DBHDS

DBHDS

Virginia Department of Behavioral Health
and Developmental Services

INVESTIGATING ABUSE & NEGLECT

DBHDS Office of Human Rights Training Series

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This training is designed to present fundamentals of the investigative process and to expose the learner to best practices related to investigating abuse and neglect allegations specific to the Office of Human Rights.

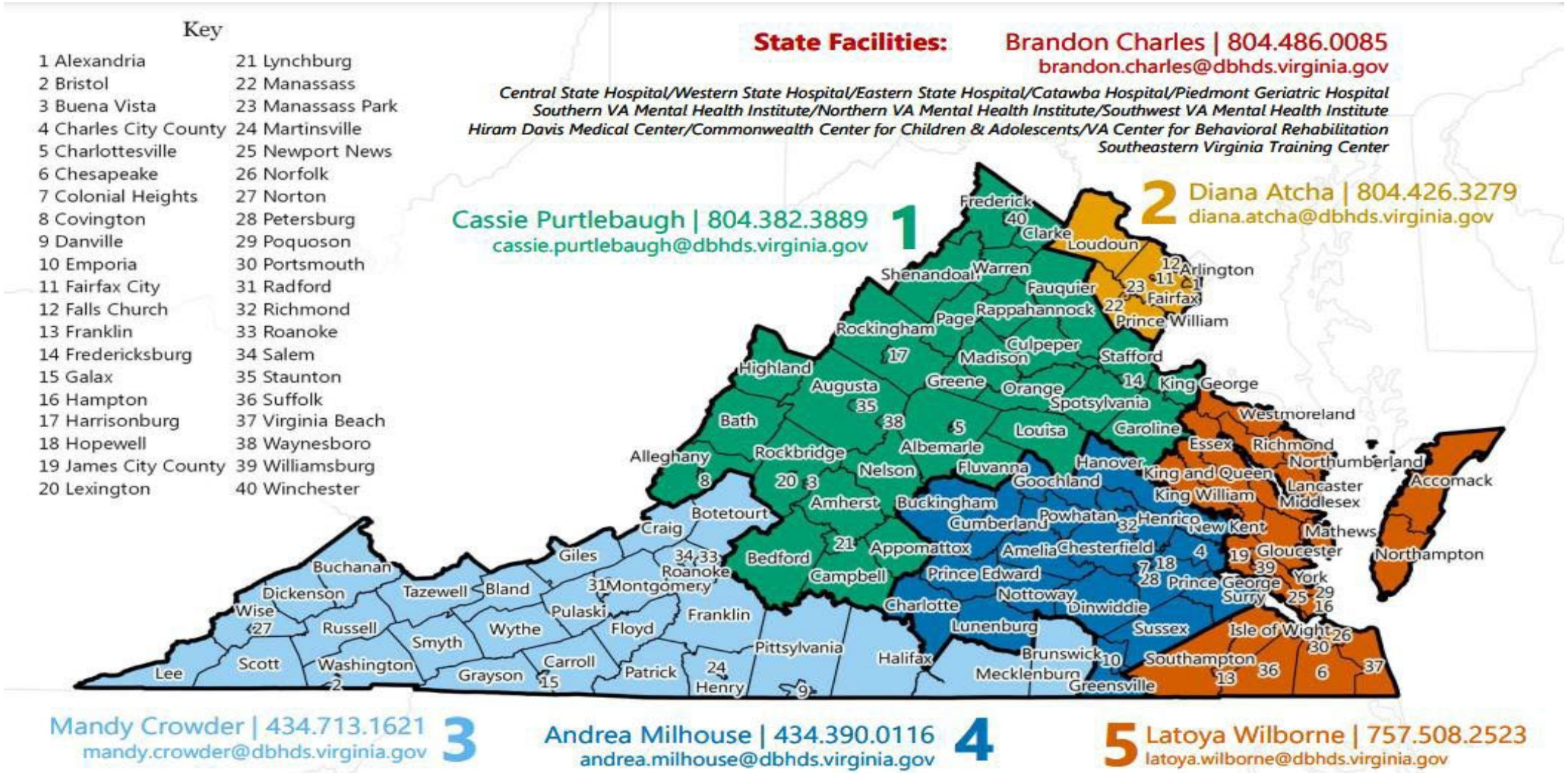
You are encouraged to continue building your skills as an investigator by researching other resources (e.g., trainings, literature, etc.).

Primarily, the information presented in this training has been adopted and created from The Human Rights Regulations (12VAC35-115) and collaboration with Labor Relations Alternatives, Inc.

Learning Objectives:

- Define key terms related to abuse, neglect, exploitation, coercion, restraint, and seclusion as outlined in the Human Rights Regulations (12VAC35-115).
- Identify the types and indicators of abuse, neglect, and exploitation
- Be informed of the Human Rights Complaint Process
- Understand and apply mandatory reporting requirements, including timelines, responsible parties, and documentation tools (e.g., CHRIS).
- Conduct impartial investigations using structured methods and best practices for interviewing witnesses and individuals receiving services.
- Collect, preserve, and document evidence (testimonial, physical, documentary, and demonstrative) in accordance with investigative standards.
- Findings and preponderance of evidence
- Investigative reports that meet regulatory and procedural requirements.

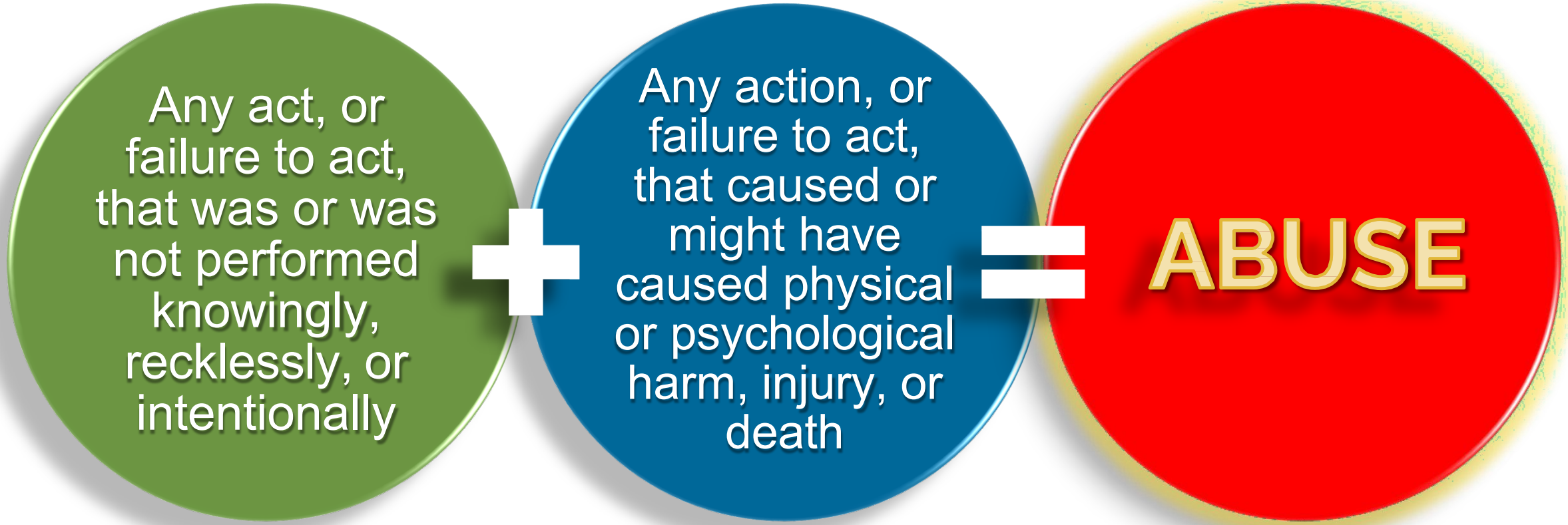
DBHDS Regional Managers and Senior Human Rights Manager for Facility Services



Objective

- Identify abuse, neglect, and exploitation as defined by the Human Rights Regulations
- Describe the regulatory mandates for abuse, neglect, and exploitation investigations per the human rights regulations.

Abuse: 12VAC35-115-30



Determining **Abuse**

First - determine whether the act, or failure to act by the employee was done knowingly, recklessly, or intentionally.

- **Knowingly: with a sense of consciousness or awareness.**
- **Recklessly: with a sense of carelessness, inattention, or deviation from policy and procedure.**
- **Intentionally: done deliberately or willfully.**

Second - determine whether the act, or failure to act by an employee either caused, or may have caused:

- **Physical or psychological harm**
- **Injury**
- **Death**

Abuse Types

- Coercion (As Abuse)
- Physical Abuse
- Verbal Abuse
- Sexual Abuse
- Exploitation
- Psychological
- Neglect
- Neglect: Missing/AWOL/Elopement
- Neglect: Medication Related
- Neglect Peer-to-Peer
- Seclusion (As Abuse)
- Restraint (As Abuse)

Coercion

- The use of expressed or implied threats of violence, reprisal, or other intimidating behavior that puts a person in immediate fear of consequences in order to compel that person to act against his or her will

- Subtle language or actions intended to persuade or otherwise influence someone to do something that they might typically be unwilling to do, using tactics such as emotions, psychology, imagination, or indoctrination.

- Coercion can play a role in abuse:
  - Intention (and impact) of words or behavior
  - Can apply to all abuse types, exploitation, and neglect
  - Leading statements or coercive questions/redirection in response to an individuals' expressed preferences

Physical Abuse

- includes but is not limited to hitting, kicking, pinching, choking, shoving, pushing, biting, slapping, punching, burning, striking, cutting with an object or any other direct physical act that is the proximate cause of psychological harm or physical injury to a person receiving services.

Examples:

- An employee slaps an individual and demands they take their medications.

- An employee pushes an individual in the restroom for showers.

Verbal Abuse

- Words, signs, and/or gestures by an employee or actions taken by an employee which intimidate, demean, curse, harass, cause emotional anguish or distress, ridicule, or threaten harm to the person; or actions which the employee knows for that particular person will or is likely to incite and/or precipitate aggressive and/or regressive behavior by that person.

- ***Examples:***
- Directing a racial slur at an individual.

- Using names which would demean an individual receiving services.

- Humiliating an individual by making fun of a prized belonging.

Sexual Abuse

ALLEGATIONS OF SEXUAL ABUSE MUST BE REPORTED TO LAW ENFORECEMENT PRIOR TO INITIATING AN INVESTIGATION

Any contact, however slight, between the sex organ of one person and the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person, animal, or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio and anal penetration; any intentional or knowing touching or fondling by one person, either directly or through clothing, of the sex organs, anus, or breast of the other person, for the purpose of sexual gratification or arousal of either person

- ***Examples*:**
- Staff engage in a sexual relationship with an individual.
- There is oral sex between staff and an individual
- Staff allow an individual to perform acts of sexual gratification for the individual or themselves

Exploitation

The misuse or misappropriation of the individual's assets, goods, or property. Exploitation also includes the use of a position of authority to extract personal gain from an individual.

Examples:

- Financial Misconducts
- Using an individual's belongings without permission
- Withholding an individual's belongings or medications to ensure compliance with a request
- Offering an individual extra meds for favors/personal gain.
- Accepting gifts
- Coercing an individual to make purchases for staff

Psychological Abuse

The Individual is alleged to have experienced emotional harm that may be evidenced by changes in the individual's behavior

- ***Example:***
- Becoming withdrawn
- Avoidance of specific people or situations
- Behavioral change atypical of the individual

Neglect: Failure to provide nourishment, treatment, care, goods or services

Failure to provide what is necessary for the individual's health, safety and welfare in accordance with their identified needs (ISP) and the level of service

- *failure could be the result of inaction by one or more staff, or possibly the result of a programmatic failure (i.e. inadequate policy or infrastructure).*

Examples:

- Failure to provide food, clothing, support or appropriate supervision
- Failure to take actions that would have prevented an injury
- Failure to stop or try to stop an individual from an activity that could lead to harm
- Failure to report a co-worker not doing their job

Neglect: Missing/Elopement/AWOL

When an individual is not physically present when and where they should be and their absence cannot be accounted for or explained by their supervision need, and the individual has been determined to lack capacity, or their capacity is currently in doubt

Examples:

- When an individual is to report to unit/program, but the individual cannot be found, however required to have one on one support.
- The individual is not able to located in their room, on the unit, in programming; or additionally accessible locations., however supervision is not provided based on ISP/need.

Neglect: Medication Related

A mistake made by the provider in administering medication to an individual.

Examples:

- Wrong medication is given to an individual,
- Wrong dosage of a medication is given to an individual,
- Wrong method is used to give the medication to the individual
- Medication is given to an individual at the wrong time or not at all.

Neglect: Peer to Peer

Incidents of peer-on-peer aggression that are alleged to have resulted in or from a human rights violation, whether the alleged violation is discovered or through a complaint.

- ***Examples***:
- Staff were not engaged in appropriate supervision
- An allegation or suspicion of sexual assault, and or other non-consensual sexual acting out
- An allegation or suspicion of consensual and non-consensual sexual acts between minors
- An allegation or suspicion of sexual activity between adult peers in which at least one individual is deemed to lack capacity to make informed decisions
- Three (3) or more Incidents involving one or more of the same peers within a 72-hour timeframe

Seclusion (as Abuse)

- As of 7/17/24: Seclusion may be used only in an emergency and only in facilities operated by the department; residential facilities for children that are licensed under Regulations for Children's Residential Facilities (12VAC35-46); inpatient hospitals; and crisis receiving center or crisis stabilization units that are licensed under Part VIII (12VAC35-105-1830 et seq.) of 12VAC35-105

The involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical or verbal means, so that the individual cannot leave it.

Examples:

- Seclusion performed outside of an emergency
- Performing seclusion outside of the parameters of approved policy and procedure / as punishment

Restraint (as Abuse)

A restraint is a Mechanical device, Pharmacological (medication administered to control behavior), or Physical hold that prevents an individuals' body (or part of the body) movement, meant to mitigate imminent risk to the individual or others.

Examples of Restraint (as abuse):

- Improper use
  - Not approved behavior management methods,
  - not in ISP/BTP
  - done outside of imminent risk or as punishment)

- Excessive Force or Injury obtained during approved uses

- ***Prone Position:*** a violation of Regulation 12VAC35-115 110C.6

The Investigation Process

Foundations for conducting a successful investigation

Objective

To navigate the abuse and neglect investigatory process.

ANE Investigators must be trained

- ✓ Cannot be involved in the issues under investigation
- ✓ Investigation must be impartial

Investigation time frames:

- ✓ Should begin as soon as possible, but no later than the next business day
- ✓ Summarize in CHRIS within 10 working days
  - Extensions may be requested until the 6th day of the investigation time frame
  - Full investigation summary should be kept as part of the individual's record

What is an Investigation?

An *investigation* is a process of systematically collecting *facts*.

Facts are pieces of information that help clarify a matter and generate a conclusion.

The Investigatory Question

The question is the compass of the investigation

❖Let it do its job and lead the investigation!

Elements of the question come from initial reports

Develop to describe the when (time) and where (space) of the allegation

Forming the Question

- Open-ended
- Approximate date, time if unknown (only if able)
- Concrete language
- Avoid concluding the facts
- Undisputable
- Revise when needed

Preparing for the Investigation

Preparedness

Internal

- **Policy & Procedures**
  - reporting procedures
  - investigator assignments
  - timelines
  - organization
    - scene
    - interviews
      - victims/person making complaint
      - witnesses
      - accused
    - evidence collection

Investigator

- Know the policy
- Review the complaint
  - type of ANE?
  - plan, organize the investigation
- Tool kit
  - pen, pencil & paper
  - internal forms
  - PPE
  - snacks

Organizing the Investigation

The three essential characteristics of an investigation are:

- **Speed**
- **Thoroughness**
- **Objectivity**

Following a structured order can help an investigator organize the process and preserve crucial evidence.

- However, it is important to recognize that when working within a facility, an investigator must remain flexible and be able to pivot, when necessary, as it may not always be possible to follow the same methods in every situation.

Organizing the Investigation

Early Intervention	Initial Activities of the Investigator
Ensure anyone injured has received medical attention	• Speak with medical staff about injuries. • Collect medical reports • Observe injuries on the individual
Secure the scene	• Collect physical evidence • Make Diagrams • Take photographs
Separate witnesses	• Interview witnesses • Take written statements
Secure documentary evidence	• Collect and review documents

What is evidence?

- Information that may describe, explain the allegation
- Evidence can be relevant or irrelevant
- Collect it as soon as possible
- Support or dispute *Preponderance of the evidence*
  - Greater likelihood (or not) that the allegation occurred

- Evidence
  - Types:
    - Direct
    - Circumstantial
  - Forms of evidence:
    - Testimonial
      - Documentary
    - Physical
      - Demonstrative

Physical Evidence

Any tangible piece of information that may be relevant, including injuries

Collect, preserve as soon as possible

- Be mindful of chain of custody
  - Begins at the time the scene is secured
  - Tag/label
    - description, date & time, place, person collecting the evidence
    - include a unique identifier

Keep physical evidence according to policy/procedure (retention schedule)

Physical Evidence: Injuries

Important piece of physical evidence

Considerations for collecting, preserving injuries:

- view, and photograph when possible
- ensure medical attention rendered for all impacted persons
- obtain, review relevant medical records
- ensure the accused is checked for injuries
- do not assess, make a diagnosis

How physical evidence is preserved

- Pictures
- Diagrams
- Maps

Tag/label per internal policy/procedure

Always review video footage, if available

Testimonial Evidence

- Most common form of evidence
- Witness's recollection of the allegation
  - Collected in the form of an interview
- Non-aggressive, non-accusatory

- Types of interviews
  - Incident
  - Exploratory
  - Background
  - Follow-up

Prepping for the Interview

- As much as possible, ensure witnesses remain separated
- Observe the scene
- Create an outline of topics to discuss
- Identify the reason for the interview
- Identify appropriate setting

Conducting the Interview

- Goal is to obtain relevant information
  - Do not lead the witness
- Communicate the purpose
- Ask relevant questions
- Create a comfortable environment
- Acknowledge, accept what the witness communicates

Testimonial Evidence

- Ensure privacy
- Allow sufficient time
- Keep witnesses separated, when/if possible
- Remain calm, be mindful of presentation
- Be clear, concise, direct
- Ask open-ended questions
- Do not ask leading questions
- Ask follow-up questions
- Remain neutral (Impartial)

Documentary Evidence

- Best to collect after collecting physical evidence
- Types include:
  - Witness statements
  - Agency protocols
  - Charts, records
- Preservation of testimonial evidence:
  - Interview first, then document
  - Do not leave witness alone to write the statement
  - Do not edit witness's statement
  - Appropriate to assist a witness to read/write their statement:
    - Write the statement as witness dictates their recollection
    - Have another individual read the statement and obtain witness's validation

Collecting Evidence

- Observe, review the scene at the time of arrival
- Collect physical evidence
  - Create demonstrative evidence if unable to preserve the physical evidence
- Interview the person making the report
- **Interview the alleged victim**
- Interview the other direct evidence (eyewitnesses)
- Interview the circumstantial evidence witnesses
- Interview the alleged target of the investigation
- Collect documentary evidence for review later

Substantiated

Most Likely DID Occur

- Preponderance of the evidence amassed
- Finding does not have to reflect the reported allegation
  - investigation may have uncovered additional, different type(s) of ANE
- Corrective action required

OR

Unsubstantiated

Most Likely DID NOT Occur

- Preponderance of the evidence NOT amassed
- Corrective action not required, but can still be implemented
  - increase staffing
  - revision of policies/procedures
  - re-training of staff

Investigation Summary

- A written report of the results of the investigation
- Due **10 working days** from date investigation began, unless extension granted
  - summary in CHRIS
  - full reported maintained as part individual's file
- Must contain
  - whether ANE occurred
  - type of abuse
  - whether the act resulted in physical or psychological injury

Investigation Summary

- Elements of a comprehensive report include:
  - an introduction
  - a timeline of the investigation
    - include processes followed
  - a summary of collected evidence
  - a conclusion

- A well written report is:
  - factual
  - accurate
  - objective
  - complete
  - includes actions taken
  - concise
  - clear
  - mechanically correct
  - legible

Reminders & Considerations

Begin the investigation as soon as possible

Visit the scene

Interview witnesses early

1. reporter
2. ictim
3. eyewitnesses
4. perpetrator

Identify any conflict of interest

Please refer to the Human Rights Staff Contacts list and the Regional Map in the Contact Information section of the OHR web page for up-to-date contact information.

Office of Human Rights Contact Information webpage