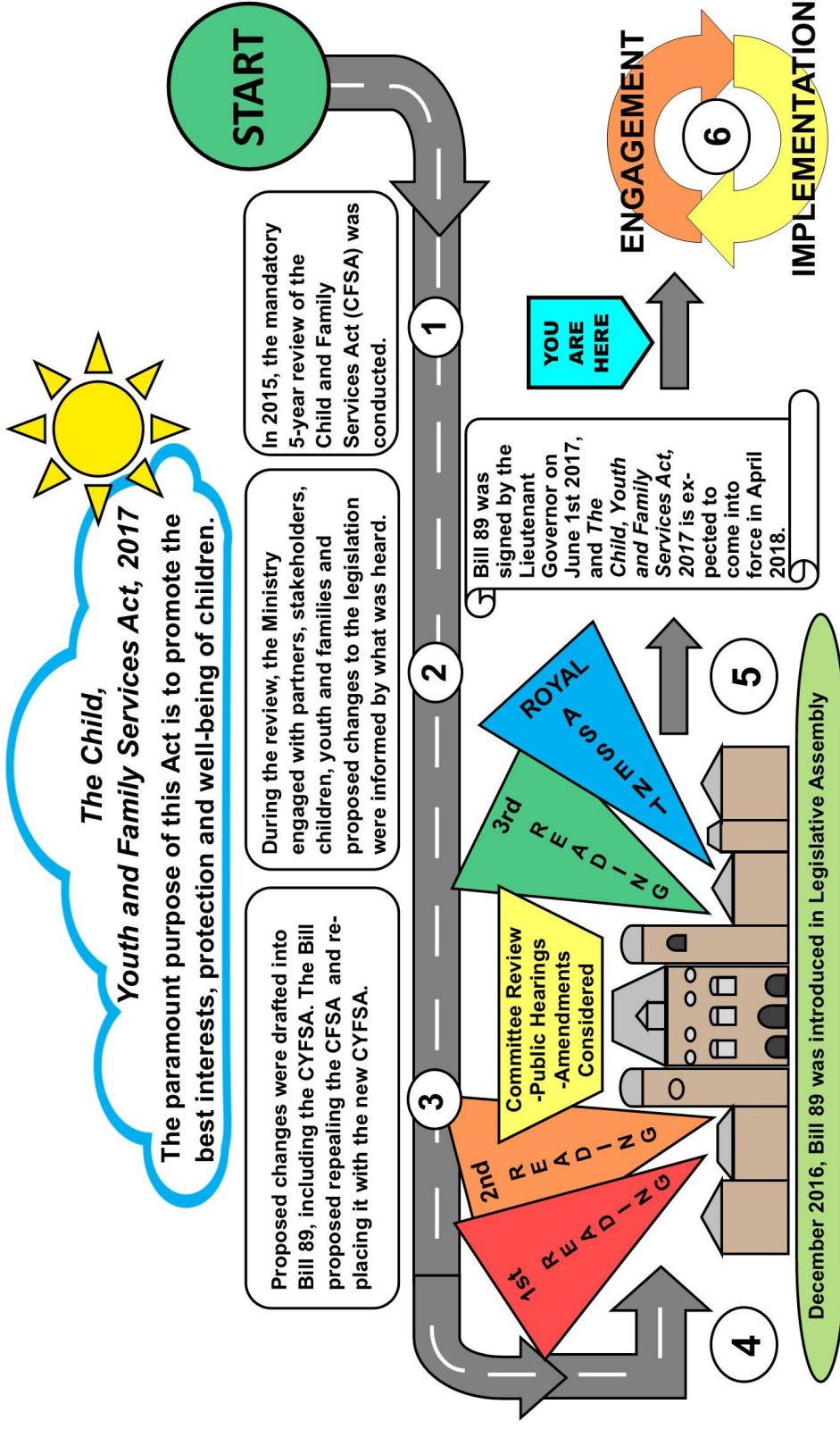


The Child, Youth and Family Services Act, 2017:

Regulations and Implementation.

Discussion Guide
Summer 2017

THE LEGISLATIVE JOURNEY



Materials or comments received from organizations may be used or disclosed by the Ministry in accordance with applicable legislation to assist the Ministry in formulating changes to and/or development of regulations and/or policy guidelines. This may involve disclosing materials or comments, or summaries of them, to other interested parties during and after the request for public comment process.

An individual who provides materials or comments and who indicates an affiliation with an organization will be considered to have submitted those comments or materials on behalf of the organization so identified unless the individual indicates that the submission is being made on his or her own behalf. Organizations include: children's aid societies; child and family service providers; Indigenous organizations; and professional associations.

Materials or comments submitted to the ministry will be subject to the access and privacy provisions of the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F31.

If you have any questions about the collection or use of this information, you can contact the Manager of the Planning and Partnerships Unit, Strategic Policy and Planning Division of the Ministry of Children and Youth Services at 416-314-3366 or CYFSA@Ontario.ca.

Introduction

Following the 2014-15 Review of the *Child and Family Services Act* (CFSA) and as part of the implementation of the Ontario Indigenous Children and Youth Strategy (OICYS), the *Supporting Children, Youth and Families Act* was introduced on December 8, 2016. This Act, which was passed and received Royal Assent on June 1, 2017, will repeal the entire CFSA and replace it with the new *Child, Youth and Family Services Act, 2017* (CYFSA), which is designed to strengthen and modernize child, youth and family services across Ontario. Most CYFSA provisions are expected to come into force in April 2018.

The CYFSA includes significant changes aimed at improving the service experiences and outcomes for children¹ and young persons² in Ontario. The CYFSA allows for broad regulation-making authority to help operationalize the CYFSA and strengthen and modernize child, youth and family services across Ontario.

In Ontario, as in other provinces, the making of laws includes the passage of Acts and the issuance of regulations. Ontario Acts are laws passed by the provincial legislature while regulations are laws made by government, not the legislature. Regulations are a form of law and the legal authority to make a regulation must be found in an Act.

Most regulations will be posted on the Ontario's Regulatory Registry for a minimum period 45 calendar days to allow for the public to comment on them. Written comments will be reviewed and taken into account when finalizing the drafting of the regulations.

The Ministry of Children and Youth Services MCYS has committed to continued engagement on development of regulations under the CYFSA and overall implementation of the Act. This document is a part of that engagement and implementation.

This document covers a number of topics, and the input received will support the development of regulations under the CYFSA. It is important to note that some issues may be more appropriately addressed through a policy directive, or standard instead of a regulation. It may also be determined that no action will be taken at this time in a specific area.

How to Use This Discussion Guide

The purpose of this discussion guide is to guide conversations and feedback which can help inform the development of regulations and policies for, and the implementation of, the CYFSA.

The questions are designed to help you frame your feedback, and under each question there is space for your reply. You do not need to answer all the questions; answer only those questions that are of interest or concern to you. Anything you can provide on the areas of proposed

¹ For the purposes of this discussion guide the term 'child' or 'children' is used to mean anyone under the age of 18, as it is used in the CYFSA.

² Young Person(s) means anyone involved with the youth justice system, and in some circumstances may be over the age of 18.

regulation and/or policy development will be valuable to the regulation and policy development process.

At the end of this document, there is also a general question where you are asked to provide any other input that is important for us to receive. Please do not feel limited by the amount of space in this document or the format of the discussion guide. Additional or supporting documentation is also welcomed.

In your written feedback, please help us to ensure that we have accurately captured the challenges and opportunities of the current system and then provide us with details on what the solution could look like, and how the solution may play out on the ground. These are very important areas for those drafting the regulations to understand.

All information received will be considered. Feedback received that is not directly related to the *CYFSA*, will be redistributed to appropriate program areas for consideration.

For any questions please contact Amy Waschenfelder, Senior Policy Analyst, Planning and Partnerships Unit, Strategic Policy and Planning Division of the Ministry of Children and Youth Services, at: 416-327-4869 or cyfsa@ontario.ca.

To Send Your Response

Your response will be accepted in English or French, in writing or alternative formats, such as audio or video recordings.

Timelines for this process are short, and as such, in order for us to incorporate your integral input into the process, we are asking for your written submissions no later than **Friday September 8th, 2017**.

By E-Mail:

cyfsa@ontario.ca

By Mail:

CYFSA Regulations and Implementation Discussion Guide 2017

Ministry of Children and Youth Services

Strategic Planning and Aboriginal Relationships Branch

2 Bloor Street W, 30th Floor, Toronto, On, M4W 1A8

Table of Contents

Under the CYFSA, regulations can be developed in the following areas:

- **Child- and Young Person-Centred Changes**
 - Diversity and Inclusion
 - Rights of Children and Young Persons
 - Rights of Children and Young Persons receiving services
 - Rights of Children and Young Persons in Care
- **Accountability Through Reporting**
 - Service Provider Reporting to the Public, the Minister or other entities.
- **First Nations, Inuit, and Métis Children, Young Persons, Families and Communities**
 - Accounting for a Child or Young Person's Unique Needs as a First Nations, Inuk, or Métis Person
 - A process for identifying which Bands and First Nations, Inuit, or Métis Communities a Child or Young Person Identifies with; Circumstances in which a Society, Person or Entity must Consult with these Bands and First Nations, Inuit, or Métis Communities, and what the Process for Consultation Should be
- **Licensed Residential Services**
 - Residential Placement Advisory Committee
 - Children's Residential Licensing
 - Other Related Regulations for Licensed Residential Services for Children and Young Persons
- **Delivery of Youth Justice Services**
 - Searches and Contraband in Youth Justice Facilities
 - Complaints by Visitors to Youth Justice Facilities
 - Other Youth Justice-Related Regulations
- **Prohibitions and Restrictions on the Use of Detention, Secure De-Escalation Rooms and the use of Physical Restraint and Mechanical Restraints**
 - Physical Restraint by Service Providers or Foster Parents
 - Mechanical Restraints in Secure Youth Justice Facilities
 - Mechanical Restraints in Secure Treatment Settings
 - The Use of Secure De-Escalation Rooms
- **Intercountry Adoptions under CYFSA – Delegation of Central Authority Functions**
- **The Protection of Privacy and the Handling of Personal Information**

Child- and Young Person-Centred Changes

Diversity and Inclusion³

Challenges and Opportunities:

- There are many different kinds of families in today's Ontario, which means that services should be delivered in a manner that is inclusive and responsive to diverse identities and diverse families.
- The CYFSA requires that services to children and young persons be provided in a manner that takes into account a range of aspects of their unique identity. These aspects include race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression, cultural and linguistic needs, and regional differences.

Regulations and Policies that can be Developed:

- Regulations and policies can be developed to:
 - Describe how service providers should take into account a child or young person's unique identity when making decisions (*CYFSA s339(3) 3-5*);
 - Set out a process for selecting a person to represent children, young persons and their parents in order to assist service providers on how to take into account the child or young person's identity when decisions about the care for that child or young person are being made (*CYFSA s339(3)7*); and,
 - Set out the roles and duties of the person acting as the child, young person or parent's representative (*CYFSA s339(3)7*).

Questions

- What are ways to communicate with a child or young person to identify and understand all the factors that make up their identity? Are there ways to determine and understand these factors without or in addition to communicating directly with the child or young person?
- What are the best ways you can consider a child or young person's identity when making a decision with a view to improving their experiences and outcomes? (i.e. Asking the child what they need, ensuring the child has access to resources/individuals relating to aspects of their identity, considering how aspects of a child or young person's identity may result in misconceptions or misunderstandings etc.)
- How can we measure whether a child or young persons' unique identity is being fully considered in the decision making process?
- What are the characteristics of individuals you think would be appropriate to act as representatives for children, young persons and their parents to assist service providers to account for the various aspects that make up the child or young person's identity? (i.e. Can

³ Other Purposes, Part II - Children's And Young Persons' Rights, and throughout the CYFSA.

the representative be a close friend of the child and family? Can they be a teacher, a member of the child or parents' community or a child's sport's coach? Does the person need to have any special skills or knowledge?)

- Who should choose the representative for the child, young person and parent? (i.e. Can it be the child or young person? The parent? Or should the representative be appointed? If so, by whom?)
- When should these representatives be engaged? (i.e. Should it be at a set time or can it be at any point during the delivery of services if the child or parents request it)
- What are potential barriers to the ability to take into account a child or young person's identity when making service-related decisions? How can these barriers be eliminated?

Rights of Children and Young Persons Receiving Services or in Care

Rights of Children and Young Persons Receiving Services⁴

Challenges and Opportunities:

- Strengthening, clarifying and enhancing the rights of children and young persons were identified as a priority area for improvement in the 2015 CFSA Review to improve the experiences and outcomes for children and young persons in the province.
- Children and young persons emphasized that they do not feel empowered or supported to meaningfully participate in decision-making in matters that affect them, and called for the CFSA to better acknowledge and respect their rights and voices when they are receiving services.
- The ministry listened to the concerns raised. The CYFSA now contains a clear and explicit set of rights for all children and young persons receiving services under the Act. These provisions focus on a child or young person's right to participate and express their views when decisions are being made that affect them.
- The CYFSA requires that, in considering the best-interests of a child or young person, decision makers must take into account the child or young person's views and wishes.
- The CYFSA now also provides for a mechanism to raise and address complaints to service providers other than those mechanisms already established for children's aid societies and residential licensees.

Regulations that can be Developed to Address Challenges:

- Regulations can be developed to:
 - Govern how service providers are to respect and promote the rights of children and young persons under the Act (*CYFSA s340(1)*); and,
 - Govern an internal procedure for making certain complaints to service providers and governing the external review process for certain classes of complaints (other than to children's aid societies or residential service providers⁵) (*CYFSA s339(1)(7)*).

Questions

- In what manner should a child or young person be informed of their rights? How often, and at what times, should children and young persons be informed of their rights? How best can

⁴ Part II - Children's And Young Persons' Rights.

⁵ Comments about the complaints process for children's aid societies and residential service providers can be provided in the section on the "Rights of Children and Youth in Care" on page 11.

we make sure that children and young persons understand their rights? How can we measure whether or not children and young persons understand their rights?

- In order to effectively place the child or young person at the centre of service delivery and decision making, how can you support a child or young person to use their rights to express their views and meaningfully participate in decisions?
- When should a service provider ask child or young person what their views are?
- How should the information obtained about the child or young persons' views or wishes be used in service planning and decision making? How can we best make sure that the views and wishes of children and young persons are obtained, heard and acted upon?
- How can you make a child or young person feel safe about expressing their views, exercising their rights or raising concerns about services?
- What does effective participation of children and young person in decisions about services look like to you? What does participation in decision-making mean to you?
- In what manner should conversations about decisions and services occur with children and young persons (i.e. discussions re how and why decisions are being made and the nature of services they are receiving etc.)
- What are potential barriers with respect to a child or young persons exercising their rights or with respect to a service provider respecting the rights of children and young persons? How can these barriers be eliminated?
- What should the internal process for children and young persons to raise complaints or concerns about the ways in which their rights are being respected to service providers look like to you? What format should the complaint take? What should the timeline be for a response? What format should the response take? How should the resolution be communicated to children and young persons?

Rights of Children and Young Persons in Care⁶

Challenges and Opportunities:

- Enhancing the rights of children and young persons in care specifically was identified in the 2015 CFSA Review, as well as the Child and Youth Residential Services Review Panel's report *Because Young People Matter*, and the Residential Services Youth Panel established in partnership with the Office of the Provincial Advocate for Children and Youth. Children and young persons in care is defined in the CYFSA as a child or young person that is receiving residential care from a service provider such as a child or young person receiving foster/group care or family based care, residential mental health treatment, youth justices services in an open or secure youth justice facility or respite services.
- Children and young persons called for new legislation that would improve a number of areas such as clarifying regular access to food and other amenities like phone communication and access to the internet.
- In addition to containing a clear and explicit set of rights for all children and young persons receiving services, the CYFSA still sets out specific rights for children and young persons in care and includes enhancements to provisions including:
 - Clarifying that children and young persons have a right of access to food that is of good quality and appropriate for the child or young person (including meals that are well-balanced) and to participate in recreational, athletic and creative activities;
 - Clarifying that children and young persons have the same rights with respect to decisions about their placement in a residential setting as they do with transfers and discharges from placements;
 - Requiring that children and young persons be informed about the reasons for, changes to, and/or discharge from, their placement in a residential setting, and that their views and wishes be taken into account; and
 - Clarifying that children and young persons have a right to be informed, upon admission to a residential placement, at regular intervals, and in language suitable to their understanding, of: their rights in Part II; their responsibilities while in a residential placement; the rules governing the day-to-day operations of the residential facility including disciplinary procedures; and the complaint and review procedures.
- Changes have also been made to better support a child and young person's voice by clarifying and enhancing service providers' responsibilities to children and youth in care respecting complaints. Section 18 of the CYFSA requires residential service providers or providers placing children and young persons in residential care to have written procedures dealing with complaints about alleged violations of the rights of children and young persons.
- This includes five key changes:
 - New requirements that the written procedures must include the requirement to inform children and young persons in care that they may seek the assistance of the Provincial Advocate for Children and Youth (PACY) in making a complaint about their rights or in requesting a further review;
 - The addition that a group of children or young persons in care may make a complaint;

⁶ Part II - Children's And Young Persons' Rights.

- The addition that people affected by a condition, limitation, or suspension of a visit with a young person in a youth justice custody/detention facility may make a complaint;
- That service providers must have procedures for hearing and dealing with these complaints; and
- The addition of a requirement that each person who made the complaint be informed about the results of the review.

Regulations and Policies that can be Developed:

- Regulations and policies can be developed to:
 - Govern how the rights of children and young persons in care in the CYFSA are to be respected and promoted by service providers (*CYFSA s340(1)*);
 - Set intervals at which children and young person in care should be informed of their rights in Part II, their responsibilities while in a residential placement; the rules governing the day-to-day operations of the residential care; and complaint review procedures in section 18 of the CYFSA (*CYFSA s340(2)*);
 - Set requirements for the internal complaints procedures to be established by service providers under section 18 (*CYFSA s340(3)*); and
 - Set requirements for the further review of complaints under section 19 which outlines the requirement for the Minister to appoint a person to conduct a further review of a complaint if the person/group of people who made the complaint is/are not satisfied with the results of the complaint review (*CYFSA s340(4)*).

Questions

- What do the rights under section 2 of the CYFSA look like on the ground for children and young persons in care (e.g., participating in the development of their plan of care, access to food and regular meals, clothing, medical and dental care, education and participation in recreational, athletic and creative activities)? What does good quality and appropriate look like?
- How should a child or young person in care be informed of their rights? What should “regular intervals” be?
- What information or supports do children and young persons in care need in order to be able to exercise their right to express their views and participate in decisions about services?
- How should a child or young person in care be made to feel safe about expressing their views, exercising their rights or raising concerns about services?
- What does effective participation of children and young persons in care in decisions about services look like? What does it mean to participate in a decision for children and young persons in care?
- What should be included in the service provider (ministry, children’s aid societies and residential licensees) complaints procedure? For example, how should a child or young person, or a group of children or young persons, or people who have been affected by a condition, limitation, or suspension of a visit with a young person in a custody/detention facility be supported to make a complaint?
- How should children and young persons in care be informed that they can seek the assistance

of PACY in making a complaint or requesting a further review of a complaint?

- How should persons who made a complaint be informed about the results of the review?
How should this information be explained to children and youth in care?
- What information should service providers (children's aid societies and residential licensees) be required to provide when responding to a complaint or concern?

Accountability Through Reporting

Service Provider Reporting to the Public, Communities, and the Minister⁷

Challenges and Opportunities:

- There is a lack of data regarding the exact number and the factors associated with the presence of different children, youth and families involved with child welfare, youth justice and in need of other government services.
- The CYFSA provides for regulation making authority that could be used to require service providers to make available information to listed entities (which could include Indigenous communities). This may increase transparency and accountability of service providers to the Minister, and the public.
- The information can also be used for service planning and further improving outcomes and experiences for children and youth.

Regulations and Policies that can be Developed:

- Regulations and policies can be developed to identify information that service providers should provide to the Minister, communities, and the public (*CYFSA s341(1) 16-18*).

Questions

- What kind of information would assist with the goal of improving experiences and outcomes for children and youth? What information do you think would be helpful to you or to the Ministry to assist with increased transparency and accountability? (i.e. information about number of children from a specific community, or from specific populations in care, information about consultations with bands and First Nations, Inuit or Métis communities, information about culturally relevant services provided etc).
- What information should be available to the public?
- What information should be available only to the Minister/ ministry?
- What other types of entities should receive these reports or information? (i.e. advocacy groups, racialized communities, individual First Nations, Metis, or Inuit communities etc)
- How often should receive this information be provided?

⁷ Part III – Funding and Accountability.

Needs of First Nations, Inuit, and Métis Children, Young Persons, Families and Communities

Accounting for a Child or Young Persons' Unique Needs as a First Nations, Inuk, or Métis person⁸

Challenges and Opportunities:

- First Nations, Métis and Inuit peoples in Ontario are diverse with differences based in culture, history, treaties, relationships, and geography. These differences result in a range of perspectives, approaches, and needs for different service supports and approaches.
- The definitions of 'Indian' and 'native' in the CFSA were not inclusive of non-status First Nations, Inuit and Métis children and young persons.
- The CYFSA now refers to First Nations, Inuit and Métis children, young persons and their families and requires that services recognize their cultures, heritages, traditions, connection to their communities and the concept of the extended family.

Regulations and Policies that can be Developed:

- Regulations and policies can be developed that would address how service providers are to take into account the cultures, heritages, traditions, connection to community and the concept of extended family of First Nations, Inuit and Métis children, young persons and families when providing services (*CYFSA s339(3)6*).

Questions

- What are ways to determine if a child or young person is First Nations, Inuk or Métis? What would support you to determine if a child or young person is First Nations, Inuk or Métis?
- What are ways to obtain information from First Nations, Inuit and Métis children, young persons and families about what their cultural needs? How else can this information be obtained if the child, young persons or family is not able to provide it themselves?
- What do services that are responsive to the cultures, heritages and traditions of First Nations, Inuit and Métis children and young persons look like to you? How should these services be monitored? What should happen if services are not responsive to the unique needs of First Nations, Inuit and Métis children and young persons?
- How can Indigenous children and young persons receiving services maintain connections to their culture, heritage and communities? What should be done if these connections are not maintained?
- How should connection to community and the concept of extended family for First Nations, Inuit, and Métis children and young persons be considered in the provision of services? How can these considerations be enforced? What should happen if these considerations are not made?

⁸ Other Purposes and throughout the CYFSA.

Determining what Bands and First Nations, Inuit, or Métis Communities a Child or Young Person Identifies with; Circumstances in which a Society, Person or Entity must Consult with these Bands and First Nations, Inuit or Métis Communities, and What the Process for Consultation Should be.⁹

Challenges and Opportunities:

- The CYFSA now refers to bands and First Nations, Inuit, or Métis communities in provisions that require consultation and allows for self-identification with these bands and First Nations, Inuit, or Métis communities.
- The CFSA required consultation to occur with bands about a number of matters including the preparation of plans for the care of children and adoption placements. The CFSA also required consultation to occur if a society provided certain services, including when a society determined at the conclusion of a child protection investigation that protection services were required and when a society brought a child to a place of safety or placed a child in a residential placement. However, First Nations, Métis and Inuit communities have emphasized that they are not being consulted at appropriate times or in a sufficient manner about matters involving their children and youth.
- The CYFSA expands consultation requirements to persons and entities and continues to allow the government to prescribe matters as requiring consultation as well as setting out processes and guidelines for these consultations. These discussions with bands and First Nations, Inuit and Métis communities can facilitate and identify appropriate support services for First Nations, Inuit and Métis children and young persons.

Regulations and Policies that can be Developed:

- Regulations and Policies can be developed to:
 - Describe how to determine the bands and First Nations, Inuit or Métis communities with which a First Nations, Inuit or Métis child or young person identifies (*CYFSA s339(3)2*); and,
 - Identify circumstances in which a society or entity must consult with bands and First Nations, Inuit or Métis communities and the process for those consultations (*CYFSA s342(2)2-4*).

Questions

- What are ways to find out from a child which band and First Nations, Inuit or Métis community they belong to or identify with?

⁹ Definitions and Part IV – First Nations, Inuit and Métis Child and Family Services.

- Are there situations where there may be confusion as to what band and First Nations, Inuit or Métis community the child or young person identifies with? What should occur if there is confusion?
- What would support you to find out which band and First Nations, Inuit or Métis community a child or young person belongs to or identifies with?
- In what circumstances should a society be required to consult with a band and First Nations, Inuit or Métis community about a matter involving children or young persons from their bands or communities?
- How should communication with a band and First Nations, Inuit or Métis community occur to begin consultations and during consultations?
- What does effective consultation look like? (i.e. what should the outcomes of the consultation be? How long should the consultation be? etc.)
- What are potential barriers to effective consultation? How can these barriers be eliminated?
- How should regular consultation about matters involving First Nations, Inuit or Métis children or young persons in general occur? (i.e. how often is 'regularly', how are these communications triggered, what is the method of these communications etc.)
- How can consultation be monitored to ensure that it is occurring according to the Act, Regulations and Directives? What should occur if consultation is not occurring in the proper manner?

Child and Young Persons Licensed Residential Services

Residential Placement Advisory Committees¹⁰

Challenges and Opportunities:

- Residential Placement Advisory Committees (RPACs) were established when the CFSA first came into force. The duty of an RPAC is to advise, inform and assist parents, children and service providers with respect to the availability and appropriateness of residential services and alternatives to residential services, and to conduct both mandatory and discretionary reviews of residential placements.
- Under the CYFSA, RPACs will conduct mandatory reviews of:
 - Children's placements in institutions, if the placement is intended to last or actually lasts 90 days or more. An institution is defined as a children's residence that provides residential care to 10 or more children or youth at a time or a premises designated by a Director in which residential care can be provided to 10 or more children at a time.
 - Every residential placement of a child or youth who objects to the placement within the timeframe specified by the CYFSA.
 - An existing or proposed residential placement of a child that the Minister refers to the RPAC, within 30 days of the referral.
- RPACs conduct discretionary reviews of:
 - An existing or proposed residential placement of a child on a person's request or on its own initiative.
- The scope of the RPAC mandate does not extend to review of the following residential placements:
 - Placements under the Youth Justice Criminal Justice Act or under Part VI of the CYFSA (Youth Justice);
 - Commitment to secure treatment under Part VII of the CYFSA (Extraordinary Measures); or
 - Placements with persons who are neither service providers under the CYFSA nor foster parents.
- In the CYFSA, provisions about RPACs have been moved from Part II (Voluntary Access to Services) in the CFSA to Part III (Funding and Accountability) and includes enhancements that support the child- and youth-centered nature of the Act by supporting children to be informed and participate in decision-making processes about their residential placement and have a voice in matters that affect them.
- Enhancements to the provisions related to RPACs include:
 - Requiring RPACs to consider the child or youth's views and wishes, given due weight in accordance with the child's age and maturity, when conducting a review of their residential placement;

¹⁰ Part III – Funding and Accountability.

- Making it mandatory (rather than optional) for RPACs to advise children, in a way suitable to their understanding, that the review of their placement has been completed and of the RPAC's recommendations;
- Extending notice and participation rights to all children (no longer limited to children 12 or older);
- Extend RPACs obligations to conduct mandatory reviews for all children who object to a residential placement within their jurisdiction, regardless of age;
- Extending the ability to apply to the Child and Family Services Review Board (CFSRB) to review a RPACs decision in respect of a residential placement to all children, regardless of age;
- The CYFSA provides that RPACs may include the persons listed in the Act (to increase flexibility of who can sit on RPACs); and
- The CYFSA requires the committees to report to the Minister on their activities annually and on request.

Regulations and Policies that can be Developed:

- Regulation and policies can be developed to:
 - Prescribe rules to determine whether a child or youth resides within an RPACs jurisdiction (*CYFSA s341(1)20*); and to
 - Set the practices, procedures and further duties for RPACs (*CYFSA s341(1)21*).

Questions:

- What information or supports do children need in order to be able to exercise their rights, to express their views, and participate in decisions that affect them regarding RPAC reviews?
- How can a child be supported to express their views, exercise their rights or raise concerns about services in an RPAC review?
- What does effective participation of children in RPAC reviews look like?
- How can RPACs be supported to consider a child's views and wishes when conducting a review of their residential placement?
- How can further clarity be provided about the RPACs jurisdiction?

Children's Residential Licensing¹¹

Challenges and Opportunities:

- The well-being of children and young persons in licensed residential care is a key priority for the Ministry of Children and Youth Services and we are taking action to improve the way residential services are being provided to children and young persons in Ontario.
- The licensing scheme in the CFSA for child and young person's residential services has been in place for over 30 years, with limited changes in requirements or processes. Changes to the residential licensing framework in Part IX of the CYFSA reflect the advice and input we have received. We heard that the licensing requirements in the CFSA and its regulations were out dated and did not reflect a modern regulatory compliance scheme consistent with other licensing schemes in Ontario serving vulnerable groups (i.e., the Child Care and Early Years Act governing child care and the Long-Term Care Homes Act governing long-term care homes in Ontario).
- Changes in the CYFSA will modernize and enhance the licensing scheme for child and young person's residential services to improve the delivery of high-quality care for children and young persons. Changes, when implemented, will:
 - Strengthen and modernize the licensing, compliance and enforcement framework for child and young person's residential services to better support high-quality services; and
 - Provide new and enhanced authorities for the Minister and Ministry to establish enhanced quality of care standards and strengthen accountability for licensed residential services; and
 - Improve information sharing and transparency of licensed residential services to support more informed placement decision-making.

Overview of Legislative Changes:

- The CYFSA strengthens the criteria to obtain and retain a licence and to refuse to issue/renew or revoke a licence. New requirements include:
 - New criteria to obtain a licence: includes requiring applicants for a licence to complete an attestation confirming they are not prohibited from applying for a licence, and providing any other prescribed information.
 - New criteria to refuse to issue a licence: includes false statement(s) in the licence application or in any report, document or other information required under the proposed legislation or applicable law; a previous revocation or refusal with no material change; or any other prescribed ground.
 - New criteria to refuse to renew/revoke a licence includes: includes past conduct that provides reasonable grounds to believe that the person is not competent to operate or that the premises is not/will not be operated in accordance with the proposed legislation; or any other prescribed ground.

¹¹ Part IX – Residential Licensing.

- The CYFSA establishes new protective measures to further protect the safety and well-being of children and youth;
 - For example, the CYFSA includes a requirement that licensees provide a copy of the licence and other information to persons placing children and young persons in licensed settings. There are also provisions prohibiting licensees from saying that they are licensed when they are not, or from providing residential care under the authority of a licence if convicted of a prescribed offence.
- The CYFSA provides new and enhanced authorities for the Minister and MCYS, including;
 - A new authority for the Minister to issue binding directives and make regulations respecting licensed residential services;
 - Authority to publish licensing, compliance and other information on licensed residential services in Ontario to increase transparency, encourage compliance, and provide placing agencies and families with information and resources about the types of residential care available so that they may make informed decisions when making placement decisions for children and young persons;
 - Minister's authority to appoint inspectors who can conduct announced and unannounced inspections of licensed residential settings. The powers of a program supervisor under the CFSA to conduct residential licensing inspections under the current Act are replaced by powers of an inspector to conduct such inspections for the purposes of determining compliance with the Act, the regulations and the directives. This Part now sets out rules for such inspections without and with a warrant; and
 - New offences (e.g., operating under the authority of a residential licence when having been convicted of a prescribed offence; holding out as licensed to provide residential care when the person is not licensed; failure to deliver records when the licence has been revoked or refused or the licensee ceased to operate in accordance with the regulations; and obstructing an inspector under Part IX).
- New authorities in the CYFSA were created to provide authority to develop new regulations and requirements as work to reform child and young person residential services is implemented. New authorities where regulations could be developed include authority to:
 - Specify who is subject to the duty to report imminent risks to the health, safety and welfare of children and young persons in licensed residential settings to the Ministry Director;
 - Identify other circumstances where a licence is required to provide residential care;
 - Set out enhanced quality of care standards in licensed residential settings;
 - Establish the term of the licence;
 - Assign a class to a licence in accordance with the regulations; and
 - Set or determine the amount to be charged for licensed residential services;
- The rules respecting the right to request a hearing by the Licence Appeal Tribunal, and to appeal the Tribunal's findings, remain essentially unchanged.

Regulations and Policies that can be Developed:

- Regulations and policies can be developed to:
 - Further define a "children's residence" or identifying other circumstances in which a licence is required to provide residential care (*CYFSA s347(1) 1-3*);

- Identify circumstances under which a licensee or class of licensees could be exempted from any provision of Part IX or its regulations for a period of time and on conditions specified by the Director (*CYFSA s347(1) 4*);
- Identify matters on which the Minister can issue Directives (*CYFSA s347(1)5*);
- Govern the issuance, renewal and expiry of licences and prescribing fees payable by an applicant for a licence or its renewal (*CYFSA s347(1) 7*);
- Identify additional grounds for:
 - The refusal to issue a licence (*CYFSA s347(1)8*); and
 - The revocation of a licence or refusal to renew a licence (*CYFSA s347(1) 9*);
- Specify and govern classes of licence that may be assigned (*CYFSA s347(2)2*);
- Prescribe persons that must inform the Ministry Director when there is an imminent threat to the health, safety or welfare of any child or young person placed in a licensed setting (*CYFSA s347(2)1*);
- Prescribe the requirements for the publication of contact and other licensing information (*CYFSA s347(2)1*);
- Govern the amount that a licensee may charge for the provision of residential care under the authority of a licence including variation of the amount and circumstances in which a licensee may charge a different amount (*CYFSA s347(2) 3*);
- Govern the management and operation of, and the accommodation, facilities, equipment and services to be provided in, children's residences and other places where residential care is provided under the authority of a licence (*CYFSA s347(2)4*);
- Govern procedures for the admission to and discharge of children or youth from children's residences or other places where residential care is provided under the authority of a licence (*CYFSA s347(2)8*); and
- Specify and governing performance standards and performance measures with respect to the provision of services in children's residences or other places where residential care is provided under the authority of a licence, including standards with respect to quality of care and responsiveness to cultural needs (*CYFSA s347(2)5*).

Questions:

- How can feedback be collected from children and young person in residential care that reflects the diversity of needs? How should it more directly inform service delivery, etc.?
- How can licensed residential services be more inclusive?
- What are some of the current challenges with the existing requirements for licensed residential services? What are some of the opportunities?
- Should requirements across residential settings (e.g., plan of care requirements, requirements related to the physical environment and reporting requirements, etc.) be harmonized where possible and appropriate? Can you provide examples?
- How can transitions of children and young person be better supported upon admission to residential care, between services and out of residential care?
- Should the regulations include additional criteria to obtain and retain a licence, additional criteria to refuse to renew/revoke a licence? Can you provide examples for consideration?

- What violations of the CYFSA or its regulations should be prescribed that would prohibit a person, if convicted, from operating a children's residence or providing residential care under the authority of a licence?
- How should licensees provide a copy of the licence and other information to persons placing children and young persons in licensed settings?
- Can you recommend topics on which the Minister could issue binding directives respecting licensed residential services?
 - Are there areas of residential service delivery that could benefit from more prescriptive requirements and/or direction from the Ministry?
- How should the Ministry publish licensing compliance and other information about licensed residential services in Ontario?
 - What information would be beneficial to making more informed placement decisions for children and young persons?
- How should the ministry enhance existing licensing requirements to improve the quality of care in residential settings?
- Who, while acting in the course of their employment, should be required to inform the Ministry Director when there is an immediate threat to the health, safety or welfare of any child or young persons placed in a licensed setting (e.g., employees in children's residences, foster parents, other professionals providing services in licensed settings, etc.)?

Other Related Regulations for Licensed Residential Services for Children and Young Persons¹²

Challenges and Opportunities:

- Part IX of the Regulation 70 in the CFSA sets out requirements for the delivery of licensed residential services to children and young persons.
- The ministry is committed to continuous improvements in licensed residential settings that keep children and young person's safe, while supporting accountability and consistency in service delivery.
- This is an opportunity to identify challenges and opportunities in the delivery of licensed residential services that could be appropriate for inclusion in regulations.
- This is an opportunity to support consistent expectations and accountability for placing agencies and service providers and put mechanisms in place to better protect the health, safety and well-being of children and young persons in residential settings.

Regulations and Policies that can be Developed:

Regulations and policies can be developed to:

- Prescribe other powers and duties of an inspector and powers on inspection (*CYFSA s347(1) 10-11*);
- Prescribe the term of a licence (*CYFSA s347(2) 7*);
- Prescribe other provisions of the Act or the regulations as additional offences (*CYFSA s347(1) 12-13*);
- Identify other premises where licensees must keep a copy of a licence or a record of compliance that a copy of the licence was provided to persons placing children or youth (*CYFSA s347(2) 1*);
- Identify other information that must be posted in premises where residential care is provided (*CYFSA s347(2)4*);
- Identify persons to whom and timeframes for which records in the licensee's possession or control must be delivered where a licensee ceases to operate or the licence is revoked or renewal of it refused (*CYFSA s347(2) 1*);
- Prescribe other persons who should receive copies of an inspection report (*CYFSA s347(2) 1*);
- Prescribe procedures and conditions of eligibility for the admission of children and youth and other persons to and their discharge from places where services are provided (*CYFSA s339(3) 8*);
- Govern the residential placement of children and prescribing procedures for placements, discharge, assessments and case management (*CYSA s339(3) 9*);
- Require that residential placements with or by service providers be made in accordance with written agreements, and prescribing their form and contents (*CYFSA s339(3) 10*);
- Prescribe classes of licences (*CYFSA s347(2) 2*)

¹² Part IX – Residential Licensing.

- Prescribe forms and providing for their use (*CYFSA s339(3) 16*);
- Prescribe the accounts and records to be kept by licensees (*CYFSA s347(2) 6*);
- Prescribe the qualifications, powers and duties of persons supervising children in children's residences or other places where residential care is provided under the authority of a licence (*CYFSA s347(2)7*);
- Prescribe screening measures to be conducted for licensees, applicants for a licence or renewal of a licence and other persons providing residential care to children in children's residences or other places where residential care is provided under the authority of a licence (*CYFSA s347(2) 8*); and
- Require licensees and applicants for a licence or renewal of a licence to provide information, returns and reports, and respecting the manner in which the information, returns and reports must be provided (*CYFSA s347(2)10*).

Questions:

- Do you have any additional feedback to provide about the areas for regulation development listed above?
- Do you have any other comments or concerns for the ministry to take into consideration as part of its work on the regulations?

Delivery of Youth Justice Services

Searches and Contraband in Youth Justice Facilities¹³

Challenges and Opportunities:

- The unique nature of the youth justice setting means that custody/detention facilities may require certain measures to keep young persons and staff safe that are distinct from other models of residential care.
- In youth justice facilities, searches are intended to identify contraband, objects and situations that might be dangerous or detrimental to the safety and security of young persons, staff, visitors, and the overall security of the facility by:
 - detecting and preventing the introduction, use, or trafficking of contraband, weapons, intoxicants, etc.;
 - discouraging theft, trading, or bartering by young persons;
 - identifying items or situations which might assist in or contribute to an escape, disturbance, suicide attempt, assault, or other serious occurrence;
 - recovering missing or stolen property; and,
 - identifying health, safety and security hazards
- There are times when young persons are not permitted to have items in their possession for safety or security reasons. The CYFSA identifies what items in a young person's possession are defined as "contraband".
- The provisions in the CYFSA give legislative authority to the person in charge of designated youth justice custody facilities to authorize searches, to be carried out in accordance with the regulations, as are necessary to ensure the safety and security of young persons and staff. This includes searches of the facility itself, the person or property of any resident (young person) or other person such as a visitor, contractor or staff member, or any vehicle entering, or on the premises.

Regulations and Policies that can be developed :

- Regulations and policies can be developed to:
 - Govern how searches authorized by the person in charge of designated youth justice custody facilities are to be carried out (*CYFSA s344(13)*); and,
 - Prescribe how contraband found during a search may be seized and disposed of (*CYFSA s344(14)*).

Questions:

- Given the potentially intrusive nature of searches, what should service providers be required to consider when conducting searches of young persons in custody/detention facilities?
- What should service providers be required to consider when conducting searches of visitors, staff or contractors or vehicles entering, or on the premises of custody/detention facilities?

¹³ Part VI – Youth Justice.

- What should service providers be required to consider when seizing and disposing of contraband seized from a young person?

Complaints by Visitors to Youth Justice Facilities¹⁴

Challenges and Opportunities:

- Under the CFSA, it was unclear whether individuals who had been affected by conditions or limitations on visits with young persons in custody/detention, or when visits were suspended, had a right to ask that the decision be explained or reconsidered.
- Section 11 of the CYFSA allows for service providers to place conditions and limitations on people who are visiting a young person in a custody/detention facility, or to suspend visits in certain circumstances.
- The CYFSA also contains provisions that allow for a person who has been affected by a condition or limitation on visitors, or a suspension of visits to make a complaint and request a review of the service provider's decision.

Regulations and Policies that can be developed :

- Regulations and policies can be made to govern the process for addressing complaints made to service providers which would include a complaint made by a person affected by a condition or limitation on visitors, or a suspension of visits (*CYFSA s.340(3)*).

Questions:

- What information or supports do people who have been affected by a condition, limitation, or suspension of a visit with a young person in a custody/detention facility need in order to be able to express their concerns to service providers?
- What should service providers be required to consider when considering a request by a person to review a condition, limitation, or suspension of a visit with a young person?
- What information should service providers be required to provide when responding to a request by a person to review a condition, limitation, or suspension of a visit with a young person?

¹⁴ Part II – Children's and Young Persons' Rights.

Other Youth Justice-Related Regulations¹⁵

Challenges and Opportunities:

- During presentations to the Standing Committee on Justice Policy, stakeholders raised concerns that the CYFSA leaves too much for regulation/policy and that the process will not be transparent. There are currently very few regulations set out in the CFSA that are specific to youth justice service delivery
- The ministry is committed to continuous improvements in youth justice facilities that keep youth and staff safe, while supporting accountability and consistency in service delivery.
- This is an opportunity to identify policy requirements that could be appropriate for inclusion in regulations.
- This is an opportunity to support consistent expectations and accountability for service providers and put mechanisms in place to support safe and appropriate use of interventions, including monitoring of service providers for compliance.

Regulations and Policies that can be developed:

- Regulations and policies can be developed to:
 - Govern the establishment, operation, maintenance, management and use of places of temporary detention, of open custody and of secure custody (*CYFSA s344(1)*);
 - Govern the establishment and operation of and the accommodation, equipment and services to be provided in any premises established, operated, maintained or designated for the purposes of the Youth Criminal Justice Act (Canada) (*CYFSA s344(2)*);
 - Prescribe additional duties and functions of,
 - probation officers (*CYFSA s344(3)i*), and
 - provincial directors (*CYFSA s344(3)ii*);
 - Prescribe the duties and functions of bailiffs (*CYFSA s344(4)*);
 - Prescribe the qualifications of probation officers (*CYFSA s344(5)*);
 - Prescribe additional duties and functions of persons in charge of places of custody/detention (*CYFSA s344(6)*);
 - Govern the exercise of the power of entry given under subsection 153 (5) (*CYFSA s344(12)*);
 - Prescribe reports to be made to the Minister and information to be furnished under section 147, their form and the intervals at which they are to be made or furnished (*CYFSA s344(7)*);
 - Prescribe procedures for the admission of young persons to and their discharge from places of temporary detention, of open custody or of secure custody or premises in which a service is provided (*CYFSA s344(9)*);
 - Govern the conduct, discipline, rights and privileges of young persons in places of temporary detention, of open custody or of secure custody (*CYFSA s344(8)*); and,

¹⁵ Part VI – Youth Justice.

- Respect any matter considered necessary or advisable to carry out effectively the intent and purpose of Part VI (*CYFSA s344(15)*).

Questions:

- In what other areas of youth justice service delivery do you think it would be important to develop regulations?
- What should service providers be required to consider in regulations when delivering services to young persons in conflict with the law?

Prohibitions and Restrictions on the Use of Detention, Secure De-Escalation Rooms and the use of Physical Restraint and Mechanical Restraints¹⁶

MCYS is committed to the safety of vulnerable children and young persons receiving services under the Act. The CYFSA supports the principle of least-restraint/intrusive measure necessary to support the safety and well-being of children and young person's receiving services under the Act. This is demonstrated by the new and enhanced protections for children and young persons that include: restricting service providers and foster parents from using physical restraint on children and young persons except as authorized by the regulations, and from using mechanical restraints on children and young persons except as permitted by Parts VI (Youth Justice) and VII (Extraordinary Measures) and the regulations.

The provision in the current CFSA prohibiting service providers from detaining a child or young person in locked premises except as authorized under the Youth Justice and Extraordinary Measures parts of that Act is maintained; it now expressly applies to foster parents as well as service providers.

Regulations under the CYFSA will support an approach of least-restraint and minimizing the use of intrusive measures through clear and narrow requirements for their use in the provision of services to children and young persons.

Regulation making authority also exists to further prescribe procedures as intrusive procedures.

¹⁶ Part II - Children's And Young Persons' Rights, Part VI - Youth Justice, and Part VII – Extraordinary Measures.

The Use of Physical Restraint by Service Providers and Foster Parents¹⁷

Challenges and Opportunities:

- Section 6, Part II - Children and Young Persons' of the CYFSA prohibits service providers or foster parents from using or permitting the use of physical restraint on a child or young person for whom the service provider or foster parent is providing services except as the regulations authorize.
- The existing definition of physical restraint (i.e., as currently defined in Regulation 70 s.1(1) under the CFSA) now appears in the CYFSA.
- Currently, sections 109.1-109.3 of Regulation 70 under the CFSA specify the very narrow circumstances for the use of physical restraint in children's residences (e.g., group homes, youth justice services).
 - Existing regulations for these settings specify that physical restraint may only be used as a last resort to prevent children and young persons from physically injuring themselves and/or others and after determining that less intrusive interventions would not be effective.
 - The physical restraint of a resident may only be carried out by a member of the residence's staff if they have obtained training and education in accordance with regulatory requirements.
 - Also, if a physical restraint is used in a setting that is funded, licensed or operated by the ministry, the service provider must complete a Serious Occurrence Report (SOR).
- These provisions are intended to safeguard the safety and well-being of children and young persons in children's residences.
- In addition, the ministry has a policy requirement about The Use of Physical Restraints that was issued in June 2001 and applies to foster parents and all other service providers funded and/or licensed under the CFSA (i.e., excluding children's residences under the CFSA for which Regulation 70, Section 109 applies).
 - The intent of the policy is to protect children and young person from the inappropriate use of physical restraints by limiting their use and setting standards for service provider protocol, training, reviewing and reporting.
 - Unlike the regulation for children's residences, the policy does not require all direct care staff to be trained nor does it require ministry-approved training on the use of physical restraints.
 - Under the policy, only persons who complete a training program approved by the service provider may administer a physical restraint. Furthermore, training on the use of physical restraints is to be provided within the context of broader training on the use of behaviour management techniques used by the service provider.

¹⁷ Part II – Children's And Young Persons' Rights.

Regulations and Policies that can be Developed:

- Regulations and policies can be developed to:
 - Further define the term “physical restraint” in regulation (*CYFSA s339(1)9*);
 - Set out requirements for the use of physical restraint (*CYFSA s339(1)5*);
 - Set out standards, procedures related to the use of physical restraint (*CYFSA s339(1)5*); and
 - Require service providers to develop policies about the use of physical restraint and to set requirements that must be or may not be included in those policies (*CYFSA s339(1)5*).

Questions:

- What should service providers be required to consider in the use of physical restraint?
- Is there a need for clarity respecting the circumstances in which a physical restraint can be used or to further clarify the circumstances in which physical restraint may be appropriate?
- Are additional protections for children and young persons required in regulation?

Mechanical Restraints in Secure Youth Justice Facilities¹⁸

Challenges and Opportunities:

- Section 7 of the “Children and Young Person’s Rights” part of the CYFSA prohibits a service provider or foster parent from using mechanical restraints on a child or young person, except as authorized in Part VI (Youth Justice), Part VII (Extraordinary Measures) and the regulations.
- The unique nature of the youth justice setting means that secure custody/detention facilities may require certain measures to keep young persons and staff safe that are distinct from other models of residential care. These provisions are intended to safeguard the safety and security of young persons and staff in secure youth justice custody/detention facilities when no reasonable alternative exists.
- The CYFSA sets out requirements for the use of mechanical restraints in secure youth justice facilities, including that:
 - Mechanical restraints must never be used as a means of punishment;
 - Mechanical restraints can be used only in specific circumstances as set out in the Act; and,
 - Additional requirements in regulation may be set out in regulations.
- Mechanical restraints may also be used, when reasonably necessary, during transportation of young persons between places of custody or detention, or to or from court or in the community.
- Mechanical restraint equipment is not used in open custody/detention facilities.

Regulations and Policies that can be Developed:

- Regulations and policies can be developed to:
 - Govern the use of mechanical restraints in secure youth justice facilities (*CYFSA s339(1)6*); and
 - Set out standards and procedures related to use of mechanical restraint, including during transportation of young persons between places of custody or detention, or to or from court or in the community (*CYFSA s339(1)6*).

Questions:

- What should service providers be required to consider when using mechanical restraints on young persons?

¹⁸ Part VI – Youth Justice.

Mechanical Restraints in Secure Treatment Programs¹⁹

Challenges and Opportunities:

- Section 7 of the “Children and Young Person’s Rights” part of the CYFSA prohibits a service provider or foster parent from using mechanical restraints on a child or young person, except as authorized in Part VI (Youth Justice), Part VII (Extraordinary Measures) and the regulations.
- The limited use of mechanical restraints authorized by Part VII of the CYFSA relates to use in Secure Treatment programs. These programs provide treatment for children with a mental health condition in a place where continuous restrictions can be imposed on the liberties of the children. Part VII sets out specific criteria for admission to secure treatment programs, which includes the requirement that the child has caused or attempted to cause serious bodily harm to themselves or another person.
- The CYFSA sets out requirements for the use of mechanical restraints in these settings, including that:
 - Mechanical restraints may be used in an emergency situation when immediate action is necessary to prevent serious bodily harm to the child or young person or others and,
 - There is legislated authority to set out additional requirements in regulation.
- MCYS is seeking to include additional provisions for children in regulation.

Regulations and Policies that can be developed:

- Regulations and policies can be developed to:
 - Govern the use of mechanical restraints under the CYFSA, including prescribing standards and procedures for their use (*CYFSA s339(1)6*) ; and
 - Set policies of Secure Treatment programs on the use of mechanical restraints, including prescribing provisions that must be or may not be included (*CYFSA s345(3)*) .

Questions:

- What should Secure Treatment programs be required to consider when using mechanical restraints on children?
- Given that Secure Treatment programs are intended to be programs where treatment is provided for children with mental health conditions, what clinical or other considerations should be brought to bear on the use of mechanical restraints?

¹⁹ Part VII - Extraordinary Measures.

The Use of Secure De-Escalation Rooms²⁰

Challenges and Opportunities:

- Secure de-escalation rooms are defined in Part VII, Extraordinary Measures under the CYFSA for use for the de-escalation of situations and behavior involving children or young persons.
- Secure de-escalation rooms are only used when a child or young person's conduct indicates they are likely to cause serious bodily harm to another person or serious property damage in the immediate future and no less restrictive manner of restraining the child or young person is practicable.
- When using a secure de-escalation room, it is important to review the practices to ensure that such activities are done within established parameters of legislation, regulation and policy.
- There are provisions that apply to all premises where the use of secure de-escalation rooms have been approved by the ministry under the CYFSA (including youth justice secure facilities, secure treatment programs, licensed residential settings (e.g., foster homes and group homes) and places where ministry funded services are provided in the community)
- There are also separate provisions that only apply to young persons over 16 years of age in youth justice secure facilities.

Regulations and Policies that can be developed:

- Regulations and policies can be developed regarding:
 - Director approvals of secure de-escalation rooms; (*CYFSA s345(8)*)
 - Criteria for the use of a secure de-escalation room; (*CYFSA s345(4-7)*)
 - Time limits; (*CYFSA s345(4-7)*)
 - Observation (*CYFSA s345(4-7)*);
 - Release of children and young persons from a secure de-escalation room (*CYFSA s345(4-7)*);
 - Service provider review of the need for a secure de-escalation room (*CYFSA s345(8)*); and,
 - Additional reports (*CYFSA s345(8)*).

Questions:

- Is additional clarity required regarding the existing requirements for the use of a secure de-escalation room?
- How should clarification on existing requirements be communicated to service providers?

²⁰ Part VII - Extraordinary Measures.

Intercountry Adoptions under CYFSA- Delegation of Central Authority Functions²¹

Challenges and Opportunities:

- Clarifying and assigning the functions of Central Authority under the CYFSA in accordance with Article 22 of the Convention on Protection of Children and Co-operation in respect to Intercountry Adoption, set out in the Schedule to the Intercountry Adoption Act, 1998.
- Part XII subsection 346 (2) (3) under CYFSA provides regulation making authority with respect to the functions of Central Authority. Central Authority is designated under clause 24 (a) of Intercountry Adoption Act, 1998.
- The Lieutenant Governor In Council may make regulations assigning functions of the Central Authority under Part VIII.

Regulations and Policies that can be developed:

- Regulations can be developed to assign certain functions of the Central Authority to public authorities, accredited bodies or persons authorized to process intercountry adoptions under the CYFSA (*CYFSA s.346(3)*).

Questions:

- Given the complexity of intercountry adoptions, which functions of the Central Authority should be assigned to public authorities, accredited bodies or persons pursuant to the regulations under the CYFSA?
- How would the functions differ for public authorities, accredited bodies or persons authorized to process intercountry adoptions in accordance with Article 22 of the Convention?

²¹ Part XII –Regulations.

Protection of Privacy and the Handling of Personal Information²²

Challenges and Opportunities:

Part X (Personal Information) of the Child, Youth and Family Services Act (CYFSA) introduces a new information privacy framework for the children and youth sector. The framework works with existing provincial privacy legislation including the Personal Health Information Protection Act (PHIPA) and the Freedom of Information and Protection of Privacy Act (FIPPA). The new framework:

- Gives children, young persons and family members the right to access and correct their personal information held by service providers allowing for improved access to records and personal histories.
- Strengthens the right of children and young persons to have a say in how their personal information is used or shared. Service providers will be required to obtain consent before using or sharing a client's personal information with certain exceptions, such as when there is a risk of harm to a child in the case of Children's Aid Societies
- Assumes that an individual has capacity to provide their own consent, and in cases where a provider determines that they do not, provides rules for how to appeal that determination and for who can make decisions for them.
- Creates clear requirements for service providers to handle, maintain and protect clients' personal information and be accountable for using it appropriately.
- Creates a right to appeal to the Ontario Information and Privacy Commissioner if an individual feels that their privacy has been breached or if they have been unable to gain access to or correct their personal information.
- Will improve the ministry's ability to collect and use high quality data from service providers to better learn about the impact of policies and programs on the lives of children, young persons and families. The 'intelligence' gained from the data collected will allow the ministry to better evaluate current programs and design future policies and programs.
- Recognizes that service providers and communities also want to use data gathered from clients about the services they access to inform their service planning.

Regulations and Policies that can be developed:

- Regulations and policies can be developed to:
 - Help children and young persons exercise their rights to control how their personal information is collected, used or disclosed (e.g. reviewing capacity decisions and appointing a representative to make decisions on their behalf) (*CYFSA s348(8)*);
 - Specify how individuals can access their records and how records are to be handled, such as if a service provider stops operating (e.g. how long records must be kept, transferring of records) (*CYFSA s348(17)*);

²² Part X – Personal Information.

- Describe when and how service providers are to notify individuals affected by a privacy breach should a breach occur (*CYFSA s348(16)*)
- Specify the expectations for how the ministry and service providers will respect clients' privacy when collecting, using, and sharing clients' personal information for research purposes (i.e. to analyze the impact of ministry services and programs) (*CYFSA s348(3)&(8)*);
- Identify circumstances under which the ministry and service providers could provide clients' personal information to other bodies (e.g. the Canadian Institute for Health Information or the Institute for Clinical Evaluation Sciences, other organizations) for specific purposes such as to support service planning (*CYFSA s348 (8),(9)&(10)*); and,
- Address how these other bodies should handle clients' personal information to protect its privacy (*CYFSA s348 (8), (11) & (15)*).

Questions

- What information or supports do children and young persons need to be able to exercise their right to make decisions about their personal information?
- What factors should be considered when appealing a service provider's determination of a person's capacity to make decisions about the sharing of their personal information?
- What factors should be considered when appointing a representative (i.e. a Substitute Decision Maker) to make decisions on an individual's behalf?
- For how long should client records be kept by service providers? Should the time differ depending on the type of records?
- When an individual is notified of a privacy breach, is there specific information that should be included in the notification? If yes, what information should be included?
- If there is a privacy breach, should individuals be directly notified every time? If not, in what circumstances should an individual not be notified?
- Are there any circumstances where indirect notification (e.g. posting on a web site) of a privacy breach would be appropriate?
- Should the Minister's and service providers' use and sharing of clients' personal information for research to support service planning be guided by privacy protections as currently outlined in the Personal Health Information Protection Act?
- Should other bodies be able to use clients' personal information for other purposes than service planning (e.g. research)?
- Is there any type of personal information that service providers, including the ministry, should not share with other bodies for purposes related to service planning?

Other Issues of Interest or Concern

The Ministry is open to receiving information on other areas of interest related to the CYFSA regulations

As we work towards even better outcomes for the children and young persons of Ontario, what other possible changes achieved through the CYFSA regulations, would help the ministry and its service providers continue to improve outcomes for children and young persons?

**Thank you for participating in the engagement around the
development of regulations under the
*Child, Youth and Family Services Act, 2017.***

