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Ex Officio Member

Dr. Lawanda Ravoira, Director
National Center for Girls and
Young Women (NCCD)

Our Mission

The Florida Juvenile Justice Association promotes the availability and accessibility of comprehensive, high quality services to pre-delinquent and delinquent youth and their families.

Florida Juvenile Justice Association Comments

**Proposed Rule Hearing
63F-11 (Central Communications Center)
May 25, 2010**

The Florida Juvenile Justice Association has worked with the department to develop an effective incident reporting rule that serves to protect youth, staff and the community. We greatly appreciate the department's transparency in this regard, and its willingness to listen to our comments and proposals.

We continue to take issue with two sections of the current draft. First, 63F-11.004(5)(j), regarding "Health or Mental Health/Substance Abuse Services Complaint," requires the reporting of any of six types of alleged "complaints." These are:

- Any improper action of medical services.
- Any improper action of mental health services.
- Any improper action of substance abuse services.
- Any improper omission of medical services.
- Any improper omission of mental health services.
- Any improper omission of substance abuse services.

Several examples are provided, but the draft does not limit the "complaints" to those three examples. Further, the three examples do not provide sufficient guidance as to what must be reported.

Section 120.54(1)2., F.S., requires a rule to provide fair notice to affected parties of the applicable criteria or standards for agency decisions. The "complaints noted above are so vague and so broad that a reasonable person would not know what is reportable or not reportable. By the same token the CCC operator taking the report would have no specific criteria, nor guidance, as to whether to accept the report. Each operator would be left to decide for him/herself whether the "complaint" should be reported.

Section 120.545(8)(d), F.S., states that a proposed rule is an invalid exercise of delegated legislative authority if the rule "is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency." We believe the six standards noted above are vague, inadequate standards, which ultimately vests unbridled discretion in the department.

Section 120.545(8), F.S., states that "Invalid exercise of delegated legislative authority" means action which goes beyond the powers, functions, and duties delegated by the Legislature." The legislature has vested the sole



authority to investigate alleged improper actions and omissions, relating to medical services, i.e., medical neglect, to the Department of Children and Services. It has likewise vested sole authority to license and regulate children's mental health and substance abuse services, including those provided in DJJ facilities and programs, to the Department of Children and Families. Subsection (5)(j) of the draft seeks to regulate through a "complaint" reporting requirement subject matter that has not been delegated to DJJ by the legislature.

This draft subsection is not necessary because what it seeks to accomplish is already addressed appropriately and within the requirements of Chapter 120, elsewhere, with respect to residential programs. Rule 63E-7.006(1) mandates that programs provide youth, among other things, with health services, mental health services, and substance abuse services. This section also requires programs to provide access to the DCF abuse hotline or the CCC (for youth 18 and older), if a youth wishes to allege abuse or neglect. Sub-section (5) states that "A residential commitment program shall establish written procedures specifying the process for youth to grieve actions of program staff and conditions or circumstances in the program *related to the violation or denial of basic rights.*" [emphasis added] In effect, this draft subsection inappropriately seeks to expand 63E-7.006(1) to allow youth 17 and younger to contact the CCC for these grievances, albeit through staff reporting.

Finally, improper actions and omissions are adequately addressed through contract management. There are numerous examples of contracted providers being held accountable for violations of rule and policy, including improper actions and omissions.

For these reasons we ask that subsection (5)(j) be deleted in its entirety.

The second issue is found at 63F-11.004(6)(d). This involves the reporting of "sexual contact" between youth. That term, however, is not defined. As a result, it does not provide fair notice as to what must be reported. It is vague, and thus, vests unbridled discretion in the agency. Moreover, we believe it is bad policy and is in conflict with the department's gender responsive initiative that has endorsed the "Gender Responsive Program Assessment Protocol" developed by the NCCD Center for Girls and Young Women. Dr. Lawanda Ravoira, Director of the NCCD Center, has provided FJJA with the Center's position on this issue, which is attached to our testimony and which we request be included in the hearing record.

The FJJA concurs with Dr. Ravoira's position. As an example of how this lack of definition has the potential to inappropriately categorize normal adolescent behavior, one of our member's programs kept track of "contact" incidents between youth. It recorded 24 touching incidents, including eight kissing on cheeks, 173 "huggings," and 33 horse playing incidents that included touching. Depending on who is defining what "sexual contact" is at any point of time, all or none of these incidents might be found to be or not be reportable. Such vagueness should not be implemented as rule.

For these reasons we ask that the "sexual contact" standard be deleted from this draft subsection. We do not object to the "sexual battery" standard.

We ask that our comments be included in the hearing record. Thank you.



NCCD Center for Girls and Young Women

Testimony submitted to the FJJA

Regarding the draft CCC Rule: *(d) Youth on Youth Sexual Contact: Any alleged incident or event occurring in a department facility, juvenile assessment center, day treatment program, contracted facility, shelter, contracted site or program where youths engage in sexual contact with one another.*

Additionally, any alleged sex act which may constitute a form of sexual battery as defined in Section 794.011, Florida Statutes, occurring in a department facility, juvenile assessment center, day treatment program, contracted facility, shelter, contracted site, or program in which there is obvious injury or physical evidence to support the allegations will be reported regardless of the elapsed time.

<https://www.flrules.org/gateway/readFile.asp?sid=2&tid=8564244&type=1&File=63F-11.001.htm>

The NCCD Center for Girls and Young Women (The Center) has several concerns regarding the Florida Department of Juvenile Justice Central Communications Center (CCC) proposed new rule above which requires reporting of sexual contact. The Center supports all policies and practices that protect youth and ensure their safety, particularly from occurrences of sexual battery. It is of the utmost importance that youth in the justice system are not sexually abused or victimized by peers and/or staff. Likewise, it is imperative that juvenile justice programs document instances of sexual abuse and victimization. There needs to be better data on the sexual abuse and assault that occurs within facilities so we can accurately identify the scope of the problem and implement solutions.

The goal to keep youth safe and document incidents of abuse should be balanced with meeting their rehabilitation needs that may include building helping alliances within a caring and therapeutic environment, which is particularly important for girls. Currently, "sexual contact" must be reported but the term in the proposed language, "sexual contact" is not defined, which is extremely problematic. Moreover, most facilities have enacted "no touch" policies, which eliminate all forms of touch. **Instead, The Center supports careful and deliberate crafting of policies that (1) clearly define sexual contact and (2) differentiate harmful physical contact, including sexual contact, from nurturing and healthy contact.** We believe that without doing so, these policies can lead to several unintended negative consequences, which are outlined below:

Problem 1: The term "sexual contact" is not defined.

- Ideas regarding what constitutes sexual contact may vary by staff, which leads to inconsistent practices. For example, girls are not allowed to do each other's hair or nails in some facilities because some staff consider this sexual in nature¹. In a qualitative study, girls discussed their desire and frustrations regarding hugs in the milieu and staff perceptions regarding boundaries.¹
- Any touching between two youth could be interpreted as "sexual" by staff. Without clear guidelines, reporting can become arbitrary and not reflect the unwanted sexual behaviors intended.

Negative Consequences:

- Youth can be penalized and receive additional infractions due to touch that is not sexual due to overly broad categorizations
- Staff can be confused by the vague term and their responsibility in meeting reporting requirements

¹ Richmond, P. A. (2006). Boundary realities from the wisdom of female youth in residential treatment. *Journal of Child and Youth Care Work*, 21. pp. 80-93.

Problem 2: No-touch rules are not gender-responsive

- “No touch” rules do not take into consideration female adolescent development and the role of healthy relationships in girls’ lives.
 - Qualitative research shows that the most important topic discussed by girls in residential treatment was their need for healthy physical contact. The majority expressed the need to have emotional and physical (non-sexual) relationships with peers and staff¹.
 - In general, research suggests that deficits in physical contact can have negative effects on the development
- “No touch” rules are often developed out of fear and are reactionary
- “No touch” policies do not differentiate between nurturant and sexual touch

Negative Consequences:

- Youth will be denied opportunities to experience healthy boundaries with adults.
- Youth may experience confusion regarding which behaviors are considered sexual in nature.
- Girls (and boys) who have experienced abuse may have skewed perspectives regarding physical contact and “no-touch” rules can add to confusion
- Staff may be conflicted regarding how to be supportive to youth but remain professional and abide by policies

Problem 3: LGBTQ youth are overcharged with sex offenses²

- It is a reality that youth may engage in consensual same-sex sexual activity but often suffer more severe consequences from the legal and justice systems²
- Profound bias and damaging misconceptions of LGBTQ youth place them at risk of both being the victims of abuse and receiving additional charges while in facilities²

Negative Consequence:

- Youth are labeled as sexual offenders though behavior was consensual, which severely impacts future employment and life opportunities

In conclusion, The Center strongly recommends clearly defining *sexual contact* and revising “no touch” policies for youth in the juvenile justice system. This will ensure that data are accurate and truly reflect the sexual behaviors they were intended to capture. Re-examining “no touch” policies will be important to ensure that treatment needs are met and a safe and therapeutic environment is created.

² Majd, K., Marksamer, J., & Reyes, C. (2009). *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts*. San Francisco, CA: The Equity Project.