

Child, Youth and Family Services Act, 2017

Fact Sheet #3: New Regulatory Provisions for All Service Providers: Use of Physical Restraint

New Physical Restraint Requirements for All Service Providers and Foster Parents

The Ministry of Children and Youth Services has developed a plan to reform licensed residential services in Ontario to strengthen accountability and oversight of licensed residential settings, and improve the quality of care children and youth receive. The voices, experiences and expectations of youth have been the cornerstone of this work and the Ministry has worked closely with youth to define quality of care. For more information about the residential services reform and youth input into the Ministry's plan, please see Appendix A: Residential Services Reform.

The Ministry has started this reform by modernizing the legislation that governs licensed residential care. This is the third of four fact sheets on new residential licensing requirements under the *Child, Youth and Family Services Act, 2017* (CYFSA) and its regulations. To access the additional fact sheets, please visit: <http://www.children.gov.on.ca/htdocs/English/professionals/childwelfare/residential/index.aspx>. For other relevant information, please see Appendix B: Key Resources.

This fact sheet is intended to provide all service providers¹ and foster parents² with general information about the key new and enhanced provisions related to the use of physical restraint set out in Ontario Regulation 155/18 under the CYFSA.

Review the CYFSA: <https://www.ontario.ca/laws/statute/17c14>, Ontario Regulation 156/18: <https://www.ontario.ca/laws/regulation/180156> and Ontario Regulation 155/18: <https://www.ontario.ca/laws/regulation/180155> for more information.

These provisions will come into force on **April 30, 2018**.

Please note: The information presented here is intended to support the reader's general understanding of the key new and enhanced provisions in the CYFSA and its regulations related to the use of physical restraint. It is not intended to replace the statute or the regulations. The information contained here is not legal advice and should not be construed as legal advice or relied upon as such. For information particular to your situation, you may wish to seek legal advice.

¹ Under the CYFSA "service provider" means the Minister; a licensee; a person or entity, including a society, that provides a service funded under the CYFSA; or a prescribed person or entity, but does not include a foster parent.

² Under the CYFSA, "foster parent" has corresponding meaning to "foster care" which means the provision of residential care to a child, by and in the home of a person who,

(a) receives compensation for caring for the child, except under the *Ontario Works Act, 1997* or the *Ontario Disability Support Program Act, 1997*, and

(b) is not the child's parent or a person with whom the child has been placed for adoption under Part VIII of the CYFSA (Adoption and Adoption Licensing).

Rationale for Change

Section 6 of the CYFSA prohibits the use of physical restraint by a service provider or a foster parent, except as the regulations authorize.

New and enhanced regulatory provisions on the use of physical restraint were developed to enhance:

- Clarity for all service providers and foster parents as to the rules and requirements around the use of physical restraint;
- Requirements for all service providers and foster parents regarding minimizing the use of physical restraint where possible; and
- Debriefing, recording keeping and reporting requirements related to the use of physical restraint.

1. Restrictions

All Service Providers

- I. **Imminent Risk (Ontario Regulation 155/18 s. 10(1) paragraph 1):**
Physical restraint can only be used or permitted to be used if there is imminent risk that the child or young person³ will physically injure themselves or others; or, in the case of a young person, that the young person will escape or cause significant damage to property (and there is imminent risk that the damage to property will cause harm to a person).

- II. **Manner of Using Physical Restraint (Ontario Regulation 155/18 s.10(4)):**
Physical restraint can only be used with the least amount of force and with the least intrusive type of restraint that are necessary in the circumstances. The child or young person's condition must be continually monitored and assessed while a physical restraint is being used. The physical restraint must be stopped immediately when:
 - There is a risk that the use of the physical restraint will endanger the safety of the child or young person;
 - There is no longer imminent risk of physical injury, escape, or significant property damage; or

³ Under the CYFSA, "young person" means

(a) a person who is or, in the absence of evidence to the contrary, appears to be 12 or older but younger than 18 and who is charged with or found guilty of an offence under the *Youth Criminal Justice Act* (Canada) or the *Provincial Offences Act*, or
(b) if the context requires, any person who is charged under the *Youth Criminal Justice Act* (Canada) with having committed an offence while they were a young person or who is found guilty of an offence under the *Youth Criminal Justice Act* (Canada).

- The physical restraint is determined to be ineffective in reducing or eliminating the risk of physical injury, escape or property damage.

2. Policy

All service providers must maintain a written policy on the use of physical restraint, subject to the following:

Service Providers That Use or Permit the Use of Physical Restraint

- I. **Maintain Written Policy (Ontario Regulation 155/18 s. 11(1)):** The written policy must include information specified in the regulation, such as alternative interventions that must be considered or used, the titles or positions of persons authorized to use physical restraint, and measures to be taken to prevent and minimize the use of physical restraint.

Service Providers That Do Not Use or Permit the Use of Physical Restraint

- I. **Maintain Written Policy (Ontario Regulation 155/18 s. 11(1)):** If a service provider decides that it will not use or permit the use of physical restraint, it must develop and maintain a policy that provides that the service provider will not use or permit the use of physical restraint and includes the rationale for the service provider's decision not to use or permit the use of physical restraint.

3. Debriefing

Service Providers That Use or Permit the Use of Physical Restraint

- I. **Debriefing After the Use of Physical Restraint (Ontario Regulation 155/18 s. 12):** Service providers must hold or offer a debriefing with persons who were involved in the use of the physical restraint (in the absence of any children or young persons), with the persons who were involved in the use of the physical restraint and the child or young person who was restrained, and with any children or young persons who witnessed the incident. Details about the debriefing must be recorded.

4. Notification

Service Providers That Use or Permit the Use of Physical Restraint

- I. **Notifying Parent (Ontario Regulation 155/18 s. 13):** Service providers must notify the parent(s) of a child or young person, and in the case of a child in care, the placing agency or person who placed the child, that it has used or permitted the use of physical restraint on the child or young person.

5. Record on the Use of Physical Restraint

Service Providers That Use or Permit the Use of Physical Restraint

- I. **Record of Each Instance of the Use of Physical Restraint (Ontario Regulation 155/18 s. 14):** Service providers must ensure that a record of each use of physical restraint is kept, including information specified in the regulation, such as the type of restraint used, the date and time of the restraint, and the name and age of the child or young person restrained.

6. Monthly and Annual Reports

Service Providers That Use or Permit the Use of Physical Restraint

- I. **Monthly Reports (Ontario Regulation 155/18 s. 15):** Service providers must keep a monthly summary of each instance of the use of physical restraint, including information specified in the regulation, and prepare a written analysis of each use on a monthly basis to determine if the physical restraint was used in accordance with the regulation.
- II. **Annual Requirement (Ontario Regulation 155/18 s. 15):** At least once every calendar year, a service provider must ensure that their policy on the use of physical restraint is evaluated on its effectiveness and determine whether any changes or improvements are needed.

7. Training and Education

Service Providers That Use or Permit the Use of Physical Restraint (Except Licensees Operating a Children's Residence)

- I. **Training Requirements (Ontario Regulation 155/18 s. 17):** All persons who provide direct care to a child or young person must complete a training

program in the use of physical restraint, all refresher courses, and training on the use of less intrusive intervention measures.

- II. **Education Requirements (Ontario Regulation 155/18 s. 17):** All persons who provide direct care to a child or young person must complete education on the use of physical restraint, including education respecting the provisions of the Act and Regulations concerning the use of physical restraint, any Ministry policies concerning the use of physical restraint, and the service provider's policy concerning the use of physical restraint. This must be completed within 30 days of the Act or regulations coming into force, 30 days after a new or revised ministry policy is established, or 30 days after any service provider policy is established or amended.
- III. **Record (Ontario Regulation 155/18 s. 19):** The service provider must maintain a record of the training and education provided to each person.
- IV. **Assessment of Education (Ontario Regulation 155/18 s. 20):** The service provider must ensure that each person who completes the education requirements is immediately assessed to determine their understanding and ability to apply the education. If the assessment indicates a deficiency, the person must complete additional education until their understanding is satisfactory. A record must be kept of the assessment and the results of the assessment.

Licensees Operating a Children's Residence

- I. **Training Requirements (Ontario Regulation 155/18 s. 16):** All persons who provide direct care to a child or young person must complete a Ministry-approved training program in the use of physical restraint, all refresher courses, and training on the use of less intrusive intervention measures.
- II. **Education Requirements (Ontario Regulation 155/18 s. 16):** All persons who provide direct care to a child or young person must complete education on the use of physical restraint, including the provisions of the Act and Regulations, any Ministry policies, and the service provider's policy. This must be completed within 30 days of the Act or regulations coming into force, 30 days after a new or revised ministry policy is established, or 30 days after any service provider policy is established or amended.
- III. **Record (Ontario Regulation 155/18 s. 19):** The service provider must maintain a record of the training and education provided to each person.

IV. **Assessment of Education (Ontario Regulation 155/18 s. 20):** The service provider must ensure that each person who completes the education requirements is immediately assessed to determine their understanding and ability to apply the education. If the assessment indicates a deficiency, the person must complete additional education until their understanding is satisfactory. A record must be kept of the assessment and the results of the assessment.

Appendix A: Residential Services Reform

Vision and Guiding Principles

Vision:

High-quality residential services in Ontario will effectively meet the needs of children, youth and families, contribute to lasting, positive outcomes and enable the fulfilment of each person's individual and unique potential.

As a result of this reform, by 2025, the system will be one where:

1. **Safety:** All children and youth in care are safe and feel safe.
2. **Youth Voice:** All children and youth receiving residential services have the right to express their own views freely and safely about matters that affect them.
3. **Greater Accountability:** Better data is available to help make better decisions and increase transparency of licensed residential services.
4. **Quality of Care:** Standards are informed by young people and reflected in the care they receive.
5. **Consistency:** The same standard of care is maintained in every part of the province.
6. **Inclusivity:** All language used to describe services is inclusive.
7. **Strengthened Workforce:** All children and youth are cared for by qualified, well-trained and responsive staff.
8. **Respecting Cultures and Identities:** The needs of all children and youth are met and supported, including those of Black, racialized, First Nations, Métis, and Inuit children and youth.

Guiding Principles:

- Respect for the knowledge, customs and rights of Indigenous communities
- Child and youth voice at the centre, with a family-focused approach
- The right place at the right time for as little time as necessary
- Data-driven transparency and accountability
- A home for now
- Anti-oppression and inclusion
- Cultural relevance, diversity and accessibility
- Consistent, responsive and high quality care
- Strong oversight and a commitment to improvement

Youth Panel Input

- Youth have developed six quality of care domains that must be present in the lives of young people in residential care at all times:
 - Voice, Rights, and Communications;
 - Homes and Ongoing Support;
 - Individual Paths and Fulfillment;
 - Belonging, Relationships, and Accepting Environments;
 - Identity and Culturally-Relevant Care; and
 - Service Providers and Caregivers.

Quality of Care Pillars

1. Safe and Healthy Places

Children and youth are physically safe. The physical space in which residential services are provided meets the basic needs of children and youth, including food, shelter and clothing, in the context of what is culturally appropriate for them. Their physical space supports their ability to thrive and to be healthy. It provides space for play and leisure in a comfortable and caring environment.

2. A Sense of Belonging

All children and youth in residential care feel at home, are supported to form and maintain attachments, and to be the best they can be. They are supported by caring, qualified adults to have a sense of stability, continuity and hope for the future. Children and youth are supported to have a voice in decision-making about their care and matters that affect them. Residential settings are inclusive and accepting places that provide culturally appropriate services that meet the needs of a diverse population.

3. Child and Youth Centered Placement and Services

All children and youth have the right placement at the right time. Access to services is as close to home as possible, and appropriate for their needs. A range of services are in place in the community to meet their needs. Decisions about their care are made with them using sound clinical and evidence-informed practice and high quality data. Multi-sector professionals work together to support them moving into, through and out of residential services.

For Indigenous Children and Youth

Throughout this process we will co-develop an approach with Indigenous partners to meet the needs of Indigenous children and youth through the mechanisms established as part of the co-implementation of the *Ontario Indigenous Children and Youth Strategy*.

Appendix B: Key Resources

The CYFSA and Regulations

The *Child, Youth and Family Services Act, 2017* is available on Ontario's e-laws website at: <https://www.ontario.ca/laws/statute/17c14>.

Ontario Regulation 155/18, *General Matters under the Authority of the Lieutenant Governor in Council*, which includes requirements for licensed residential settings, is available on e-laws at: <https://www.ontario.ca/laws/regulation/180155>.

Ontario Regulation 156/18, *General Matters under the Authority of the Minister*, which includes requirements for licensed residential settings, is available on e-laws at: <https://www.ontario.ca/laws/regulation/180156>.

The **Fact Sheets** on new regulations related to residential licensing requirements are available on the Ministry's website at: <http://www.children.gov.on.ca/htdocs/English/professionals/childwelfare/residential/index.aspx>.

Additional information on the CYFSA is also available on the Ministry's website at: <http://www.children.gov.on.ca/htdocs/English/professionals/childwelfare/modern-legislation.aspx>.

Residential Services Reform

Safe and Caring Places for Children and Youth: Ontario's Blueprint for Building a New System of Licensed Residential Services is available on the Ministry's website at:

<http://www.children.gov.on.ca/htdocs/English/professionals/childwelfare/residential/blueprint/index.aspx>.

The Residential Services Youth Panel Report **Envisioning Better Care for Youth: Our Input into the Blueprint Report** can be found on the Ministry's website at: <http://www.children.gov.on.ca/htdocs/English/professionals/childwelfare/residential/index.aspx>.

The Residential Services Review Panel Report **Because Young People Matter** is available on the Ministry's website at:

<http://www.children.gov.on.ca/htdocs/English/documents/childrensaidthe/residential-services-review-panel-report-feb2016.pdf>.

The Provincial Advocate for Children and Youth Report **Searching for Home** is available on the Ministry's website at:

<http://www.children.gov.on.ca/htdocs/English/professionals/childwelfare/residential/blueprint/appendix.aspx>.

Questions

Questions about the *Child, Youth and Family Services Act, 2017* or its regulations can be directed to cyfsa@ontario.ca. The Ministry of Children and Youth Services cannot provide legal advice. For information particular to your situation, you may wish to seek legal advice.