



OFFICE OF CHILDREN, YOUTH AND FAMILIES BULLETIN

COMMONWEALTH OF PENNSYLVANIA * DEPARTMENT OF PUBLIC WELFARE

NUMBER:

3800-10-01

ISSUE DATE:

August 4, 2010

EFFECTIVE DATE:

August 30, 2010

SUBJECT:

Act 45 of 2010 Regarding Restraint Use and Reporting Requirements of Pregnant Females

BY:

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SCOPE:

County Children and Youth Social Service Agencies Administrators
Private Children and Youth Social Service Agencies
Chief Juvenile Probation Officers
Juvenile Court Judges
Juvenile Court Judges' Commission
State Youth Development Centers/Youth Forestry Camps
Child Residential and Day Treatment Programs
Juvenile Detention Center Administrators

PURPOSE:

The purpose of this bulletin is to transmit requirements and guidance related to the implementation of Act 45 of 2010 to programs who serve alleged and adjudicated delinquent youth, including programs licensed under 55 Pa. Code Chapter 3800 (relating to child residential and day treatment programs) as well as Youth Development Centers (YDC) and Youth Forestry Camps (YFC) operated by the Department of Public Welfare (Department), Office of Children, Youth and Families (OCYF).

BACKGROUND:

Senate Bill 1074, Printer's Number 1776 of the 2009 Session of the General Assembly was signed into law by Governor Edward G. Rendell on July 2, 2010 as Act 45. It is effective on August 30, 2010, 60 days from the date of signature.

Act 45 amends Title 61 (Penal and Correctional Institutions) of the Pennsylvania Consolidated Statutes, and prohibits the application of restraints to pregnant females who are alleged or adjudicated delinquent during labor, unless the failure to restrain would likely result in risk of imminent flight or jeopardize the safety of the youth, facility or medical staff, other youth or the public. Act 45 applies to youth who are alleged or adjudicated delinquent, and are being served in YDCs and YFCs,

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Appropriate Regional Office

Origin: Darlene Black, 717.787.3987

and programs licensed under 55, Pa. Code Chapter 3800 (relating to child residential and day treatment programs) pursuant to a court order. Those court orders requiring that the youth remain at those facilities provide the force of law such that the facilities have the authority to “detain” them for the purposes of Act 45. The requirements of Act 45 expands regulatory requirements for programs licensed under 55 Pa. Code Chapter 3800 (relating to child residential and day treatment programs). Programs licensed under 55 Pa. Code Chapter 3800 (relating to child residential and day treatment programs) need to adhere to Act 45 as well as Chapter 3800.

The use of restraints on youth as an intervention is a growing concern within this Commonwealth, nationally and internationally, as youth have been injured, emotionally traumatized and have even died as a result of the unnecessary use of restraints. The Chapter 3800 regulations prohibit the use of restraints except for an immediate emergency when the youth or someone else’s physical safety is in immediate jeopardy, and then only with careful safeguards. Restraints pose a risk of serious injury or death to the child or staff; emotional harm and trauma to the child or staff; and also disrupt the relationships among the child, family members, peers and staff. Even if no physical injury is sustained, youth can be severely traumatized during restraint.

Despite regulatory prohibitions, restraints are sometimes imposed on youth for non-emergency reasons. *The non-emergency use of restraints is prohibited by regulation; and when they occur, they place youth at risk of emotional trauma, injury and even death.* Non-emergency uses of restraints include, but are not limited to, applying restraints in an effort to control the environment, to coerce or to punish the youth or to correct the youth’s behavior. Applying non-emergency restraints to control the environment may include efforts to curtail the youth’s movement to compensate for having insufficient staff, or to avoid providing less restrictive interventions. Applying non-emergency restraints to coerce youth may include efforts to compel a youth to comply with the staff’s wishes, such as following a rule or directive. Non-emergency restraints may also be applied to punish, or impose penalties on a youth. *The non-emergency use of restraints is prohibited. Act 45 does not change this prohibition.*

Pennsylvania’s Efforts to Eliminate Unnecessary Restraints

On January 30, 2006, the Department issued a Special Transmittal entitled “Strategies and Practices to Eliminate Unnecessary Use of Restraint” which provided guidance to child residential and day treatment programs on implementing strategies and practices targeted to eliminating the use of unnecessary restraint and to promote environments free of violence and coercion through safe and best practice management of children and youth. The Department partnered with families, advocates, and public and private children and youth agencies in this effort.

On December 19, 2009, the Department issued Bulletin Number 3800-09-02, entitled “Prone Restraints in Children’s Facilities”. This bulletin clarifies that prone position manual restraints are prohibited in child residential and day treatment facilities, and Department-operated YDCs and YFCs. A prone restraint (in which a youth is held face down) can be especially dangerous because the maneuver can put pressure on the youth’s trachea, heart, lungs, and diaphragm. Because prone position restraints apply pressure or weight on a youth’s respiratory system, they are prohibited by 55 Pa. Code § 3800.211(b) (relating to manual restraints). On the same date, Bulletin Number 3800-09-01, entitled “Strategies and Practices to Eliminate the Use of Unnecessary Restraints”, was also issued, which was developed in partnership with the Alternatives to Coercive Techniques (ACT) work group and providers, to provide additional guidance regarding strategies and practices to help

eliminate the use of unnecessary restraints in children's facilities. The ACT Core Competencies, which were also developed in partnership with the ACT work group and providers, were also distributed, which presents basic practice ideals that apply when working with children and youth in all settings. The ACT Core Competencies incorporate the ideals of leadership, mentoring, trauma informed interactions, modeling and youth and family involvement, and serves to reinforce basic practice principles in an easy to use and applied manner. The values and competencies included in this document support the desired cultural shifts toward reducing and eliminating restraints.

DEFINITIONS UNDER ACT 45:

Correctional Institution – Any entity under the authority of the state, or any county or municipality that has the power to detain and restrain a person under the laws of this Commonwealth. *(Note: this includes youth who are alleged or adjudicated delinquent, including youth served in YDCs and YFCs, and programs licensed by the Department under 55 Pa. Code Chapter 3800 (relating to child residential and day treatment programs)).*

Detainee – Includes any person detained under the immigration laws of the United States at any correctional facility.

Labor – The period of time before birth during which contractions are of sufficient frequency, intensity and duration to bring about effacement and progressive dilation of the cervix. The determination of when labor has commenced shall rest solely with the medical providers of the prisoners or detainee.

Postpartum – The period following delivery before a prisoner or detainee has been discharged from a medical facility.

Prisoner – Any person incarcerated or detained in any correctional institution who is accused of, convicted of, sentenced for or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial release or a diversionary program. *(Note: this includes youth who are alleged or adjudicated delinquent, including youth served in YDCs and YFCs, and programs licensed under Title 55, Pa. Code Chapter 3800 (relating to child residential and day treatment programs)).*

Restraint – Any physical hold or mechanical device used to control the movement of a prisoner's or detainee's body and limbs, including, but not limited to, shackles, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security (tether) chain or a convex shield.

DISCUSSION:

1. LIMITATION ON USE OF RESTRAINTS:

Act 45 prohibits the application of restraints during any stage of labor, any pregnancy-related medical distress, any period of delivery, any period of postpartum, or transport to a medical facility as a result of any of the preceding conditions or transport to a medical facility after the beginning of the second trimester of pregnancy. Leg or waist restraints are not permitted on a known pregnant female youth who is in labor. The law states that the determination of when labor has commenced will be made solely by the attending medical provider.

Act 45 provides an emergency exception, that restraints may be permitted after staff assigned to the pregnant youth have made an individualized determination, that the youth represents a substantial risk of imminent flight or needs to be restrained to ensure the safety and security of the youth, other youth, the staff or the public as a result of other extraordinary medical or security circumstances. If a youth is restrained for any reason, the type of restraint and how it is applied must be in the least restrictive manner possible, especially when the staff has actual or constructive knowledge that the youth is in the second or third trimester of pregnancy. During the restraint, the youth must be attended at all times by staff with the ability to release the restraint should a release become medically necessary. Staff must monitor the youth during transport to and from the medical facility and during her stay at the medical facility. All restraints must be removed immediately upon request from an attending medical professional.

Although the statute requires reporting restraints only for known pregnant females who are alleged or adjudicated delinquent, OCYF strongly recommends implementing the best practice of also reporting restraints applied to known pregnant females who are alleged or adjudicated dependent. Many programs licensed or operated by the Department serve both, alleged or adjudicated delinquent youth as well as, alleged or adjudicated dependent youth, including youth who are dually adjudicated. Reporting restraints for both alleged and adjudicated delinquent and dependent youth who are pregnant will provide safety and protect the rights of both populations of youth, and also provide consistency in tracking to support quality assurance in programs.

2. REPORTING PROCEDURES:

Under Act 45, child residential and day treatment programs and Department-operated YDCs and YFCs are required to report each restraint applied to known pregnant females who are alleged or adjudicated delinquent. The report must include:

- a description of the circumstances that led to the restraint;
- circumstances that led to the determination that the known pregnant female youth represented a substantial risk of imminent flight, or that other extraordinary medical or security circumstances dictated that the known pregnant female youth be restrained to ensure safety and security of the female, the staff, other residents or the public;
- type of restraint(s) applied;
- narrative description of the restraint or restraints applied;
- date, time, duration of restraint or restraints and location of where restraint or restraints occurred;
- name of staff person(s) who applied the restraint or restraints;
- name of staff person(s) who observed the child during the restraint or restraints;
- child's condition following the restraint or restraint(s);
- medical treatment, if provided;
- de-briefing activities; and
- plan for intervention to reduce or eliminate restraints for the known pregnant female youth.

The report must be submitted on the form attached to this bulletin entitled "Pregnant Females Restraint Reporting Form". At this time, this report will not be submitted through Home and Community Services Information System Incident Management System (HCSIS) as HCSIS does not currently capture data related to restraints unless the incident results in injury, nor does it denote when a youth is pregnant. Therefore, the reporting of restraints applied to these youth will be through

a manual process. The report can be completed electronically and transmitted via secure email. This manual reporting form can also be used to report on restraints of known pregnant females who are alleged or adjudicated dependent. In the future, this data will be captured electronically.

Reports must be submitted to the OCYF Regional Office within 24 hours of the occurrence of the restraint. This time frame is consistent with Section 3800.16 (c) (relating to reportable incidents).

Department-operated facilities, including YDCs and YFCs, currently utilize the Automated Intake and Incident Reporting System (AIIRS) to gather information on restraints occurring in those facilities. Since AIIRS already captures the required data elements of this statute, the Department-operated facilities will continue to use this reporting system. AIIRS reports are to be completed and submitted to OCYF Bureau of Juvenile Justice Services (BJJS) staff within 24 hours of the occurrence of the restraint. BJJS staff will be responsible to forward the reports to the OCYF Regional Office where the program is located upon receipt.

In accordance with Section 3800.16 (h) (relating to reportable incidents), following the application of a restraint to a known pregnant female youth who is alleged or adjudicated delinquent or dependent, the program is required to notify the parent and, if applicable, a guardian or custodian, unless restricted by a court order.

3. ANNUAL REPORT:

The Secretary of the Department of Public Welfare is required to submit an annual report to the Governor's Office no later than August 1 of each year. The report will contain compiled information regarding the use of restraints on known pregnant females who are alleged or adjudicated delinquent during the preceding fiscal year, specifically identifying and enumerating the circumstances that led to the determination that the youth posed a substantial risk of imminent flight or extraordinary medical or security circumstances that dictated the restraint was necessary to assure the safety and security of the youth, staff and other residents, or the public. As the Act is effective August 30, 2010, the first report, to be submitted no later than August 1, 2011, will not be a full fiscal year report as it will only cover the period from August 30, 2010 to June 30, 2011. Thereafter, subsequent reports will reflect information on a full fiscal year. No identifying information will be used in the annual reports. As mandated by the statute, the annual reports will be posted on the Governor's Internet website and these annual reports will be made available at the Department for public inspection.



F. ACTION TAKEN: See instructions. (Use additional sheets if necessary).

(This area is intentionally left blank for reporting actions taken.)

G. NOTIFICATION:

_____	<input type="checkbox"/> YES	Date	Time	<input type="checkbox"/> AM
Parent/Guardian/Custodian	<input type="checkbox"/> NO	____ / ____ / _____	____ : ____	<input type="checkbox"/> PM
_____	<input type="checkbox"/> YES	Date	Time	<input type="checkbox"/> AM
Parent/Guardian/Custodian	<input type="checkbox"/> NO	____ / ____ / _____	____ : ____	<input type="checkbox"/> PM
_____	<input type="checkbox"/> YES	Date	Time	<input type="checkbox"/> AM
Parent/Guardian/Custodian	<input type="checkbox"/> NO	____ / ____ / _____	____ : ____	<input type="checkbox"/> PM
_____	<input type="checkbox"/> YES	Date	Time	<input type="checkbox"/> AM
CCYA/JPO	<input type="checkbox"/> NO	____ / ____ / _____	____ : ____	<input type="checkbox"/> PM
_____	<input type="checkbox"/> YES	Date	Time	<input type="checkbox"/> AM
Regional Office of DPW	<input type="checkbox"/> NO	____ / ____ / _____	____ : ____	<input type="checkbox"/> PM

H. CONTACT INFORMATION:

Name of person completing report:

Last First MI Title

Signature of Reporter Date Signature of Supervisor Date

Contact Person Name Contact Person Telephone #



A. FACILITY INFORMATION

Enter the name and address of the legal entity. If the facility name or address differs from that of the legal entity, enter the facility name or address. Enter the certificate of compliance number and the county in which the facility is located. Specify the type of facility from the options listed on this form in section A.

B. CHILD INFORMATION

Enter all identifying information regarding the child, including full name; sex, date of birth; social security number; and name of the County Children & Youth Agency, CCYA, or Juvenile Probation Office, JPO, involved with the youth. Specify the legal status of the child from the options listed on this form in section B.

C. DATE/TIME OF RESTRAINT

Enter the date and time the restraint occurred.

D. TYPE OF RESTRAINT

Specify the types of restraint(s) used. Check all that apply.

E. DESCRIPTION OF RESTRAINT

Complete a separate PREGNANT FEMALES RESTRAINT REPORTING FORM for each restraint episode. Enter descriptive information regarding:

- Description of circumstance that led to the restraint(s);
- Circumstances that led to the determination to restrain;
- Type of restraint(s) applied;
- Narrative description of the restraint(s) applied;
- Date, time, duration of restraint(s) and location of where restraint(s) occurred;
- Name of staff person(s) who applied the restraint(s);
- Name of staff person(s) who observed the child during the restraint(s); and
- Child's condition following the restraint(s).

F. ACTION TAKEN

Enter descriptive information regarding:

- De-briefing activities;
- Medical treatment, if provided; and
- Plan for intervention to reduce or eliminate restraints.

G. NOTIFICATION

Indicate whether or not the people listed on this form in section G were notified of the restraint; enter the date and time that they were notified.

H. CONTACT INFORMATION

Enter the name and title of the person completing this report; have the person completing the report and their respective supervisor sign and date the form; provide a contact name and telephone number.