

Guidelines for Valuing Claims for Settlement Purposes

1. **Introduction.** These Guidelines govern the valuing for settlement purposes of claims of abuse to be paid from the YDC Settlement 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 uniform valuation of claims for all claimants, so that similar claims receive similar compensation.
2. The Definitions of many terms used here are contained in the Glossary, found at Appendix D¹ to the Claims Process for Administration of the YDC Settlement Fund.
3. The Claims Process and these Guidelines were approved by the Joint Fiscal Committee of the New Hampshire Legislature on _____. The Claims Process and Guidelines for Valuation may be revised by the Administrator, with input from the AG designee and claimants' counsel, with the approval of the Joint Fiscal Committee. To check for any updated versions of this document, go to the websites of the Administrator or the Attorney General.

Overview of Valuing Claims

Valuing a claim involves four basic steps:

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

4. **Step One: Determining the Base Award.**
5. Valuation of a claim begins with determining the Base Award (the "BA") of the claim. To determine the Base Award, the most severe category of sexual or physical abuse claimed from Table 1 or Table 2, below, should be used. To the extent an incident of abuse does not fall clearly or directly within the defined categories in Tables 1 or 2, the category that most closely resembles the incident of abuse should be used.

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

Category	Description	Base Award
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¹ [Note: The Glossary will be compiled after other documents are finalized.]

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
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

6. The categories of sexual and physical abuse are based on and intended to correspond to statutory or other legal definitions. The categories are explained in Appendices 1 (Sexual Abuse) and 2 (Physical Abuse)

7. Step Two: Determining and Applying a Frequency Multiplier

8. Determine the number of instances of the most severe level of abuse and the number of instances of each less-severe level of abuse claimed.

9. Determine the Adjusted Frequency Total. For sexual abuse, add the number of instances of the most severe level of abuse suffered plus ½ the number of instances of the two next lower levels of abuse suffered. Instances of abuse three or four levels lower, if any, shall not be counted. For physical abuse, add the number of instances of the most severe level of abuse suffered plus ½ the number of instances of the next lower level of abuse suffered. Instances of abuse two or more levels lower, if any, shall not be counted.

10. Determine the applicable Frequency Multiplier from Table 3 (sexual abuse) or Table 4 (physical abuse) below based on the Adjusted Frequency Total. Then multiply the Base Award by the Frequency Multiplier to determine the Frequency Adjusted Base Award (the “FABA”).

Table 3 – Frequency Multiplier Table for Claims of Sexual Abuse

Adjusted Frequency Score	Frequency Multiplier
One	1
Two	2
Three	3
Four	4
Five	5
Six to Nine	7
Ten to Fourteen	9
Fifteen to Nineteen	11
Twenty to Twenty-four	13
Twenty-five or more	15

Table 4 – Frequency Multiplier Table for Claims of Physical Abuse

Adjusted Frequency Score	Frequency Multiplier
One	1
Two to Five	2
Six to Ten	3
Eleven to Fourteen	4
Fifteen or more	5

11. Step Three: Determining and Applying Any Applicable Enhancements

12. Determine which Aggravating Factors from Table 5 (sexual abuse) or Table 6 (physical abuse) below apply.
13. Aggravating Factors are further described in Appendix 3 (Aggravating and Mitigating Factors).
14. Calculate the value of the Enhancement corresponding to each applicable Aggravating Factor. Note that some Enhancements are a single set value; some are calculated as a fraction of the Base Award, and some are calculated as a fraction of the base award level (BAL) of the particular category of abuse to which they apply (which may be lower than the BA of the claim).
15. Add up the value of each applicable enhancement to determine the Total Enhancement.

Table 5 – Aggravating Factors and Enhancements Factors for Claims of Sexual Abuse

Aggravating Factors	Enhancement factor
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	\$ 50,000
Different Actors commit separate incidents (applies only if more than one assault)	BA x .5
Incident accompanied by unjustified out of community confinement	BA x .25
Duration (continuous course of conduct extending more than 24 months)	BA x .25
Youthful Claimant at time of at least one incident (under the age of 13)	BA x .25
Physical participation by more than one Actor in a single incident	BAL of most serious multi-actor incident x .5
Use of deadly weapon during an incident	BAL of the most serious 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	BAL of the most serious incident with such an additional actor x .25
Extraordinary harm not accounted for in other enhancements (claimant: please describe in your own words [on page/question#] of the Claim Form any other way in which the sexual abuse you have claimed impacted you to a significantly greater extent than a typical survivor of similar sexual abuse)	Up to .5 x BA

Table 6 – Aggravating Factors and Enhancement Factors for Claims of Physical Abuse

Aggravating Factors	Enhancement factor
Physical abuse inflicted in retaliation or as punishment for refusal to submit to sexual advances	BA x .25
Physical abuse accompanied by unjustified out of community confinement for 7 or more days	BA x .5
Extraordinary harm not accounted for in enhancements (claimant: please describe in your own words [on page/question#] how the physical assault(s) you have claimed impacted you to a significantly greater extent than a typical survivor of a similar physical assault)	Up to .5 x BA

16. Step Four: Take into Account Any Mitigating Factors or Problems of Proof

17. Mitigating Factors and Problems of Proof are further described in Appendix 3 (Aggravating and Mitigating Factors).

18. Evaluate potential factors concerning credibility or issues of proof and increase or decrease the award as appropriate. Potential factors concerning credibility or issues of proof may include the following:

- a. Whether or not the acts were previously reported to persons in a position of authority;
- b. Whether or not the acts can be corroborated through contemporaneous reports by the claimant to others;
- c. Whether or not the acts can be corroborated through contemporaneous records supplied by the claimant or located by the AG designee, Administrator or investigator;
- d. Any other similar factors.

19. Evaluate potential legal issues that would arise if the claims were pursued as litigation. Potential legal issues may include the following:

- a. The applicable statute of limitations.
- b. The applicable legal standards in effect at the time of the act, including privileged conduct and justification.
- c. Whether the conduct was justified in whole or part. See also the following paragraph.

20. Justification.

- a. Justification is defined in Appendix 2 (Physical abuse) and Appendix 3 (Aggravating and Mitigating Factors).
- b. Sexual abuse of YDC residents was never and is not now justifiable, and no claim for sexual abuse shall be denied or discounted on the basis of justification.
- c. Claims of physical abuse shall be evaluated, and potentially discounted, for whether the use of force was justifiable or privileged under then applicable law.
- d. The AG designee may recommend, and the Administrator shall determine, that a claim for physical abuse be denied or discounted if the use of force was justified. The AG designee may recommend, and the Administrator shall determine, that a claim for physical abuse be discounted proportionately if the use of force exceeded the level of force justifiable in the circumstances of the incident.

21. Evaluate any other factor that may be relevant.

22. Determine the Requested, Recommended or Final Claim Award Amount

23. Add the Frequency Adjusted Award (from Step Two) plus the Total Enhancement (from Step Three), then adjust in light of any Mitigating Factors, Problems of Proof or similar factors (from Step Four).

24. Reduce Recommended or Final Claim Award Amount to the applicable statutory cap if, as calculated, it would exceed the cap.

25. **Cap.** In no case may an award to a claimant exceed \$1,500,000 for sexual abuse or \$150,000 for physical abuse, even if application of the base award amount and various applicable enhancements might yield a claimed award amount higher than the applicable cap.

26. **Separation of claims.** Because these Sexual Abuse Claim Valuation Guidelines contemplate the use of force inherent in certain of the offenses and enhancements, no claimant may file for, or receive an award for, both sexual abuse and physical abuse unless the physical abuse was completely separate from and unrelated to the sexual abuse.

Approved by the Joint Fiscal Committee, July __, 2022

Appendix 1

Definitions of Categories of Sexual Abuse

[Note - This is in a separate document at present]

Appendix 2

Definitions of Categories of Physical Abuse

[Note - This is in a separate document at present]

Appendix 3

Aggravating and Mitigating Factors

[Note - This is in a separate document at present]