

## INSTRUCTIONS ON REPORTING ALLEGATIONS OF PHYSICAL OR SEXUAL ASSAULT IN A YTC/YRC TO THE POLICE

### INTRODUCTION

These instructions are to apply to any allegation of a physical or sexual assault occurring in any Youth Training Centre or Youth Residential Centre; the assaulted person may be a client or staff member, and the alleged assailant may be a client or a staff member.

### BACKGROUND

1. Children and young persons in YTCs and YRCs are in the care of the Director-General, regardless of the nature of the order which requires that they be in that institution. It is the responsibility of the Department to ensure that the care of those children and young people is free from actual or threatened physical or sexual assault.
2. It is recognised that many children and young people in YTCs and YRCs have a history of violence. They may have committed offences of violence, they may be victims of violence, or they may have witnessed violence at home. These children and young people tend to be more violent towards others than is the community norm and may tend to resolve differences by physical means. It is not uncommon therefore for differences between clients of YTCs and YRCs to develop into fights, or to be resolved by violence.
3. It is recognised that many of the children and young people in YTCs and YRCs have ambivalent or negative views about the police and may prefer to not report an alleged assault to the police even after being injured. At the same time, it is recognised that the hostility from young persons in institutions towards the one that reports an alleged assault to the police may well be a major inhibiting factor in reporting the matter (ie being "put on the dog" etc).
4. The Department also has a responsibility to provide a safe working environment for its staff.
5. Police Standing Orders (General Instructions 1.60) direct that members of the police force should not take action regarding an alleged assault which was not witnessed by the police, where there is no serious harm, where the parties are known to each other, and where the incident has ceased:

**1.60** *In most cases (other than domestic violence), where an allegation is made of a minor assault, not witnessed by police, and not resulting in serious or visible harm to the aggrieved party, and where no breach of the peace is continuing on the arrival of police, or is likely to occur in their departure, and where the parties are known to each other, the person complaining or making the allegation should be advised to consult a solicitor or a clerk of the magistrates' court with a view to*

*initiating private proceedings for assault if so desired. (Where an allegation of domestic violence is made, members shall comply with Standing Orders paragraphs 1.95-1.99 inclusive).*

## **INSTRUCTIONS ON REPORTING ALLEGATIONS TO POLICE**

### **SITUATION 1: SUBSTANTIAL, IMMEDIATE AND CONTINUING PHYSICAL DANGER**

6. In circumstances of substantial, immediate and continuing physical danger to clients and/or staff in a YTC or YRC, emergency contact should be made with the police by the most senior officer on duty in the unit where the incident occurs. This circumstance would include serious assaults or threats of serious physical risk beyond the control of staff.
7. The CEO (or on-call executive officer) is to be advised at the earliest opportunity.
8. A Category 1 Incident Report must be prepared in the normal way and forwarded to the Regional Director. See Appendix 1 for Departmental Instruction on completing Critical Incident Reports.
9. Written reports from all staff involved in the incident must accompany the Category 1 Incident Report. The staff member who called the police must describe the circumstances which in his/her view constituted substantial, immediate and continuing physical danger.
10. A copy of the Incident Report must be placed on the TIF of all residents involved and on the YTC/YRC Critical Incident Report Register.

### **SITUATION 2: AN ASSAULT BY A CLIENT ON ANOTHER CLIENT**

11. Clients of YTCs and YRCs will resort to violence (more than is the community norm) in attempting to resolve differences with each other. Especially within the restricted confines of an institution, fights between clients occur far more frequently than in the general community. Moreover, violence up to a certain level tends to be tolerated and even accepted by clients of institutions.
12. This does not in any way absolve the Department and facility staff, from the responsibility to provide an environment which is as free from violence as is reasonably possible.
13. Staff are required to intervene to prevent or break up fights. It is not sufficient to "let them sort it out" or to not intervene on the basis that "they are evenly matched". Some judgement on the part of the staff member may be required to ensure that he or she is not placed at undue risk. Activation of a personal duress alarm may be appropriate.

14. Not all fights and/or assaults are witnessed by staff. Evidence that a fight and/or assault has taken place may be shown by:
  - the client has recent injuries, eg a black eye, swollen face or lips, bruising, cuts to the face or body
  - the client complains of soreness, eg ribs, head, shins
  - the client seeks medical or dental attention for unexplained injuries or problems eg dizziness, headaches, blurry vision, or loosened teeth
  - the client has torn clothing
  - the client is distressed
15. After the immediate incident is resolved, counselling should be provided to the clients involved including the implementation of appropriate disciplinary measures. If medical attention is required, appropriate arrangements must be made at the earliest opportunity.
16. In all instances, if medical attention is required, or if obvious physical injuries are sustained, the matter must be reported to the Unit Manager or CEO (or on-call executive officer) at the earliest opportunity.
17. Written reports are to be prepared by every staff member who witnessed any part of the incident and provided to the Unit Manager or CEO (or on-call executive officer). These should be maintained on file and on the TIF of any individual client involved. Reports on each incident of allegation of physical or sexual assault need to include information on:
  - date and time of incident
  - who made the report
  - name(s) of person assaulted
  - nature of allegation and details
  - names of witnesses
  - to whom the report was made
  - what action was taken (in point form)
  - details of any referral to police if made (include time, date, name of police officer and station where report was made)
  - summary of disciplinary action or counselling undertaken.

Reports should be signed and dated.

18. If no injuries are sustained and no medical attention is required, and if the clients involved in the incident do not request police involvement, then normal internal disciplinary action should take place.
19. If after an incident and :
  - obvious physical injuries are sustained
  - AND/OR
  - medical attention is required
  - AND/OR
  - the client requests police involvement then the Unit Manager or CEO (or in their absence the most senior officer) must take the following steps
    - a) the client must be advised that he/she has a right to report the matter to the police
    - b) arrangements must be made for a medical examination and report by police or H&CS if police decline to cause such an examination to be made

In no way should these requirements be construed as a discouragement to the client to report the matter to the police, nor should the Unit Manager or CEO attempt to encourage or discourage the resident from taking such action. The advice being given to him is to ensure that he/she is best able to make an informed choice about what action to take.

20. The client's response to advice in 9(a), his or her decision about reporting the matter to the police and all other reports must be recorded and attached to the Critical Incident Report to be prepared by the Unit Manager for forwarding to the Regional Director.
21. It is the responsibility of the Unit Manager/CEO (or on-call executive) to ensure that the incident is reported to the police at the earliest opportunity. The client once deciding to report the matter to the police, should be supported throughout.
22. At all times the client retains the right to report any matter to the police, but while a client of a YTC or YRC, such reports must be dealt with by the Unit Manager/CEO.

**SITUATION 3: AN ASSAULT BY A STAFF MEMBER ON A CLIENT OR ANOTHER STAFF MEMBER**

23. Any staff member witnessing a physical or sexual assault by a staff member on a resident or another staff member is required to report the matter to the Unit Manager or CEO (or on-call executive officer) at the earliest opportunity.
24. Any staff member experiencing a physical or sexual assault by a staff member or advised by a client that he or she has experienced such an assault by a staff member, the matter must be reported to the Unit Manager or CEO (or on-call executive officer) at the earliest opportunity.
25. In these cases the procedures to be followed are outlined in Section 16 of the Discipline Procedures Manual of H&CS. In some cases the procedures in Section 15 of the Discipline Procedures Manual may also be relevant.
26. Written reports must be prepared by all advising staff members and documented interviews conducted with clients or staff members alleged to have been assaulted. These reports must be provided to the Unit Manager or CEO (or on-call executive officer) as soon as is possible. Any necessary interviews should be conducted in a confidential setting and manner away from the staff member's or client's usual section. The content of any report is as per paragraph 17 above.
27. If no injuries are sustained and no medical attention is required and if the client or staff member involved in the incident(s) do not request police involvement, then normal internal disciplinary action should take place. Procedures outlined in Serious Incident Reporting and Investigation Instructions (DI/28/23 of 7/8/90) and Disciplinary Procedures Manual are to be followed in all such cases.
28. Even if police involvement does not eventuate, copies of all reports of the allegation and subsequent discipline or staff counselling should be maintained by the CEO on a confidential YTC/YRC Register.
29. If after an incident involving a staff member assaulting a client or staff member and:
  - obvious physical injuries are sustained or sexual assault appears possible

AND/OR

  - medical attention is required

AND/OR

- the client or staff member requests police involvement then the Unit Manager or CEO (or on-call executive officer) must take the following steps :
  - a) the client/staff member must be advised that he/she has a right to report the matter to the police
  - b) the client/staff member must be provided with the necessary support and made comfortable
  - c) arrangements must be made for a medical examination and report by H&CS if police decline to do so.
  - d) the local police should be called to investigate the allegation at the earliest opportunity. The client or staff member once deciding to report the matter to the police, should be supported throughout

None of the above instructions apply where a staff member is required to exercise "reasonable force" to contain a client under the Children and Young Persons Act (1989).

30. With respect to incidents involving police investigations a Critical Incident Report must be completed by the Unit Manager and CEO and forwarded to the Regional Director. A copy of all reports relating to those incidents must be attached to the Critical Incident Report and on the YTC/YRC Critical Incident Report Register. The content for these reports is as per paragraph 17 above.
31. Although clients or staff members have the right to report upon these assaults by staff members to the police, such reports should be through the Unit Manager or CEO (or on call executive officer).
32. In relation to any alleged physical or sexual assault or offence, Unit Managers should not take the responsibility for determining whether an incident constitutes a crime, but should refer any matters of alleged offences to the police. Examples of sexual offences under the Crimes (Sexual Offences) Act 1991 include rape, indecent assault, indecent act with a child 16 years of age or under 16 years; sexual relationship with a child under 16 years, and sexual penetration of a 16 or 17 year old child and who is under the care, supervision or authority of the alleged perpetrator.
33. Special care must be taken when a client or staff member alleges that a sexual assault has taken place:
  - a) the client or staff member must be provided with the necessary support, made comfortable and offered de-briefing. Referral to a sexual assault/rape support centre may be appropriate after consultation with police.

- b) arrangements must be made for a medical examination and report if police decline to do so.

**SITUATION 4 : AN ASSAULT BY A CLIENT ON A STAFF MEMBER**

34. In cases where a client over the age of 17 assaults a staff member Procedures A and B in operation at the respective Youth Training Centre should be initiated.
35. In cases where a client assaults a staff member(s) and regardless of whether Procedures A & B are invoked, a report should be prepared that describes all aspects of the incident including the period leading up to the incident and the names of all clients and staff members involved. Reports of such incidents should be prepared by the Unit Manager or other senior management staff in an objective manner and independent of those involved in the incident. Such reports should involve interviewing clients or staff members in a confidential manner away from section.
36. In some cases of severe disruption or assault by a young person Section 259 of the Children and Young Persons Act may also need to be invoked.

**GENERAL MATTERS**

37. All Critical Incident Reports should be maintained in a secure register at each YTC/YRC and a schedule of all Critical Incident Reports should be maintained.
38. Clients and staff members need to be given prior warning that allegations of physical or sexual assault must be reported to the police.
39. Staff involved in making a report of an allegation of physical or sexual assault must be available to assist police in their inquiries.
40. The Unit Manager must notify (and explain to) the parent/guardian if a client is the subject of a physical/sexual assault involving police intervention. Prior to this course of action the consent of the young person if over 17 years should be obtained. The parent or guardian should be asked whether they wish to participate in any part of the police or other action to be taken.
41. The client or staff member against which the allegations are made may decline to be interviewed by the police and are not obliged to answer any police questions.

JUVENILE JUSTICE BRANCH

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