

Guidelines for Valuing Claims for Settlement Purposes

Introduction

These Guidelines for Valuing Claims for Settlement Purposes (“the Guidelines”) govern how Claims of abuse will be valued and paid from the YDC Settlement Fund (“the Fund”). They are intended to be used uniformly by the Claimant, the AG Designee and the Administrator. It is the goal of these Guidelines to provide for a fair and uniform valuation of Claims for all Claimants, so that similar Claims receive similar compensation.

Overview of the Valuation Process

Valuing a Claim involves four basic steps:

1. Determining the Base Award;
2. Determining and Applying a Frequency Multiplier;
3. Applying any Applicable Aggravating Factors; and
4. Taking into Account any Mitigating or Exceptional Factors.

These steps will be performed separately for each type of abuse—sexual abuse and physical abuse. For Claimants making both types of Claims, these steps will be performed twice.

The Claim Packet contains a Claim Worksheet which is intended to help each Claimant perform the first three of these steps. Claimants will use the Claim Worksheet to calculate their awards, adjusted for frequency and increased by any applicable Aggravating Factors. Claimants are not asked to make reductions based on any Mitigating factors. The AG Designee may determine whether they believe any Mitigating or Exceptional factors apply in arriving at their position regarding Claims. The Administrator may also determine whether any Mitigating or Exceptional factors apply in arriving at a final Claim determination.

Valuing Claims

Step One: Determining the Base Award

The Base Award for a Claimant is a dollar amount. For sexual abuse Claims, Base Award amounts range from \$25,000.00 to \$200,000.00. For physical abuse Claims, Base Award amounts range from \$2,500.00 to \$50,000.00.

Each Base Award corresponds to a category of abuse.

For Claimants who experienced only one category of abuse of a single type (sexual or physical), the Base Award amount is the amount corresponding to that category.

For Claimants who experienced abuse falling in multiple categories of a single type (sexual or physical), the Base Award for that type of abuse is the amount corresponding to the category of abuse that provides the most compensation.

The following tables identify the categories for each type of abuse which can be compensated by the Fund:

Table 1 – Categories of and Base Award Amounts for Claims of Sexual Abuse

Category	Description	Base Award Amount
A	Anal or Genital Rape (Sexual Penetration of the Anus or Genital Openings)	\$200,000
B	Oral Rape (Fellatio, Cunnilingus, Sexual Penetration of the Mouth)	\$150,000
C	Intimate Sexual Touching (Masturbation)	\$100,000
D	Other Touching (Groping)	\$50,000
E	Conduct Creating a Reasonable Apprehension of Sexual Touching or Sexual Penetration (Indecent Exposure, Lewdness, Violations of Privacy)	\$25,000

Table 2 – Categories of and Base Award Amounts for Claims of Physical Abuse

Category	Description	Base Award Amount
A	Physical abuse resulting in permanent or life-threatening bodily injury	\$50,000
B	Physical abuse resulting in serious bodily injury	\$25,000
C	Physical abuse resulting in bodily injury	\$10,000
D	Physical abuse with no significant injury	\$2,500

The categories of sexual abuse and physical abuse contained in these tables are further described below. To the extent an incident of abuse does not fit clearly within one of

these categories, the category which most closely resembles the incident in question should be used.

Sexual Abuse

“Sexual Abuse” means “an incident of conduct which would constitute an offense under RSA 632-A:2, RSA 632-A:3, or RSA 632-A:4, or a common law cause of action for assault or battery that involves sexual contact or sexual penetration as defined by RSA 632-A:1.” (RSA 21-M:11-a, I. (i))

To be the basis of an award, sexual abuse must have been perpetrated upon a Former YDC Resident by or at the behest of a member of the YDC staff. (RSA 21-M:11-a, I. (c))

“Former YDC Resident” means an individual who resided at YDC at any time. (RSA 21-M:11-a, I. (e)) (A current YDC resident is also a “Former YDC Resident.”)

“YDC” means the Youth Development Center, as identified in RSA chapter 621, or its renamed or successor entity, and any predecessor entity performing the function of housing adjudicated delinquent or pre-adjudication detained youth, including the State Industrial School, the Philbrook School, the Tobey Special Education School and the Youth Services Center. (RSA 21-M:11-a, I. (k))

Sexual Abuse Category A—Anal or Genital Rape

This category is based on sexual penetration by the Actor of the anus or genital openings of the Claimant or sexual penetration by the Claimant of the anus or genital openings of the Actor during the period of Claimant’s residency at YDC.

“Actor” means a staff member of YDC.

“Genital Openings” means the internal or external genitalia including, but not limited to, the vagina, labia majora, labia minora, vulva, urethra, or perineum.

Sexual penetration for purposes of Category A includes, but is not limited to, sexual intercourse and anal intercourse. **“Sexual penetration”** for purposes of Category A means:

- (a) Any intrusion, however slight, of any part of the Actor's body, including emissions or any object manipulated by the Actor into the genital or anal openings of the Claimant's body;

(b) Any intrusion, however slight, of any part of the Claimant's body, including emissions or any object manipulated by the Claimant into the genital or anal openings of the Actor's body; or

(c) When the Actor through force, coercion, or intimidation causes any part of another person's body to be utilized in place of the Actor's in the manner described in (a) or (b).

"Emissions" include semen, urine, and feces.

"Objects" include animals as defined in RSA 644:8, II.

Sexual Abuse Category B—Oral Rape

This category is based on sexual penetration by the Actor of the oral opening (mouth) of the Claimant or sexual penetration by the Claimant of the oral opening (mouth) of the Actor during the period of Claimant's residency at YDC.

The terms **"Actor," "emissions,"** and **"objects"** have the same meaning here as in Category A.

Sexual penetration for purposes of Category B includes, but is not limited to, fellatio and cunnilingus. **"Sexual penetration"** for purposes of Category B means:

(a) Any intrusion, however slight, of any part of the Actor's body, including emissions or any object manipulated by the Actor into the oral opening of the Claimant's body;

(b) Any intrusion, however slight, of any part of the Claimant's body, including emissions or any object manipulated by the Claimant into the oral opening of the Actor's body; or

(c) When the Actor through force, coercion, or intimidation causes any part of another person's body to be utilized in place of the Actor's in the manner described in (a) or (b).

Sexual Abuse Category C—Intimate Sexual Touching

This category is based on intimate sexual contact between the Actor and the Claimant which does not involve sexual penetration as defined in Categories A and B during the period of Claimant's residency at YDC.

The term **"Actor"** has the same meaning here as in Category A.

"Sexual contact" for purposes of Category C means the intentional touching, directly, through clothing or otherwise, of the Claimant's or Actor's sexual or intimate parts, including genitals, emissions, tongue, anus, breasts, and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification, or the humiliation of the person being touched. Sexual contact may include touching by the Claimant of their own sexual or intimate parts, if done at the behest of the Actor. Sexual contact for purposes of Category C includes, but is not limited to, masturbation.

Sexual Abuse Category D—Other Touching

This category is based on touching of the Claimant by the Actor for the purpose of sexual arousal or gratification of the Actor which does not involve sexual penetration as defined in Categories A and B or sexual contact as defined in Category C during the period of Claimant's residency at YDC.

The term "**Actor**" has the same meaning here as in Category A.

"Other touching" is the same as "groping."

"Groping" means the intentional touching whether directly, through clothing or otherwise, of the Claimant's sexual or intimate parts, including genitals, emissions, tongue, anus, breasts, and buttocks, by the Actor under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification of the Actor. Groping does not include touching of the Claimant's sexual or intimate parts for another legitimate purpose, such as for purposes of medical care; touching of the Claimant's sexual or intimate parts that is accidental; or touching of the Claimant's sexual or intimate parts that is incidental to justified touching of the Claimant in the interests of the safety of the Claimant or others, the security of the facility, or the preservation of order and discipline.

Sexual Abuse Category E—Conduct Creating a Reasonable Apprehension of Sexual Touching or Sexual Penetration

This category is based on conduct that involves no touching, but which causes Claimant to reasonably fear an imminent danger of sexual touching or sexual penetration during the period of Claimant's residency at YDC.

The term "**Actor**" has the same meaning here as in Category A.

The terms "sexual penetration" and "sexual contact" shall here include any of the meanings of those terms contained in Categories A-C.

Conduct which satisfies the conditions of Category E includes, but is not limited to, indecent exposure, lewdness, and violations of privacy.

“Indecent exposure” and/or **“lewdness”** occur when an Actor, for the purpose of the Actor’s sexual gratification or arousal:

(a) purposely fornicates, exposes their genitals, or performs any other act of gross lewdness knowing that the Claimant is present; or

(b) purposely performs any act of sexual penetration or sexual contact on themselves or another in the presence of Claimant; or

(c) transmits to Claimant an image of themselves fornicating, exposing their genitals, or performing any other act of gross lewdness.

A **“violation of privacy”** for purposes of Category E occurs when an Actor:

(a) for the purpose of sexual gratification or arousal installs or uses any device for the purpose of observing, photographing, recording, amplifying, broadcasting, or in any way transmitting images or sounds of the private body parts of Claimant including the genitalia, buttocks, or female breasts, or a Claimant’s body underneath that person’s clothing; or

(b) for the purpose of arousing or gratifying their sexual desire, knowingly views the private body parts of Claimant including the genitalia, buttocks, or female breasts, with or without the Claimant’s knowledge.

“Views,” as used here, means looking at another person with the unaided eye or any device intended to improve visual acuity.

A violation of privacy does not occur when installation or use of a device as described in (a) is done for another legitimate purpose, such as for purposes of medical care; or in the interests of the safety of the Claimant or others, the security of the facility, or the preservation of order and discipline.

A violation of privacy also does not occur when viewing as described in (b) occurs accidentally, or for another legitimate purpose, such as for purposes of medical care; or in the interests of the safety of the Claimant or others, the security of the facility, or the preservation of order and discipline.

A violation of privacy also does not occur when installation or use of a device as described in (a) is done or viewing as described in (b) occurs in order to obtain evidence of suspected illegal activity, the suspected violation of any administrative rule or regulation, or any other suspected pattern or practice by the Claimant or others, potentially adversely affecting safety of the Claimant or others, the security of the facility, or the preservation of order and discipline.

Physical Abuse

“Physical Abuse” means an incident of conduct that would constitute an offense under RSA 631:1, RSA 631:2, or RSA 631:2-1, and that is not justified under RSA 627:6, or a common law cause of action for assault or battery. (RSA 21-M:11-a, I. (i))

To be the basis of an award, physical abuse must have been perpetrated upon a Former YDC Resident by or at the behest of a member of the YDC staff. (RSA 21-M:11-a, I. (c))

“Former YDC Resident” means an individual who resided at YDC at any time. (RSA 21-M:11-a, I. (e)) (A current YDC resident is also a “Former YDC Resident.”)

“YDC” means the Youth Development Center, as identified in RSA chapter 621, or its renamed or successor entity, and any predecessor entity performing the function of housing adjudicated delinquent or pre-adjudication detained youth, including the State Industrial School, the Philbrook School, the Tobey Special Education School and the Youth Services Center. (RSA 21-M:11-a, I. (k))

“Justified” as used in these Guidelines has the same meaning as in RSA 627:6.

Additionally, to be the basis of an award, physical abuse must have occurred separately from and unrelated to an instance of sexual abuse. If physical force is used in connection with sexual abuse, it is already considered in determining the appropriate category for the sexual abuse Claim.

Physical Abuse Category A—Physical Abuse Resulting in Permanent or Life-Threatening Bodily Injury

This category of physical abuse is based on an unjustified use of physical force by the Actor against the Claimant which causes permanent or life-threatening bodily injury to the Claimant during the period of Claimant’s residency at YDC.

“Actor” means a staff member of YDC.

Use of physical force **“by the Actor”** includes incidents in which the Actor through force, coercion, or intimidation causes another person to use physical force against the Claimant.

“Permanent or life-threatening bodily injury” means injury involving a substantial risk of death; loss or substantial impairment of the function of a bodily member, organ, or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent. (U.S. Sentencing Guidelines, § 1B1.1, app. note 1(K))

Physical Abuse Category B—Physical Abuse Resulting in Serious Bodily Injury

This category of physical abuse is based on an unjustified use of physical force by the Actor against the Claimant which causes serious bodily injury to the Claimant, during the period of Claimant’s residency at YDC.

“**Actor**” and “**by the Actor**” have the same meaning here as in Category A.

“**Serious bodily injury**” means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. (U.S. Sentencing Guidelines, § 1B1.1, app. note 1(M))

Physical Abuse Category C—Physical Abuse Resulting in Bodily Injury

This category of physical abuse is based on an unjustified use of physical force by the Actor against the Claimant which causes bodily injury to the Claimant, during the period of Claimant’s residency at YDC.

“**Actor**” and “**by the Actor**” have the same meaning here as in Category A.

“**Bodily injury**” means any significant injury; e.g., an injury that is painful and obvious, or is of a type for which medical attention ordinarily would be sought. (U.S. Sentencing Guidelines, § 1B1.1, app. note 1(B))

Physical Abuse Category D—Physical Abuse with No Significant Injury

This category of physical abuse is based on an unjustified use of physical force by the Actor against the Claimant which causes no significant injury to the Claimant, during the period of Claimant’s residency at YDC.

“**Actor**” and “**by the Actor**” have the same meaning here as in Category A.

Step Two: Determining and Applying a Frequency Multiplier

The Frequency Multiplier is a number. It is determined from the Tables of Adjusted Frequencies and Frequency Multipliers below. The Frequency Multiplier is used to increase the Base Award for victims of multiple incidents of abuse.

To apply the Frequency Multiplier to the Base award, multiply the Base Award by the Frequency Multiplier. This is a Claimant's Frequency Adjusted Base Award.

Table 3 – Frequency Multiplier Table

Adjusted Frequency	Frequency Multiplier
One	1
Two to Five	3
Six to Nine	7
Ten or more	12

To determine the Frequency Multiplier, it is first necessary to determine an Adjusted Frequency. This is done by averaging and adding the number of incidents from several categories of abuse, as follows:

For sexual abuse, add the number of incidents of the highest compensated category of abuse claimed plus half the number of incidents for each of the next two categories (even if the number of incidents is zero). Incidents in any additional categories are not counted.

For physical abuse, add the number of incidents of the highest compensated category of abuse claimed plus half the number of incidents for the next category (even if the number of incidents is zero). Incidents in any additional categories are not counted.

Step Three: Applying Any Applicable Aggravating Factors

Aggravating Factors, where applicable, may increase the value of a Claim. The following tables identify the Aggravating Factors that may increase the amount of compensation to be awarded from the Fund and describe the amount to be added:

Table 4 – Aggravating Factors for Claims of Sexual Abuse

Aggravating Factor	Amount Added
Sexual abuse resulting in pregnancy	\$200,000
Sexual abuse resulting in a sexually transmitted disease (STD)	\$100,000
Photographs or video recording were taken during an incident of abuse	\$ 125,000
Different Actors commit separate incidents (applies only if more than one assault)	Base Award x .5

Incident accompanied by unjustified out of community confinement	Base Award x .25
Duration (continuous course of conduct extending more than 12 months)	Base Award x .5
Youthful Claimant at time of at least one incident (under the age of 13)	Base Award x .25
Physical participation by more than one Actor in a single incident	Base Award Amount of the multi-actor incident x .5
Use of deadly weapon during an incident	Base Award Amount of the incident involving a deadly weapon x .5
During at least one incident, an additional actor observed, stood by or acted as a lookout during an incident	Base Award Amount of the incident with such an additional actor x .25

Table 5 – Aggravating Factors for Claims of Physical Abuse

Aggravating Factor	Amount Added
Physical abuse inflicted in retaliation or as punishment for refusal to submit to sexual advances	Base Award x .25
Physical abuse accompanied by unjustified out of community confinement for 7 or more days	Base Award x .25

Guidance regarding selected aggravating factors which may apply to a Claim is explained below.

Unjustified Out-of-Community Confinement

For purposes of determining whether conduct constituting sexual abuse or physical abuse is aggravated by unjustified out-of-community confinement, causing a Claim award to be increased, the following guidance should be followed:

“Out-of-Community Confinement,” (or “OOC”) also known as “room confinement,” and “solitary confinement,” means the placement of a resident in a locked room with

minimal or no contact with persons other than juvenile detention facility staff and attorneys.

OOC does not include protective or medical isolation.

OOC may take place in a resident's assigned room, or it may take place in a separate room used specifically for that purpose.

OOC may involve practices such as removing most objects from the room, including the resident's clothing, and restraint of the resident, when necessary and appropriate to the purpose of the OOC.

OOC is justified in some circumstances. OOC may be used to calm a resident who is exhibiting seriously disruptive or dangerous behavior. It may also be used to protect residents from self-harm, hurting others or causing significant property damage. OOC used for these purposes should be terminated once it becomes reasonably certain that the necessitating circumstances have passed.

In some cases, OOC may also be justified as a sanction for rules violations.

Attitudes about the practice of utilizing OOC in juvenile detention facilities have varied over time. To determine whether OOC is justified in a given case, the then-applicable law and facility policies and procedures and whether they were substantially followed must be considered.

Use of Deadly Weapon

For purposes of determining whether conduct constituting sexual abuse is aggravated by use of a deadly weapon, such that a Claim award should be increased, "**deadly weapon**" means any firearm, knife or other substance or thing which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing death or serious bodily injury.

Step Four: Take into Account Any Mitigating or Exceptional Factors

Mitigating Factors are circumstances which may reduce the value of a Claim. They do not need to be addressed by the Claimant. The amount of the reduction to be applied for a particular Mitigating Factor is not specified in these Guidelines due to the nature of the Mitigating Factors. In a particularly clear case, such as in the event of a prior settlement and release, a Mitigating Factor may reduce the value of a Claim to zero.

Exceptional Factors are circumstances not accounted for in any other way under these Guidelines. Exceptional Factors may justify increasing the value of a Claim by up to one half of the Base Award. Application of this adjustment should be reserved for a Claimant who has suffered extraordinary harm, or harm that is significantly greater than the harms suffered by all survivors of abuse. The Claimant is given an opportunity to describe any such circumstances in the Claim Form but is not asked to suggest an additional award amount.

Mitigating and Exceptional Factors should be taken into consideration by the AG Designee and the Administrator in arriving at an award, recommendation, or position concerning a Claim.

The following guidance is provided regarding how Mitigating Factors should be considered.

Issues of Credibility

It is acknowledged that sexual abuse and physical abuse are traumatic events which can affect a victim's ability to recall details clearly. It is also acknowledged that memory of the details of traumatic events can sometimes be regained over time. It is also acknowledged that due to past trauma, and the potential for re-traumatization through recall, victims may only become able to discuss details of their abuse after the passage of time and may not become comfortable sharing all details at a single time. Therefore, the fact that a victim has not previously disclosed or has only partially disclosed the details of incidents which now form the basis for a Claim shall not, standing alone, be considered as a reason for denial or reduction of a Claim.

Understanding these facts about victims, if the totality of the circumstances surrounding a Claimant's description of events (which may include how and when details were recalled and disclosed by Claimant, as well as statements made by persons other than Claimant, comparisons with information contained in records, and any other matters

typically considered as bearing on credibility) indicates a Claim is based on statements lacking in credibility, a Claim may be denied or the amount reduced, on that basis.

Problems of Proof

The degree of proof needed to support a Claim, an element of a Claim, or a defense will depend upon the nature of the Claim and should generally comport with what proof might be reasonably expected to exist in each instance. A Claim may be denied or the amount reduced where reasonably expected proof is lacking to such a degree that it calls into question the legitimacy or veracity of the Claim or element.

Legal Issues Including Defenses

The Claims Process is designed to be an alternative to litigation. The amounts which may be awarded from the Fund have been developed with consideration given to the fact that by participating, a Claimant will largely avoid having to litigate issues of law that would otherwise be raised in a court case or controversy. Therefore, to the extent that issues of law exist and would apply to all Claimants equally, simply by virtue of the nature of the Claims, generally, they shall not be considered as Mitigating Factors. To the extent that there are legal issues that are factually unique to a Claim, they may be considered and may form the basis to deny or reduce a Claim or to reject a defense. The more common legal issues which may be raised are discussed below.

Comment Regarding Law Applied, Generally

Except where expressly contradicted by the Statute or by the Guidelines, it shall be presumed that the law as it exists today also existed at the time of the incidents giving rise to the Claim. However, to the extent not expressly contradicted by the Statute or by the Guidelines, the parties may raise, and the Administrator may consider, the law and standards applicable at the time of the incidents, if it can be demonstrated that prior applicable law would require a different result than current law.

Limitations

This Mitigating Factor may apply to Claims of sexual abuse only where it can be demonstrated that the Claimant had actual knowledge regarding the potential to file a Claim during the applicable limitations period and failed to do so. This standard shall be applied to the exclusion of otherwise applicable law.

This Mitigating Factor may be applied to Claims of physical abuse according to applicable law.

Laches

This Mitigating Factor may only apply to Claims of physical abuse, and when applied, shall apply according to applicable law.

Justification/Privilege

Justification, as applicable to the definition of Physical Abuse, and as applicable to Out-of-Community Confinement as an Aggravating Factor, is already provided for in relation to each of those topics.

Conduct which would constitute Sexual Abuse should not generally be subject to a defense of justification or privilege, except as articulated in the definitions applicable to Sexual Abuse Categories D and E, such as in the case of touching necessitated by medical treatment or use of surveillance cameras for security or law enforcement purposes.

To the extent a defense of justification or privilege might apply which is not already contemplated by these definitions, whether or not it constitutes a Mitigating Factor will be governed by applicable law.

Failure to Utilize Available Grievance Procedures or Other Means of Redress, Concealment

This Mitigating Factor may apply when the Claimant knew or reasonably should have known of the availability of legitimate procedures in place or other legitimate means by which abuse could have been addressed, and either (1) made a deliberate choice not to utilize those procedures or means, or (2) actively concealed the abuse, thwarting the effectiveness of such procedures.

Absence of Harm

The nature of this Claims Process is such that, in general, Claims will be approved in a liquidated amount. Harm to a Claimant from abuse is presumed, and a Claimant need not offer proof of specific harm in order to receive compensation. However, an extraordinary lack or the absence of any harm or suffering on the part of the Claimant may be considered as a Mitigating Factor.

Other Causes of Harm Suffered

To the extent that extraordinary harm or suffering, claimed as the basis for an increased award, may be traced to another source, that circumstance may also be considered as a Mitigating Factor.

Waiver, Accord and Satisfaction, Release

This Mitigating Factor may apply where a Claimant has previously relinquished the right to pursue a Claim in exchange for consideration. This Mitigating Factor may be considered even if the consideration received is significantly less than the amount which would otherwise be awarded from the Fund.

Final Steps: Determine the Requested, Recommended, or Final Claim Award Amount

Adding the Frequency Adjusted Base Award (from Step Two) plus the Total of any Aggravating Factors (from Step Three) should result in the Claimant's requested Claim amount for each type of abuse.

The AG Designee and the Administrator will utilize the same method but may arrive at a different amount due to differences in the selection of categories and factors. Additionally, the AG Designee and the Administrator may make adjustments for any Mitigating or Exceptional Factors (from Step Four).

Amounts which exceed the statutory caps for payment from the Fund will then need to be reduced to the cap as follows:

An award to a Claimant may not exceed \$1,500,000.00 in total. In addition, an award to a Claimant for sexual abuse may not exceed \$1,500,000.00 and an award for physical abuse may not exceed \$150,000.00.