

Member and Advocate General Incident Quick Guide

Understanding Your Rights

What is Jonathan's Law? Jonathan's Law established procedures that agencies must follow to notify parents, siblings, and legal guardians of children and adults receiving services of incidents involving their loved ones. It also allows qualified persons to access certain documents pertaining to the incidents. Jonathan's Law requires agencies to provide records and documents pertaining to allegations and investigations into abuse, neglect, and significant incidents (reportable incidents) to the qualified person(s) upon written request.

Please note this only applies to incidents classified by OPWDD as "Part 624 incidents" meaning they occurred onsite or under the supervision of agency staff i.e. IRA, Dayhab, Comhab, ACA/NY. A list of Part 624 incident classifications is included on the last page of this quick guide. If you would like additional information about OPWDD and the agency's incident policies, please visit <https://acany.org/resources/incident-management-regulations/>.

Roadmap

Agency where incident occurred notifies you within 24 hours of incident occurrence/discovery



Within 10 days of incident, agency sends you an OPWDD 148 form reporting on the actions taken by the agency to safeguard the member. If you do not receive this automatically from the agency, you may request it in writing.



If the incident is being investigated by the agency, the agency has 30 days to complete investigation. Once completed, you can make a written request for the redacted version of the investigative report. Agency has 21 days to respond to your written request.



If you are dissatisfied with the agency's investigative conclusions, you have the right to request additional review by Justice Center if the agency is under their jurisdiction (See below FAQs for more information)



You can work with your Care Manager to ensure investigative recommendations or additional safeguards are implemented by the agency and where applicable, Care Management.



Please note, **ACA/NY is not under the jurisdiction of the Justice Center BUT Certified IRAs, Dayhabs, ICFs are.**

What to know if a **Part 624 incident** occurs at another agency or at ACA/NY? Please note the following questions and answers apply only to Part 624 incidents.

FAQs

Question	Answer
<p>Who will be notified if a Part 624 incident has occurred at an agency serving a member?</p>	<ul style="list-style-type: none"> • An agency must inform the qualified person(s) by telephone of accidents or injuries that affect the health or safety of an individual receiving services within 24 hours of the initial report of the incident. • If requested by a qualified person, the agency must promptly provide a copy of the written incident report. • The agency must also offer to meet with the qualified person to further discuss the incident.
<p>Who is considered a qualified person/party?</p>	<p>Qualified parties include an individual/member receiving services, his or her legal guardian, or an involved parent, spouse, adult child, or adult sibling who has authority to provide consent for care and treatment.</p>
<p>Who will be informed of actions taken to address an incident?</p>	<p>The agency where the incident occurred must provide the qualified person(s) with a written report on a specific form called OPWDD 148 on the immediate actions taken to address the incident (e.g., steps taken to protect the involved individual/member) within 10 days of the initial report of the incident.</p>
<p>Who can a “qualified party” or advocate speak to for follow-up?</p>	<p>An advocate has the right to ask questions if he or she receives notice of an incident. You may ask to speak with a supervisor within the agency where the incident occurred for more information. The advocate may also accept the offer to meet with the agency director or designee. If not satisfied, the advocate may direct questions or concerns to the director of the agency or other high level administrators.</p>



Question	Answer
How can you obtain these records?	At the conclusion of an investigation of an abuse or neglect incident reported to the Justice Center, the Justice Center will notify the individual/member or their personal representative of the finding of the investigation. When the qualified person(s) makes a written request for records and documents pertaining to a reportable incident, the agency must respond to this request within 21 days of the conclusion of the investigation. Written request for records or documents from that investigation should be directed to the agency that reported the incident.
What if the Justice Center conducts the investigation and not the agency?	<p>Requests for incident and investigation records must be made to the agency where the incident occurred.</p> <p>The Justice Center is not authorized to provide any records under Jonathan's Law.</p> <p>When reportable incidents are investigated by the Justice Center, the Justice Center will coordinate with the agency so that the disclosure of records and documents will be made in compliance with Jonathan's Law.</p>
Can any information be withheld?	Yes. The names or information that identifies other persons receiving services and employees will be redacted unless these individuals authorize disclosure. Federal laws or regulations may pose additional restrictions on the release of records or information contained in those records. If a patient is a minor and is receiving services to which a parent or guardian has also consented, both the minor and the parent or guardian must consent to disclosure.
Can records or documents obtained by a qualified person be shared?	A qualified person who received records and documents pertaining to reportable incidents may share them only with: <ul style="list-style-type: none">• Health care providers;• Behavioral health care providers;• Law enforcement agencies (if the qualified person believes a crime has been committed); and/or• The qualified person's attorney



Question	Answer
<p>What happens if the agency denies me access to records as a qualified person?</p>	<p>There is an administrative appeal process for advocates who have been denied incident records requested from an agency providing services. Contact the OPWDD Incident Records Appeals Officer at 44 Holland Avenue, Albany, NY 12229 for more information.</p>
<p>What do I do if I am not satisfied with the investigative conclusions?</p>	<p>Members and Qualified person(s) have the right to request a review of an investigation if they are not satisfied with the findings and conclusions. They should contact:</p> <p>The Justice Center’s Individual and Family Support Unit: Toll-free number: 1-800-624-4143 (Voice/Multi-language/TTY)</p> <p>Email: supportcoordinator@justicecenter.ny.gov Email is the preferred method of contact</p>
<p>Where can I find more information or assistance?</p>	<p>Justice Center Information Line Phone: 518-543-0200 Website: https://justicecenter.ny.gov</p> <p>OPWDD Information Line Phone: 1-866-946-9733/TTY: 1-866-933-4889 Website: https://opwdd.ny.gov</p> <p>OPWDD’s “Learning About Incidents” brochure contains information about access to records. It is available on OPWDD’s website at https://opwdd.ny.gov/willowbrook/incident-management</p> <p>The Justice Center’s Individual and Family Support Unit’s toll-free number is 1-800-624-4143 (Voice/Multi-language/TTY) and the email address is supportcoordinator@justicecenter.ny.gov. Email is the preferred method of contact.</p> <p>Disability Rights New York https://www.drny.org/page/what-we-do-6.html</p>



Part 624 – Incidents Classifications

- Part 624 Reportable Incidents have two (2) sub-categories: *Abuse/Neglect* and *Significant Incidents*
- Part 624 Notable Occurrences have two (2) sub-categories: *Serious Notable Occurrences* and *Minor Notable Occurrences*
- For a complete list of detailed definitions for each of the below classifications, please click this link <https://acany.org/resources/incident-management-regulations/> and request a copy of **Appendix B-9H_Part 624 Incident Classifications**.

Reportable Incidents <i>Abuse/Neglect</i>	Reportable Incidents <i>Significant Incidents</i>	Serious Notable Occurrences	Minor Notable Occurrences
Physical Abuse	Conduct between individuals receiving services	Death	Injury
Sexual Abuse	Seclusion	Sensitive Situation	Theft or Financial Exploitation
Psychological Abuse	Unauthorized use of time out		
Deliberate inappropriate use of restraints	Medication error with adverse effect		
Aversive Conditioning	Inappropriate use of restraints		
Obstruction of reports of reportable incidents	Mistreatment		
Unlawful use or administration of a controlled substance	Missing Person		
Neglect	Unauthorized Absence		
	Choking, with known risk		
	Choking, no known risk		
	Self-abusive behavior with injury		
	Injury with hospital admission		
	Theft or financial exploitation		
	Other significant incident		