

Colorado Commission on Criminal and Juvenile Justice
Abuse of Youth in Custody Subcommittee
Minutes

November 15, 2018, 2018 1:30PM-3:00PM

700 Kipling, 4th Floor Training Room

ATTENDEES:

SUBCOMMITTEE MEMBERS

Joe Thome, Subcommittee Chair, Division of Criminal Justice

Blake Harrison, 2nd JD District Attorney's Office

Natasha Mitchell, Child Protection Ombudsman

Anders Jacobson, CDHS, Division of Youth Services

Joseph Brozek, CDHS, Child Welfare (on the phone)

ABSENT

Tony Gherardini, CDHS

Eiffie Seibold, Public Defenders' Office

STAFF

Kim English, Division of Criminal Justice

Laurence Lucero, Division of Criminal Justice

Stephane Waisanen, Division of Criminal Justice

GUESTS

Gretchen Russo, CDHS

<p>Issue/Topic: Welcome</p>	<p>Discussion: Joe Thome, Subcommittee Chair, welcomed the group and attendees introduced themselves. Joe Thome welcomed Ms. Natasha Mitchell as a new member representing the Child Protection Ombudsman.</p>
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<p>Issue/Topic: Recap of September meeting</p> <p>Action:</p>	<p>Discussion:</p> <p>Joe Thome explained that the Subcommittee didn't meet in October because Ms. Tanya Wheeler from the Attorney General's Office was invited to present on her work of the relevant statutes for CDHS but Ms. Wheeler expressed not being able to participate with the work of this Subcommittee.</p> <p>Joe provided a brief background of the mandate from the General Assembly and the context of the study assignment to the Commission. CCJJ was assigned by the General Assembly to look at gaps in the Colorado statutes related to abuse of youth placed in CDHS residential settings. A report from the Subcommittee study will be completed and submitted to the General Assembly by June 2019.</p> <p>At the last meeting, the group discussed the inability of social services to investigate allegations of child abuse/neglect of youth ages 18-21 who are in custody of CDHS because they are not a child, per statute. A law enforcement investigation is required when the youth is 18 and older. Law enforcement sometimes arrest the youth who, if under age 18, would be considered the victim of child abuse.</p> <p>There is no requirement for mandated reporting of child abuse/neglect when the youth is 18+ and the group agreed that mandatory reporting should be expanded to individuals who are in a CDHS institution/facility.</p> <p>The offense of child abuse by a person in position of trust requires review; it does not apply to those 18-21 in residential facilities.</p> <p>Ms. Gretchen Russo was invited to present on H.B. 18-1346 that was introduced in the past legislative session. The bill did not pass and, instead, the CCJJ was assigned to study the issue.</p>
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<p>Issue/Topic: Legal Overview</p>	<p>Gretchen handed out a copy of H.B. 18-4346 which was drafted with the assistance of the Office of Child Welfare. The intent of the bill was to give authority to the Colorado Department of Human Services (CDHS) to assess cases of abuse and neglect cases for those youth over 18 years old and residing at a CDHS facility (custody of the Division of Youth Services or Child Welfare).</p>
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The CDHS started its work by asking the following questions:

1. Do the criminal statutes address the abuse of a child or youth in a CDHS facility?
2. Should the age group be extended and include 18-21 in the Child Abuse statutes?
3. Should there be a change in the statutes regarding the definition of CDHS facilities?

CDHS initially considered a statutory change in the Child Abuse statute (18-6-401) around the definition of a “child” to include 18-21 year olds. However, it was soon realized that too many statutes would be impacted and doing so would substantial legal study.

The bill introduced in last year’s legislative session proposed a statutory change to the definition of facilities to include:

1. Residential child care facility
2. Specialized group home
3. Specialized group care home
4. Foster child care home
5. Child welfare custody and DYS

A facility does not include adult detention, correctional facilities, or state hospitals.

Gretchen shared that CDHS updated their practices since last session, and that all assessments are now conducted for those youth who reside within a Child Welfare facility. However, some cases of youth over 18 remain Not Assessed, particularly within the Division of Youth Services.

DISCUSSION

In statute, law enforcement is required to investigate each case of abuse for youth over 18 who are in the custody of CDHS. However, it is unsure whether cases coming through the hotline are being investigated by law enforcement.

Blake Harrison believed that the reason why H.B. 18-4346 didn’t pass was that the statutes already address this issue and a statutory change was not warranted. Blake will research further the relevant statutes.

Gretchen expressed that there might be some gaps with regards to whether a person is charged with child abuse vs. assault. If a person is charged with child abuse, he/she will be unable to become a foster parent but could become a foster parent if charged with assault.

The questions are: *“Are youth 18-21 years old protected under the criminal statutes, and are they protected the same way whether a person is charged with “assault” vs. “child abuse?”*

Blake Harrison mentioned that, in statute, abuse of a youth over 16 is “assault” and for those 16 and under, the crime is “child abuse.”

The group discussed the importance of ensuring that there are different ways to prosecute someone who has committed abuse towards a youth over the age of 16 and ensure that abusers are not receiving lesser charges because of the statutory gaps.

Anders Jacobson believed that DHS and law enforcement investigate cases differently with different results. For example, a county investigator may see a case of abuse whereas a law enforcement officer may not see any abuse charge at all. Counties have founded cases of abuse but many are not prosecuted. When the case is founded inconclusive, law enforcement is not involved.

Kim English suggested that there might be value in exploring the possibility of DHS conducting all investigations. She remembered that Chief Kilpatrick from the Golden Police Department mentioned that it is an unfunded mandate when an officer is called at DYS facility. Kim added that there could be a value in a descriptive statute that applies to youth who are in the custody of CDHS.

Another issue is mandatory reporting. Youth who are institutionalized are a particularly vulnerable population and it should be confirmed that mandatory reporting includes the 18-21 year olds.

Some county social services do not make findings of abuse because they have the option to do differential responses. This means that someone who has been investigated for abuse can still work with a youth. Not all counties have the ability to do differential responses. Gretchen suggested that the group walk through the child welfare process starting from the moment when someone calls the hotline to law enforcement.

It was mentioned that the Office of Child Welfare is updating Volume 7 of their regulation manual. There is a new requirement that counties and local enforcement develop a Memorandum of Understanding (MOU) pertaining to joint investigations and Volume 7 rules. This is a collaborative agreement is to include protocols for responding to allegations of abuse, the rights of those accused, and remedies for unincorporated municipalities, cities, counties, and state law enforcement agencies.

Joey Brozek shared that since July 1, 2018, there have been 19 assessments conducted and, of those, 14 cases were founded including 3 cases who were under the custody of DYS. All founded cases within the child welfare system are referred to law enforcement.

Joey also mentioned that the Office of Child Welfare is working on addressing the issues of youth-on-youth assaults, group assaults and updating the verbiage related to staff institutional abuse. There is a high level expectation for supervision at the institutions. Should there be a different definition of institutionalized supervision and institutional rules compared to a home life?

	<p>Blake Harrison followed up on the discussion of extending the definition of a child to youth over 16 with more severe penalties for the abuser. However, Blake asked if this was the right solution as it is sometimes easier to prosecute when there is serious harm as opposed to intent of serious harm. The Colorado District Attorney’s Council (CDAC) has talked about reclassifying a youth in custody crime, but there are not any higher penalties. It might be worth exploring a way to put someone into the registry or database without changing the criminal code.</p> <p>Joe Thome summarized the following topics of discussion:</p> <ul style="list-style-type: none"> - Protection of 18+ youth under the criminal code - Prosecution of abusers for youth 16+ / Child abuse vs. assault - Mandatory reporting of abuse for youth over 18 - Law enforcement unfunded mandates - 18-21 year olds commit offenses to younger youth population - Who goes on the registry and under what circumstances. <p>Joe Thome suggested that the group start working on possible solutions to these issues before examining the relevant statutes in the criminal code.</p> <p>Joe Thome thanked the group members for their participation and Gretchen Russo for her presentation. Gretchen Russo was invited to participate to the group’s work as Subcommittee member.</p>
<p>Issue/Topic:</p> <p>Next steps and Adjourn</p>	<p style="text-align: center;">Discussion:</p> <p>At next month meeting, the Subcommittee will be presented with a presentation of the Child Welfare process.</p> <p>Meeting was adjourned at 3:00 pm</p>

Next Meeting

December 20, 2018

1:30pm – 3:00pm

700 Kipling, 4th Floor Conference room