

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 compensable, 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. (d))

“**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))

To be compensable, conduct constituting physical abuse must have been unjustified. Under RSA 627:6, the following “**justifications**” for conduct which might otherwise be considered physical abuse exist:

1. A parent, guardian or other person responsible for the general care and welfare of a minor is justified in using force against such minor when and to the extent that he reasonably believes it necessary to prevent or punish such minor's misconduct.
2. A teacher or person otherwise entrusted with the care or supervision of a minor for special purposes is justified on the premises in using necessary force against any such minor, when the minor creates a disturbance, or refuses to leave the premises or when it is necessary for the maintenance of discipline.
3. A person responsible for the general care and supervision of an incompetent person is justified in using force for the purpose of safeguarding his welfare, or, when such incompetent person is in an institution for his care and custody, for the maintenance of reasonable discipline in such institution.

BUT: The justifications set forth above do not excuse the malicious or reckless use of force that creates a risk of death, serious bodily injury, or substantial pain.

4. A person authorized by law to maintain decorum or safety in a vessel, aircraft, vehicle, train or other carrier, in a hospital or other health care facility, or in a place where others are assembled may use non-deadly force when and to the extent that he or she reasonably believes it necessary for such purposes, but the

person may use deadly force only when he or she reasonably believes it necessary to prevent death or serious bodily injury.

5. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious bodily injury upon himself may use a degree of force on such person as he reasonably believes to be necessary to thwart such a result.

6. A licensed physician, or a person acting under his or her direction, or an advanced practice registered nurse (APRN) working for the department of corrections may use force for the purpose of administering a recognized form of treatment which he or she reasonably believes will tend to promote the physical or mental health of the patient, provided such treatment is administered:

(a) With consent of the patient or, if the patient is a minor or incompetent person, with the consent of the person entrusted with his care and supervision; or

(b) In an emergency when the physician or the advanced practice registered nurse (APRN) reasonably believes that no one competent to consent can be consulted and that a reasonable person concerned for the welfare of the patient would consent.

7. An employee authorized by a hospital or other health care facility may use non-deadly force when and to the extent that he or she reasonably believes it necessary to maintain decorum or safety and may use deadly force only when he or she reasonably believes it necessary to prevent death or serious bodily injury.

For purposes of valuing claims, physical abuse is divided into four categories:

Category	Description
A	Physical Abuse Resulting in Permanent or Life Threatening Bodily Injury
B	Physical Abuse Resulting in Serious Bodily Injury
C	Physical Abuse Resulting in Bodily Injury
D	Physical Abuse with No Significant Injury

To the extent an incident of physical abuse does not fit clearly within one of these four categories, the category which most closely resembles the incident in question should be used.

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

This category of physical abuse is characterized by an unjustified use of physical force by the Actor against the Claimant which causes permanent or life-threatening bodily injury to the Claimant.

"Actor" means a staff member of YDC who had direct supervisory or disciplinary authority over the Claimant by virtue of the Claimant being incarcerated in YDC, or a juvenile probation and parole officer who had direct supervisory or disciplinary authority over the victim while the victim was on juvenile probation from 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.

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

This category of physical abuse is characterized by an unjustified use of physical force by the Actor against the Claimant which causes serious bodily injury to the Claimant.

"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.

Physical Abuse Category C—Physical Abuse Resulting in Bodily Injury

This category of physical abuse is characterized by an unjustified use of physical force by the Actor against the Claimant which causes bodily injury to the Claimant.

"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.

Physical Abuse Category D—Physical Abuse with No Significant Injury

This category of physical abuse is characterized by an unjustified use of physical force by the Actor against the Claimant which causes no significant injury to the Claimant.

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