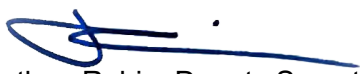


**ISSUE DATE**  
January 19, 2021**EFFECTIVE DATE**  
**Immediately****NUMBER**  
3800-21-01**SUBJECT**  
Reporting Requirements of Incidents Involving  
Children Served in Child Residential Facilities**BY**  
  
Jonathan Rubin, Deputy Secretary  
Office of Children, Youth & Families**SCOPE**

Chief Juvenile Probation Officers  
Child Residential and Day Treatment Facilities  
County Children and Youth Social Service Agencies  
County Children and Youth Solicitors  
Guardians Ad Litem  
Juvenile Court Judges' Commission  
Administrative Office of Pennsylvania Courts  
Youth Development Centers and Youth Forestry Camps

**PURPOSE**

The Pennsylvania Department of Human Services (DHS) is issuing guidance related to procedures and policies for reporting suspected child abuse and recordable/reportable incidents for all entities licensed by DHS that operate programming under Chapter 3800 regulations governing Child Residential and Day Treatment Facilities. State operated facilities including Youth Development Centers (YDC) and Youth Forestry Camps (YFC) are also required to comply with the mandated reporter and plans of supervision requirements.

**STATUTORY AUTHORITY**

As mandated by the Pennsylvania Child Protective Services Law (CPSL), DHS is responsible for receiving and investigating referrals of suspected child abuse involving allegations in which the identified alleged perpetrator presents a contractual conflict with the registered county of jurisdiction.

§6362 (b) Assumption of responsibility by the department. When the suspected abuse has been committed by the county agency or any of its agents or employees, the department shall

**COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:** The appropriate OCYF Regional Office.  
Central Region (717)772-7702 | Northeast Region (570)963-4376 | Southeast Region (215)560-2249 | Western Region (412)565-5728

**ORIGIN OF BULLETIN:**  
Office of Children, Youth and Families

Visit the Office of Children, Youth and Families website at [www.KeepKidsSafe.pa.gov](http://www.KeepKidsSafe.pa.gov)

assume the role of the agency with regard to the investigation and directly refer the child for services.

In accordance with CPSL §6368 (i) relating to an investigation concerning a school or child care service employee, the school or child care service shall immediately implement a plan of supervision or alternative arrangement **for the individual under investigation** to ensure the safety of the child and other children who are in the care of the school or child care service. The plan of supervision must be submitted to the investigating authority for approval. If the investigatory agency is a county children and youth agency, the child care service is also required to submit the plan of supervision to the licensing entity of the child care service.

## **BACKGROUND**

The Office of Children, Youth and Families (OCYF) is the DHS program office designated to perform the investigative function as mandated by the CPSL when suspected abuse has been committed by a county agency or any of its agents or employees. Pursuant to §6368(i), a child care service must immediately implement a plan of supervision or alternative arrangement for the individual under investigation of suspected abuse to ensure the safety of the child and other children who are in the care of the child care service.

Members of the child residential facility provider community identified a need to review current policies and practice applications specific to Chapter 3800, Child Residential and Day Treatment Facilities requirements related to these plans of supervision. There was also a need identified for additional clarification related to those allegations and incidents that must be reported to ChildLine as suspected abuse and those more appropriately directed to the OCYF regional offices, even if reported through ChildLine, as a complaint. Contents of these reports, the process of how initial determinations are addressed by Childline to classify a report either as a Child Protective Services (CPS) report or as a complaint, and the timeline and protocol for investigations by the regional OCYF offices were included in these discussions.

OCYF staff, providers, provider organizations, the Office of Mental Health and Substance Abuse Services, and the Juvenile Court Judges' Commission convened a Reportable Incident/Mandated Reporter Workgroup to review the CPSL mandates for reporting suspected child abuse and the Chapter 3800 regulatory requirements for addressing recordable and reportable incidents. This review led to the development of policy guidance and clarification, as well as recommendations for training content and messaging for all key stakeholders, including but not limited to, the residential child care workforce, managed care organizations, Pennsylvania Department of Education, Juvenile Detention Centers, Department of Health, OCYF (Bureau of Policy, Program and Operations, Bureau of Juvenile Justice Services, and the Bureau of Children and Family Services) and other investigating agencies.

The Reportable Incident/Mandated Reporter Workgroup met seven times from February through June 2018. Discussions focused on current practices of reporting incidents to ChildLine. Through the discussions, it was apparent that, in many circumstances, reports were being directed through Childline for incidents that did not meet the definition or criteria to classify them as reasonable suspicion of child abuse but were reports made to comply with requirements for reporting incidents referenced in Chapter 3800.

Further discussion of the basis for this practice identified reasons prompting residential facility staff to make reports to ChildLine for every incident or allegation occurring as a perceived “need” to report based on:

- **fear** (criminal penalties for failure to report, concern for regulatory citations or licensing action, or at the direction of legal counsel due to potential litigation),
- **pressure** (from internal management, legal entities, placing agencies and placement funders, and CASAs),
- **precedent** (what has always been done or based on prior criminal charges for failure to report), or
- **confusion** (not knowing that staff could ask questions to determine reasonable cause to suspect).

The Reportable Incident/Mandated Reporter Workgroup identified scenarios and contributing factors that were resulting in reports being made to ChildLine for a broad range of incidents beyond those that met criteria for suspected child abuse as defined in the CPSL. These themes included:

- 1) uncertainty as to when to report;
- 2) escalating incidents and those involving restraints;
- 3) allegations made by children against staff;
- 4) sexual contact between children; and
- 5) outside influences such as Prison Rape Elimination Act (PREA);
- 6) and lack of direction and distinction between reportable incident requirements using the Home and Community Services Information System (HCSIS) and reports directed to ChildLine as suspected abuse.

This bulletin provides guidance based upon the collective results and recommendations of the workgroup following review, modification and the final review by DHS. This policy guidance serves as a basis for training and procedure development that will support statewide consistency in interpretation and application of statute and regulation.

## **Practice Guidance for Reporting Suspected Child Abuse and Reportable Incidents by Chapter 3800 Child Residential Facilities**

### **Determining Whether a Report of Suspected Child Abuse Must be Made**

It is important to understand that staff are **required** to make a report to ChildLine when they have *reasonable cause to suspect* that a child is a victim of abuse. Reasonable Cause to Suspect does not require that the person making the report be “certain” that abuse occurred, or that there is evidence or “proof” that the abuse occurred. While the law does not define exactly how likely abuse must be before a mandated reporter is required to report, good practice is that in addition to reporting any incident involving a child the reporter *believes* has been abused/neglected, reports should be made **whenever there is a suspicion that abuse/neglect may have happened**. Asking the right questions may help with reaching the correct determination as to whether there is reasonable cause to suspect abuse.

**Reasonable cause to suspect** is a determination made based on the reporter’s knowledge of circumstances, observations, familiarity with the individuals, and feelings about the incident.

Knowledge of circumstances includes:

- Who
- What
- How
- When
- Where

Observations include:

- Indicators of abuse or "red flags" present such as "injuries that are unexplained or do not fit the explanation"
- Behavior and demeanor of the child
- Behavior and demeanor of the staff/alleged perpetrator
- Behavior and demeanor of other staff or children
- Any other behaviors or observations that may be important

Familiarity includes the knowledge about:

- The individuals
- The family situation (if applicable)
- Relevant history or similar prior incidents (including prior abuse disclosed while in placement)

The mandated reporter should also consider their own feelings and personal biases and how these factors may influence both conclusions reached, and actions taken.

### **Minimal Facts Interviewing**

Mandated reporters, including residential child care staff, are permitted to conduct "minimal facts interviewing (MFI)" to obtain very basic facts regarding the alleged maltreatment. MFI is an initial, basic fact-finding interview to gather basic information and to ensure the safety of children. The MFI may also provide the staff person with information necessary to help inform their decision as to whether there is reasonable cause to suspect that a child is a victim of abuse.

MFI **only** involves asking the child questions, avoiding multiple choice and leading questions. Specific follow-up questions, especially those related to the details of the abuse, should not be asked during the MFI.

MFI includes asking the following basic questions:

1. What happened? Include any statements of pain or injuries.
2. Where did it happen?
3. When did it happen?
4. Who is the alleged perpetrator?
5. Are there other alleged perpetrators?
6. Who are the witnesses?
7. Are there other victims?

Child residential facility staff must be aware that while they, as the mandated reporter, are required to directly make the report of suspected child abuse, they are permitted to "consult" or "process" with their supervisor or someone within the agency if they are unsure and want to

discuss their concerns before making a final decision about whether or not they have “reasonable cause to suspect” the child is a victim of abuse.

The purpose of “consulting” or “processing” is not to have the decision about whether a report of suspected child abuse needs to be made deferred to someone other than the mandated reporter, nor is it to obtain permission to make a report of suspected child abuse. The individual that the staff chooses to consult with is also prohibited from interfering with or obstructing the report being made. The decision to “consult” or “process” with a supervisor or someone within the agency must not delay or interfere with a timely report being made, even if the individual that the staff chooses to consult with is not immediately available.

Often children entering a residential program will self-report previous child abuse as part of their intake history. Often the children and/or guardians will indicate that the allegations were previously reported and investigated. Child residential staff often struggle with their obligations to make a report of suspected abuse when the family is saying that it was already investigated. At what point should the provider make a report of suspected child abuse? The following points may be helpful to consider:

- Is the information provided enough to suspect abuse?
  - If not, an MFI may help to determine if the situation rises to the level of a reasonable cause to suspect abuse.
- If reasonable cause to suspect abuse is determined, assess if there is documentation that the same allegations being disclosed have already been reported.
  - If it is verified that the same allegations were previously reported to ChildLine and substantiated, then no report needs to be made. (Example: CY47 from previous placement was included in the paperwork.)
  - If unable to determine that the same allegations were previously reported to ChildLine, then a new report should be made if the child is disclosing details about the abuse. Reports which were unfounded previously due to the child not talking or only providing limited details can be re-opened/re-investigated based on “new information” obtained.
  - If the documentation is not available or if the allegations shared are different than what was previously reported, a report to ChildLine should be made.

The CPSL directs mandated reporters, which includes all residential child care staff, to make a report **immediately** when they have reasonable cause to suspect that the child is a victim of abuse. While the term “immediate” is not defined in the law, best practice is that the report be made as quickly as possible to ensure the child does not continue to be abused or unsafe. For residential child care staff, the immediate response also ensures that the needs of the victim child are addressed, including medical treatment and imminent safety considerations. This applies to the requirement for reporting suspected child abuse to ChildLine and also the requirements under Prison Rape Elimination Act of 2003 (PREA).

After the immediate needs of the child and other children are met, child residential facility management should make accommodations for their staff to make the report to ChildLine. This may require staffing changes to assure ratios are maintained or that delays in scheduled activities are accommodated.

It is important for residential child care staff to understand that there will be times when a report of suspected child abuse will not need to be made following an MFI or after receiving

other information that does not support a conclusion that, there is in fact, reasonable cause to suspect. It is an acceptable resolution to determine that no report is warranted.

If a decision is made that there is no reasonable cause to suspect abuse and therefore no mandated report, this does not conclude other internal investigations, reviews, or assessments that are needed, nor does it result in a determination that no action or follow-up review by the OCYF regional offices will occur. Also, determining that a report of suspected child abuse is not warranted does not negate the requirement that the incident be reported in HCSIS as necessary, based on Chapter 3800.16 and 3800.274 requirements and definitions related to Reportable Incidents and the PREA reporting requirements.

It is important to note that any sexual interaction, sexual contact or sexual harassment, between staff and child is to be reported to Childline, HCSIS/other agency reporting systems, and/or law enforcement directly or indirectly through ChildLine.

It is the interpretation of DHS that a residential or school setting does not meet the definition of a household, therefore, a fellow student or child could not be considered a household member and would not meet the definition of a perpetrator under the Child Protective Services Law. However, subject to §6304 (f), child to child sexual contact is required to be reported to ChildLine for referral to law enforcement in the following circumstances:

- a) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape);
- b) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);
- c) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault);
- d) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault);
- e) Indecent assault as defined in Pa.C.S. § 3126 (relating to indecent assault); and
- f) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

The PREA definitions that require reporting under that statute include:

1. Non-consensual sexual contact
  - a. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
  - b. Contact between the mouth and the penis, vulva, or anus;
  - c. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, other instrument;
  - d. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, when sexual in nature; and/or
  - e. Contact between children when they are outside the parameters of age of consent as dictated by the Child Protective Services Law § 6303' Definitions of Sexual Abuse or Exploitation.
2. Sexual Harassment – verbal, text, journaling, notes, computer
  - a. Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, physical contact, gestures, and actions of a derogatory/offensive sexual nature or creating an intimidating, hostile or offensive environment, by one person directed toward another.

PREA reporting requirements must continue to be followed as required by federal statute:

**§ 115.363 Reporting to other confinement facilities.**

- a) Upon receiving an allegation that a child was sexually abused while confined at another child residential facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred and shall also notify the appropriate investigative agency.
- b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
- c) The child residential facility agency shall document that it has provided such notification.
- d) The child residential facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

In addition, the incidents triggering a PREA report would also meet the criteria under Chapter 3800.16 (a) (6).

Nonconsensual contact and sexual harassment as defined in 1 and 2 of the PREA definitions, where the circumstances also include allegations that staff failed to act, require a report to be filed with ChildLine.

**Recommendations for Internal Follow-Up and Communication**

It is not only the duty of all mandated reporters to report cases of suspected child abuse, it is also critically important to ensure all parties are treated fairly and are continually kept well-informed throughout the process. In doing so, child residential facility providers strengthen their relationships with the children living at the facility, staff members, and stakeholders, ultimately creating a more effective treatment milieu within their agency. The following recommendations for child residential facilities offer guidance regarding communication with both children and staff.

When a Child Abuse Allegation is Made:

1. When an allegation is made and there is reasonable cause to suspect that abuse may have occurred, communication must occur with:
  - The alleged perpetrator (AP) to inform them of the allegations and the immediate consequences/plan of supervision/plans of action.
  - The mandated reporter, if not the child, to confirm with them that the allegation of abuse has been reported to ChildLine, agency management, and law enforcement if needed. Examples of such reporters may be another child residential facility staff person or a parent of the child. Identification of and a plan to address any safety concerns that may exist for the reporter (ex. The reporter may fear for their own safety after reporting) should be developed with discussion of next steps as necessary (interviews/investigations/witness statements).
  - The child based on their age and level of maturity. Examples of details that may be age and developmentally appropriate to discuss include:
    - Confirming that an allegation was made either by them or on their behalf.
    - Informing the child that their concern is being looked into including the communication with investigating parties and involved individuals.

- Identifying any plan of supervision or other measures put in place to ensure their immediate and future safety.
  - Identifying any safety concerns that may exist or potentially exist for the child and how they will be addressed.
2. At the conclusion of the Complaint and/or Child Protective Services (CPS) report investigation:
- The investigating OCYF staff is responsible for communicating the results of the investigation to the child, the alleged perpetrator, and the child residential facility management.
  - An in-person meeting should be scheduled for this purpose, however delays in coordinating this meeting should not delay communication to the parties involved regarding the outcome of the investigation.
  - This meeting is intended to be much more than presenting an opportunity to share the outcome of the investigation and should focus on ensuring that everyone involved understand the basis for the status determination and have an opportunity to fully discuss the circumstances surrounding the allegation/incident in order to rebuild the working relationship between the agency staff and the child, especially when both will be remaining at the same child residential facility.
  - The meeting should also address the ongoing treatment needs for the child, interventions/training for staff as needed, and identification of corrective actions to be taken by the agency.

Direct communication with the child should include the allegation of abuse that was reported, investigated, and resolved and how the final determination affects them (ex. Alleged perpetrator (AP) is no longer employed/AP is returning to work with them/etc.). If the AP continues to work with the child, the child should be engaged in discussion about the benefits in resolving the alleged incident with the staff and providing them the choice of having a meeting with the AP. Once again, identification of and efforts to address any ongoing concerns regarding the child's safety in the program moving forward are priorities.

Facilitation of this meeting and identification of individuals to participate should be determined on a case by case basis but may include:

- The child's therapist or case manager at the child residential facility who may prove to be the best resource for initiating and facilitating this conversation.
- The investigating agency that has responsibility for direct follow-up with the child after the investigation conclusion. The meeting should occur within five business days of the disposition determination to provide closure to the child and alleged perpetrator. The timing of the meeting does not preclude the child residential facility from returning the staff person to duty, either at another facility or within the same child residential facility as the child, provided that the staff person does not have unsupervised interaction with the child or participate in restraints with the child except in circumstances where the safety of the child, other children at the child residential facility or staff are at imminent risk. OCYF, as the investigating agency, should be a participant to have direct follow up with the child after the investigation conclusion.

### **Investigation of Reports of Suspected Child Abuse Including Plans of Supervision**

The OCYF Regional Offices are responsible for receiving reports of child abuse involving contractual conflicts with the registered county of jurisdiction. The Regional Office is



responsible for receiving these reports during normal business hours as well as evenings, weekends, and holidays. The Regional Office investigates and analyzes the allegations of child abuse and makes a determination regarding the status of the allegations. Based on the reports received and investigated, the Regional Office may present recommendations for services deemed necessary for the child and/or their family through the county agency and/or child residential facility directors.

Upon receipt of a report of suspected child abuse, ChildLine will notify the OCYF Regional Office of the report. Upon notice, the Regional Office immediately acknowledges receipt of the report. The OCYF Human Services Program Representative (HSPR) receiving the report from ChildLine initiates the investigation and takes action to ensure that the child is seen within 24 hours. The Regional Office must begin the investigation immediately and ensure that the child is seen immediately if protective custody is necessary, or if it cannot be determined by the information provided in the initial report if protective custody should be assumed. Upon initiation of the investigation, the following activities may be necessary:

- Contact with the child residential facility where the child resides.
- Contact with the county with physical custody of the child.
- Contact with the local county of jurisdiction to request a courtesy safety assessment.

Child residential facility staff may be named as perpetrator by omission for allegations of physical or sexual abuse involving:

- Incidents involving residents
- Staff negligence due to:
  - Lack of supervision (i.e. ratio, bed checks, safety plans, etc.)
  - Failure to follow agency policy

An OCYF regional office may request assistance of the county agency in the county where the child resides to see the child for initial screening and assurance of safety and well-being. If the alleged abuse involves a staff person from a county children and youth agency, the regional office may request a neighboring county conduct the initial screen and safety assurance. No other entity than a county children and youth agency can conduct the 24-hour contact on behalf of the regional office. If a child, or other child witnesses, are in another region, courtesy interviews can be requested.

Within the statutory authority of DHS OCYF, there is a requirement for the child residential facility to implement steps to assure the safety of the victim child and children entrusted to their care. In accordance with CPSL 6368 (i) relating to an investigation concerning a school or child-care service employee, the school or child-care service shall immediately implement a plan of supervision or alternative arrangement **for the individual under investigation** to ensure the safety of the child and other children who are in the care of the school or child-care service.

All plans of supervision or alternative arrangement must be approved by the regional office (or county agency) conducting the investigation and kept on file with the child residential facility until the investigation is completed. As the alternative plan of supervision is specific to ensure the safety of ALL children in the child residential facility, a plan is required whether or not the victim child is a currently residing or remains at the facility after the report has been filed.

Upon receipt of the plan of supervision, the plan will be reviewed by the regional office to determine if the following content areas are present and acceptable:

- The plan of supervision details how safety will be ensured for all children with whom the individual under investigation may have contact in the child residential facility.
- The plan of supervision is incident and circumstance specific and is not boilerplate in content.
- The plan of supervision must be specific to the allegations being investigated and consider the context of the circumstances surrounding the incident that resulted in a report being filed.
- The nature of the incident, type of injury or alleged abusive act, history and child residential facility agency structure must be considered in the review of the plan of supervision.

The following incidents are cause for staff removal from direct childcare duties and responsibilities when a report of suspected child abuse has been made alleging that a staff intentionally, knowingly or recklessly:

- a) Caused bodily injury as defined in §6303 (a) – impairment of physical condition or substantial pain – through any act or failure to act;
- b) Caused the death of a child through any act or failure to act;
- c) Caused sexual abuse or exploitation as defined in §6303 (a) through any act or to failure to act;
- d) Caused serious physical neglect as defined in §6303 (a) which placed the child at risk of death;
- e) Engaged in any other Per Se Act, as identified in §6303 (b.1) (8i-vii), where there is the presence of corroborating evidence, or a reliable witness to confirm the allegation;
- f) Created a reasonable likelihood of bodily injury or death through any act or failure to act; where there is the presence of corroborating evidence, or a reliable witness to confirm the allegation;
- g) Created a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act; where there is the presence of corroborating evidence, or a reliable witness to confirm the allegation;
- h) Fabricated, feigned or intentionally exaggerated or induced a medical symptom or disease which resulted in a potentially harmful medical evaluation or treatment to the child through any recent act;
- i) Caused or substantially contributed to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act;
- j) Engaged a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, Us U.S. C. §7102);
- k) Any other incidents not captured in a-f where reliable witnesses confirm the allegations; or
- l) Staff is currently under a lesser plan of supervision due to an allegation and another allegation is made that is being investigated.

In addition, if a child residential facility resident who is 18 or older is subject of an allegation that meets the criteria of suspected child abuse except for the age of the child and the timing of the alleged incident, the criteria for the plan of supervision applies and is to be followed in the same manner. It is also necessary that a report be filed with the local law enforcement agency and that a reportable incident be submitted in HCSIS.

If an incident does not meet the above criteria (a-l), such as an allegation of a Per Se Act or creating reasonable likelihood in which there is not corroborating evidence or a reliable witness identified at the time of the report filed, the plan of supervision can be:

1. The alleged perpetrator(s) cannot be alone with the subject child or any other child; and
2. The alleged perpetrator(s) cannot initiate restraints and cannot participate in restraints (exception is being the observer) unless there is imminent risk to staff or other child where it is necessary for the staff to become involved after the initiation of the restraint.

During the course of the investigation (24-hour assessment or following interviews of involved parties), OCYF or the investigating county agency can determine whether a change in the plan of supervision is necessary. The investigating authority or licensing authority may require a different plan of supervision if during the investigation, a change is determined to be necessary and appropriate. The plan of supervision may be increased or lessened based on consideration of all relevant factors, including, but not limited to:

- The severity of the allegations.
- The number of staff members implicated.
- The nature and existence of documentation or facts that the allegations are false.
- Whether removal of staff, considering the specific nature of the allegations, would threaten the safety of children in the facility, including consideration of ratios and other safety issues.

Modifications to, or the lifting of, a plan of supervision, can only occur with the approval of the licensing authority or investigating agency. The plan of supervision must remain in effect throughout the course of the investigation. When the investigation has been completed, supervisory review and approval obtained, and a determination made that the report status is Unfounded, the child residential facility is informed of the outcome and the plan may be lifted.

It is expected that child residential facility will implement a plan of supervision at the time ChildLine is contacted to initiate a report of suspected child abuse. If the child residential facility confirms with the OCYF regional office that the report was classified as a complaint, the child residential facility, through consultation with the regional office, can revise the plan of supervision based on the assessment of the safety of children at the facility.

The plan of supervision as identified above is the minimum acceptable plan that a child residential facility may exercise to ensure the safety of the alleged victim child and all children under their care. Nothing in this policy precludes a child residential facility from implementing a more restrictive plan of supervision or taking disciplinary actions with their staff.

It is critical that investigating agencies thoroughly investigate child abuse allegations while also ensuring there are no unnecessary delays in concluding the investigation and determination as it impacts staffing ratios, treatment, and the children served.

If a report is substantiated, in accordance with Title 55, PA Code: Chapter 3490.56 (e), the investigating agency shall request a written statement from the person in charge of the child care service or child residential facility related to the plan of supervision in place. The plan should address steps planned and taken to ensure the future safety of the child and other children in the care of the child care service or child residential facility. The request shall be made within 5-calendar days of when the status determination was made. The person in

charge of the child care service or child residential facility shall submit a written response to the investigating agency within 10-calendar days of the mailing date of the investigating agency's letter. If the plan of supervision is unacceptable to the investigating agency, the county agency shall take appropriate action to ensure the safety of the children in the child care service or child residential facility.

Upon confirmation by the regional office that the referral was classified as a complaint, a Plan of Supervision may be revised or removed based on the assessment of the safety of residents and agreement by the Regional Office. This assessment process may include consideration of all relevant factors, including, but not limited to:

- The severity of the allegations;
- The number of staff members involved;
- The nature and existence of documentation or facts that the allegations are false;
- Whether removal of staff, given the specific nature of the allegations, would threaten the safety of children in the facility, including consideration of ratios and other safety issues.

***NOTE:*** A child residential facility is required to place a staff person on a plan of supervision when it becomes aware that the staff person is named as an alleged perpetrator of suspected abuse. The child residential facility is not automatically required to place a staff person on plan of supervision that involves removal from child care duties when it becomes known that the staff person is under investigation as an alleged perpetrator in a report of suspected child abuse involving their own child, or another child unrelated to their role as a child residential facility agency staff person. The child residential facility should assess each scenario based on information available to them and take the necessary steps in ensuring the safety of the children residing at the facility.

***NOTE:*** If a ChildLine call has been classified as a Complaint and not a CPS report, the child residential facility may not hear from the regional office within 24 hours. If the child residential facility is unsure whether a call has been classified as a CPS or a Complaint, the facility should call or contact the regional office or investigating agency directly.

### **Reportable Incidents and Complaints - Appropriate Reporting Options, Communication Expectations and Timely Resolution**

#### **Reportable Incidents**

Chapter 3800 regulations address requirements for those situations requiring a report to be made to DHS and contracting agencies. Reportable incidents that rise to the level of reasonable cause to suspect child abuse must be reported to ChildLine immediately.

While most situations listed as reportable incidents do not rise to the level of having reasonable cause to suspect that a child has been or is at imminent risk of being abused, there are several that do require duplicate reporting through ChildLine and the current electronic reporting system to notify DHS and contracting counties, the Home and Community Services Information System (HCSIS).

Situations requiring reports be made to both Childline as suspected child abuse and HCSIS as reportable incidents, include but are not always limited to the following if there is reason to suspect that a staff person acted intentionally, knowingly or recklessly creating a situation in which a child was abused or placed at risk of abuse.

- A death of a child (a report must be made within 12 hours).
- An injury, trauma or illness of a child requiring inpatient treatment at a hospital.
- A serious injury or trauma of a child requiring outpatient treatment at a hospital.

Situations meeting the criteria listed below are to be reported to DHS and the contracting agency within 24 hours through HCSIS, unless the report is for a fire requiring the relocation of children, or a child who is missing from the child residential facility and police have been notified, which all must be reported to both the regional DHS office and the contracting agency within 12 hours.

- A physical act by a child to commit suicide. However, if this physical act was due to alleged neglect or lack of supervision by child residential staff, it may rise to a ChildLine report of suspected abuse.
- An injury, trauma or illness of a child requiring inpatient treatment at a hospital if not related to suspected actions or omissions of a staff person.
- A serious injury or trauma of a child requiring outpatient treatment at a hospital, not to include minor injuries such as sprains or cuts, if not related to suspected actions or omissions of a staff person.
- A violation of a child's rights. However, if the act was committed by staff and physical abuse was suspected, a ChildLine report must be made. If the use of force by a child residential facility staff would have likely caused physical injury (creating a reasonable likelihood of bodily injury) or the use of physical violence endangered the child (Per Se Definitions), a ChildLine report must be made.
- Intimate sexual contact between children, consensual or otherwise, unless such contact occurred as a direct result of lack of appropriate supervision by a child residential facility staff of when a safety plan to keep the two children separated was not followed by staff, requiring a ChildLine report to be made.
- A child absence from the premises for 4 hours or more without the approval of staff persons, or for 30 minutes or more without the approval of staff persons if the child may be in immediate jeopardy. If the child has at-risk behaviors that staff are aware of and they either fail to intervene or fail to follow the safety plan by doing nothing to prevent the absence, therefore placing the child at risk (creating a reasonable likelihood of bodily injury), a ChildLine report should be made.
- Abuse or misuse of a child's funds.
- An outbreak of a serious communicable disease as defined in 28 Pa. Code § 27.2 (relating to specific identified reportable diseases, infections and conditions).
- An incident requiring the services of the fire or police departments, unless such service is related to an allegation of abuse by staff at the child residential facility.
- Any condition which results in closure of the child residential facility.

At what point does an injury from a restraint rise to the level of abuse? An injury from a restraint in-and-of itself does not mean a report of suspected abuse needs to be made. The law requires that a report be made if there is reasonable cause to suspect abuse. Therefore, if the injury was clearly accidental (no intent to harm nor acting recklessly), then the mandated reporter may not have "reasonable cause to suspect abuse." A child could sustain an injury from a restraint and it not be considered suspected abuse if the injury was self-inflicted by the child or if the injury was reasonable for the type of restraint being used (with no suspected excessive force). However, if there is reasonable cause to suspect an intention on the staff's part to harm the child OR that the staff acted recklessly OR that there was excessive force

used during the restraint which caused the injury, then a report of suspected child abuse should be made to ChildLine.

Each child residential facility must have written policies and procedures on the prevention, reporting, investigation and management of reportable incidents and for keeping a copy of each report filed.

These policies must address how the initiation of an internal investigation of a reportable incident immediately following the report of the incident and projected reasonable timelines in which this investigation will be completed. The child residential facility must submit a final reportable incident report to DHS and the contracting county immediately following the conclusion of the investigation.

The child residential facility is also responsible to notify the child's parent and, if applicable, a guardian or custodian, immediately following the filing of a reportable incident relating to a specific child, unless restricted by applicable confidentiality statutes, regulations or an individual child's court order.

It is critically important to use only MFI practices, previously addressed in this Bulletin, to assist in determining if there is reasonable suspicion to believe that child abuse has occurred, allowing for an untainted investigation to be completed by DHS regional or county staff or law enforcement.

### **Reports Made Through ChildLine Classified as Complaints Not Meeting Child Abuse Definitions**

While efforts have been made and are continuing to inform, educate and support mandated reporters to report reasonable suspicion of child abuse in a timely and direct manner, there is still confusion in the field as to when and what must be reported through ChildLine and those situations more appropriately addressed through other reporting and investigative options. Some of these misdirected ChildLine reports are made by mandated or permissive reporters external to the child residential facility but may directly involve allegations made against staff or take issue with facility policies or practices. Some reports are made by child residential facility staff when allegations are raised by a child residing at the facility. And other reports involve a child over the age of 18, who although is no longer protected by the provisions of the CPSL, is still offered protections through a complaint investigation process.

If a report made through ChildLine alleges a concern that does not rise to the level of suspected child abuse, it is now categorized as a "Complaint." A complaint is the classification also used when a referral source alleges an agency or a facility did not follow a provision of the CPSL, regulations, policy and/or procedures.

Communication by child residential facility staff with the OCYF regional office becomes a critical piece of ensuring that timely notifications, related investigations and resolution are supported. At times, the mandated reporter is not advised and may not be aware of ChildLine staff accepting and sending the report on to the investigating entity as a suspected child abuse report or if it will be directed to the regional OCYF office as a complaint. If addressed as a ChildLine report, OCYF is to initiate contact with the child residential facility in compliance with the timelines for investigations as delineated in the CPSL.

- Immediately, if:
  - Emergency protective custody is required, has been or will be taken; or
  - It cannot be determined from the report whether emergency protective custody is needed.
- Within 24 hours of receipt of the report in all other cases.

If a ChildLine call has been classified as a complaint and not a CPS report, the child residential facility will likely not hear from the regional office within 24 hours. If the child residential facility is unsure whether a call has been classified as a CPS or a complaint, efforts to contact the OCYF regional office should be initiated. This provides clarification as needed to verify if the complaint fits the criteria as a reportable incident and supports the ability of the child residential facility to proceed with an internal investigation and notifications as referenced in the Chapter 3800 regulations.

OCYF reserves the right to exercise discretion as to whether an on-site meeting and or further investigation is warranted after reviewing the information forwarded to the regional office as a complaint. In some situations, identified concern and issues may be addressed and resolved through follow-up telephone contact with child residential facility.

### **Recordable Incidents**

Chapter 3800 regulations also delineate incidents that must be recorded in some formatted manner at the child residential facility and be made available for review by OCYF upon request. These recordable situations include:

1. All seizures. If there is reason to suspect that the seizure was caused by staff neglect in administering medication as prescribed it is necessary to document the incident as a medication administration error and may rise to the level of suspected Child abuse requiring a ChildLine report.
2. Suicidal gestures. A ChildLine report may be indicated if such gestures were as a direct result of neglect or lack of supervision by staff.
3. Any incidence of intentionally striking or physically injuring a child. A ChildLine report may be indicated if the act was committed by staff and physical abuse was suspected or if the use of force would have likely caused physical injury (creating a reasonable likelihood of bodily injury) or the use of physical violence that endangers the child (Per Se Definitions)
4. Property damage of more than \$500.
5. A child absence from the premises without the approval of staff persons, that does not meet the definition of reportable incident in § 3800.16(a) (relating to reportable incidents). A ChildLine report may be indicated if the child has at-risk behaviors that staff are aware of and they either fail to intervene or fail to follow the safety plan by doing nothing to prevent the absence, therefore placing the child at risk (creating a reasonable likelihood of bodily injury).
6. Injuries, traumas and illnesses of children that do not meet the definition of reportable incident in § 3800.16(a), which occur at the facility. A ChildLine report may be initiated if physical abuse or serious physical neglect was suspected by staff.

### **Internal Documentation Recommendations**

Internal child residential facility documentation is critical when making a determination about whether or not a report of suspected child abuse should be made to ChildLine. This section contains both recommendations and requirements for providers related to the documentation of interviews conducted with children and staff. Documentation requirements mandated through the CPSL are also identified in this section. All other references to documentation format and content are considered best practice.

Thorough documentation should occur when information is brought to the mandated reporter's attention either through disclosure or as witness to behaviors or an incident within the child residential facility. Internal documentation can include a copy of the CY-47, Report of Suspected Child Abuse, however, it is important to note that the CY-47 is **only** required when a call is placed to ChildLine to report suspected child abuse. The CY-47 is **not required** when the report of suspected child abuse is made electronically.

#### **Documentation When There is Reasonable Cause to Suspect Child Abuse**

When information is brought to the mandated reporter's attention either through disclosure or as a witness to behavior or an incident within the child residential facility and there is reasonable cause to suspect abuse occurred, a child residential facility staff person is expected to document what was disclosed to them and/or their observations. If a staff person conducts a Minimal Facts Interview (MFI) to gather more information to determine if there is reasonable cause to suspect abuse, documentation must be completed that provides the content of this interview. While there is no specific format required, the following information should be included within internal documentation such as HCSIS, CWIS Self-Service Report, CY-47 and/or Internal Incident Reports:

1. Name of the child;
2. Date and time of the disclosure;
3. Statement related to what prompted the child to disclose alleged abuse to the child residential facility staff person;
4. Statement of what the child disclosed, use of quotations is preferred;
5. Identification of the alleged perpetrator and information obtained during the disclosure about the alleged perpetrator;
6. Statement from the child residential facility staff identifying any observations made throughout the disclosure of the abuse;
7. Information that the child residential facility staff person communicated to their supervisor;
8. Information specific to the report to ChildLine; including the identity of the ChildLine Caseworker spoken to, time, and date of the report.
9. If the report is completed online, a summary of the report can be printed and should be maintained with the internal child residential facility documentation; and
10. A signed and dated CY-47 by the child residential facility staff if the report is made via telephone.

#### **Documentation When There is Not Reasonable Cause to Suspect Abuse**

When information is brought to the mandated reporter's attention either through disclosure or as a witness to behavior or an incident within the child residential facility and there is not reasonable cause to suspect that abuse occurred, a child residential facility staff person is



expected to document what was disclosed to them after the MFI is completed. Documentation of this information as the basis of the decision that reasonable cause to suspect abuse does not exist is critical, as children at the child residential facility may make allegations of alleged abuse to other individuals, or report that staff at the facility were aware of the alleged abuse and did not take action.

Child residential facility staff must ensure that thorough documentation of the allegations/incident, information obtained through MFI and the reasons/rationale as to why it was determined that there was no reasonable cause to suspect that child abuse occurred, to create an accurate and detailed record for later reference as needed. While there is no specific format required, the following internal documentation should include:

1. Name of the child;
2. Date and time of the disclosure;
3. Statement related to what prompted the child to disclose alleged abuse to the child residential facility staff person;
4. The child's statement, use of direct quotations is preferred;
5. Identification of the alleged participant(s) and information obtained during the disclosure about the alleged participant(s);
6. For situations in which reasonable cause to suspect does not exist, identification of individuals allegedly involved;
7. Statement from the child residential facility staff identifying observations made throughout the disclosure of the abuse including information supporting why the disclosure did not meet the criteria of reasonable cause to suspect abuse occurred; and
8. Information that the child residential facility staff person disseminated to their supervisor.

The documentation and detail outlined above is an essential component in child residential facility internal investigations and regional OCYF reviews of allegations and incidents at the child residential facility.

It is also important to note that residential or school setting does not meet the definition of a household, therefore, a fellow student or child in a residential facility is not considered to be a household member and would not meet the definition of a perpetrator under the Child Protective Services Law and a report of suspected child abuse would not be warranted.

If reasonable cause to suspect child abuse does not exist, or the definition of alleged perpetrator does not apply, the incident may be either a recordable or reportable incident. There are some situations in which reports fall into more than one of these categories. Additional information addressing reportable and recordable incidents and complaint investigations are addressed in Section V of this practice guide.

## **ATTACHMENT A**

### **Classification Examples of ChildLine Reports**

At the time a report of suspected child abuse is made to ChildLine, the referral information is reviewed and assessed in context of the provisions of the CPSL. Not all referrals to ChildLine are considered reports of suspected abuse and categorized as child protective services (CPS) nature. The classification of a CPS is dependent on the information provided to ChildLine at the time of reporting. The following scenarios are common examples of referrals made to ChildLine regarding incidents involving child residential facility staff and children. These examples are not inclusive of all types of reports made.

**Example:** *Allegations of verbal threats of physical harm toward the child without an actual attempt to harm the child.*

**Referral Information:** A child has made an allegation that a staff member threatened to punch the child in the face and “drop” the child on his back. The argument started over the child not complying with rules and regulations of the child residential facility. The child felt that the staff was being disrespectful, and the staff reported that the child was not being compliant. This referral would not be identified as a CPS referral.

**Additional Information for CPS:** In this example, a CPS could be considered if staff made an attempt to punch the child or contact the child in a manner that would endanger the child, but the child was not injured due to chance, third party intervention, the direct actions of the child, or another act that ultimately removed the child from the direct threat of harm.

**Example:** *Allegations of pushing, throwing or shoving the child with no information regarding level of force used or whether there was an injury or risk of injury to the child.*

**Referral Information:** A child reported that he engaged in a verbal altercation with a staff member and that the staff member pushed him against a wall. The child’s arm shows a fingerprint bruise. This referral would not be identified as a CPS referral.

**Additional Information for CPS:** In this example, the level of force involved with the push is a key factor in considering a CPS. Would a reasonable person believe that the child would have likely sustained substantial pain or impairment from the incident? Other factors would include the location of the child’s body that made contact with the wall and what material the wall was made from (concrete versus drywall).

**Example:** *Allegations of the use of unapproved physical intervention technique of the child.*

**Referral Information:** A child was restrained after attempting to assault another child. The involved staff members held the child down face first in a prone position on the floor while the child was trying to free himself. The prone position is not an approved restraint technique due to possibility of restricted breathing to the child. There were no known injuries to the child. This referral would not be identified as a CPS referral.

**Additional Information for CPS:** In this example, a CPS could be considered if it was likely that the child would have received substantial pain or impairment from the incident or if the child's breathing was interfered or restricted. Was there reasonable suspicion that the staff acted intentionally, knowingly or recklessly when they restrained the child that led to breathing impairment or the likelihood of substantial pain or impairment?

**Example:** *Allegations that a staff member's comments and interactions made the child feel uncomfortable.*

**Referral Information:** A child was speaking with his program counselor and reported that a way staff speaks to him, looks at him, and stands too close when talking to him, makes him feel uncomfortable. The child states the staff always wants to make personal contact and looks into his bedroom at night. This referral would not be identified as a CPS referral.

**Additional Information for CPS:** In this example, a CPS could be considered if there was more information as to what specific actions make the child feel uncomfortable; descriptions of interactions between the staff and child where the child felt uncomfortable. What specifically does the staff say or what manner is it said? What type of personal contact and under what circumstances? Where was the child touched and was the touching physical or sexual in nature?

### **Example of Perpetrator by Omission Referrals:**

It is the interpretation of DHS that a residential or school setting does not meet the definition of a household, therefore, a fellow student or child could not be considered a household member and would not meet the definition of a perpetrator under the Child Protective Services Law. The following scenarios are examples of when a staff person may be identified as an alleged perpetrator by omission. These examples are not inclusive of all types of reports made.

**Example 1:** Two children were engaged in a sexual act, but one of the children said that the sexual act was forced upon them. The staff member that was to be supervising the child failed to complete their supervision checks in the allotted timeframe (i.e. failing to follow the agency's policy).

**Example 2:** A child has made numerous complaints of being sexually harassed by another child to staff member (A), but staff member (A) continues to neglect the allegations. The child continues to be sexually harassed by the same child and has now brought this to the attention of staff member (B). The child also notifies staff member (B) that staff member (A) was told of all the alleged incidents and has done nothing about it. Staff member (B) would call Childline to report neglect of reporting by staff member (A) according to their agency policy. Staff member (B) would also contact their local law enforcement due to the repeated and unwelcomed advances of sexual harassment.

**NOTE:** *Reports of sexual contact between children that meet the PREA definitions of Non-consensual sexual contact and/or Sexual harassment are subject to PREA reporting requirements regardless of whether or not a staff person has been identified as an alleged perpetrator by omission.*

## **REFERENCES AND RESOURCES**

**DHS Keep Kids Safe Website:** [www.KeepKidsSafe.pa.gov](http://www.KeepKidsSafe.pa.gov)

For a copy of the current Pennsylvania Child Protective Services Law, please see:  
<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/00.063..HTM>

For additional resource information on reporting requirements, please see:  
<http://www.keepkidssafe.pa.gov/>

**Pennsylvania Code Online:** [www.PaCodeandBulletin.gov](http://www.PaCodeandBulletin.gov)

For a complete copy of the Chapter 3800 Child Residential and Day Treatment Regulations, please see: <https://www.pacode.com/secure/data/055/chapter3800/chap3800toc.html>

***NOTE:*** A separate Bulletin establishing guidelines and procedures for appropriately reporting incidents involving adjudicated dependent, delinquent and dually adjudicated children and youth served by licensed DHS agencies and facilities under Chapters 3130, 3680, 3700, 3350 and 3800 will be developed to support timely and comprehensive reporting of incidents.

### **Training for Child Residential Facility Staff as Mandated Reporters**

DHS is supporting a specialized training effort addressing child abuse recognition and reporting training through a contracts with the [Pennsylvania Family Support Alliance](#) to provide training child residential staff, their related purchasing entities and local law enforcement agencies.