

Facility Investigation Training (FIT)

Office of Human Rights Training Series

AGENDA

Overview of Human Rights Regulations

Departmental Instruction 201

Investigative Process

Additional Information, Resources, and Next Steps

LEARNING OBJECTIVES

Indicate understanding of abuse, neglect, and exploitation as defined by the human rights regulations.

Identify human rights regulatory mandates for investigations concerning abuse, neglect, and exploitation.

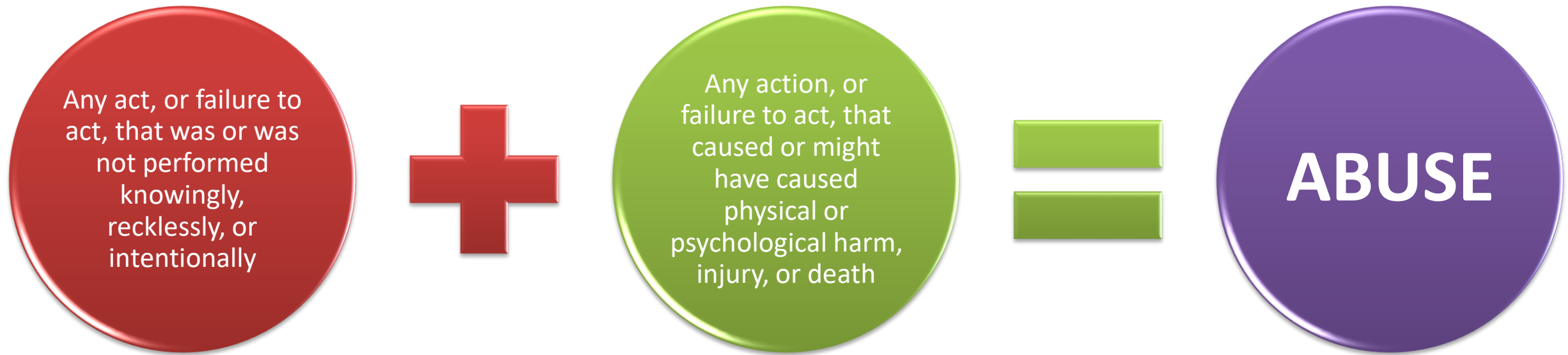
Explain elements of the DBHDS Departmental Instruction 201 (DI 201).

Demonstrate ability to navigate an investigation involving abuse, neglect, or exploitation.

Human Rights Regulations

Definitions & the Complaint Process

ABUSE



ABUSE TYPES

- Physical

- 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.
- Emergency vs Non Emergency

- Verbal

- 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.
- Words, signs and/or gestures 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.
- **Verbal abuse goes beyond the obvious use of vulgar, obscene or violent language which may include:**
 - 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.

ABUSE TYPES CONT.

- Sexual

- sexual penetration or sexual conduct involving physical occurred. **ALLEGATIONS OF SEXUAL ABUSE MUST BE REPORTED TO LAW ENFORCEMENT (State police) PRIOR TO INITIATING AN INVESTIGATION**
- **Penetration v Conduct**
 - 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 or of any 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:**
 - Rape, Sexual Assault or Other Criminal Sexual Behavior i.e. sodomy
 - Inappropriate sexual contact

EXPLOITATION

Defined

- Type of abuse
- Misuse, misappropriation of assets, goods, property
- Use of authority to extract personal gain

Examples

- Withholding an individual's belongings to ensure compliance with a request
- Accepting gifts
- Offering an individual extra meds for favors/personal gain
- Withholding a service for personal or business gain

RESTRAINT

Use of:

- mechanical device
 - medication
- physical intervention, hands-on hold



Prevent body movement



Mitigate imminent risk

NEGLECT

Failure to provide services:

nourishment

treatment

care

goods

services necessary
for health, safety,
welfare



Questions to consider

Were policies and procedures
followed?

Was the ISP and/or BTP
followed?

Was the basic right to dignity
denied?

HUMAN RIGHTS COMPLAINT 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
- Results due within 10 working days
 - Extensions may be requested until the 6th day of the investigation time frame
 - The investigator or facility must notify the individual (or AR/Substitute Decision maker) that an extension was granted.

Departmental Instruction 201(RTS)03

Reporting and Investigating Abuse and Neglect of Individuals Receiving Services in Department Facilities, 2018

PURPOSE & GUIDANCE

Outlines policy, procedures, & responsibilities:

- reporting abuse & neglect
- investigating abuse & neglect
 - **all** allegations will be investigated
- maintaining a safe, secure environment
 - action must be taken to mitigate future occurrences

Applies to the entire workforce, with certain protections:

- be informed of allegations, impartial investigation
- have rights explained relative to the DI 201
- receive written notification of investigative findings
- be allowed to present evidence to the investigator

Presumption of innocence until Facility Director (FD) makes final decision

GUIDANCE

Rights of individuals:

- be protected from harm
 - abuse, neglect, exploitation
- report allegations without reprisal
- have **all** abuse, neglect allegations investigated

Facility Advocates may conduct independent investigations

- results submitted to SHRD, FD

RESPONSIBLE AUTHORITY

State Human Rights Director (SHRD)

- interpret, consult

Facility Directors (FD)

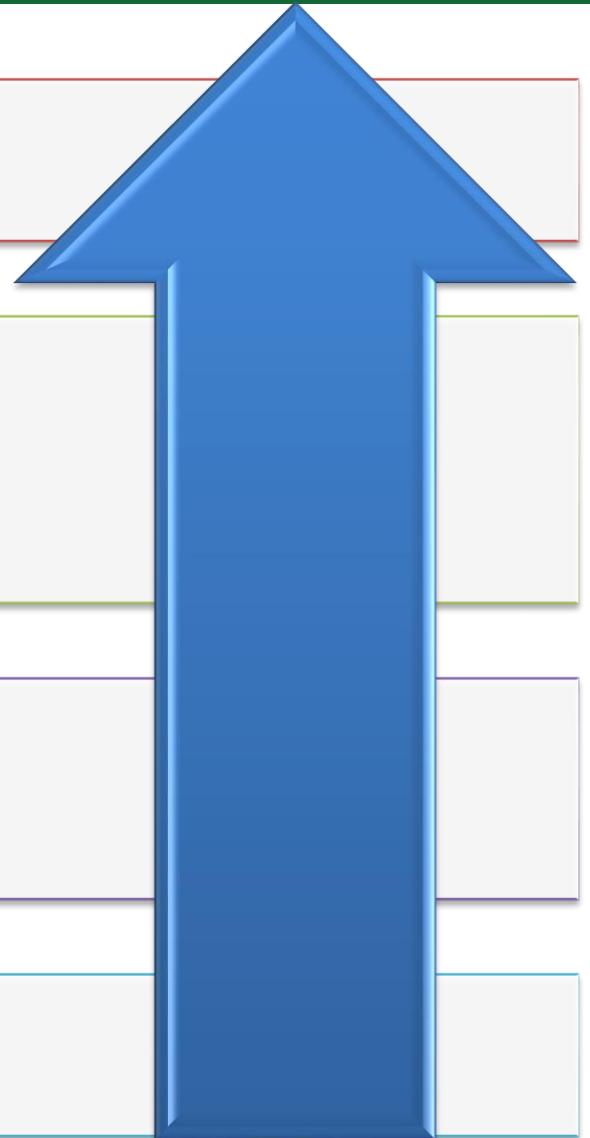
- training, implementation
- ensure compliance
- appoint trained investigators

Facility Advocates

- monitor investigations
- review findings

Facility Investigators

- conduct impartial investigations



RESPONSIBLE AUTHORITY

Central Office Advisory Panel (COAP)

- review, make recommendations concerning investigations
 - issues of quality & risk
 - controversial or subject to media coverage
- systems issues, trends reported to DBHDS' Quality Improvement Committee & OHR
- review requests emailed to SHRD, after FD consults with supervisor

REPORTING REQUIREMENTS

Report abuse, neglect suspicions to FD *immediately*

Workforce members may, and shall, when required by law, notify the appropriate protective services agency:

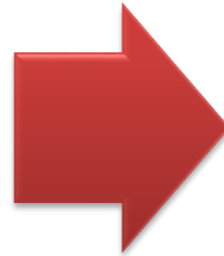
- Child Protective Services (children under 18 y.o.)
- Adult Protective Services (individuals over 60 or incapacitated)

The Investigative Process

Preparation, Facilitation, Summarization

WHAT IS AN INVESTIGATION?

Process of
systematically
collecting facts



Facts are pieces of
information that
help clarify, generate
a conclusion

ASSIGNMENT OF ANE INVESTIGATION

Notified via the 201(A) Form

Ensure there is no conflict of interest; if so, immediately notify the FD and Facility Advocate

Ensure the form is complete

- dates, times for required notifications
- incident category, code
- only 1 incident per form

DI 201(a) Form

DBHDS ALLEGATION REPORT FORM # 201A						
Allegation Number:	704-2021-010		Type of Incident Code: (see coding below)	2		
Abuse Location & Site:	ESH - Recreation Area/Unit 3A		Abuse Date:	1/23/21	Abuse Time:	12:15 pm
Allegation Made By: (Name & Title)	Peer C		Date:	1/23/21	Time:	12:20 pm
To whom did they report it: (Name & Title)	ESH Facility Advocate		Date:	1/23/21	Time:	12:20 pm
Person Reporting to Director: (Name)	ESH Facility Advocate		Date:	1/23/21	Time:	12:45 pm
Advocate:	John Doe		Date:	1/23/21	Time:	12:20 pm
Substitute Decision Maker: (Name & Contact Information)	Jason Mason; 757-555-2222		Date:	1/23/21	Time:	5:00 pm
DSS: ___Phone ___X___Email (Name & Findings)	Sharon Barron; findings unknown at this time		Date:	1/23/21	Time:	3:00 pm
Suspected Criminal Activity: Police: ___Local ___State (Name & Dept)	N/A		Date:	N/A	Time:	N/A
Other: (Specify)			Date:		Time:	
Other: (Specify)			Date:		Time:	
Other: (Specify)			Date:		Time:	
Assigned Investigator:	Trained Investigator		Date:	1/24/21	Time:	8:00 am
Individual Injured: <input checked="" type="checkbox"/> Y ___N ___ Type of Injury: <input checked="" type="checkbox"/> Bruises ___Lacerations ___Burns ___Fracture ___Death <input checked="" type="checkbox"/> Other Injury Medical Attention Provided: <input checked="" type="checkbox"/> Y ___N ___ Type Provided: <input checked="" type="checkbox"/> Non-Emergency ___Emergency Injury Report Completed: <input checked="" type="checkbox"/> Y ___N ___						
(Description of Medical Treatment Provided & Findings) DSP John provided first aid by cleaning Peer B's head wound, applying an ice pack to Peer B's head and also a cold compress to Peer B's eye.						
Description of Alleged Abuse: Peer A & Peer B engaged in a physical altercation. Peer A punched Peer B in the face causing Peer B to fall and hit his head.						
Person(s) Involved:	Job Title / Client Number	I = Individual E = Employee O = Other	W = Witness A = Accused	Race	Gender	Suspension / Transfer Date (Specify S or T)
Peer B	1234	I	W	B	M	N/A
Peer A	4321	O	W	W	M	N/A
DSP John	0024	E	A	B	M	N/A
DSP Dan	1500	E	A	W	M	N/A
Signature of Facility Director: <u>Facility Director</u> Date: _____ <small>Original to be forwarded immediately to the Facility Director, and provide a copy to the Facility Advocate & Investigator.</small>						

SINGLE INCIDENT VS MULTIPLE INCIDENT DOCUMENTATION

Single
Incident –
Same 201A
Form

- same approximate time
- same location
- multiple victims or perpetrators at the same approximate time, location

Multiple
Incidents –
Multiple
201A Forms

- different time, location
- unrelated events

INVESTIGATION TIMEFRAMES

Abuse, neglect complaints must be investigated within 10 working days

- extensions may be requested through the Facility Advocate for valid reasons
 - request no later than the 6th day
- investigations may be suspended at direction of law enforcement

Exception

- complaints which are required to be reported to the Dept. of Health must be investigated within 5 working days
 - Medicaid, Medicare certified facilities

FACILITY DIRECTOR RESPONSIBILITIES

Immediately ensure the following upon receipt of complaint

- protection of individual(s)
- protection of physical evidence
- appropriate law enforcement notification made, if criminality suspected

Ensure the following within 24 hours

- trained investigator initiates impartial investigation
- individual, and AR, notified about investigation and the process
- allegation reported to OHR via CHRIS
- appropriate DSS entity notified
- workforce member(s) notified about their required cooperation and not discuss facts with anyone other than investigator

TYPES OF REPORTS

Improbable

- Based on potential inaccurate information
- Determined based on consultation with treatment team, thorough clinical assessment
 - FD, investigator, facility advocate must agree
- Closed as unsubstantiated
- Examples
 - Individual incarcerated by FD
 - CIA is training me to be a spy and torturing me at night

Repetitive

- Allegations that are frequently reported
- Example
 - Daily allegation made by individual that they were raped last night.

ORGANIZING THE INVESTIGATION



THE INVESTIGATORY QUESTION

Elements of the question
come from initial reports

Compass of the investigation

❖ Let it do its job and lead the investigation!

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

THE INVESTIGATORY QUESTION

Forming the Question

- open-ended
- approximate date, time if unknown (only if able)
- concrete language
- avoid concluding the facts
- undisputable
- revise when needed

WHAT IS EVIDENCE?

- Information that may describe, explain the allegation
- Evidence can be relevant or irrelevant
- Collect it as soon as possible
- Preponderance of the evidence
 - Greater likelihood that the allegation occurred
- Kinds of evidence
 - Forms
 - Physical
 - Demonstrative
 - Testimonial
 - Documentary
 - Types
 - Direct
 - Circumstantial

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

DEMONSTRATIVE EVIDENCE

How physical evidence is preserved

- pictures
- diagrams
- maps

Tag/label per internal policy/procedure

Always review video footage, if available

DEMONSTRATIVE EVIDENCE: PHOTOGRAPHS

Helps to preserve injuries for an allegation of physical abuse

- digital cameras preferred
- you must have consent to photograph the client

Ensure photographs are maintained securely

- you should have secure logging of the photographic evidence
- photographs are not to be viewed by others who are not authorized to do so

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

TESTIMONIAL EVIDENCE

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

Finalize the interview

summarize

- obtain validation of your understanding

advise witness not to discuss interview

provide next steps

give opportunity for questions, comments

encourage witness to follow up with additional info

TESTIMONIAL EVIDENCE

There is a possibility of receiving conflicting testimony

Several factors contribute to witnesses' credibility

- they consistently provided the same account
- there is independent corroboration of their account
- their account is consistent with physical evidence
- they had no perceptual or physical impairment which may have influenced their observation
- they were paying attention
- there is no conflict of interest

TESTIMONIAL EVIDENCE

Factors contributing to uncooperative witnesses

- misguided belief they will be blamed regardless of facts
- conflict of interest
- fear of disciplinary action
- genuine fear, misunderstanding of the process

Important for the investigator to support the witness

- remind them of the requirement to cooperate (if a workforce member)
- remain focused, objective
- be patient
- use clear, direct language

REMINDERS FOR COLLECTING 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

DOCUMENTARY EVIDENCE

Collect after collection of physical evidence

Types

- witness statements
- protocols, procedures
- individual chart records

DOCUMENTARY EVIDENCE: WITNESS STATEMENTS

Consider the following

- interview then take statement
- do not leave witness alone to write statement
- do not edit the witness' statement
- it is appropriate to assist a witness who cannot read, write
 - write statement as witness provides their account
 - have another workforce member read the statement to the witness for validation

Additional factors

- type statements that are illegible
- get witness' signature after they read their statement; date, initial all changes
- include who, when, where statement taken, name/title of witness, investigator signature

DOCUMENTARY EVIDENCE: WITNESS STATEMENTS

Method	Advantage	Disadvantage
Audio tape	Most perfect record	Intimidating, requires extra equipment and transcription
Taking notes during the interview	Efficient, requires no additional equipment	Distracting to witness; Rests on the investigator's interpretation of the witness' statement
Interview then re-interview as the witness writes their statement in response to questions	Very perfect record; Provided in witness' own handwriting; No additional equipment required	Time consuming, tedious for witness

MORE ABOUT EVIDENCE

Virginia State Police will
conduct further analysis,
if needed

Maintain for 10 years,
minimum

- along with
investigator's case file

Appropriate to destroy
perishable evidence after
being photographed &
quality prints verified

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 report 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

- introduction
- a timeline of the investigation
 - include processes followed
- a summary of collected evidence
- a conclusion

Elements of a well written report

- factual, accurate
- objective
- complete
- includes actions taken
- concise, clear
- mechanically correct
- legible

TYPES OF FINDINGS

Substantiated

- 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

Unsubstantiated

- 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

TYPES OF UNSUBSTANTIATED FINDINGS

Insufficient Evidence

- determination appropriate when the investigator believes, based on supporting facts, that it is likely the violation occurred BUT a preponderance of the evidence is not amassed
- sufficient evidence exists identifying employee misconduct

Administrative Issues

- determination appropriate related to defective policies, procedures, systems issues, misconduct by non-workforce persons

WRAPPING UP THE INVESTIGATION

Investigator

- submit detailed investigation summary to FD
- brief FD, Facility Advocate, as needed
- receive feedback from FD, Facility Advocate

Facility Advocate

- identify, discuss human rights issues
- conduct, submit results of independent investigation to SHRD & FD
- provide technical assistance to individuals during appeal

Facility Director

- make final disposition
- request an extension, up to 3 days, if permitted, to allow accused to present info
- see consultation (e.g., Assistant Commissioner, COAP)

Additional Information

Appeals, Hearings, Next Steps, Resources, Contact Info

INDIVIDUAL'S RIGHT TO APPEAL

Human Rights Regulations (Complaint Resolution, Hearing, & Appeal Procedures)

- Local Human Rights Committee (LHRC)
 - provides due process for individuals
 - conducts fact-finding hearings in response to appeals
 - provides recommendations to FD
- State Human Rights Committee (SHRC)
 - provides oversight to LHRCs
 - hears & renders decisions on appeals for cases heard but not resolved at the LRHC level

GRIEVANCE HEARINGS

Formal process conducted under oath

Ensure the investigation summary is complete, legible

Be professional

Respect formality of the process

Be prepared to discuss, answer questions

- investigatory process
- recommendations
- specific language in policies, procedures

GRIEVANCE HEARINGS

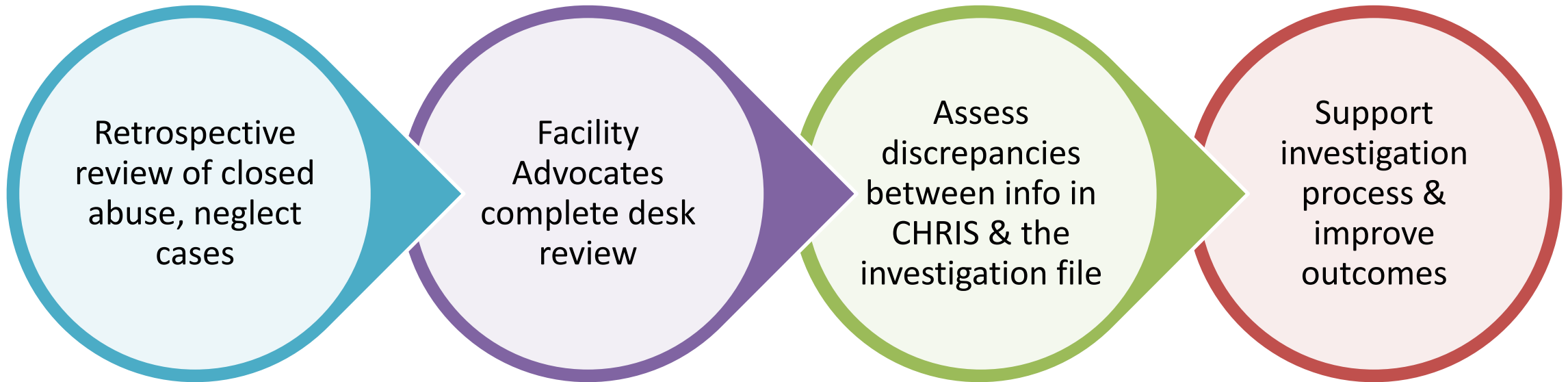
DEPARTMENT OF HUMAN RESOURCE MANAGEMENT
OFFICE OF EQUAL EMPLOYMENT AND DISPUTE RESOLUTION

101 N. 14TH Street, 12TH Floor Richmond, Virginia 23219

Toll Free 888-23-ADVICE

www.dhrm.virginia.gov/edr

FACILITY LOOK-BEHIND PROCESS



NEXT STEPS

Practice with
experienced
investigator

Review shared
resources

- OHR web page
- MS Teams

Ongoing
support,
consultation

Provide
training
certificate to
HR

RESOURCES

OHR web page

- <https://dbhds.virginia.gov/quality-management/human-rights/>
 - Resources for Individuals
 - Resources for State Operated Facilities
 - Resources for Licensed Providers
 - LHRC & SHRC
 - Contact Information

FACILITY TEAM CONTACTS

Name / Position	Office Phone	SFax	Location
Tony Davis <i>Human Rights Advocate</i> tony.davis@dbhds.virginia.gov	804-524-4463	833-734-1241	Central State Hospital/ Hiram Davis Medical Center/ Piedmont Geriatric Hospital/ VA Center for Behavioral Rehabilitation
Lashanique Green <i>Human Rights Advocate</i> lashanique.green@dbhds.virginia.gov	804-454-5105	833-734-1241	Northern VA Mental Health Institute Eastern State Hospital/ Southeast VA Training Center
Riley Curran <i>Human Rights Advocate</i> riley.curran@dbhds.virginia.gov	540-569-3193	833-734-1241	Western State Hospital/ Commonwealth Center for Children & Adolescents/ Northern VA Mental Health Institute
Mykala Sauls <i>Human Rights Advocate</i> mykala.sauls@dbhs.virginia.gov	804-931-0505	833-734-1241	Southern VA Mental Health Institute/ Southwestern VA Mental Health Institute / Catawba Hospital / Northern VA Mental Health Institute

CENTRAL OFFICE CONTACTS

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Taneika Goldman, MPA

State Human Rights Director

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REFERENCES

Code of Virginia § 37.2-100

Labor Relations Alternatives, Inc. (2016). Investigations manual (7th ed.).
[Conducting Serious Incident Investigations].