

"Building Partnerships"
*Working Together to Protect
Persons with Disabilities*



#WECOUNT-
*Navigating the Criminal Justice System
to Obtain Successful Outcomes for
Persons with Disabilities*

**August 29, 2018
Anaheim, California**

PANEL MEMBERS



➤ Elizabeth Dunphy Farris, Esq.
Legal Counsel to the
Hampden District Attorney (MA)



➤ Timothy F.X. Grant, Sergeant
Massachusetts State Police
State Police Detective Unit DPPC

Agenda

- MA BPI – Massachusetts’ multidisciplinary team (MDT) approach to the identification, report, investigation and prosecution of abuse and crimes committed against persons with disabilities; and
- Case studies from MA BPI MDT - from report through APS/law enforcement investigation and prosecution:
 - (a) What worked and what did not;
 - (b) What we have learned as “successful” strategies (e.g. interviewing victims with disabilities and alleged abusers, creating a case file for the investigation and prosecution of crimes committed against persons with disabilities and implementing prevention cross-discipline trainings)



Why MA BPI?

To effectively address abuse and crimes committed against persons with disabilities using a multidisciplinary approach to provide equal protections and equal access to the criminal justice system



MA BPI Steering Committee

- District Attorney
- MA District Attorneys Association
- MA State Police
- Disabled Persons Protection Commission
- Department of Developmental Services
- Department of Mental Health
- Massachusetts Rehabilitation Commission



MA BPI Steering Committee (cont'd)

- Office of Attorney General
- MA Office of Victim Assistance
- Provider Agency
- Massachusetts Advocates Standing Strong
- Department of Public Health
- Sexual Assault Nurse Examiner
- Executive Office of Elder Affairs



Steering Committee Duties:

- Develops Memorandums of Understanding
- Secures funding
- Drafts and secures passage of new legislation
- Develops training curricula and implements training recommendations



MA BPI Prosecution-Based Model

DPPC:

- Maintains 24-hour hotline/Intake
- Coordinates emergency victim services
- Monitors APS investigations

District Attorney:

- Coordinates team response
- Provides legal assistance
- Prosecutes offenders

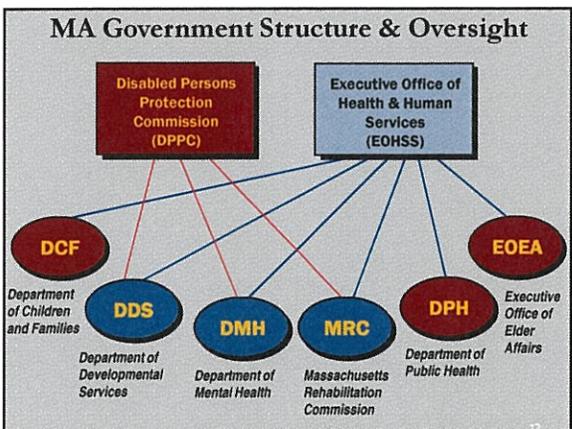
DPPC

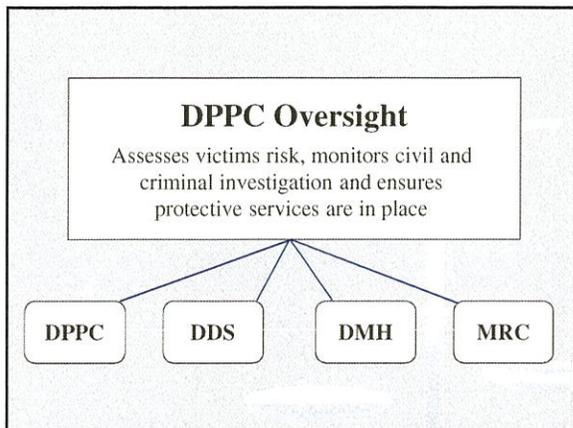
- Independent Agency
- Units (related to MA BPI)
 - Hotline/Intake
 - Investigations
 - Oversight
 - Legal
- State Police Detective Unit



DPPC Statute M.G.L. c. 19C

- Jurisdiction:
 - Person with a disability
 - 18-59 years of age, and
 - Wholly or partially dependent on others for daily living needs
 - Abused by a caregiver
 - Residing in state care or private setting (excludes nursing home(s))







District Attorney's Personnel

- Eleven (11) jurisdictions in Massachusetts
- Geographically Divided (primarily by county)
- Assistant District Attorney(s)
 - Elders and Persons with Disabilities Unit
 - Superior/District Court
- Victim Witness Advocate(s)
- Forensic Interviewer
- Massachusetts State Police Detective Unit

“JANE” – The “mosquito bite” case

- A 45 year old female with developmental disabilities, named Jane, who is a person that is **intellectually challenged, mildly autistic, deaf and non-verbal**, returns home to her residential program 45 minutes later than her usual time.
- The van driver that transports Jane back and forth to her day program tells the staff at the residence that he ran into traffic and that is why they are late.
- In the course of changing Jane out of her work clothes, it is observed that she has **multiple scratches and bug bites all over her body**.
- At this time **Jane tried to cover the bites up, and seemed visibly upset and distraught**, and ran to her room. ...

“JANE” – The “mosquito bite” case

- ...The staff present at the time, are the 3-11 shift staff; **two staff** assigned to provide support for **four individuals**.
- One of the staff is a **part-time relief staff**. He is assigned to float between several residences, depending on coverage needs. He is **not familiar with Jane or her typical behaviors**.
- The other staff is more experienced. She has been working at this residence for one year and has received basic orientation, human rights and first aid/CPR/safety training.
- She is **concerned about Jane's appearance and behavior, but there are three other individuals** who have also returned to the residence, **all requiring some degree of personal care**.

What does a MA BPI-based MDT look like?



**DPPC Intake Unit
24 HOUR HOTLINE**

- Operates a 24-hour Hotline:
 - 1-800-426-9009
 - 1-888-882-0350 TTY
- Receives reports of suspected **physical, verbal, sexual abuse, neglect and deaths** of adults with disabilities
- Evaluates reports to determine required response [emergency or non-emergency] and jurisdictional criteria
- Provides information and referrals to callers



Mandated Reporters

- A person, who as a result of their profession, is more likely to be aware of the abuse
- Mandated Reporters are required by law to report instances of **suspected** abuse to the DPPC Hotline

Who are Mandated Reporters

- Medical Personnel
- Medical Examiners
- Social Workers
- Foster Parents
- Police Officers
- Dentists
- Public or Private School Teachers
- Educational Administrators
- Psychologists
- Guidance or Family Counselors
- Day Care Workers
- Employees of Private Agencies Providing Services to People with Disabilities
- Employees of State Agencies within the Executive Office of Health and Human Services

Mandated Reporters for Jane?

- Two staff members assigned to shift
- Shift Supervisor
- Residential Home Director

While residential home policies and procedures may provide for internal reporting requirements; each individual is mandated to report "suspected" abuse.

How to File an Abuse Report

- Call the DPPC 24-Hour Hotline at:
1-800-426-9009
1-888-882-0350 TTY
- And file WRITTEN REPORT to the DPPC within 48 hours
- In case of an **Emergency** or a **Crime**, call **911 or Local Police** followed by a call to the DPPC

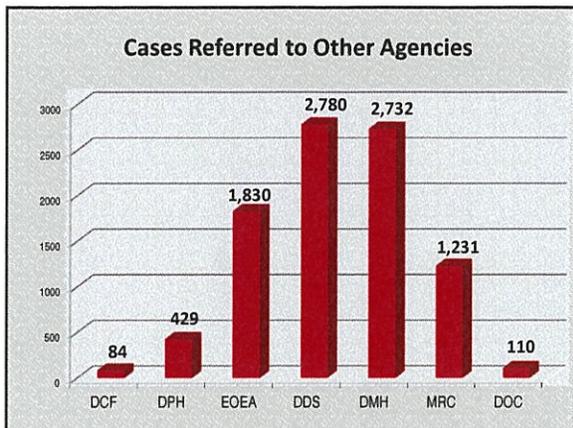
DPPC/SPDU Criminal Screening

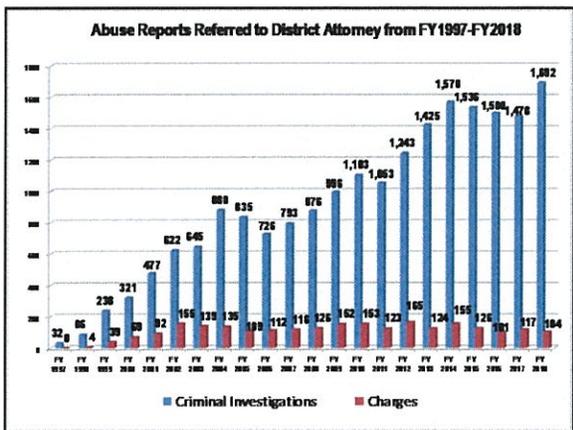
- District Attorney's office notified
- Designated assistant district attorney assigns criminal investigations to:
 - Local Police
 - DA's SPDU
 - DPPC's SPDU
- Human Service agency contacts notified
- Civil Investigator proceeds with protective services



Protective Service Examples

- | | |
|--------------------------|----------------------------------|
| ➤ Access Warrants | ➤ Guardianship/GAL |
| ➤ Protective Orders | ➤ Counseling |
| ➤ Respite Care | ➤ Financial Management |
| ➤ Emergency Shelter | ➤ Education/Training |
| ➤ Restraining Orders | ➤ Support Groups |
| ➤ Case Management | ➤ Employment/Vocational Services |
| ➤ Family Planning | ➤ Legal Assistance |
| ➤ Housing Assistance | ➤ PCA's/Home Health |
| ➤ Adaptive Equipment | ➤ Clinical Evaluation |
| ➤ Transportation | ➤ Medical Assistance |
| ➤ Specialized Counseling | |

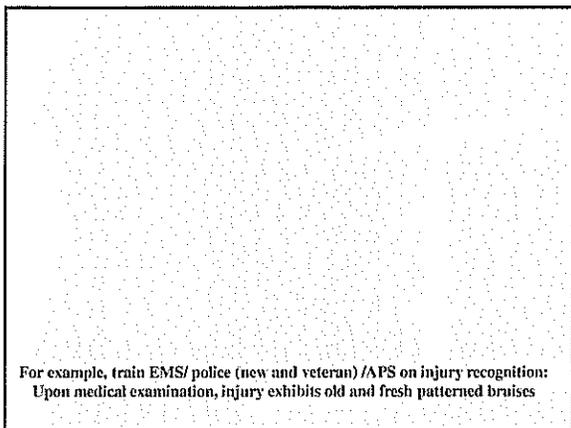


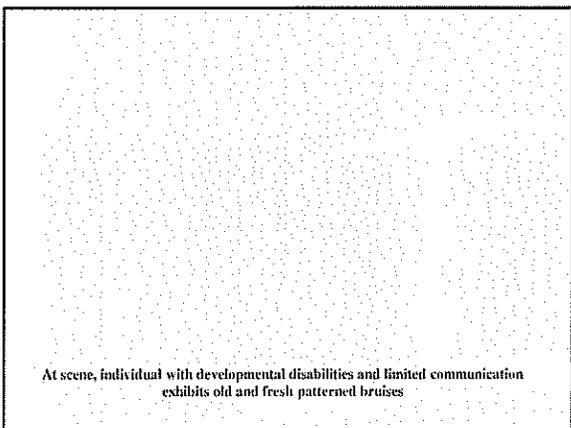


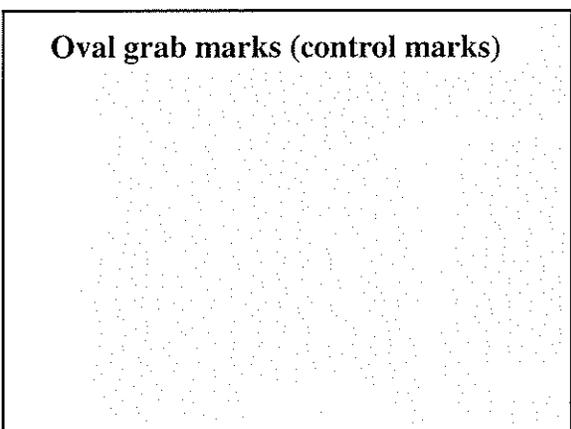


Law Enforcement Assistance to APS

- Education and training
- Interview alleged victims/abusers
- Obtain corroborating evidence
- Access to judicial system/process
- Powers of arrest







**fresh bruises on
left arm and torso
... Accidental fall
as reported?**

**Unlikely, ... laceration and
electrical cord marks on
left arm and torso.**

**Human bite mark
(with size standard)**

Interpretation of Bruises

Understanding how to interpret pattern or age of injury (old or fresh) is crucial to investigation:

- Rate of healing depends on location and depth of bruise
- Face and genital area heal faster than other parts of the body because excellent blood supply
- Color changes: red purple, blue, green, yellow, brown
- Because of variability in this progression:
 - new - red purple, blue
 - old - green, yellow, brown



AND..... Scene search can reveal weapons



Understanding Burn Injuries

Accidental or Inflicted?

- Immersion burns are often claimed to be associated with toileting "accidents"
- Splash burns are the most common type of *accidental* burns
- Immersion burns are usually *intentional*, involve no splash marks, and identifying marks are caused, most commonly, by:
 - Clothing
 - Glove
 - Sock/ Stocking

Average Water Temperature

	<u>Degrees</u>
➤ Comfortable infant bathing	mid 90s
➤ Comfortable jacuzzi	@ 103
➤ Adult - painful to touch	118 - 120
➤ Adult deep 2nd to 3rd degree in 30 sec.	130
➤ Adult deep 2nd to 3rd degree in 10 sec.	138
➤ Adult deep 2nd to 3rd degree in 3-4 sec.	146
➤ AVERAGE HOME TAP WATER !!	140-145



#WE COUNT ...

Training also seeks to aid EMS/Police/APS with interview techniques:

- Every person with an intellectual or other disability is unique and there may be broad differences in ability to think and communicate in interviews.
- The nature of the interview and type of questions asked are critically important and can have significant impact upon the quality of the individuals' responses

Cross-Discipline Trainings Stress...

Caregivers should avoid:

- Trying to conduct an investigation
- Re-interviewing the alleged victim
- Interpreting or editing the information provided
- Interrogating the alleged abuser/suspect
- Searching for evidence
- Touching physical evidence



APS Assistance to Law Enforcement

At the Scene:

- Secure protective orders, access warrants and emergency guardianship
- Obtain emergency residential placement
- Obtain alternative personal care attendants
- Access emergency and non-emergency medical treatment
- Arrange for interpreters

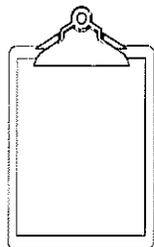


APS Assistance to Law Enforcement

At the Interview:

- Provide background data on alleged victims, abusers and providers
- Assist with gathering and analysis of medical and administrative records
- Assist in identifying communication abilities
- Assist with scheduling interviews
- Arrange for interpreters
- Assist with interview process, as needed

Police/APS Completed Case File



Includes:

- Reports (intake and investigative)
- Statements (alleged victim, alleged abuser and witness(es)).
- Photos/Videos/Diagrams
- Medical records

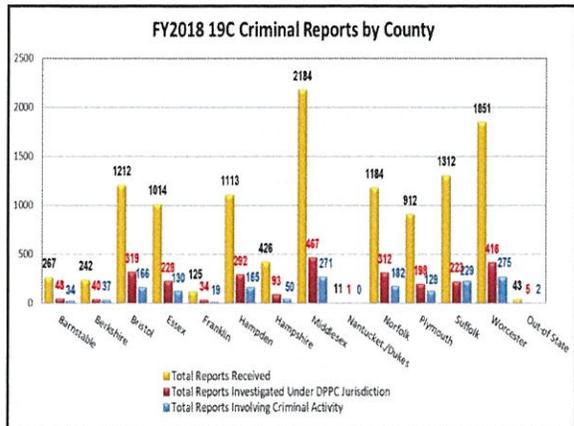
MA BPI Investigation of Jane's Report

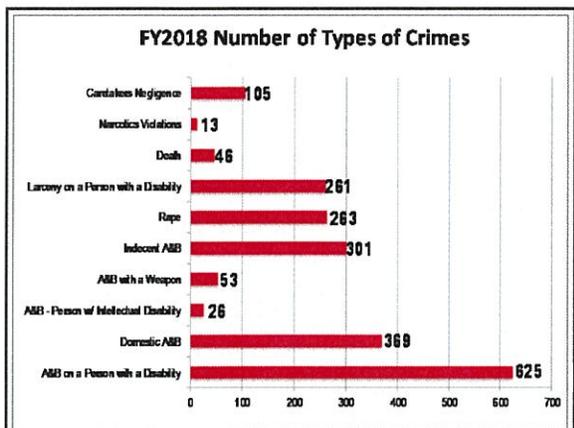
Law Enforcement and APS (jointly):

- Seek medical attention for Jane (SANE)
- Interview Jane (preferably recorded)
- Document Jane's "injuries"
- Collect Jane's clothing
- Provide for alternative transportation when Jane resumes day program/workplace
- Interview residential staff personal
- Observe route/traffic patterns traveled by van to residential home
- Interview alleged abuser, if possible

DA's Role in MA BPI

- Notification from DPPC
 - Identifies parties
 - Details reportable incident(s)
- Review by ADA
 - Coordinate with APS to ensure victim safety
 - Obtain necessary mental health, medical, school, work or social worker records from APS agencies
 - Determine civil/criminal focus
 - Designate investigating agency
 - Identify available collateral agencies
 - Request necessary medical services
 - Coordinate forensic interview, if any
 - Assign person with disability victim/witness advocate

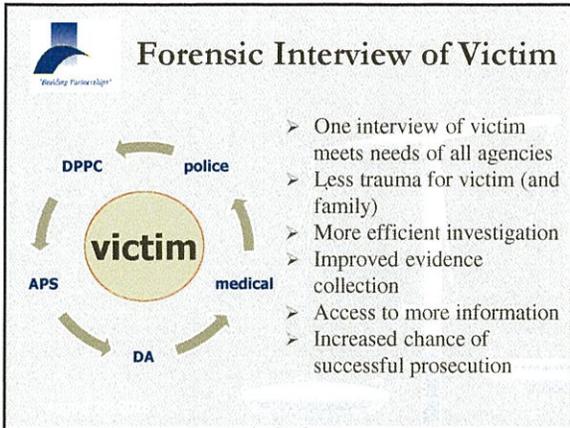


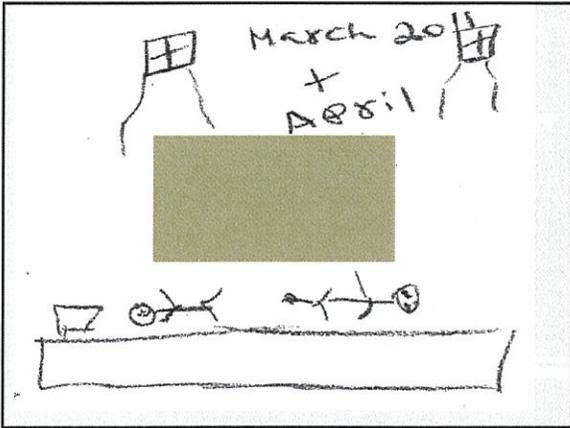


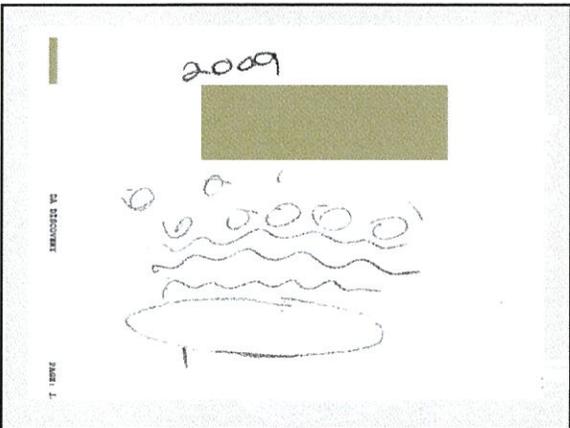
DA Referral of Jane's Intake Report

ADA:

- > Emailed intake report from DPPC (w/in 24 hours)
- > Decides criminal/civil focus
- > Assigns law enforcement agency (local or state) to conduct investigation
- > Contacts APS agency
- > Assigns alleged victim/witness advocate
- > Upon investigation's completion, decides case opened/closed for criminal charges
- > If criminal charges filed, prosecutes alleged abuser









Criteria for a SANE Exam

- Patient must be medically cleared
- Able to consent
- Assault within **5 days/120 hours**
- Patient does not have to report to police to have evidence collected (evidence held for 6 month+ if not reporting at this time)

In MA 90-95% conviction rate when a SANE testifies at trial!



MA BPI Training Curricula

Includes:

- Law Enforcement
 - State & Municipal Police Recruits
 - Veteran Officers
- Service Providers
- Persons with Disabilities
 - Learning Tool
 - Awareness & Action



Other Trainings

- Adult Protective Service (APS) Investigators
 - Forty-hour basic investigation certification
 - Forty-hour sexual assault certification
 - In-Service Training
- Emergency Room Nurses and Physicians (in collaboration with SANE)
- Judiciary/Court Personnel Training
 - Practical Guide for Court Personnel entitled, *Crimes Against Persons with Disabilities: A Practical Guide to the Reporting, Investigation and Prosecution*
 - Americans with Disabilities Act (ADA) Coordinators training



Reference Materials

- Crisis Intervention Program (CIP) Officer Reference Book
- BPI Replication Guide, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, <http://www.ovc.gov/pubs/victimswithdisabilities/stateguide/index.html> (NCJ 239107)

Outreach and Prevention FY 2018 Update

- 48 Awareness and Action trainings (921 persons with disabilities)
- 13 one-day new police recruit trainings (772 officers)
- 10 other law enforcement trainings (571 veteran police officers)
- 5 medical personal trainings (162 medical professionals)

Outreach and Prevention FY 2018 Update

- 24 human service provider trainings (1,201 human service providers)
- 10 additional agency staff trainings (612 staff from various agencies)
- 2 Protect, Report, Preserve trainings (300+ attendees)



Case Studies of MA BPI MDT Referrals

- **Case #1** – Alleged Financial Abuse of adult male with an intellectual disability, by service provider;
- **Case #2** – Alleged Sexual Abuse of adult male with physical disabilities, by caretaker;
- **Case #3** – Alleged Physical Abuse of adult male with a developmental disability, by residential home staff personnel
- **Case #4** – Alleged Sexual Abuse of elder woman, with advanced dementia, by CNA at skilled nursing home.

DPPC REFERRAL #1

- ALV, an adult male with an intellectual disability, lived independently in the community and held a job at McDonald's for over thirty years.
- In talking about income tax and bank accounts with ALV, Reporter (ALV's relative) discovered that ALAB's name was added to ALV's bank account. ALV told Reporter ALV never gave permission for this addition. Reporter also observed that ALAB regularly withdrew \$500 from ALV's account for rent.
- Reporter discovered that ALV had a deposit of \$64,000 from a retirement fund and a withdrawal of \$40,000 on the same day. ALV indicated to Reporter that ALAB took \$40,000 for rent. ALV had no plans to cash in retirement fund.
- Reporter went to the bank with ALV. She and ALV moved \$20,000 to another account. Bank was investigating how ALAB got her name on account and withdrew money. ALAB used to work at the bank and was fired.

MA BPI MDT Approach

- Police obtain ALV statement and background. ALV denies knowing \$86,000 in retirement funds disseminated and did not consent to ALAB taking money.
- ADA obtains (by subpoena) telephone calls from ALV's employer, wherein ALAB is overheard "directing" ALV to provide personal information for dissemination of funds.
- Police interview ALAB who admits transferring funds to personal account. ALAB claims money was for ALV's use and enjoyment and that she intended to pay back withdrawn funds. Says ALV "knowingly" gave her ALV's SS# and PIN.

Legal Issues Relating to Victim/Witness

- **Consent** – person’s free/voluntary act
- **Competency** – question of law
- **Capacity** – question of fact
- **Privilege(s)** – question of common law/statute
- **Confidentiality** – involves private information

Competency of Victim/Witness

- Any person with a **“sufficient understanding”** is competent to testify.
G.L. c. 233 sec. 20.
- Refers to a person’s basic understanding and for witness to relate back truthfully ...
Commonwealth v. Tatisos, 238 Mass. 322, 325 (1921)

Capacity

- Question(s) of Fact
- Encompasses personal characteristics of an individual that assist/deter “understanding”
- Defined as to purpose of legal proceeding

*Capacity is evidentiary fact(s) produced for factfinder;
Competency is legal conclusion by factfinder from evidentiary facts of capacity presented*

RESULT

ALAB charged with Larceny over \$250 from a Person with a Disability

Plea of guilty. Restitution of all monies to ALV.

DPPC Referral #2

- ALV reported to his care coordinator that he had been sexually assaulted in the early morning. ALV said that he had been asleep in his bed when ALAB, whom he knew, came into his room, fondled his genitalia and anally raped him. ALV believed ALAB ejaculated on him. ALV reported his genitalia had been touched with ALAB's hands. APS notified.
- ALV was a 37 year old male at time of incident. He is a person with Cerebral Palsy and is a spastic quadriplegic. His physical mobility is very limited. He communicates effectively through the use of a communication device.
- ALV's Case Coordinator brings ALV to local hospital. Once there, ALV undergoes SANE during which anorectal swabs were collected.

MA BPI MDT Approach

- (Prior to MA BPI) Police contact ALAB. He denies allegations. Moves away from area while investigation is pending.
- Crime laboratory processes ALV's rape kit after prolonged delay. Semen is found on anorectal swab. Results submitted into CODIS. CODIS hit with ALAB profile.
- Police re-interview ALAB who is now incarcerated in Maryland for theft charges (defrauding elders). After initial denials, ALAB admits penetration of ALV, alleges consent by ALV.

APS/Police As Witnesses

A percipient witness may testify to what his/her senses perceived

Percipient witness: relates what he/she saw, heard, smelled, tasted, or touched. NOT what others said, unless non-hearsay use of evidence or hearsay exception applies....

Hearsay: Out of court statement(s) offered for the truth of the matter asserted.

When we prove declaration was an "excited utterance"



What is an "Excited Utterance"?

Any statement made by a person, while under the influence of the "exciting event", concerning the cause or circumstances surrounding the event.

Expert(s)/Testimonial Aids

Daubert/Lanigan Challenge?

- > Daubert "gatekeeper" obligation applies to all expert testimony, not only "scientific" testimony;
- > Trial judge is not limited to enumerated factors in Daubert in making "gatekeeper" inquiry. Instead, standard is flexible to particular facts and expert's particular experience and nature of issue;
- > Trial judge has broad latitude of discretion when ruling on admissibility.

Canavan's Case, 432 Mass. 304, 313-316 (2000) citing Kumho Tire Co., Ltd. v. Carmichael (1999) (Extending holding of Lanigan to apply to expert opinions based on personal observation and clinical experience, concluding diagnosis and causation could be subject to Lanigan analysis)

RESULT

ALAB charged with Rape and Indecent Assault and Battery on a Person Over Fourteen Years Old

Pleas of guilty. State Prison sentences imposed.

DPPC REFERRAL #3

- ALV is a twenty-eight year old male with Angelman Syndrome (a developmental disability). He is non-verbal and requires complete care and 24-hour supervision. He resides at a group home. Reporter was ALV's parent and legal guardian (non-mandated reporter). Reporter noticed bruising on ALV's chest and a change in his demeanor at a recent visit. ALV was "not the same person, he seems down and sad and flinches if you come near [ALV]." ALV was reported to have been acting out and pushing others when individuals come near ALV, which was not like ALV.
- Physical abuse of ALV was video recorded on two separate occasions. Reporter stated she had placed a "nanny cam" in ALV's bedroom a month previous to the first assault. The physical assaults involved two staff members, including the house manager.

MA BPI MDT Approach

- ALV was immediately removed from group home. (ALV was third resident leaving the group home in one week.)
- MSP interviews Reporter and obtains nanny cam (hidden in fan), video recordings of ALV's room and photographs of ALV's injuries. ALABs are identified.
- APS interviews ALAB(1) who denies striking ALV. ALAB(1) claimed no memory of the incident.
- MSP interviews ALAB(2), the house manager, who denied striking ALV. ALAB(2) states he was aware of allegation against ALAB(1), and ALAB(1) was suspended. When shown video of incident, ALAB(2) states there was "something" on ALV's head that needed to be removed. ALAB(2) had a prior criminal record that included assaults.

RESULT

ALABs charged with Assault and Battery on a Person With a Disability[G.L. c. 265 § 13K]

Guilty Pleas and Jury Trial Finding and Verdict of Guilty.

EOEA REFERRAL #4

- ALV, a sixty-nine year old woman with advanced dementia at skilled nursing home, was observed with her nightgown pulled up, her legs spread apart and her pubic area exposed (with her adult underwear removed). Standing next to her was ALAB, a CNA employed by the facility. The facility has rules that prohibit a male caregiver from being alone with a female patient.
- Police are notified. Reporter states ALAB, when discovered, appeared "startled" and stated "I'm sorry, I know this looks bad."
- The scene is secured. Evidence is gathered, including ALV's underwear. It is observed to have apparent red/brown staining consistent with blood.

MA BPI MDT Approach

- Police interview ALAB (recorded with *Miranda* warnings). ALAB admits to knowledge of facility rules but states that ALV's "brief was wet so he decided to change her". He admitted inserting two fingers, approximately one inch deep into her vagina, "to clean her." He also told police that he had done the same thing on a previous occasion when caring for ALV.
- ALV is transported to hospital where a SANE nurse performs a rape kit examination. External genital swabs are examined. Saliva and sperm cells are detected on swabs. ALAB's DNA profile is included as a contributor to the sperm cells detected.
- APS provide information related to ALV's level of understanding, re: consent/competency.

RESULT

**ALAB charged with multiple counts
of Rape on a Person with an
Intellectual Disability**

**Jury Trial.
Verdicts of Guilty.
State Prison sentence imposed.**

Lessons Learned

- No one person or agency possesses all of the skill, knowledge and resources necessary to respond to the complex problems of mistreatment and abuse of persons with disabilities;
- Each agency brings a different perspective and different information to the table; and
- In working together, crimes committed against persons with disabilities are being recognized, reported, investigated and prosecuted.

Measures of Success

- Trained staff has increased
- Mandated report to DPPC is timely made
- APS is notified to optimize victim's safety
- DA is notified for case review
- DA coordinates with BPI partners to conduct criminal/civil investigation
- Collection of forensic evidence is optimized with timely SANE and other forensic examinations
- Prosecution of offender can be maintained

Contact Information

- > **Elizabeth Dunphy Farris, Esq.**
Legal Counsel to the Hampden District Attorney (MA)
beth.farris@state.ma.us
(413) 505-5926
- > **Timothy F.X. Grant, Sergeant**
Massachusetts State Police
State Police Detective Unit DPPC
Timothy.Grant@state.ma.us
(617) 727-6465; 888-822-0350 V/TTY

Questions?



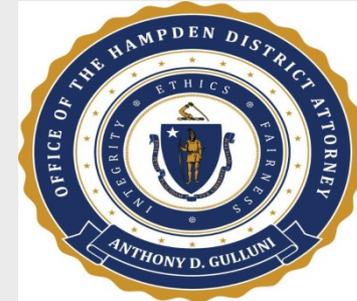
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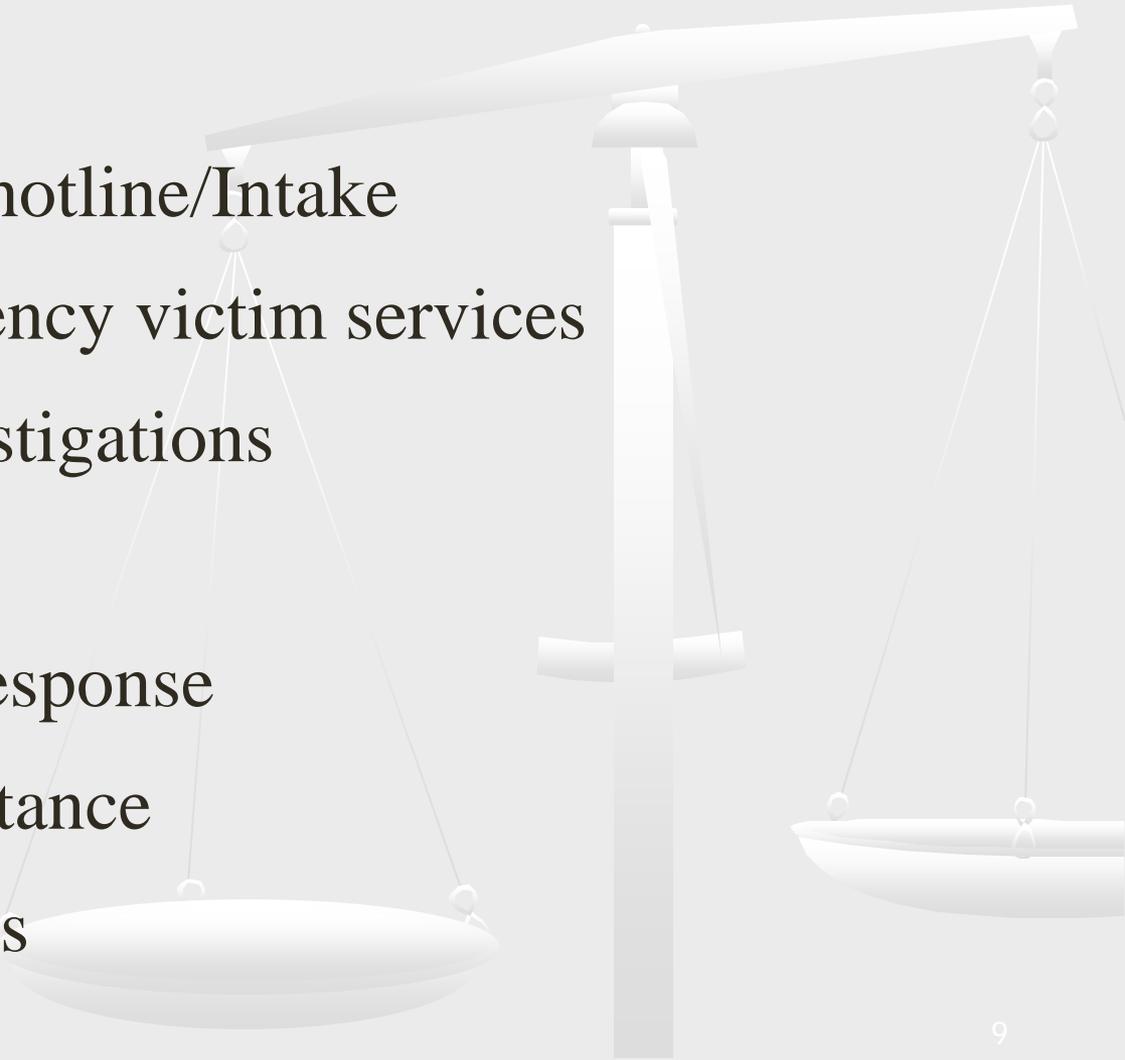
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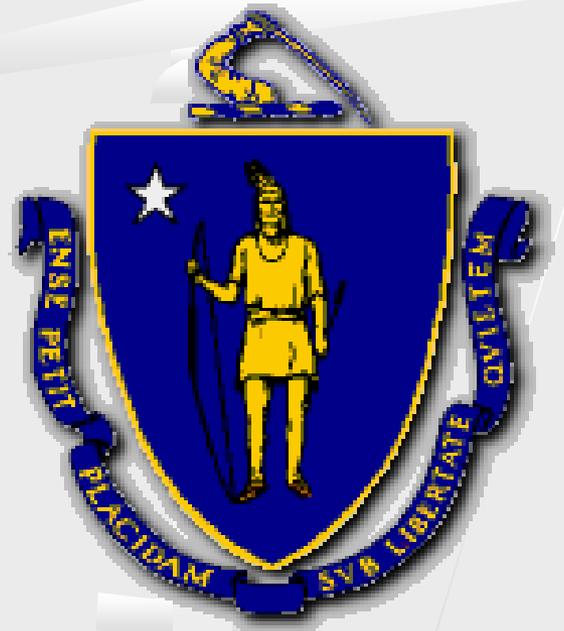
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M.G.L. c. 19C

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- Person with a disability
- 18-59 years of age, and
- Wholly or partially dependent on others for daily living needs
- Abused by a caregiver
- Residing in state care or private setting (excludes nursing home(s))

MA Government Structure & Oversight

**Disabled Persons
Protection
Commission
(DPPC)**

**Executive Office of
Health & Human
Services
(EOHSS)**

DCF

*Department
of Children
and Families*

DDS

*Department of
Developmental
Services*

DMH

*Department of
Mental Health*

MRC

*Massachusetts
Rehabilitation
Commission*

DPH

*Department of
Public Health*

EOEA

*Executive
Office of
Elder
Affairs*

DPPC Oversight

Assesses victims risk, monitors civil and criminal investigation and ensures protective services are in place

DPPC

DDS

DMH

MRC



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- Eleven (11) jurisdictions in Massachusetts
- Geographically Divided (primarily by county)
- Assistant District Attorney(s)
 - Elders and Persons with Disabilities Unit
 - Superior/District Court
- Victim Witness Advocate(s)
- Forensic Interviewer
- Massachusetts State Police Detective Unit

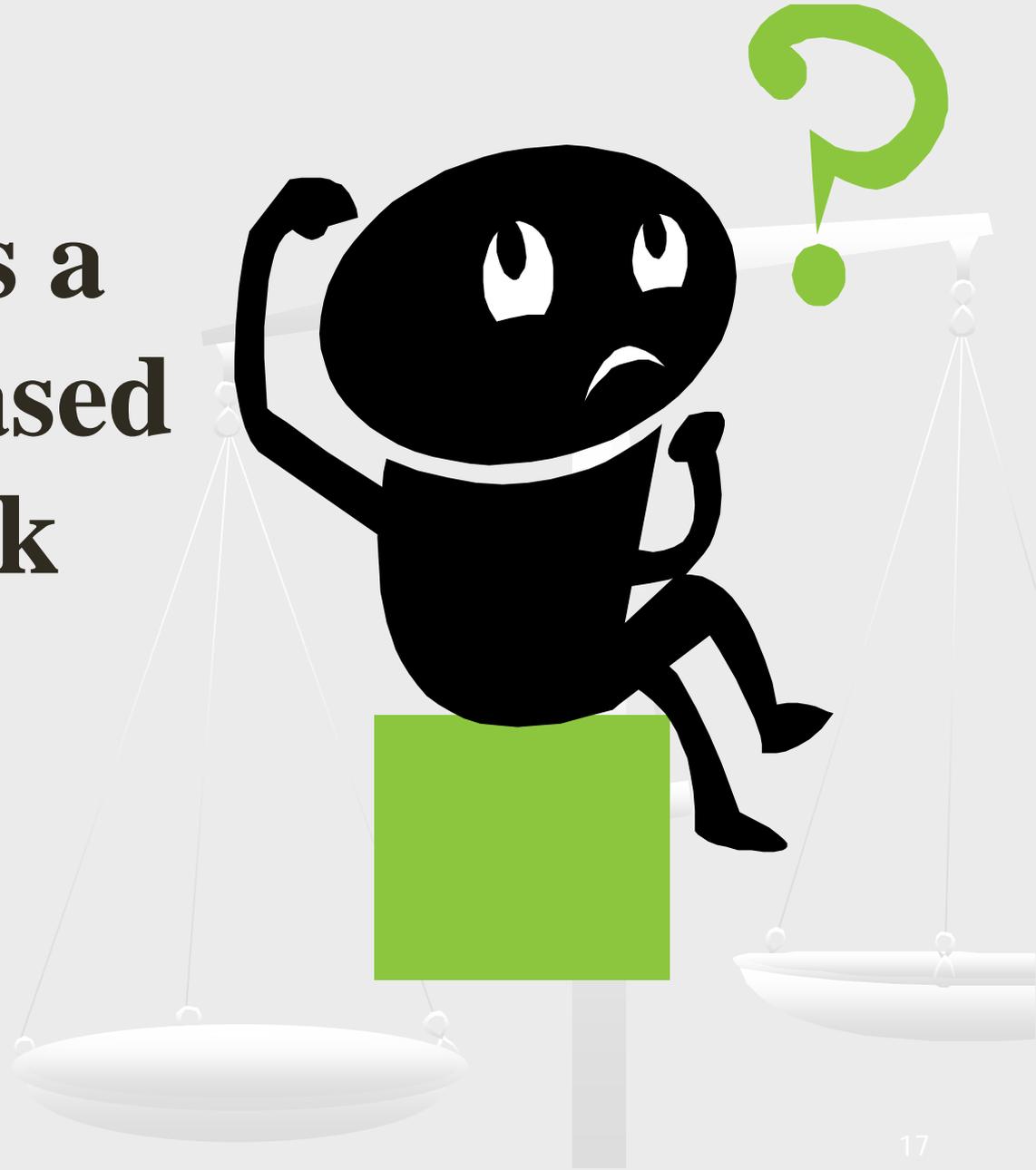
“JANE” – The “mosquito bite” case

- A 45 year old female with developmental disabilities, named Jane, who is a person that is **intellectually challenged, mildly autistic, deaf and non-verbal**, returns home to her residential program 45 minutes later than her usual time.
- The van driver that transports Jane back and forth to her day program tells the staff at the residence that he ran into traffic and that is why they are late.
- In the course of changing Jane out of her work clothes, it is observed that she has **multiple scratches and bug bites all over her body**.
- At this time **Jane tried to cover the bites up, and seemed visibly upset and distraught**, and ran to her room. ...

“JANE” – The “mosquito bite” case

- ...The staff present at the time, are the 3-11 shift staff; **two staff** assigned to provide support for **four individuals**.
- One of the staff is a **part-time relief staff**. He is assigned to float between several residences, depending on coverage needs. He is **not familiar with Jane or her typical behaviors**.
- The other staff is more experienced. She has been working at this residence for one year and has received basic orientation, human rights and first aid/CPR/safety training.
- She is **concerned about Jane's appearance and behavior, but there are three other individuals** who have also returned to the residence, **all requiring some degree of personal care**.

**What does a
MA BPI-based
MDT look
like?**



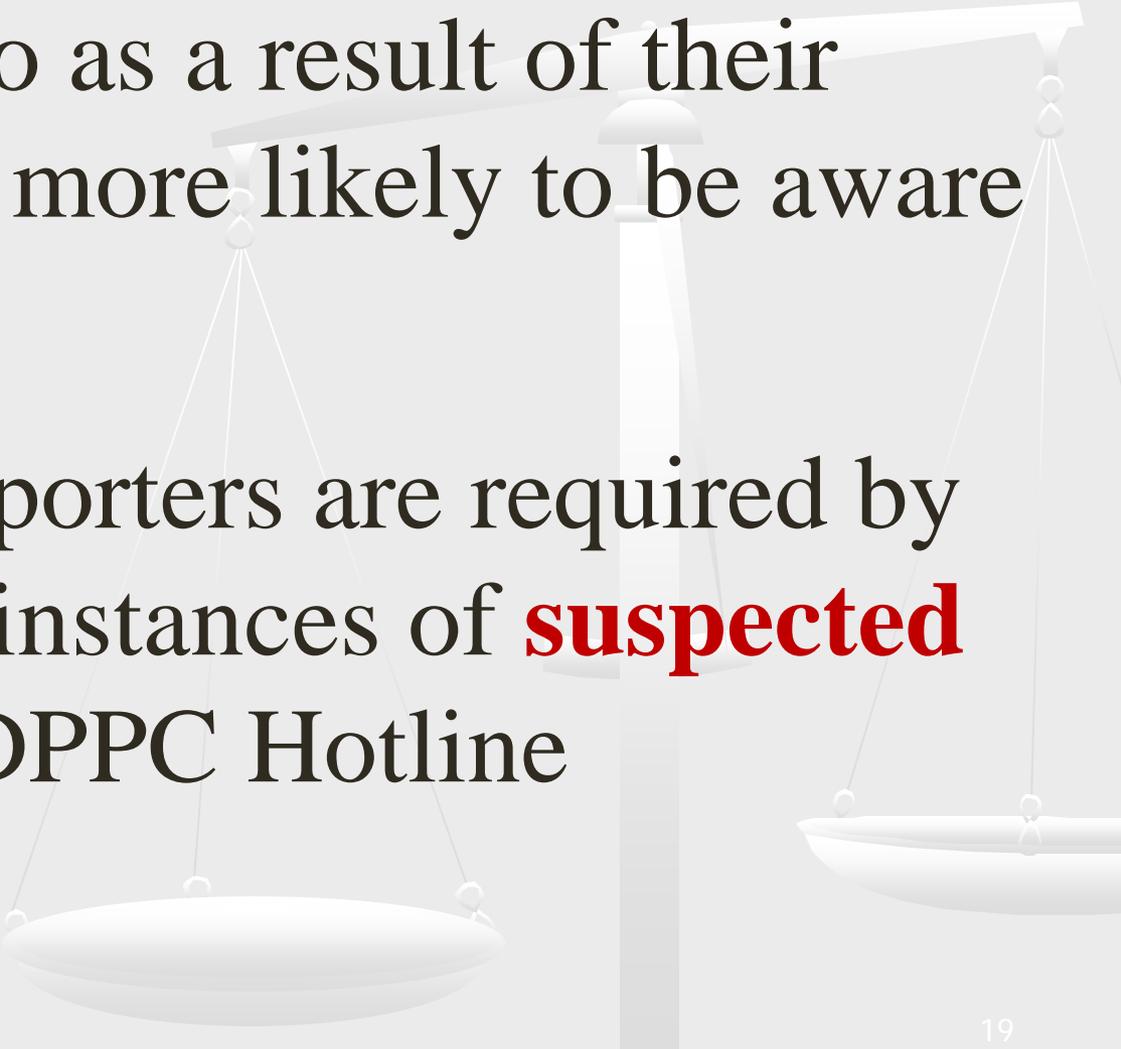
DPPC Intake Unit

24 HOUR HOTLINE

- Operates a 24-hour Hotline:
 - 1-800-426-9009
 - 1-888-882-0350 TTY
- Receives reports of suspected **physical, verbal, sexual abuse, neglect and deaths** of adults with disabilities
- Evaluates reports to determine required response [emergency or non-emergency] and jurisdictional criteria
- Provides information and referrals to callers



Mandated Reporters



- A person, who as a result of their profession, is more likely to be aware of the abuse
- Mandated Reporters are required by law to report instances of **suspected** abuse to the DPPC Hotline

Who are Mandated Reporters

- Medical Personnel
- Medical Examiners
- Social Workers
- Foster Parents
- Police Officers
- Dentists
- Public or Private School Teachers
- Educational Administrators
- Psychologists
- Guidance or Family Counselors
- Day Care Workers
- Employees of Private Agencies Providing Services to People with Disabilities
- Employees of State Agencies within the Executive Office of Health and Human Services

Mandated Reporters for Jane?

- Two staff members assigned to shift
- Shift Supervisor
- Residential Home Director

While residential home policies and procedures may provide for internal reporting requirements; each individual is mandated to report “suspected” abuse.

How to File an Abuse Report

- Call the DPPC 24-Hour Hotline at:

1-800-426-9009

1-888-882-0350 TTY

And file **WRITTEN REPORT** to the DPPC
within 48 hours

- In case of an **Emergency** or a **Crime**, call

911 or Local Police

followed by a call to the DPPC

DPPC/SPDU Criminal Screening

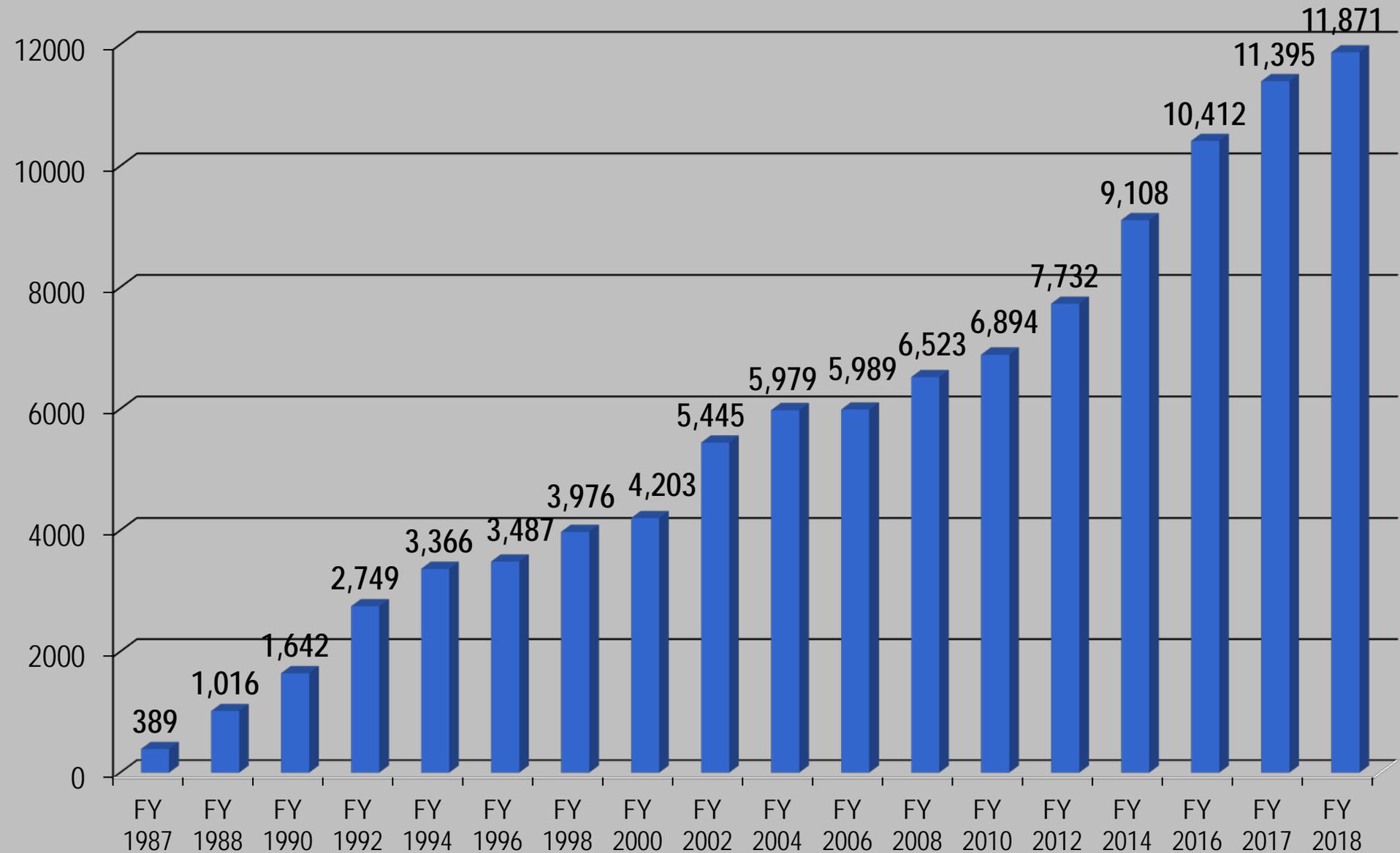
- District Attorney's office notified
- Designated assistant district attorney assigns criminal investigations to:
 - Local Police
 - DA's SPDU
 - DPPC's SPDU
- Human Service agency contacts notified
- Civil Investigator proceeds with protective services



Protective Service Examples

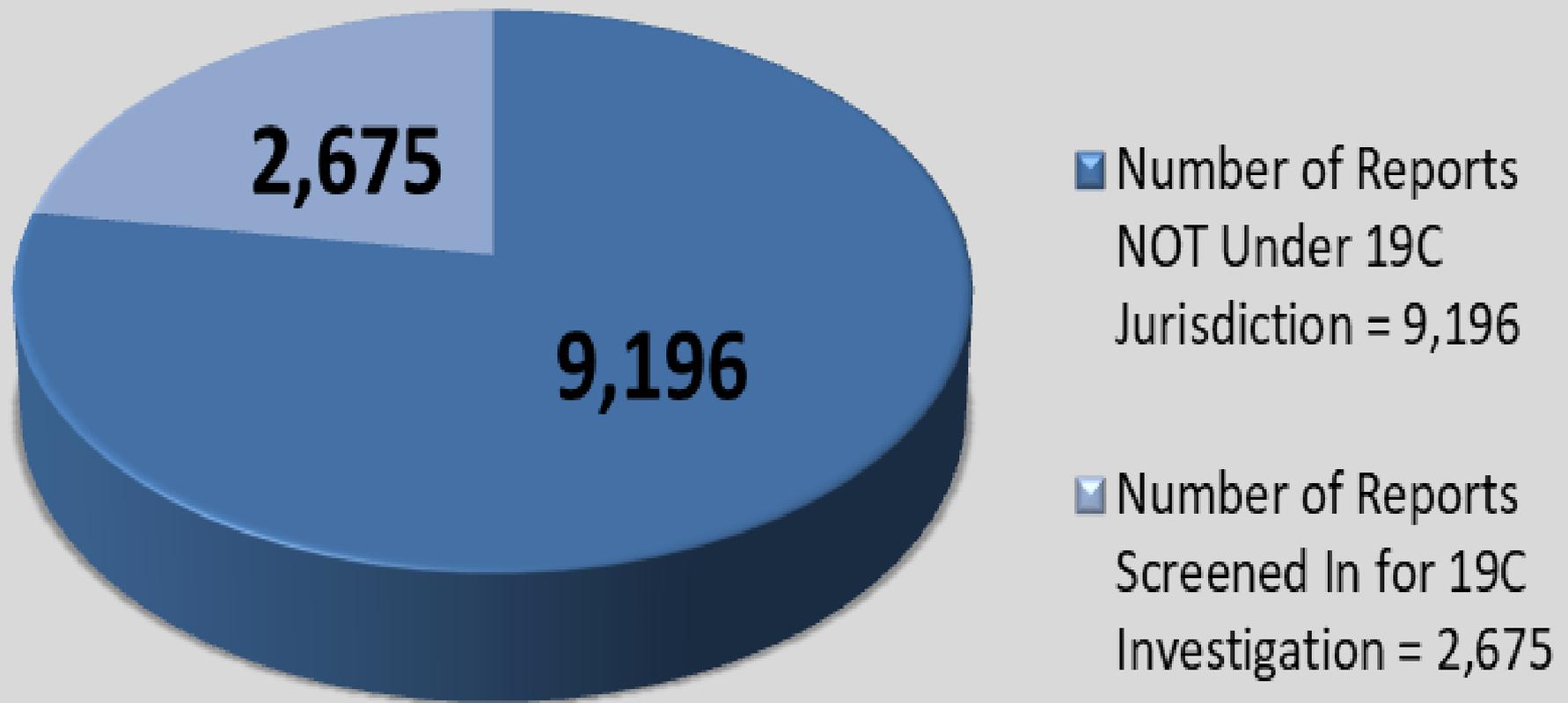
- 
- Access Warrants
 - Protective Orders
 - Respite Care
 - Emergency Shelter
 - Restraining Orders
 - Case Management
 - Family Planning
 - Housing Assistance
 - Adaptive Equipment
 - Transportation
 - Specialized Counseling
 - Guardianship/GAL
 - Counseling
 - Financial Management
 - Education/Training
 - Support Groups
 - Employment/Vocational Services
 - Legal Assistance
 - PCA's/Home Health
 - Clinical Evaluation
 - Medical Assistance

Abuse Reporting to DPPC Hotline 1987-2018*



* Does not include death reports and information and referral calls

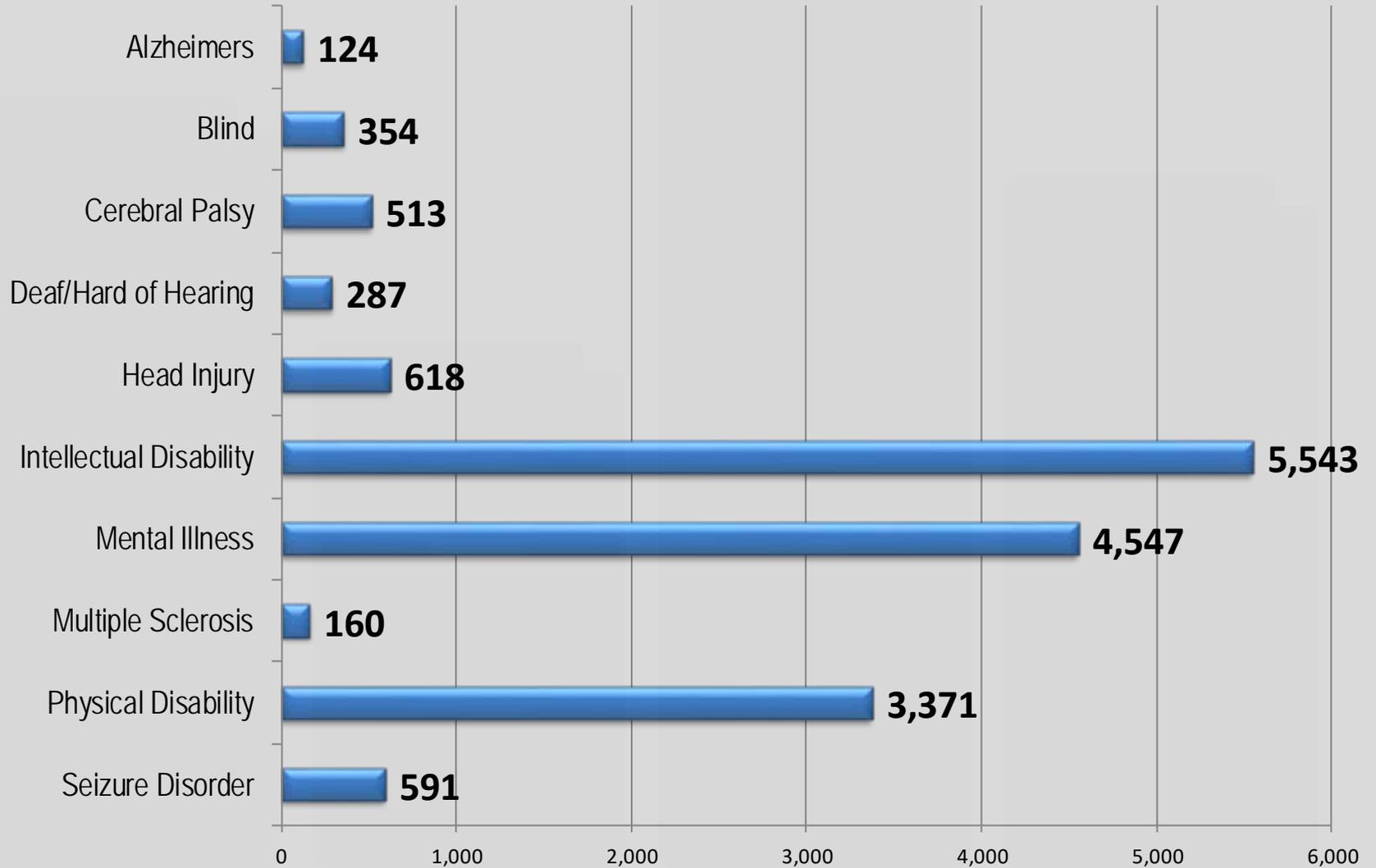
FY2018 Hotline Activity Report



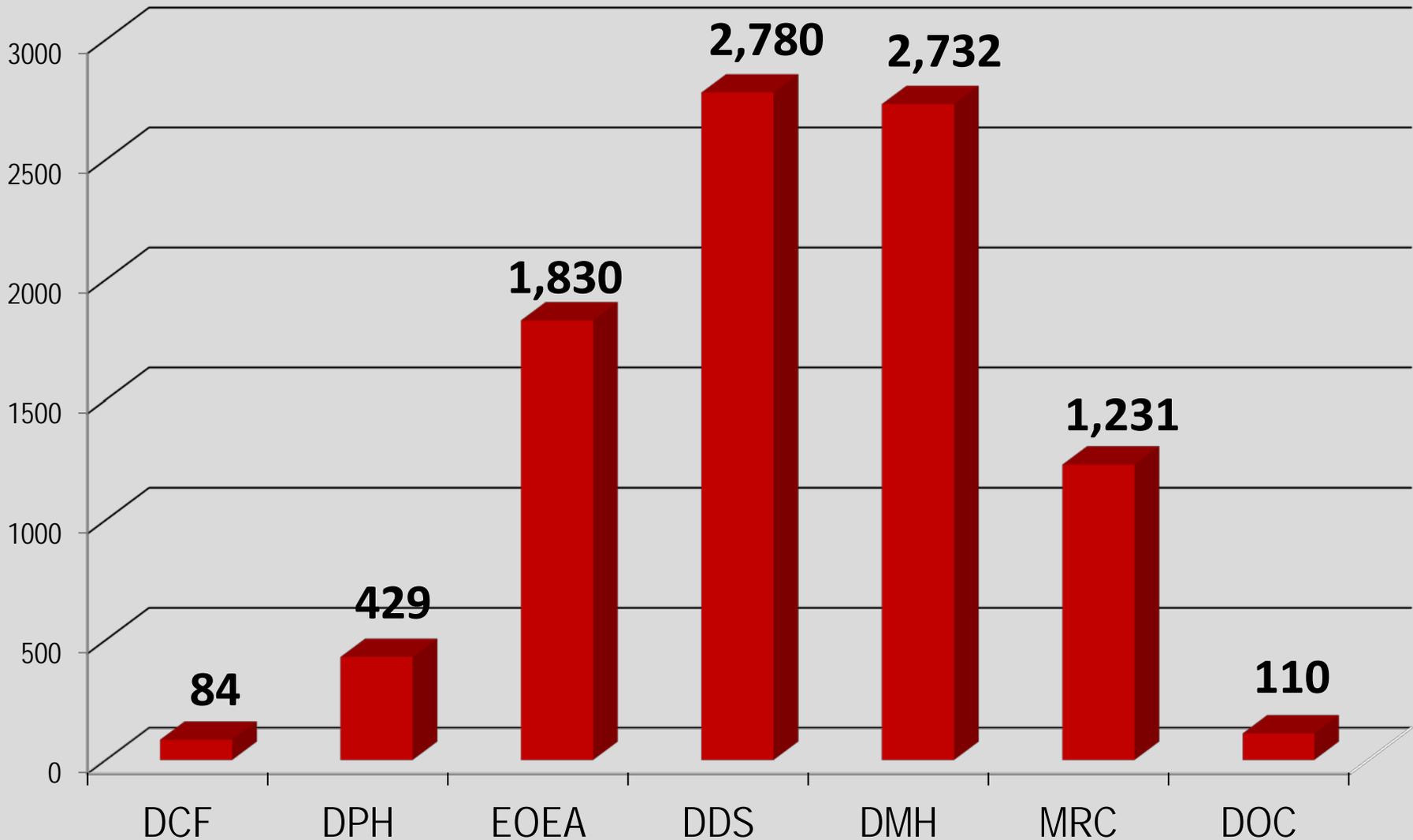
Number of Reports Received: 11,871*

* Does not include death reports and information and referral calls

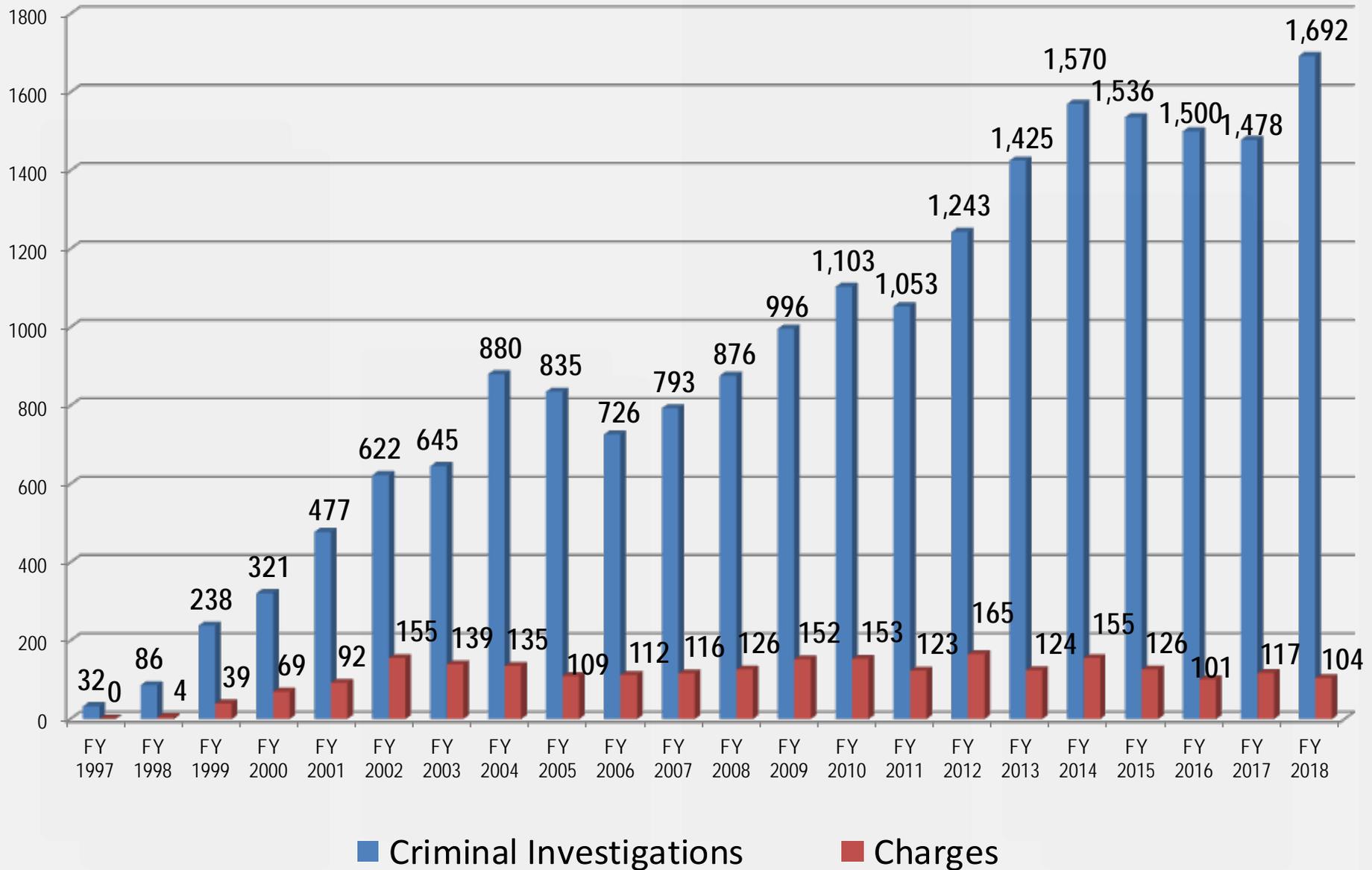
FY2018 Abuse Reports by Disability



Cases Referred to Other Agencies



Abuse Reports Referred to District Attorney from FY1997-FY2018





Law Enforcement Assistance to APS

- Education and training
- Interview alleged victims/abusers
- Obtain corroborating evidence
- Access to judicial system/process
- Powers of arrest



**For example, train EMS/ police (new and veteran) /APS on injury recognition:
Upon medical examination, injury exhibits old and fresh patterned bruises**



At scene, individual with developmental disabilities and limited communication exhibits old and fresh patterned bruises

Oval grab marks (control marks)



**fresh bruises on
left arm and torso
... Accidental fall
as reported?**



Unlikely, ... laceration and electrical cord marks on left arm and torso.



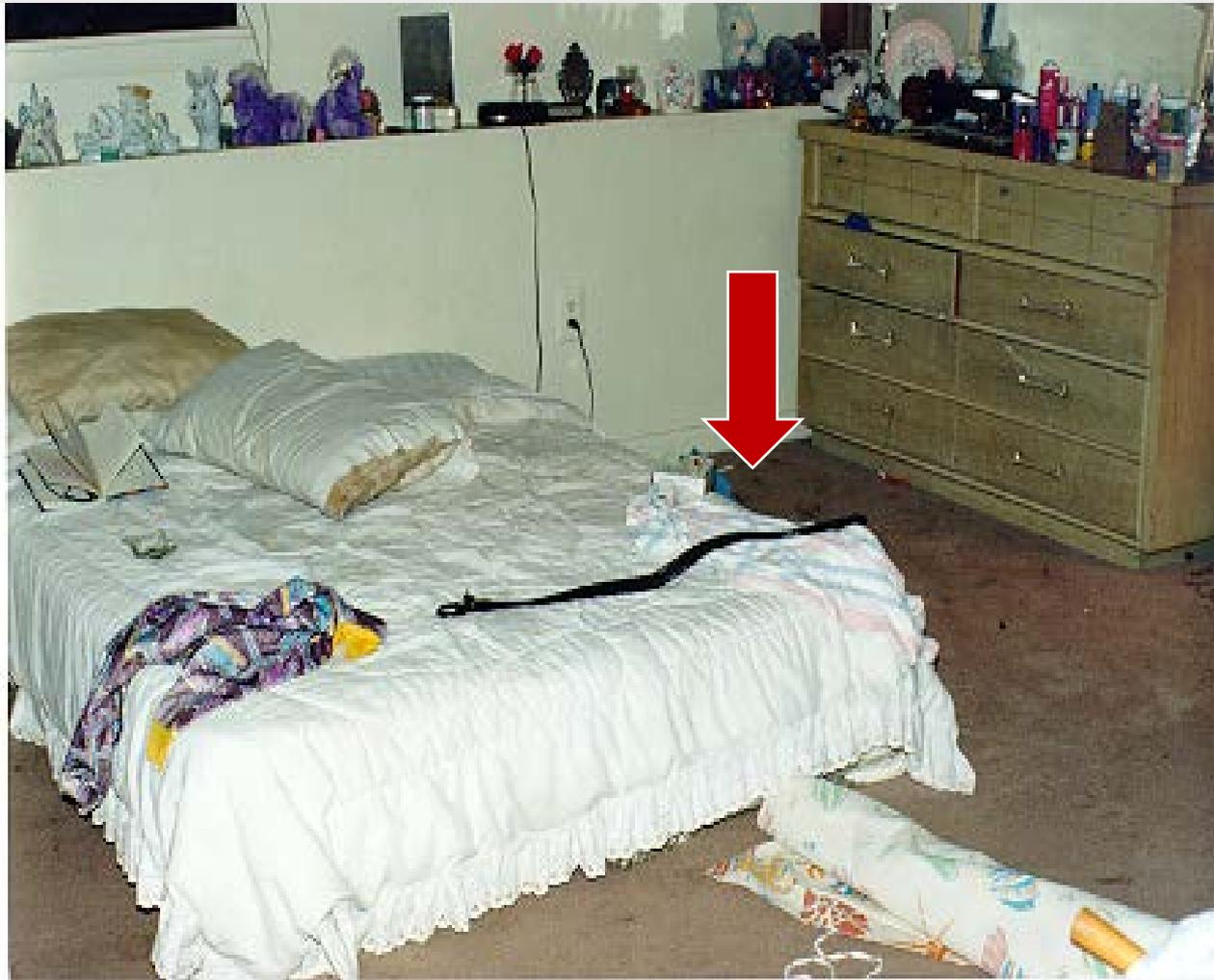
Human bite mark (with size standard)



Interpretation of Bruises

Understanding how to interpret pattern or age of injury (old or fresh) is crucial to investigation:

- Rate of healing depends on location and depth of bruise
- Face and genital area heal faster than other parts of the body because excellent blood supply
- Color changes: **red**, **purple**, **blue**, **green**, **yellow**, brown
- Because of variability in this progression:
 - new - **red**, **purple**, **blue**
 - old - **green**, **yellow**, brown



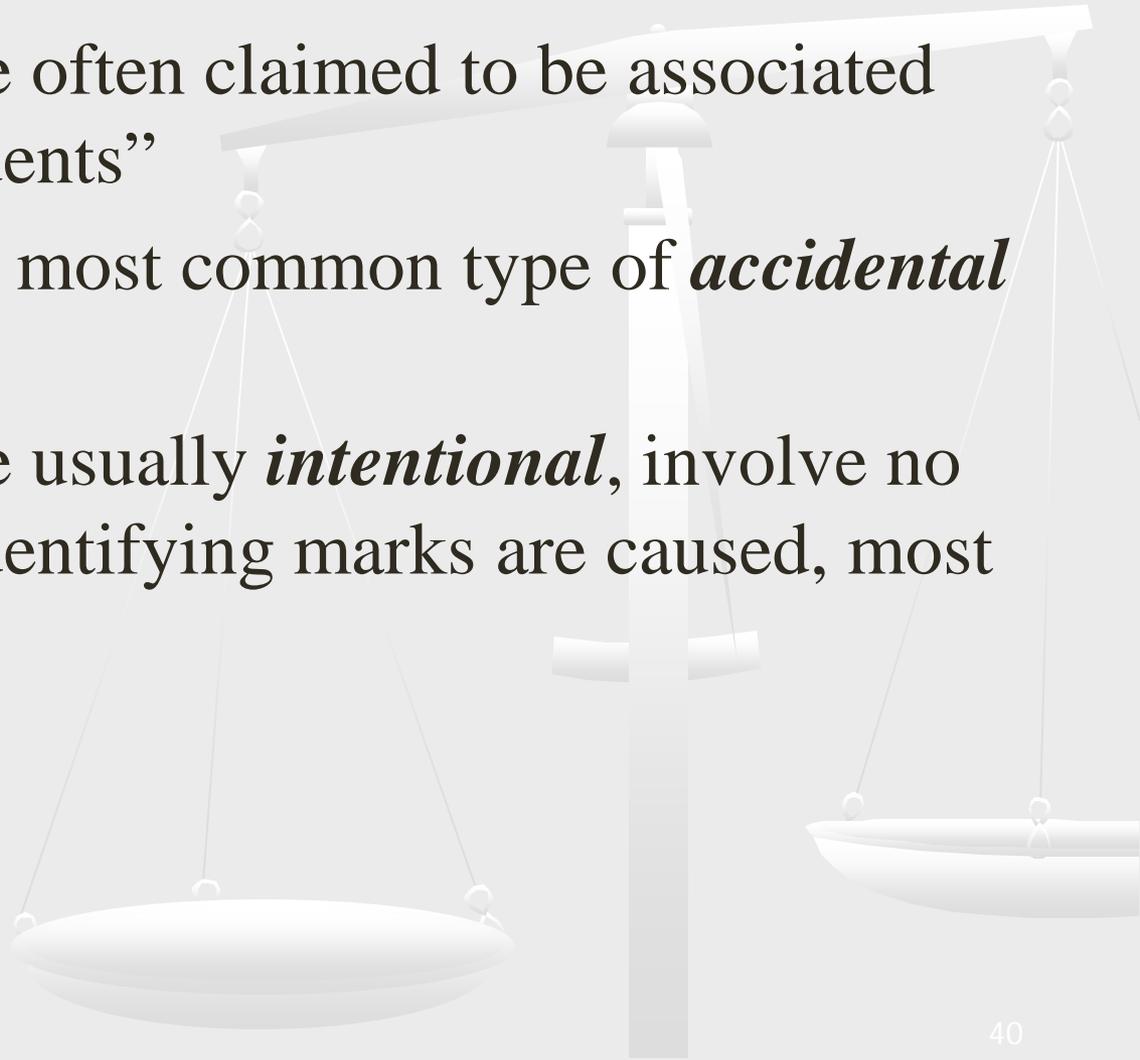
AND..... Scene search can reveal weapons



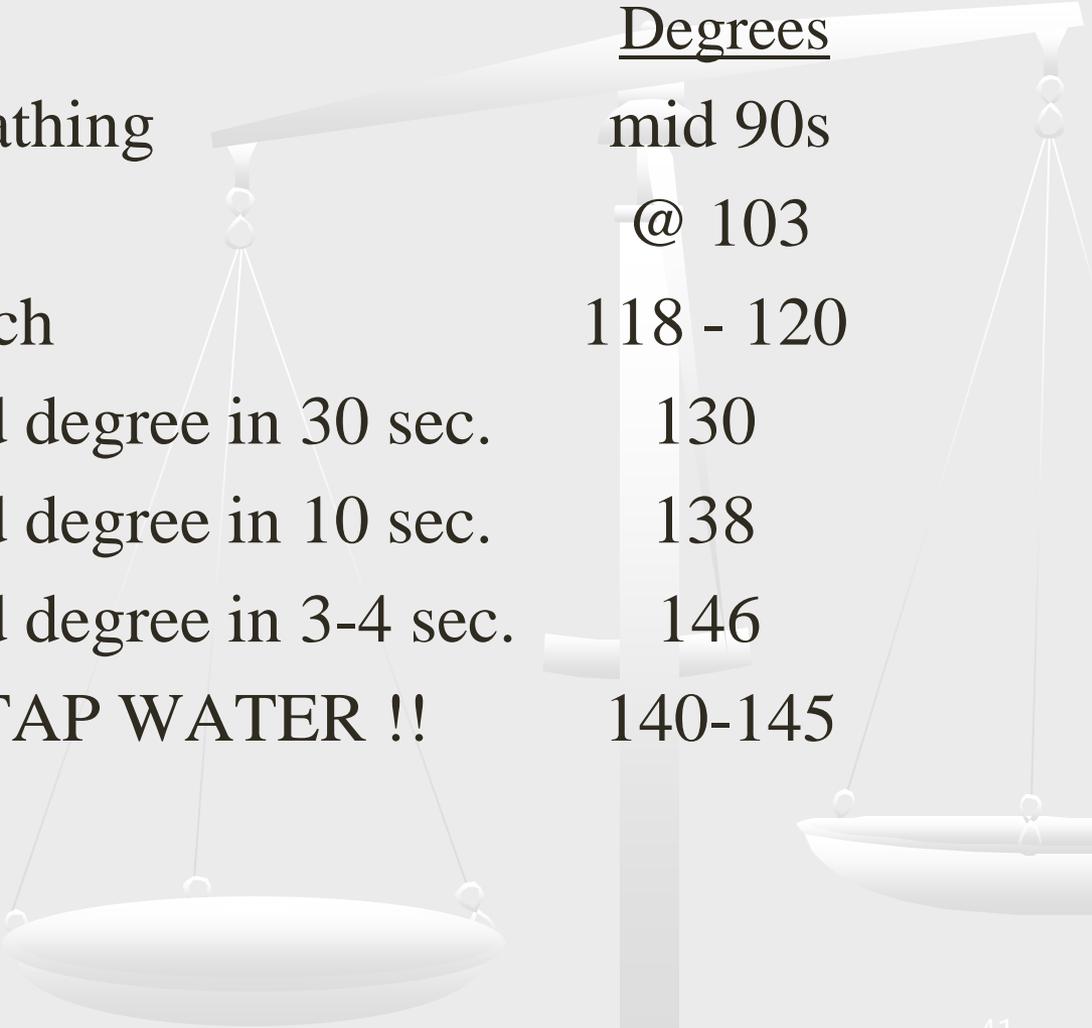
Understanding Burn Injuries

Accidental or Inflicted?

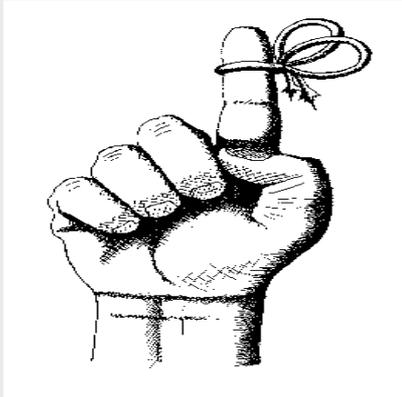
- Immersion burns are often claimed to be associated with toileting “accidents”
- Splash burns are the most common type of *accidental* burns
- Immersion burns are usually *intentional*, involve no splash marks, and identifying marks are caused, most commonly, by:
 - Clothing
 - Glove
 - Sock/ Stocking



Average Water Temperature



	<u>Degrees</u>
➤ Comfortable infant bathing	mid 90s
➤ Comfortable jacuzzi	@ 103
➤ Adult - painful to touch	118 - 120
➤ Adult deep 2nd to 3rd degree in 30 sec.	130
➤ Adult deep 2nd to 3rd degree in 10 sec.	138
➤ Adult deep 2nd to 3rd degree in 3-4 sec.	146
➤ AVERAGE HOME TAP WATER !!	140-145



#WE COUNT ...

Training also seeks to aid EMS/Police/APS with interview techniques:

- Every person with an intellectual or other disability is unique and there may be broad differences in ability to think and communicate in interviews.
- The nature of the interview and type of questions asked are critically important and can have significant impact upon the quality of the individuals' responses

Cross-Discipline Trainings Stress...

Caregivers should avoid:

- Trying to conduct an investigation
- Re-interviewing the alleged victim
- Interpreting or editing the information provided
- Interrogating the alleged abuser/suspect
- Searching for evidence
- Touching physical evidence



APS Assistance to Law Enforcement

At the Scene:

- Secure protective orders, access warrants and emergency guardianship
- Obtain emergency residential placement
- Obtain alternative personal care attendants
- Access emergency and non-emergency medical treatment
- Arrange for interpreters

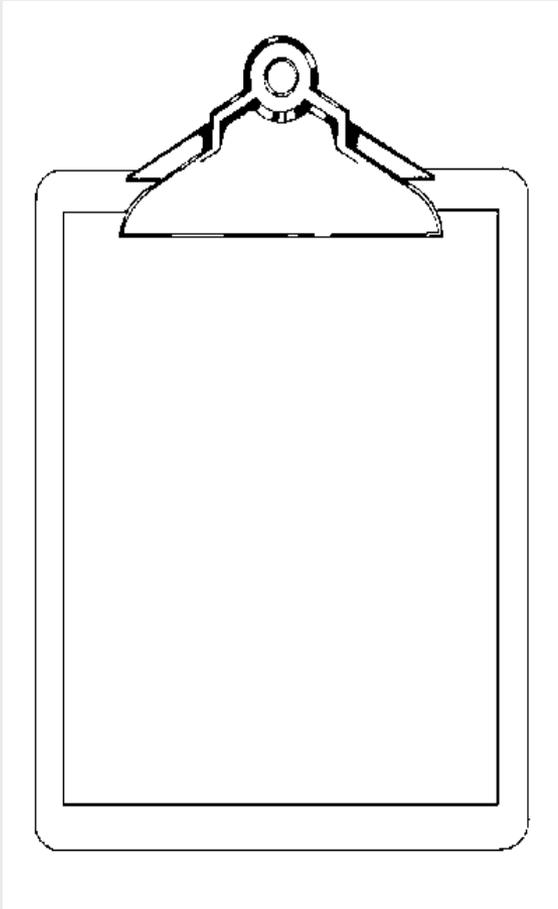


APS Assistance to Law Enforcement

At the Interview:

- Provide background data on alleged victims, abusers and providers
- Assist with gathering and analysis of medical and administrative records
- Assist in identifying communication abilities
- Assist with scheduling interviews
- Arrange for interpreters
- Assist with interview process, as needed

Police/APS Completed Case File



Includes:

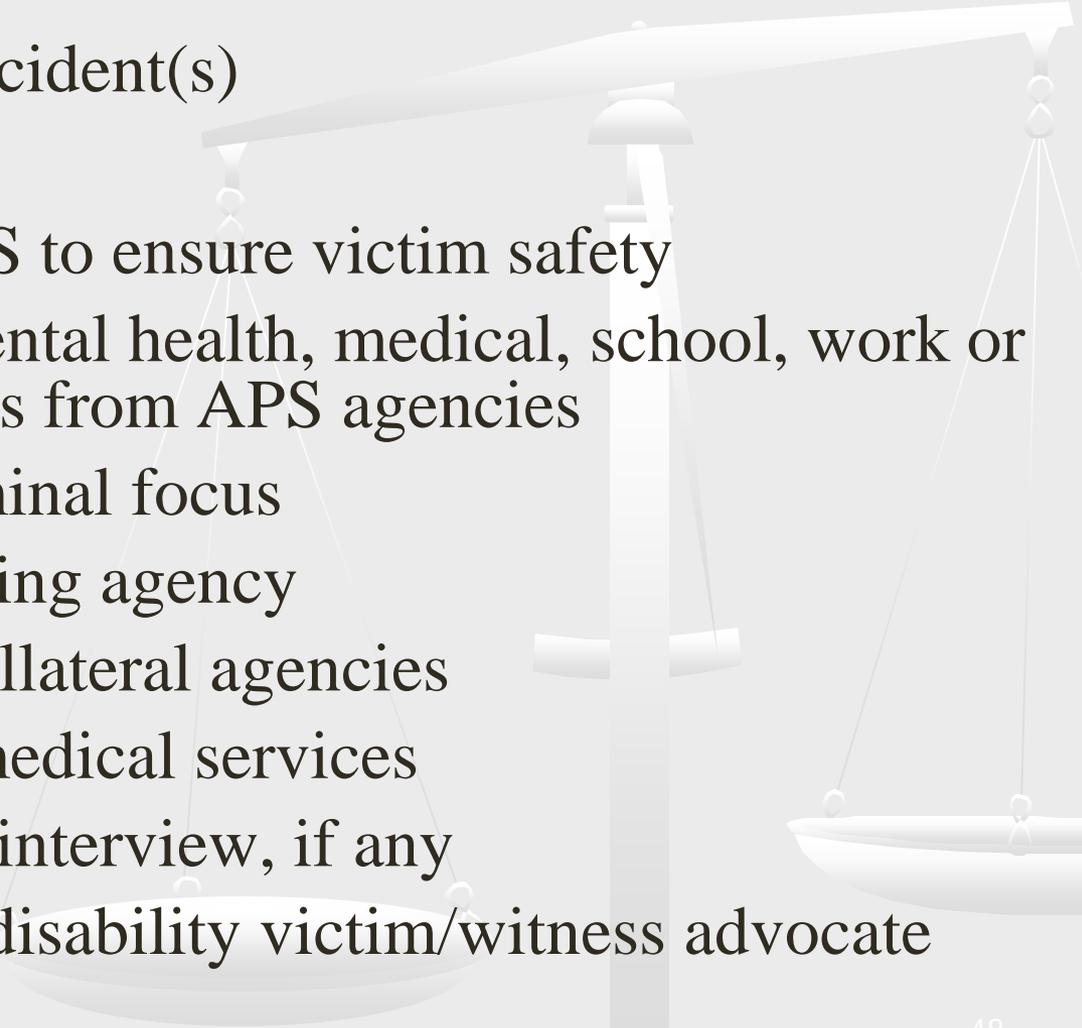
- Reports (intake and investigative)
- Statements (alleged victim, alleged abuser and witness(es)).
- Photos/Videos/Diagrams
- Medical records

MA BPI Investigation of Jane's Report

Law Enforcement and APS (jointly):

- Seek medical attention for Jane (SANE)
- Interview Jane (preferably recorded)
- Document Jane's "injuries"
- Collect Jane's clothing
- Provide for alternative transportation when Jane resumes day program/workplace
- Interview residential staff personal
- Observe route/traffic patterns traveled by van to residential home
- Interview alleged abuser, if possible

DA's Role in MA BPI



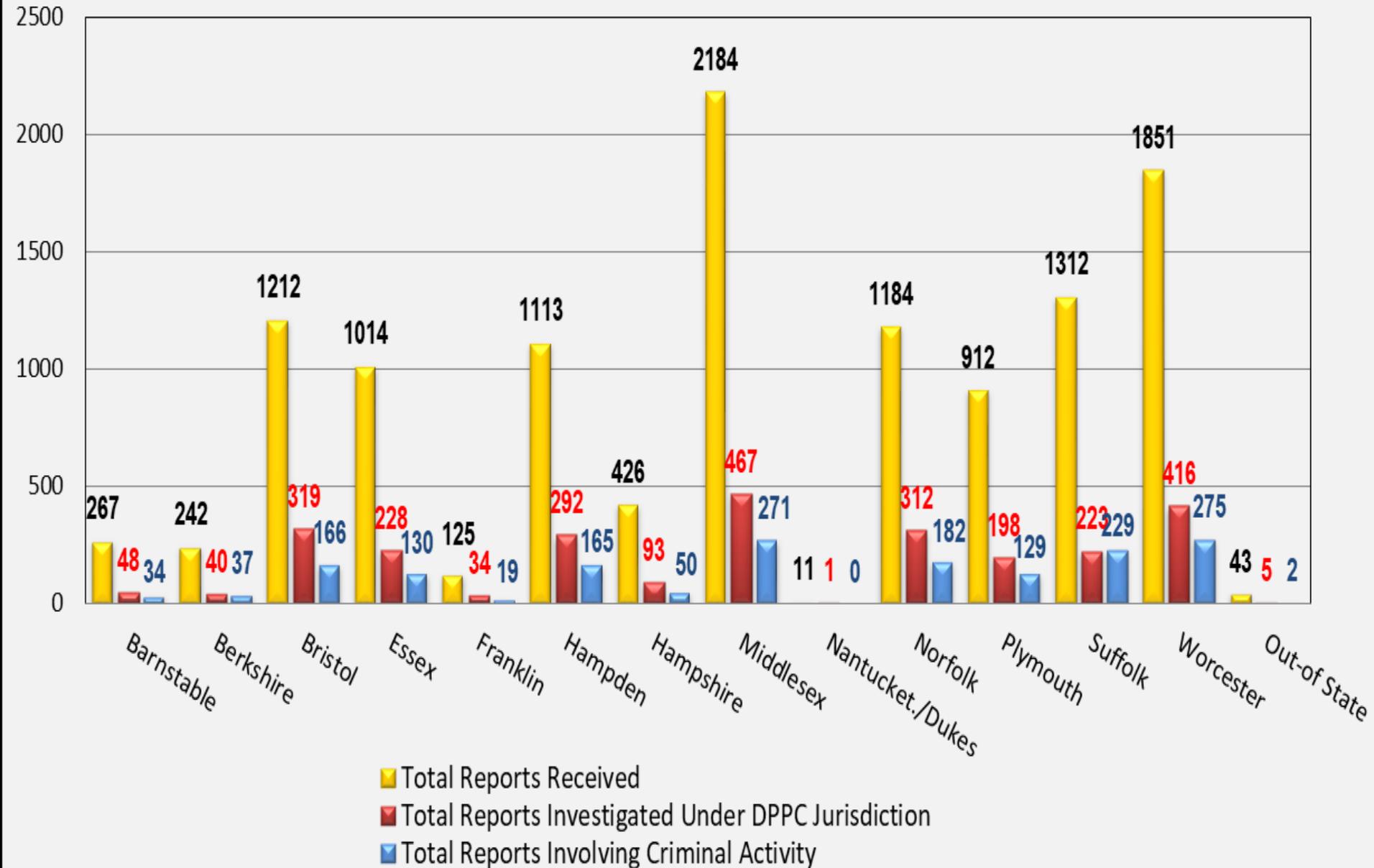
➤ Notification from DPPC

- Identifies parties
- Details reportable incident(s)

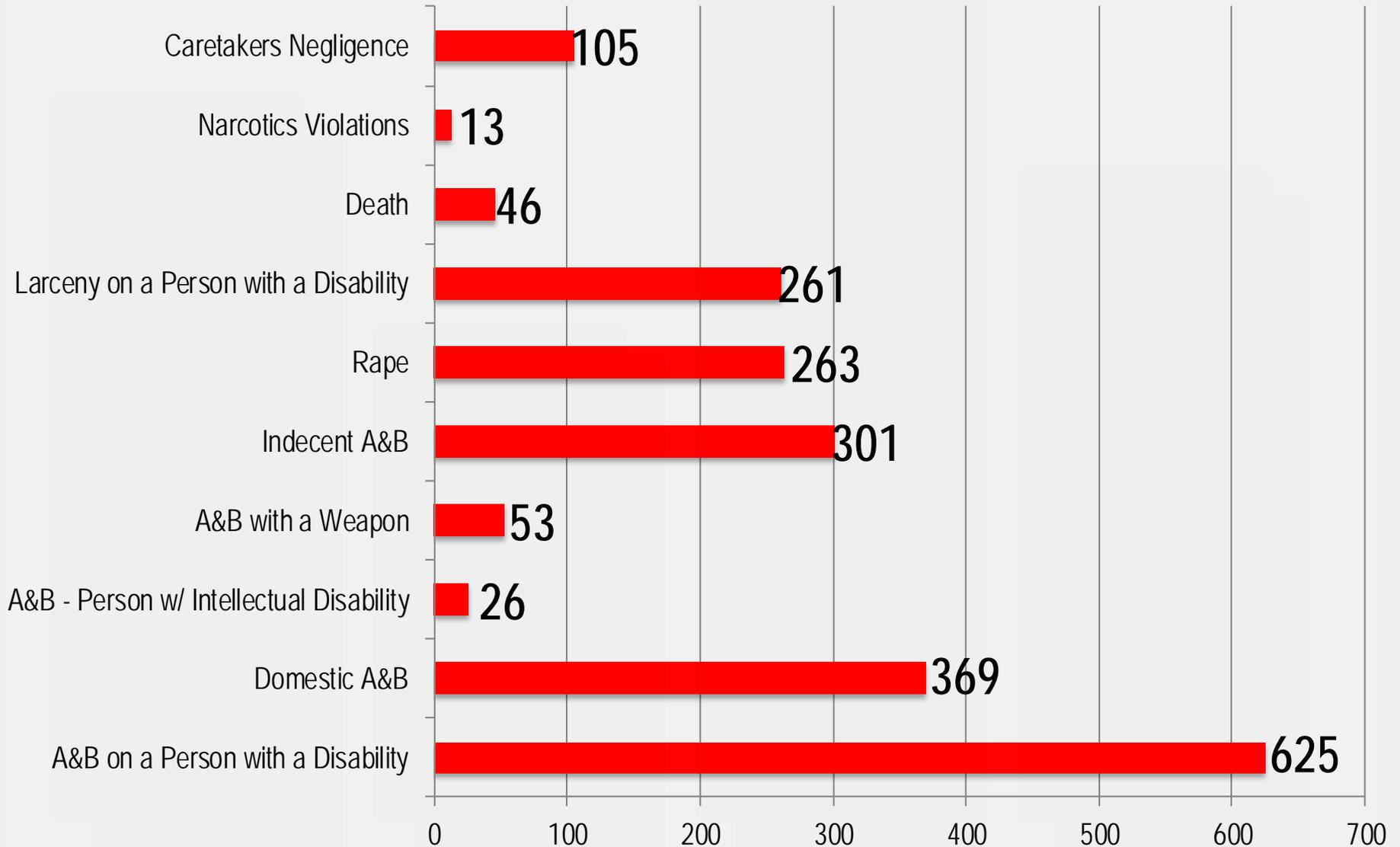
➤ Review by ADA

- Coordinate with APS to ensure victim safety
- Obtain necessary mental health, medical, school, work or social worker records from APS agencies
- Determine civil/criminal focus
- Designate investigating agency
- Identify available collateral agencies
- Request necessary medical services
- Coordinate forensic interview, if any
- Assign person with disability victim/witness advocate

FY2018 19C Criminal Reports by County



FY2018 Number of Types of Crimes



DA Referral of Jane's Intake Report

ADA:

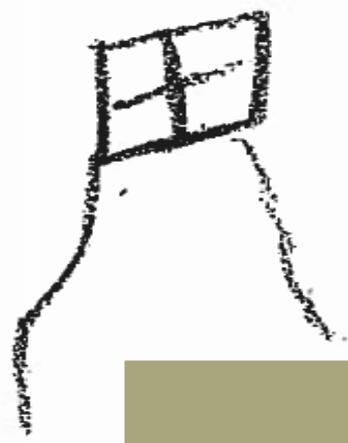
- Emailed intake report from DPPC (w/in 24 hours)
- Decides criminal/civil focus
- Assigns law enforcement agency (local or state) to conduct investigation
- Contacts APS agency
- Assigns alleged victim victim/witness advocate
- Upon investigation's completion, decides case opened/closed for criminal charges
- If criminal charges filed, prosecutes alleged abuser



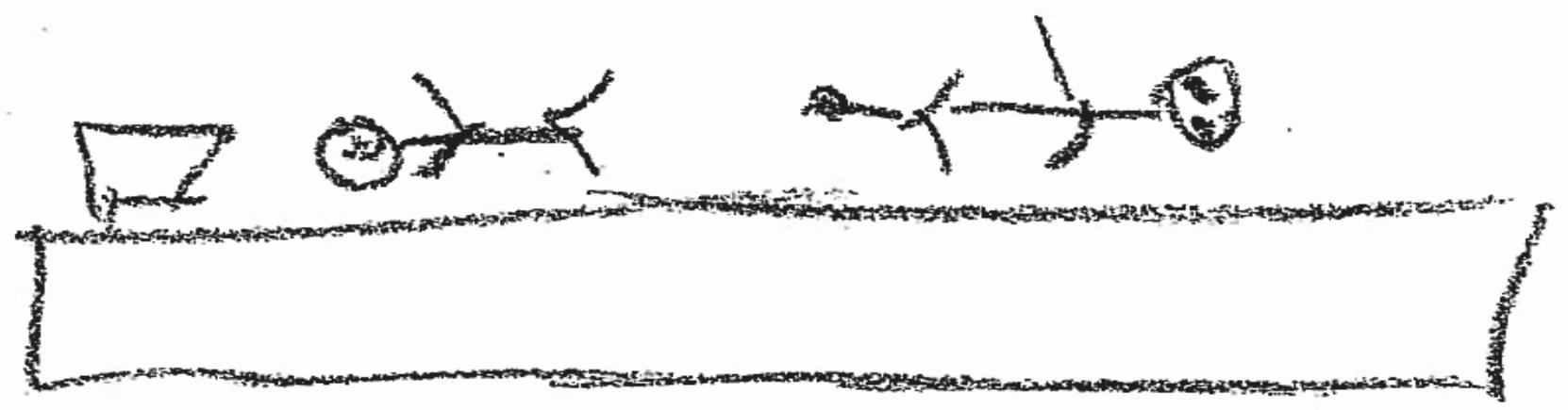
Forensic Interview of Victim



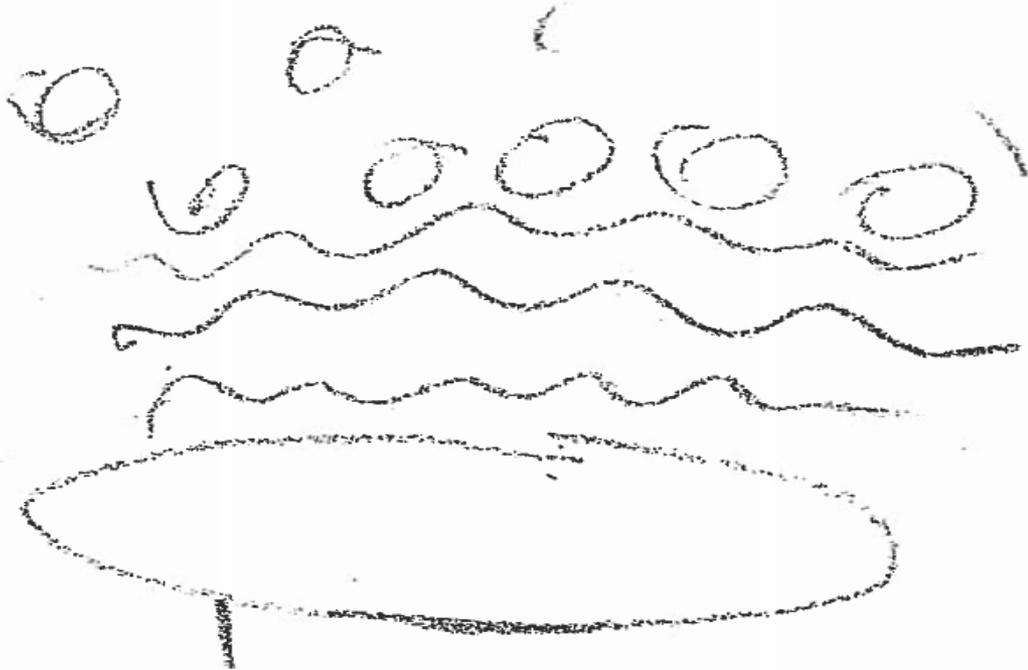
- One interview of victim meets needs of all agencies
- Less trauma for victim (and family)
- More efficient investigation
- Improved evidence collection
- Access to more information
- Increased chance of successful prosecution



March 2011
+ April



2009





Criteria for a SANE Exam

- Patient must be medically cleared
- Able to consent
- Assault within **5 days/120 hours**
- Patient does not have to report to police to have evidence collected (evidence held for 6 month+ if not reporting at this time)

In MA 90-95% conviction rate when a SANE testifies at trial!



MA BPI Training Curricula

Includes:

- Law Enforcement
 - State & Municipal Police Recruits
 - Veteran Officers
- Service Providers
- Persons with Disabilities
 - Learning Tool
 - Awareness & Action



Other Trainings

- Adult Protective Service (APS) Investigators
 - Forty-hour basic investigation certification
 - Forty-hour sexual assault certification
 - In-Service Training
- Emergency Room Nurses and Physicians (in collaboration with SANE)
- Judiciary/Court Personnel Training
 - Practical Guide for Court Personnel entitled, *Crimes Against Persons with Disabilities: A Practical Guide to the Reporting, Investigation and Prosecution*
 - Americans with Disabilities Act (ADA) Coordinators training



Reference Materials

- Crisis Intervention Program (CIP) Officer Reference Book
- BPI Replication Guide, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice,
<http://www.ovc.gov/pubs/victimswithdisabilities/stateguide/index.html> (NCJ 239107)

Outreach and Prevention

FY 2018 Update

- 48 Awareness and Action trainings
(921 persons with disabilities)
- 13 one-day new police recruit trainings
(772 officers)
- 10 other law enforcement trainings
(571 veteran police officers)
- 5 medical personal trainings
(162 medical professionals)

Outreach and Prevention

FY 2018 Update

- 24 human service provider trainings
(1,201 human service providers)
- 10 additional agency staff trainings
(612 staff from various agencies)
- 2 Protect, Report, Preserve trainings
(300+ attendees)



Case Studies of MA BPI MDT Referrals

- **Case #1** – Alleged Financial Abuse of adult male with an intellectual disability, by service provider;
- **Case #2** – Alleged Sexual Abuse of adult male with physical disabilities, by caretaker;
- **Case #3** – Alleged Physical Abuse of adult male with a developmental disability, by residential home staff personnel
- **Case #4** – Alleged Sexual Abuse of elder woman, with advanced dementia, by CNA at skilled nursing home.

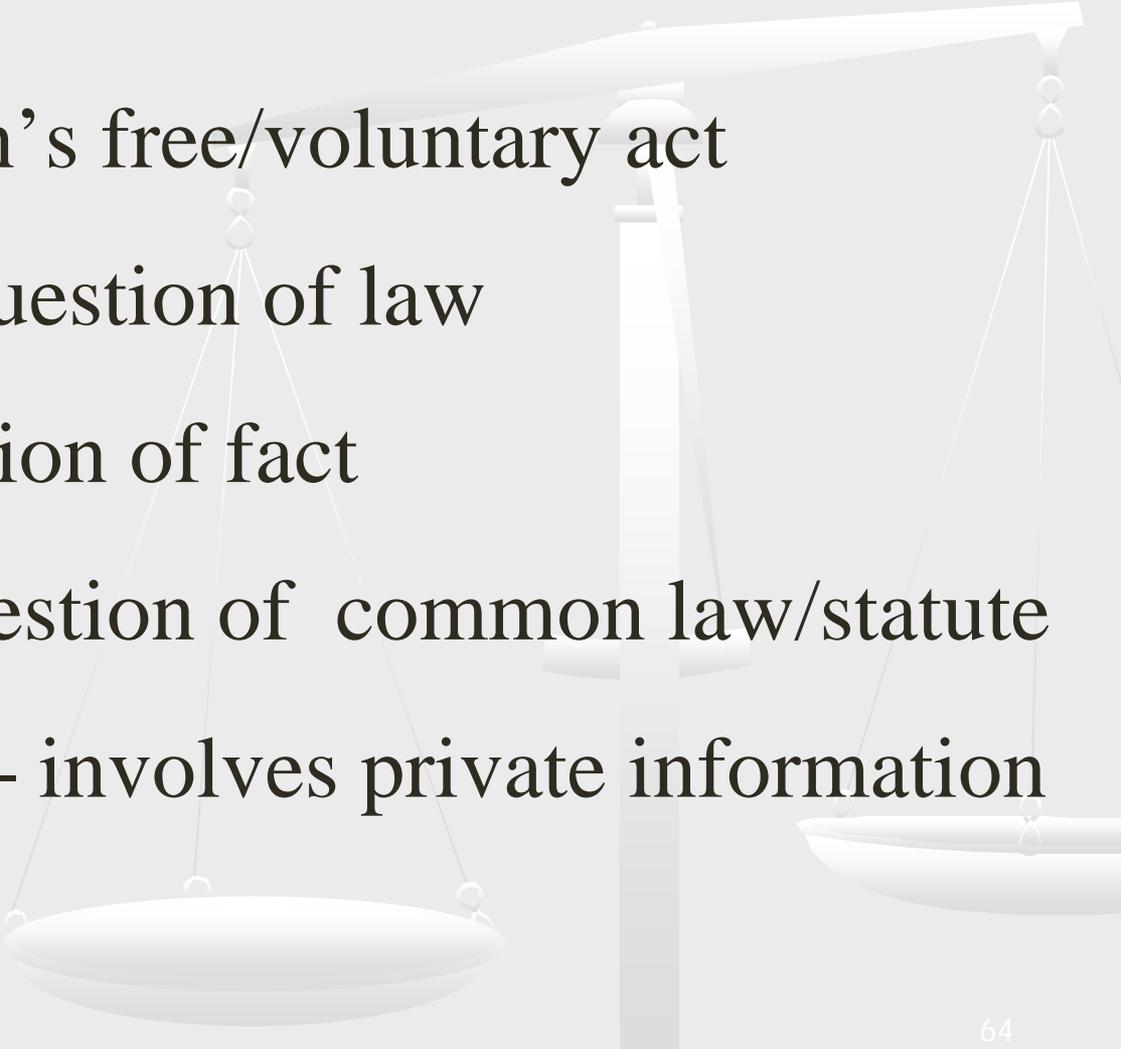
DPPC REFERRAL #1

- ALV, an adult male with an intellectual disability, lived independently in the community and held a job at McDonald's for over thirty years.
- In talking about income tax and bank accounts with ALV, Reporter (ALV's relative) discovered that ALAB's name was added to ALV's bank account. ALV told Reporter ALV never gave permission for this addition. Reporter also observed that ALAB regularly withdrew \$500 from ALV's account for rent.
- Reporter discovered that ALV had a deposit of \$64,000 from a retirement fund and a withdrawal of \$40,000 on the same day. ALV indicated to Reporter that ALAB took \$40,000 for rent. ALV had no plans to cash in retirement fund.
- Reporter went to the bank with ALV. She and ALV moved \$20,000 to another account. Bank was investigating how ALAB got her name on account and withdrew money. ALAB used to work at the bank and was fired.

MA BPI MDT Approach

- Police obtain ALV statement and background. ALV denies knowing \$86,000 in retirement funds disseminated and did not consent to ALAB taking money.
- ADA obtains (by subpoena) telephone calls from ALV's employer, wherein ALAB is overheard "directing" ALV to provide personal information for dissemination of funds.
- Police interview ALAB who admits transferring funds to personal account. ALAB claims money was for ALV's use and enjoyment and that she intended to pay back withdrawn funds. Says ALV "knowingly" gave her ALV's SS# and PIN.

Legal Issues Relating to Victim/Witness

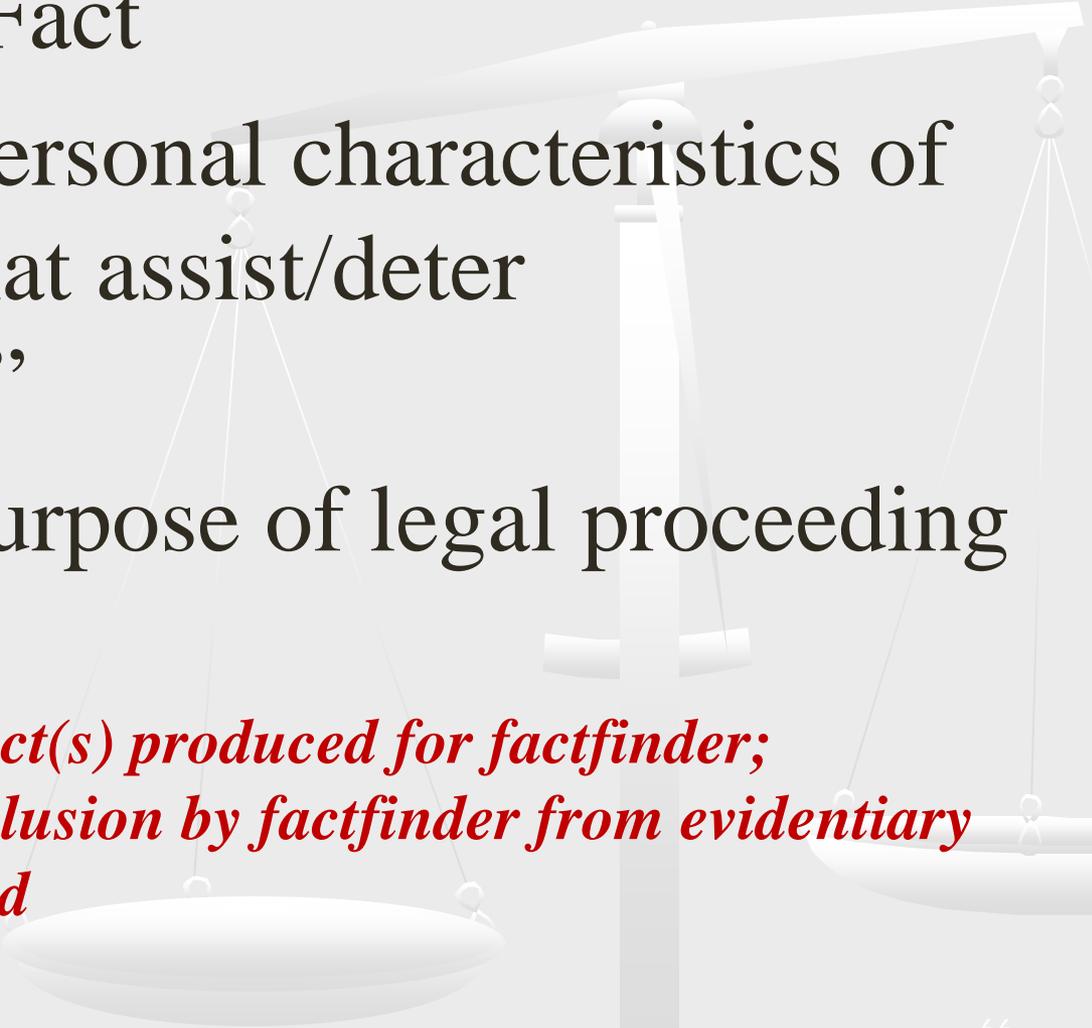


- **Consent** – person's free/voluntary act
- **Competency** – question of law
- **Capacity** – question of fact
- **Privilege(s)** – question of common law/statute
- **Confidentiality** – involves private information

Competency of Victim/Witness

- Any person with a **“sufficient understanding”** is competent to testify.
G.L. c. 233 sec. 20.
- Refers to a person’s basic understanding and for witness to relate back truthfully
Commonwealth v. Tatisos, 238 Mass. 322, 325 (1921)

Capacity



- Question(s) of Fact
- Encompasses personal characteristics of an individual that assist/deter “understanding”
- Defined as to purpose of legal proceeding

*Capacity is evidentiary fact(s) produced for factfinder;
Competency is legal conclusion by factfinder from evidentiary
facts of capacity presented*

RESULT

**ALAB charged with Larceny
over \$250 from a Person with a
Disability**

**Plea of guilty. Restitution of all
monies to ALV.**

DPPC Referral #2

- ALV reported to his care coordinator that he had been sexually assaulted in the early morning. ALV said that he had been asleep in his bed when ALAB, whom he knew, came into his room, fondled his genitalia and anally raped him. ALV believed ALAB ejaculated on him. ALV reported his genitalia had been touched with ALAB's hands. APS notified.
- ALV was a 37 year old male at time of incident. He is a person with Cerebral Palsy and is a spastic quadriplegic. His physical mobility is very limited. He communicates effectively through the use of a communication device.
- ALV's Case Coordinator brings ALV to local hospital. Once there, ALV undergoes SANE during which anorectal swabs were collected.

MA BPI MDT Approach

- (Prior to MA BPI) Police contact ALAB. He denies allegations. Moves away from area while investigation is pending.
- Crime laboratory processes ALV's rape kit after prolonged delay. Semen is found on anorectal swab. Results submitted into CODIS. CODIS hit with ALAB profile.
- Police re-interview ALAB who is now incarcerated in Maryland for theft charges (defrauding elders). After initial denials, ALAB admits penetration of ALV, alleges consent by ALV.

APS/Police As Witnesses

A percipient witness may testify to what his/her senses perceived

Percipient witness: relates what he/she saw, heard, smelled, tasted, or touched. NOT what others said, unless non-hearsay use of evidence or hearsay exception applies....

Hearsay: Out of court statement(s) offered for the truth of the matter asserted.

**When we prove
declaration was
an “excited
utterance”**



What is an “Excited Utterance”?

Any statement made by a person, while under the influence of the “exciting event”, concerning the cause or circumstances surrounding the event.

Expert(s)/Testimonial Aids

Daubert/Lanigan Challenge?

- *Daubert* “gatekeeper” obligation applies to all expert testimony, not only “scientific” testimony;
- Trial judge is not limited to enumerated factors in *Daubert* in making “gatekeeper” inquiry. Instead, standard is flexible to particular facts and expert’s particular experience and nature of issue;
- Trial judge has broad latitude of discretion when ruling on admissibility.

Canavan’s Case, 432 Mass. 304, 313-316 (2000) citing Kumho Tire Co., Ltd. v. Carmichael (1999) (Extending holding of Lanigan to apply to expert opinions based on personal observation and clinical experience, concluding diagnosis and causation could be subject to Lanigan analysis)

RESULT

ALAB charged with Rape and Indecent Assault and Battery on a Person Over Fourteen Years Old

Pleas of guilty. State Prison sentences imposed.

DPPC REFERRAL #3

- ALV is a twenty-eight year old male with Angelman Syndrome (a developmental disability). He is non-verbal and requires complete care and 24-hour supervision. He resides at a group home. Reporter was ALV's parent and legal guardian (non-mandated reporter). Reporter noticed bruising on ALV's chest and a change in his demeanor at a recent visit. ALV was "not the same person, he seems down and sad and flinches if you come near [ALV]." ALV was reported to have been acting out and pushing others when individuals come near ALV, which was not like ALV.
- Physical abuse of ALV was video recorded on two separate occasions. Reporter stated she had placed a "nanny cam" in ALV's bedroom a month previous to the first assault. The physical assaults involved two staff members, including the house manager.

MA BPI MDT Approach

- ALV was immediately removed from group home. (ALV was third resident leaving the group home in one week.)
- MSP interviews Reporter and obtains nanny cam (hidden in fan), video recordings of ALV's room and photographs of ALV's injuries. ALABs are identified.
- APS interviews ALAB(1) who denies striking ALV. ALAB(1) claimed no memory of the incident.
- MSP interviews ALAB(2), the house manager, who denied striking ALV. ALAB(2) states he was aware of allegation against ALAB(1), and ALAB(1) was suspended. When shown video of incident, ALAB(2) states there was "something" on ALV's head that needed to be removed. ALAB(2) had a prior criminal record that included assaults.

RESULT

**ALABs charged with Assault and
Battery on a Person With a
Disability[G.L. c. 265 § 13K]**

**Guilty Pleas and Jury Trial
Finding and Verdict of Guilty.**

EOEA REFERRAL #4

- ALV, a sixty-nine year old woman with advanced dementia at skilled nursing home, was observed with her nightgown pulled up, her legs spread apart and her pubic area exposed (with her adult underwear removed). Standing next to her was ALAB, a CNA employed by the facility. The facility has rules that prohibit a male caregiver from being alone with a female patient.
- Police are notified. Reporter states ALAB, when discovered, appeared “startled” and stated “I’m sorry, I know this looks bad.”
- The scene is secured. Evidence is gathered, including ALV’s underwear. It is observed to have apparent red/brown staining consistent with blood.

MA BPI MDT Approach

- Police interview ALAB (recorded with *Miranda* warnings). ALAB admits to knowledge of facility rules but states that ALV's "brief was wet so he decided to change her". He admitted inserting two fingers, approximately one inch deep into her vagina, "to clean her." He also told police that he had done the same thing on a previous occasion when caring for ALV.
- ALV is transported to hospital where a SANE nurse performs a rape kit examination. External genital swabs are examined. Saliva and sperm cells are detected on swabs. ALAB's DNA profile is included as a contributor to the sperm cells detected.
- APS provide information related to ALV's level of understanding, re: consent/competency.

RESULT

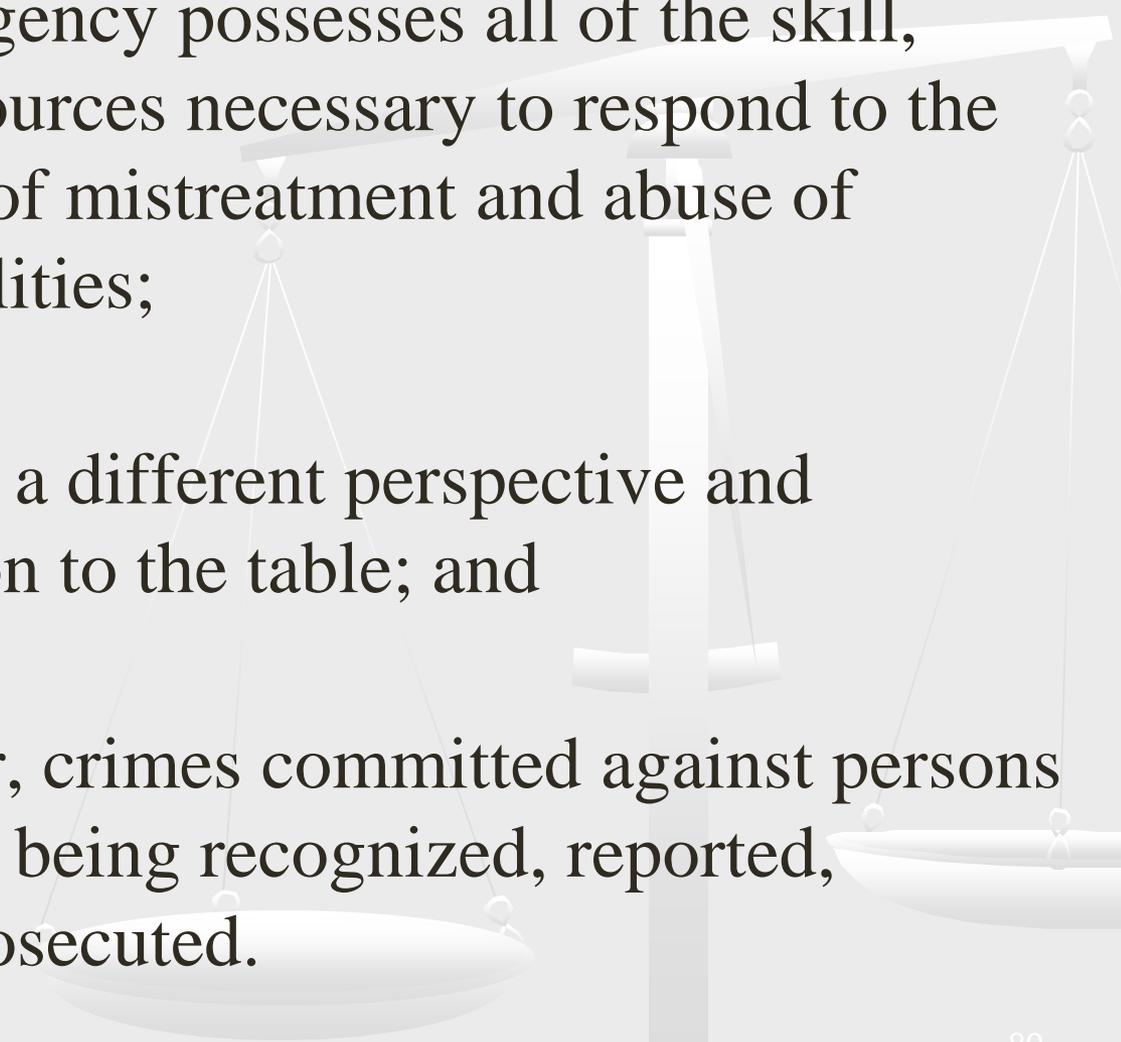
**ALAB charged with multiple counts
of Rape on a Person with an
Intellectual Disability**

Jury Trial.

Verdicts of Guilty.

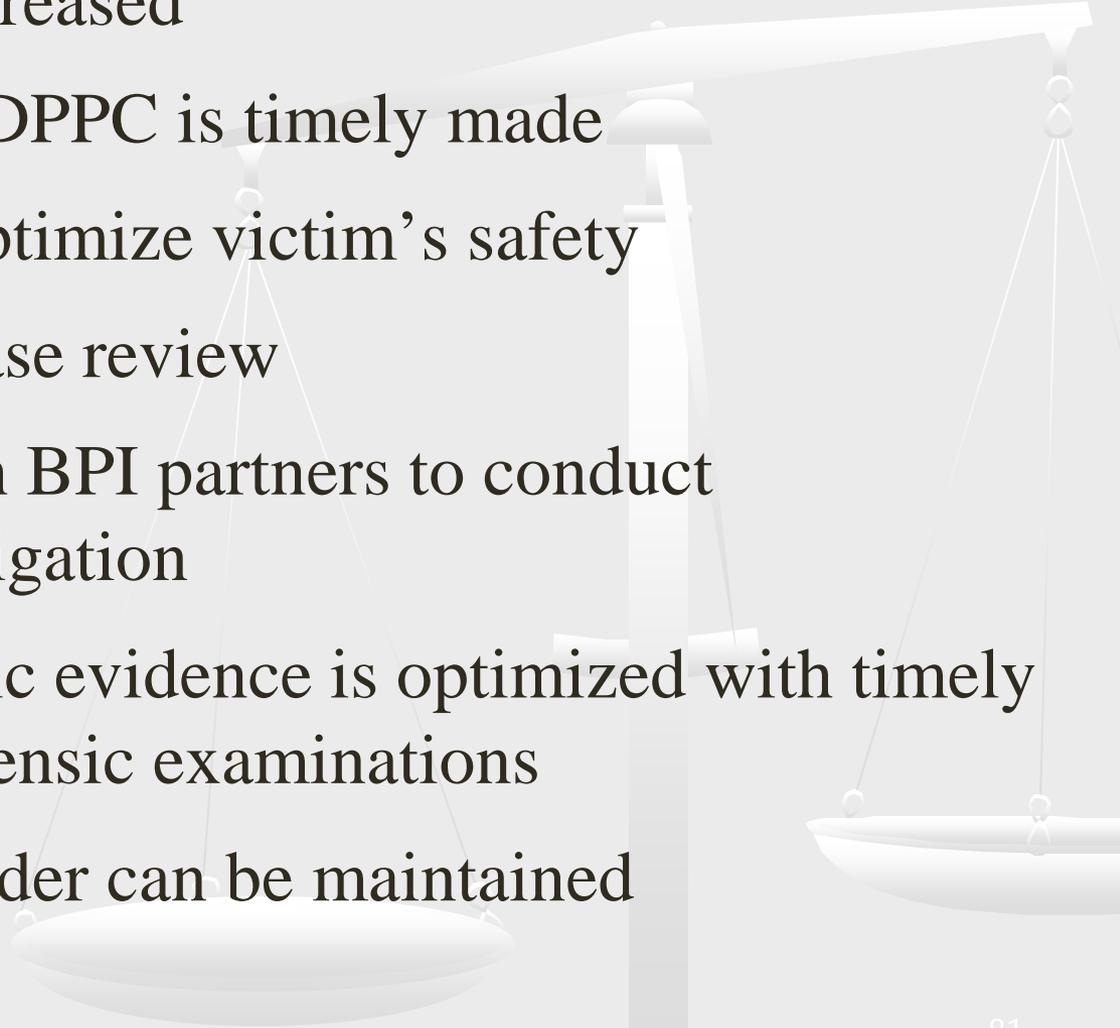
State Prison sentence imposed.

Lessons Learned



- No one person or agency possesses all of the skill, knowledge and resources necessary to respond to the complex problems of mistreatment and abuse of persons with disabilities;
- Each agency brings a different perspective and different information to the table; and
- In working together, crimes committed against persons with disabilities are being recognized, reported, investigated and prosecuted.

Measures of Success



- Trained staff has increased
- Mandated report to DPPC is timely made
- APS is notified to optimize victim's safety
- DA is notified for case review
- DA coordinates with BPI partners to conduct criminal/civil investigation
- Collection of forensic evidence is optimized with timely SANE and other forensic examinations
- Prosecution of offender can be maintained

Contact Information



➤ **Elizabeth Dunphy Farris, Esq.**

Legal Counsel to the Hampden District Attorney (MA)

beth.farris@state.ma.us

(413) 505-5926

➤ **Timothy F.X. Grant, Sergeant**

Massachusetts State Police

State Police Detective Unit DPPC

Timothy.Grant@state.ma.us

(617) 727-6465; 888-822-0350 V/TTY

Questions?



THE END.



DPPC Case #
ALV :

DPPC INTAKE FORM
*The Unauthorized Distribution Of The Information
Contained In This Document Is Forbidden By Law.*

Screening Decision: Investigation/Referral Agency: Referred to DA: YES NO
Screen Date: Response: Protective Agency: Investigation Region: Civil Investigator: Oversight Officer:

Information in this form is extracted from the statements of the Reporter and additional information obtained by DPPC.

Allegation To Be Investigated:

Reporter

First Name: Last Name: Suffix:
Street Address: Apt/Unit/floor:
City/State/Zip Code:
Primary Phone : Ext:
Alternate Phone: Ext:
Relationship to Alleged Victim:
Reporter Agency:

Reporter Mandated
 Mandated
 Non-Mandated

Alleged Victim

First Name: Last Name: Suffix:
Street: Apt/Unit/Floor:
City: State: Zip code: County:
Phone: ext: Social Security Number:
Client DOB: AGE: Approximate age (if DOB not known):
Gender: M F Other Ethnicity:
Alleged Victim's Primary Disability:

Alv served by:

Communication needs:

Other Pertinent Information Regarding The Alv:

Type of assistance the alleged victim requires because of a disability and who provides the assistance:

DPPC Case #
ALV :

DPPC INTAKE FORM
*The Unauthorized Distribution Of The Information
Contained In This Document Is Forbidden By Law.*

Alleged Victim has a Guardian: **Yes** **No** **Unknown by Reporter**

Guardian First Name: Last Name: Suffix:
Phone number: Ext:

ALAB 1

First Name Last Name Suffix Relationship to alleged victim:
Street: Apt# Alleged Abuser Agency
City/St/zip :
Phone : Date of Birth: Gender : SSN#

Describe the ALAB's caretaking responsibility to the alleged victim:

ALAB 2

First Name Last Name Suffix Relationship to alleged victim:
Street: Apt# Alleged Abuser Agency
City/St/zip :
Phone : Date of Birth: Gender : SSN#

Describe the ALAB's caretaking responsibility to the alleged victim:

ALAB 3

First Name Last Name Suffix Relationship to alleged victim:
Street: Apt# Alleged Abuser Agency
City/St/zip :
Phone : Date of Birth: Gender : SSN#

Describe the ALAB's caretaking responsibility to the alleged victim:

ALAB 4

Relationship to Alv:

ALAB 5

Relationship to Alv:

ALAB 6

Relationship to Alv:

ALAB 7

Relationship to Alv:

ALAB 8

Relationship to Alv:

DPPC Case #
ALV :

DPPC INTAKE FORM
*The Unauthorized Distribution Of The Information
Contained In This Document Is Forbidden By Law.*

Other Client Involved

First Name Last Name Suffix
Gender: Male Female
Primary Disabilities: Date of Birth:
Agency Served By : Age:
Does the Other Individual have a history of similar assualtive or sexualized behaviors?

Does the Other Individual still have access to the Alleged Victim?

Relevant Information

Briefly explain the incident:

If the incident is sexual in nature, were police notified and did the victim receive medical treatment?

Describe any physical injuries in detail: (i.e. shape, size, location, color)

Was the alleged victim injured emotionally? Explain how this emotional injury affected the alleged victim's ability to function?

Type of Abuse: Physical: Emotional: Sexual: Abuse per se : Serious unexplained injury:

DPPC Case #

ALV :

DPPC INTAKE FORM

**The Unauthorized Distribution Of The Information
Contained In This Document Is Forbidden By Law.**

Is the Alleged Abuser responsible for the alleged victim's injuries? Explain:

Is there something the alleged victim's caretaker should or could have done to prevent the injury or incident from occurring? Explain:

Location of Abuse:

Street Address: Type Of Setting:
Apt/Unit/Floor: Phone Number:
City or Town: State: Zip Code: County:
Program /Vendor Name:

Witnesses and/or anyone that may have additional information:

Name:	Daytime telephone number:

Risk Assessment:

Alleged abuser or assaultive client still have access to/or caretaker responsibility for the ALV:

Medical treatment sought for the ALV: SANE Hospital Recommended:

Have the Police been notified? YES NO

If yes, name of Department:	Contact Person:

Actions already taken to protect the Alleged Victim from further abuse:

If alleged victim is at immediate risk of serious injury, the actions Reporter believes are needed to be taken to protect the victim:

DPPC Case #

ALV :

DPPC INTAKE FORM

The Unauthorized Distribution Of The Information Contained In This Document Is Forbidden By Law.

Current Location Of The Alleged Victim:

Program name:

Street:

Apt/Unit/Floor:

City: State: Zip code:

Phone number: Ext:

SPDU Criminal Screening

Referred to DA's office for Review: YES NO

DA's office:

Criminal Screener:

Deferred To L.E.:

Date:

State Police Detective Unit Action:

Deferral Rescinded:

Date:

DPPC Screening Information

Intake Date: Time Received: SOURCE:

Screening Date: Screening Decision: Urgency:

Investigating/Referral Agency: Protective Service Agency: EXTERNAL INTERNAL

IR Due Date: Investigation Report Due Date:

Staff Screener: Approving Screener 1: Supervising Screener 2:

Assigned Investigator: Assigned Oversight Officer:

Screen out reason:

<input type="checkbox"/> NO DISABILITY	<input type="checkbox"/> NO SERIOUS INJURY	<input type="checkbox"/> DID NOT OCCUR
<input type="checkbox"/> AGE	<input type="checkbox"/> NOT A DPPC FACILITY	<input type="checkbox"/> INJURY NOT ACT / OMISSION
<input type="checkbox"/> NOT A CARETAKER	<input type="checkbox"/> FINANCIAL	<input type="checkbox"/> NO INJURY
<input type="checkbox"/> NO OMISSION	<input type="checkbox"/> NOT ABUSE	<input type="checkbox"/> OTHER

Intake Report Sent To The Following Agencies:

<input type="checkbox"/> DDS	<input type="checkbox"/> MRC	<input type="checkbox"/> DPH	<input type="checkbox"/> EOE A	<input type="checkbox"/> EEC	<input type="checkbox"/> OTHER	<input type="checkbox"/> SAO/BSI
<input type="checkbox"/> DMH	<input type="checkbox"/> DPPC	<input type="checkbox"/> DCF	<input type="checkbox"/> DOC	<input type="checkbox"/> CCF	<input type="checkbox"/> NONE	<input type="checkbox"/> AG

Information Updated

Administrative Closure Statement:

Written Report Received: Yes

Date Written Report Received:

Intake From Update Information: