) during interviews for abuse/neglect investigations. Therefore, effective 7/1/15, new responsibilities are placed on the New York State Office of Children and Family Services (OCFS) and its licensed and certified residential programs (service providers) regarding notifications related to abuse and neglect investigations. The following provides questions with answers for your information.

**Q** - What does that mean for OCFS’ licensed or certified residential programs?

**A** - Effective 7/1/15, OCFS and/or the service provider is obligated to immediately inform every youth who is an alleged victim of abuse/neglect, and every youth who is a potential witness to an incident of abuse/neglect, that they may be interviewed as part of the abuse/neglect investigation.

Also, notification must also be made to the “personal representative” of every alleged victim and every potential youth witness that an interview may take place.

**Q** - How is “immediately” defined?

**A** - For notification to alleged victims AND their personal representatives, immediately means within 24 hours of the service provider being notified that there has been an allegation of abuse or neglect registered by the Justice Center. The clock will start when the service provider receives a call from their designated regional office informing the service provider of the allegation and inquiring about the safety plan.

- For notification to potential witnesses AND their personal representatives, immediately means within 48 hours of the service provider being notified that there has been an abuse allegation classified by the
Justice Center. The clock will start when the service provider receives a call from their designated regional office informing them about the allegation and inquiring about the safety plan.

***NOTE- The service provider does not have to notify the personal representative of an alleged victim. The designated regional office will notify the personal representative of an alleged victim via letter, and will send a copy of the letter to the director of the program named in the report. A copy of the letter shall remain on file and also shall be provided to the assigned investigator from OCFS or the Justice Center.

Q - Who is considered to be a potential witness?
A - Any service recipient known to be in the place and at the time when the abuse or neglect is alleged to have occurred.

(Note: Do not ask the youth if they were a witness. If you believe they were in the location of the incident, provide them with notice.)

Q - What is a personal representative”?
A - The personal representative is any person authorized under applicable law to act on behalf of the vulnerable person. In OCFS licensed or certified programs this will routinely be the parent or legal guardian of the youth.

Q - How do we notify the personal representative of a potential witness?
A - This contact can be made via phone or form letter. A template for the form letter is provided.

Q - How do we record/document that all of these notifications have been made?
A - You can use the model form provided by OCFS, titled “Notification to Service Recipients and Personal Representatives,” which is included as part of OCFS policy 15-OCFS-ADM-08. Use one form for each investigation. There is room on the form for names of multiple youth and their personal representative.

Q - Do we provide the Justice Center investigator/OCFS investigator with any documentation?
A - Yes. For each investigation, provide the investigator with a copy of the “Notification to Service Recipients and Personal Representatives,” the letter that the regional office sent to the personal representative of the alleged victim and copies of any letters sent to the personal representatives of potential witnesses. When the investigator comes to the service provider to conduct the investigation, he/she will inquire about these notifications being completed and request such information for the investigative record.

Q - Where does the service provider maintain completed forms?
A - Each service provider shall identify a secure location with restricted access and maintain a filing system for such notification.

Q – Is this information confidential?
A – The information is not to be shared with staff suspects or witnesses.

Q – Is notice required for staff witnesses?
A – No.