RHODE ISLAND GOVERNMENT REGISTER

PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Department of Children, Youth and Families

DIVISION: Rhode Island Training School

RULE IDENTIFIER: ERLID 6978

REGULATION TITLE: Use of Restraint at the RI Training School 1200.0832

RULEMAKING ACTION: Regular rulemaking

TYPE OF FILING: Repeal

TIMETABLE FOR ACTION ON THE PROPOSED RULE:
Public Notice Date: **February 27, 2018**
Public comment will end on **March 30, 2018**

SUMMARY OF PROPOSED RULE: The Department proposes to repeal this rule in connection with the proposed adoption of 214-RICR-60-00-1, "Rules and Regulations of the Rhode Island Training School." This rule is being promulgated to replace several existing Rhode Island Training School regulations.

R.I. Gen. Laws § 14-1-36.2 provides that children and youth placed in the custody of the Department of Children, Youth and Families receive suitable treatment, rehabilitation and care in the least restrictive environment.

The mission of the Rhode Island Training School (RITS) is to provide care in a secure facility to youth who are detained or adjudicated by order of the Family Court. The Training School promotes public safety and rehabilitation of residents through a comprehensive continuum of services provided in partnership with families, the community, and the Department in the least restrictive setting compatible with youth and community safety. Supervision, security, education, behavioral health, health and transition services are provided in an individualized, culturally, and gender sensitive manner.

COMMENTS INVITED:
All interested parties are invited to submit written or oral comments concerning the proposed regulations by **March 30, 2018** to the address listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:
All written comments or objections should be sent to, Sarah St. Jacques, DCYF Policy Office, Rhode Island Department of Children, Youth and Families
Mailing Address: DCYF, 3rd Floor, 101 Friendship Street, Providence, RI 02903
Email Address: Sarah.StJacques@dcyf.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

Mailing Address: DCYF, 3rd Floor, 101 Friendship Street, Providence, RI 02903

PUBLIC HEARING INFORMATION:
If a public hearing is requested, the place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/ interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call (401) 462-6266 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.
In accordance with R.I. Gen. Laws § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within ten (10) days of this notice.

FOR FUTHER INFORMATION CONTACT:

Sarah St. Jacques, DCYF Policy Office, Rhode Island Department of Children, Youth and Families, 3rd Floor, 101 Friendship Street, Providence, RI 02903 or Sarah.StJacques@dcyf.ri.gov

SUPPLEMENTARY INFORMATION:
Regulatory Analysis Summary and Supporting Documentation:
There are no new societal costs and benefits in the adoption of this rule.

Authority for This Rulemaking: R.I. Gen. Laws § 42-72-4

Regulatory Findings:
In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Repeal:
The Department of Children, Youth and Families proposes to repeal ERLID **6978**, "**Use of Restraint at the RI Training School"** and adopt 214-RICR-60-00-1 as follows in the concise explanatory statement of proposed non-technical amendments below.

The Department of Children, Youth and Families proposes to repeal the following Rhode Island Training School regulations and reissue as Department Operating Procedures (DOPs). All DOP's are accessible to the public and may be viewed on the Department's website at: http://www.dcyf.ri.gov/policyregs/.

The proposed regulation would repeal and supersede the following rules:

- Administrative Classification to Restrictive Status 1200.1308 ERLID: 7256
- Administrative Responsibility 1200.0003 ERLID: 6180
- Administrator on Call 1200.0004 ERLID: 6181
- Behavior Report 1200.1305 ERLID: 6184
- Case Transfers between the Rhode Island Training School and Family Service Units or Juvenile Probation 1200.1620 ERLID: 7774
- Clinical Services at the Rhode Island Training School 1200.1110 ERLID: 7955
- Court Disposition 1200.0014 ERLID: 7785
- Culinary Equipment 1200.0838 ERLID: 6337
- Daily Census Report for the RI Training School 1200.0504 ERLID: 6237
- Discipline for Academic and Vocational Classes 1200.1310 ERLID: 6028
- Education Program at the RI Training School 1200.1701 ERLID: 7993
- Escape 1200.1608 ERLID: 6339
- Facility Capacity 1200.0002 ERLID: 7786
- Facility Management and Environmental Safety 1200.0718 ERLID: 6361
- Fifteen Minute Room Checks 1200.0839 ERLID: 6019
- Food Service 1200.0900 ERLID: 7787
- General Discipline 1200.1300 ERLID: 6020
- Incentive System-Points 1200.0103 ERLID: 7781
- Juvenile and Adult Offender Interactions 1200.0011 ERLID: 6182
- Lawful Detention or Confinement of Juveniles 1200.0010 ERLID: 7789
- Legal Assistance 1200.0017 ERLID: 6185
- Legal Establishment 1200.0000 ERLID: 7788
- Lock Up 1200.1307 ERLID: 7258
- Major Discipline Review 1200.1306 ERLID: 7259
- Master Control Center 1200.0857 ERLID: 6341
- Mission, Philosophy, Goals and Purpose 1200.0001 ERLID: 7508
- Movement of Residents on Grounds 1200.0809 ERLID: 6342
- Notice to Superintendent 1200.0702 ERLID: 6387
- Portable Radios 1200.0708 ERLID: 6343
- Post Assignments1200.0847 ERLID: 6614

- Protecting and Preserving Evidence 1200.0835 ERLID: 6344
- Resident Grievance Procedure 1200.1206 ERLID: 6346
- Resident Handbook 1200.1301 ERLID: 6031
- Resident Personal Property 1200.1203 ERLID: 6241
- Resident Room Inspections 1200.1003 ERLID: 6347
- Resident Telephone Calls 1200.1402 ERLID: 7959
- RITS Personnel Administration 1200.0222 ERLID: 6396
- Safety and Emergency Procedures at the RI Training School 1200.0714 ERLID: 6357
- Search of a Resident of the RI Training School 1200.0819 ERLID: 6977
- Searches for Contraband 1200.0821 ERLID: 6348
- Suicide Prevention and Special Watches 1200.0709 ERLID: 6349
- Tool and Equipment Control at the RI Training School 1200.0855 ERLID: 6350
- Tours of the RI Training School 1200.0007 ERLID: 6115
- Transportation of Residents Off Grounds 1200.0240 ERLID: 6244
- Unusual Incident Report 1200.0827 ERLID: 6351
- Use of Physical Force/Corporal Punishment 1200.1207 ERLID: 6117
- **Use of Restraint at the RI Training School 1200.0832 ERLID: 6978 (This rulemaking action)**
- Use of State Vehicles 1200.0724 ERLID: 6352

SUMMARY OF NON-TECHNICAL CHANGES

PROPOSED REGULATIONS FOR ADOPTION

214-RICR-60-00-01

Title 214 – DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES
Chapter 60 – Rhode Island Training School

Subchapter 00 – N/A

Part 1 – Rules and Regulations of the Rhode Island Training School

Justification for regulatory changes:

Language added to comply with federal provisions of the Prison Rape Elimination Act P.L. 108-79.

Section 1.1 Purpose

No new provisions, language is from existing state statutes and Department policy.

1.2 Authority

No new provisions, existing state statutes.

1.3 Application

Section Added

1.4 Severability

Section Added

1.5 Definitions

New Definitions:

From Federal Law (Prison Rape Elimination Act): "Sexual Harassment means any verbal comment of gesture (welcome or not) of a sexual nature including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing or obscene language or gestures.

"Sick Call" means a scheduled time at which residents may report as sick to the RITS nurse.

From Federal Law (Prison Rape Elimination Act: "Voyeurism" means an invasion of privacy of a resident by staff for reasons unrelated to official duties, such as peering at a resident who is using a toilet to perform bodily functions; requiring a resident to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a resident's naked body or of a resident performing bodily functions.

1.6 General Administration

New language added to comply with the federal Prison Rape Elimination Act

C. All Training School employees, and all contractors and consultants who do business at or in any of the components of the Training School, must undergo criminal background checks and must submit to the following criminal background checks every fifth (5^{th}) year of their employment or contractual/consultant relationship with the Training School.

1. Such background checks are conducted during the anniversary month of the employee's date of hire or assignment to the Training School. In the case of contractors/consultants, such background checks are conducted during the anniversary month of the start of that individuals work with the Training School.

2. Five-year criminal background checks include are done using State Bureau of Criminal Investigation (BCI) checks.

3. For employees covered by this policy, failure to submit to these checks may be used as cause for disciplinary action, up to and including dismissal from employment with cause.

4. For consultants and contractors covered by this policy, failure to submit to these checks may be used as cause for termination with cause of any and all agreements for consulting or contracting with the Department, with the consultant/contractor forfeiting any and all future payments within their contract for services with the Department.

5. Any criminal information found in these checks are subject to administrative review and appropriate disposition.

1.6.1 Resident Handbook

New language added to comply with the federal Prison Rape Elimination Act

1. The Resident Handbook includes information for youth on their rights and PREA safeguards and includes information on how to report sexual harassment and/or sexual abuse, and a place for the youth to sign acknowledging that the youth has received such information.

1.7 Prison Rape Elimination Act

New language added to comply with the federal Prison Rape Elimination Act

A. The RITS complies with the federal Prison Rape Elimination Act (PREA) to provide a safe and therapeutic environment for all youth. Department Operation Procedures outline and implement a comprehensive approach to preventing, detecting and responding to sexual abuse, including voyeurism, and sexual harassment.

B. Any physical contact of a sexual or sexualized nature between any RITS provider, vendor, contractor, volunteer, or staff toward a youth detained or adjudicated at the RITS is deemed abusive; such contact is reported to the CPS Hotline and is investigated.

1. The Department has zero tolerance for voyeurism or sexual harassment by any Department provider, contractor, volunteer or staff toward a youth detained or adjudicated at the RITS and includes voyeurism and/or sexual harassment as a form of sexual abuse.

C. Any Department staff engaging in sexual abuse or harassment toward a child/youth in care or detained or adjudicated at the RITS is subject to discipline up to and including dismissal without warning and referred to law enforcement agencies unless the activity was clearly not criminal, and to relevant licensing bodies, as appropriate.

D. Any contractor, provider, intern or volunteer who violates Department sexual abuse or harassment policies is prohibited from contact with residents and reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies, as appropriate.

1.13 Visitation

Language amended to comply with the Prison Rape Elimination Act

E. All visitors are subject to a criminal record background check and a clearance of agency activity check prior to being approved for visitation.

F. All visitors are subjected to a search upon entry to the facility.

G. Visitors are prohibited from bringing contraband in to the facility at any time. The contraband and search policy for visitors is posted at the entrance to the facility.

K. ~~There are regular family forums at which families of detained youth may voice issues of concern, offer suggestion for improvement, and obtain needed information about institutional policies and practices.~~

1.15 Resident Searches

Updated to comply with the federal Prison Rape Elimination Act

4. Clothed Body Search;

5. Except in exigent circumstances, any search of a resident is conducted by a staff member of the same gender as the youth or, in the case of a transgender or intersex identified youth, by a staff member of the gender that the youth has identified as the preferred gender for this purpose. Any search of a resident complies in all respects with the requirements of the Prison Rape Elimination Act as detailed in Department Operating Procedure as well as in Department training.

Use of Restraint at the RI Training School

Rhode Island Department of Children, Youth and Families
Division of Juvenile Correctional Services: Training School
Policy: 1200.0832
Effective Date: January 1, 1987 Revised Date: October 2, 2012 Version: 3

The Division of Juvenile Correctional Services, in compliance with Rhode Island General Law 42-72.9-9, has established a continuum of interventions to create an environment that minimizes the need for restraints and maximizes safety when restraint is necessary. Training School staff are provided with initial and ongoing training on the use of physical and mechanical restraint. Physical restraint is a non- mechanical behavior management technique involving the use of physical intervention as a means of restricting a resident's freedom of movement. Handcuffs, hobblers and leg irons are mechanical restraints used to temporarily control behavior.

No resident is restrained for the purpose of punishment, discipline, convenience or retaliation by staff. Physical and/or mechanical restraint is applied only to ensure the safety of residents, staff and the public. Staff continuously monitor the physical condition of a resident being restrained to ensure safety and seek immediate medical attention if a resident being restrained shows significant signs of physical distress. Restraint is used only when transporting residents on or off grounds or when a resident's actions demonstrate that he or she is a danger to self or others and no other intervention has been or is likely to be effective in averting danger. The resident is released from restraint at the earliest possible time that he or she can commit to safety and no longer poses a threat of harm to self or others.

Related Procedure

Use of Restraint at the RI Training School

Related Policy

Master Control Center
Behavior Report

Major Discipline Review
Discipline for Academic and Vocational Classes
Use of Physical Force or Corporal Punishment
Lock Up

Escape

Use of Restraint at the RI Training School

Procedure from Policy 1200.0832: Use of Restraint at the RI Training School

A. Restraint is used only when transporting residents on or off grounds or when a resident's actions demonstrate that he or she is a danger to self or others and no other intervention has been or is likely to be effective in averting danger.

1. Staff utilize the least restrictive method of restraint consistent with resident and community safety.
   a. When the use of restraint is planned or can be anticipated, staff determine the method of restraint in advance in consultation with the Unit Manager or Superintendent or designee.
   b. When restraint is utilized in an emergency, staff follow all procedures identified in Paragraph C, below, and consult a Unit Manager or Superintendent or designee as soon as possible.
   c. Staff utilize only physical or mechanical techniques identified in Department training.
   d. Staff continuously monitor the physical condition of a resident being restrained to ensure safety.
   e. Staff immediately release a resident who exhibits any sign of significant physical distress, such as difficulty breathing during restraint, and provide the resident with immediate medical assistance.
2. A physical restraint is a behavior management technique involving the use of physical intervention as a means of restricting a resident's freedom of movement. Physical restraint may include:
   a. Providing a resident with a physical escort. A physical escort is touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing an acting out resident to walk to a safer location.
   b. Holding resident in a standing, seated or horizontal position.
3. Handcuffs, leg irons and hobblers are mechanical restraints used to temporarily control behavior.
   a. Residents are never handcuffed or shackled to any fixed or stationary object on or off Training School grounds.
      i. Staff ensure that mechanical restraints are applied in conformance with DCYF training.
      ii. Staff are attentive to any resident complaint about pain caused by mechanical restraints and adjust restraints accordingly.
      iii. Staff ensure that mechanical restraints are double-locked.
   b. Mechanical restraints are assigned to individual units and are engraved with the unit's code and are numbered.
      i. Mechanical restraints are stored in a secure area when not in use.
      ii. Mechanical restraints are not displayed in an office or any other visible area.
      iii. Mechanical restraints are not given to residents or left unattended at any time.
      iv. Employees are not allowed to use personal mechanical restraints.
      v. Staff assigned to the Unit Log Book count mechanical

restraints at the beginning and at the end of each shift. Staff document the count in the Unit Log Book.

vi. Missing mechanical restraints are noted and reported immediately to the Unit Manager and/or the Master Control Center and/or the Administrator on Call.

vii. In conformance with DCYF Policy 1200.0857, Master Control Center, shift coordinators also maintain, distribute and document the utilization of mechanical and physical restraints.

4. The use of restraint is reviewed annually by the Superintendent or designee.

B. Transporting Residents

1. Mechanical restraints are used in movement of residents between the Training School's facilities and when necessary in transporting residents off grounds.
2. Staff determine the level of security required by each resident in transportation in consultation with the Unit Manager and Administrator on Call.
3. In consultation with the Unit Manager, clinical staff and/or the Administrator on Call, staff determine the best approach to safety and security for residents with special needs.
4. Residents with special needs include, but are not limited to, females who are pregnant or residents whose physical mobility is compromised.
   a. The Training School limits the use of mechanical restraints on pregnant and post- partum girls to circumstances where the girl is a danger to herself or others or a flight risk and cannot reasonably be contained by other means. Post-partum is defined as:
      i. The period immediately following delivery, as determined by the attending physician, including the entire period of hospitalization and
      ii. Up to 72 hours after the birth whether or not the girl is hospitalized.
   b. Any risk identified in paragraph B4 is documented prior to the use of mechanical restraints.
   c. Belly/waist chains and/or mechanical restraints of the leg or ankle are not utilized with pregnant or post-partum girls.
   d. When mechanical restraints are utilized with a pregnant or post partum girl:
      i. If a qualified medical provider requests the removal of restraints for emergency medical care, Training School staff comply and notify the Superintendent or Administrator on Call as soon as possible.
      ii. In other circumstances, if a qualified medical provider requests the removal of mechanical restraints, Training School staff request permission to seek guidance from the Superintendent or Administrator on Call. If the qualified medical provider states that the mechanical restraints must be removed immediately, Training School staff comply and notify the Superintendent or Administrator on Call as soon as possible.
   e. Girls are notified upon admission to the Training School and when known to be pregnant of this policy regarding the use of mechanical restraints during pregnancy and in the post partum period.

5. Mechanical restraints are applied within the building when residents are to be transported out of the building.
6. When moving groups, staff may handcuff residents in pairs or in a chain-like line manner.
7. When transported in a vehicle on a secure status on or off grounds, residents are handcuffed in front of the body for safety.
8. Mechanical restraints are not unlocked, loosened or removed by staff or residents in a vehicle or a busette, unless required by an imminent risk to resident safety.

C. Use of Restraint in Crisis Intervention
1. No resident is restrained for the purpose of punishment, discipline, convenience or retaliation by staff.
2. Staff utilize de-escalation strategies described in pre-service and in-service training to defuse a volatile situation, assist a resident to regain behavioral control and avoid a physical restraint.
3. Staff attempt verbal counseling, level system sanctions and direct warnings before resorting to a physical escort or restraint.
4. If interventions described in paragraphs C.2. and C.3. above are not effective, staff may utilize a physical escort to move a non-compliant resident to a different location for the safety of the resident and the facility.
a. A safer location includes, but is not limited to, the resident's room or a location away from the general population.
b. As soon as the resident is calm and cooperative, he/she is returned to the general population, except as provided in DCYF Policies, 1200.1305 Behavior Report, 1200.1306, Major Discipline Review and 1200.1310, Discipline for Academic/Vocational Classes.
5. The interventions described in paragraph C.2. – 4. are not utilized when a resident attacks another person suddenly and/or without warning and/or presents an imminent danger to self or others and/or attempts to escape.
6. When circumstances allow, staff notify the Master Control Center of a situation that may require a resident to be restrained to ensure that a proper response can be developed and supported. In all cases, the Master Control Center is notified immediately or as soon as possible upon the use of a restraint.
7. When circumstances allow, staff remove other residents, potential weapons and other hazards from the area where a resident seems likely to be restrained.
8. Whenever possible, if a resident is restrained in a contained situation, staff utilize a portable video recording device to record the event to allow for accountability of both resident and staff.
9. The physical condition of a resident who is being restrained is monitored continuously by staff and this monitoring is documented in the Unit Log Book.
10. Staff may not position or hold the resident in a manner which restricts breathing. Staff immediately release a resident who exhibits any sign of significant physical distress, such as difficulty breathing during restraint and provide the resident with immediate medical assistance.
11. The clinic is notified and the resident is examined by a nurse as soon as practical after any restraint but in all cases within the same shift.

12. The resident is released from restraint at the earliest possible time that he/she can commit to safety and no longer poses a threat to self or others.
13. In instances involving resident and/or staff injury, medical personnel are notified immediately.
14. The physical condition of a resident who is being mechanically restrained is monitored continuously by staff.
    a. Staff keep residents who are mechanically restrained under direct observation and supervision.
    b. This monitoring and supervision is documented in the Unit Log Book.
15. Staff escort the resident to his/her room or to another safe area before releasing him/her from mechanical restraints.
16. The resident remains in his/her room or safe area as provided in DCYF Policies, 1200.1305 Behavior Report; Policy 1200.1306, Major Discipline Review and 1200.1310, Discipline for Academic and Vocational Classes.
17. If the resident has not been released from mechanical restraint within fifteen (15) minutes, the Administrator on Call is contacted.
    a. The Administrator on Call approves all uses of mechanical restraint exceeding fifteen (15) minutes in length.
    b. Staff reassess the need for mechanical restraint every fifteen (15) minutes for the purpose of timely removal and documents this assessment through the filing of an Unusual Incident Report.
18. If a resident is injured during a restraint, his/her parents are notified.
19. Staff document the use of physical or mechanical restraints in the Unit Log Book and on the Unusual Incident Report.
    a. The Unusual Incident Report is signed by the staff person who applied the restraint.
    b. Other involved staff have the option of making separate comments and attaching them to the Report.
    c. By the end of the shift, medical staff sign the Unusual Incident Report.
    d. The Report includes the following information:
        i. Name of resident
        ii. Name of staff who applied restraints
        iii. Type of physical force or mechanical restraints used
        iv. Date and time restraints were applied
        v. Persons notified and persons approving restraint
        vi. Circumstances necessitating the restraint, including the alternative actions attempted and found unsuccessful or reasons alternatives were not possible
        vii. Location and confinement
        viii. Supervising personnel
        ix. Assistance of additional personnel
        x. Date and time restraints were removed
        xi. Referrals or contacts with medical and mental health staff including the date and time such persons were contacted
    e. The Superintendent or designee reviews each incident of restraint to provide feedback to staff. The record of each incident is maintained for a period of at least one year in a file in the office of the Superintendent.
    f. The Superintendent or designee convenes a Restraint Review Committee quarterly.
        i. This Committee is chaired by the Superintendent or

designee and includes training staff, mental health staff and line staff.

ii. The Committee regularly reviews all incidents to identify departures from policy and issues needing policy clarification, to develop targeted training and to provide feedback to staff on effective crisis management.

D. Physical force is utilized in conformance with DCYF Policy 1200.1207, Use of Physical Force or Corporal Punishment. In conformance with and as defined by this policy, corporal punishment is strictly prohibited in all circumstances.

E. Residents are placed in Lock Up in conformance with DCYF Policy 1200.1307, Lock Up.

F. If a resident escapes, staff respond in conformance with DCYF Policy 1200.1608, Escape

G. Paragraphs A – F are consistent with American Correctional Association (ACA) Standards 3-JDF- 3A-15; 3-JTS-3A-15; 3-JDF-3A-16, 3-JTS-3A-16; 3-JDF-3A-17 and 3-JTS-3A-17.