

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

March 5, 2019 1:00PM-3:00PM  
 710 Kipling, 3<sup>rd</sup> floor conference room

**ATTENDEES:**

**TASK FORCE MEMBERS**

Joe Thome, Chair  
 Blake Harrison, District Attorney’s Office, 2<sup>nd</sup> Judicial District  
 Effie Seibold, Public Defender’s Office  
 Natasha Mitchell, Office of the Child Protection Ombudsman  
 Anders Jacobson, Colorado Department of Human Services  
 Joseph Brozek, Colorado Department of Human Services  
 Janet Drake, Deputy, Attorney General’s Office

**STAFF**

Richard Stroker, CCJJ Consultant  
 Kim English, Division of Criminal Justice  
 Laurence Lucero, Division of Criminal Justice  
 Stephane Waisanen, Division of Criminal Justice

**ABSENT**

Gretchen Russo, Colorado Department of Human Services

<b>Issue/Topic:</b> Welcome and Introductions	Chair Joe Thome welcomed the members and introduced Richard Stroker, Commission Consultant, to the group. Richard will be facilitating today’s meeting, and helping us create a recommendation.
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<b>Issue/Topic:</b> Agenda & Recap of January Meeting	<p>Joe mentioned that the agenda for today’s meeting was very simple. He wanted to go over the agenda briefly so that the group would have time to discuss possible solutions to four areas. He stated that Richard had created an outline of the following topics:</p> <ol style="list-style-type: none"> <li>1. Information exchange for the Colorado Department of Human Services (CDHS) related to incidents. How do we have consistency in the investigations? (H.B. 18-1346 and CDHS Vol 7).</li> <li>2. New statute: Institutional Abuse and Facility Abuse?</li> <li>3. Treat Institutional Abuse as domestic violence and flag these cases in Judicial’s database?</li> <li>4. Should there be an Inspector General for CDHS?</li> </ol>
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<b>Issue/Topic:</b> Discussion of Possible Solutions	Richard stated that he thought that the group could spend some time revisiting these issues and discussing what has led the group to believe that these topics should be
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addressed, and how we should accomplish this? Let's discuss: 1. What is the problem that exists now? 2. What has lead you to believe that this needs to be addressed? 3. What do you think should be done about that?

Note that one of the issues is that the felony child abuse statute addresses a child ages 16 and younger, yet individuals can be in a CDHS facility/foster home/kinship home up to the age of 21.

It was mentioned that most child abuse allegations begin with reports to the hotline and the reports are sent to the county where the caller is calling from or calling in reference to. From that point a screening determination is made regarding whether the incident met the criteria for abuse/neglect. From that determination, a representative from the county would go assess (investigate) the situation.

The screening process may differ from a foster care home versus a DYS facility for the same allegation. It could be a licensing or policy issue. Foster and non-foster homes are not licensed to do restraints, whereas DYS and other secure facilities can do restraints; many abuse allegations result from restraints.

Another problem is that of 18-to-21 year-olds who call the hotline. These individuals are not "children" and the charge of "child abuse" applies only to individuals 16 years of age and younger. If they call the hotline it will not be given much attention since the individual is not considered a child. Law enforcement may investigate the situation, but there are cases where law enforcement charged the older youth with a crime when they called to report abuse.

The group discussed the issue of mandatory reporting of abuse/neglect. Blake clarified that the mandatory reporting statute (19-3-304, C.R.S.) requires that an individual report in one of three ways:

1. Reporting through the hotline.
2. Reporting directly to the Department of Human Services (DHS).
3. Reporting to law enforcement.

Joey mentioned that this works if the youth is under 18. If they are 18+ there is no mandatory reporting.

The group discussed a possible recommendation would be to expand mandatory reporting when child abuse/neglect is suspected for 18+ who are in out-of-home care. Additionally, a major problem is the process itself and how the investigation is handled; there are a lot of inconsistencies since resources and practices vary considerably at the county level. It was mentioned at a previous meeting that possibly involving another entity like an Inspector General might be a solution, or perhaps

	adding this to the duties of the Child Protection Ombudsman.
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	<p>Natasha mentioned that the Ombudsman is the mandatory reporter and would screen the information that was made to the hotline. If there is a suspected act of criminal child abuse it is then referred to law enforcement. She didn't think that the Ombudsman's Office should be charged with investigating child abuse findings.</p> <p>Richard stated that the group might want to provide more clarity and make a recommendation to answer to the problem of inconsistent investigations. Possibly to make some determinations based on criteria at the different locations and circumstances. However, this is not part of the "review of criminal statutes" that this group is tasked with.</p> <p>Blake mentioned that there might be a gap within the statute for mandatory reporting that ends at the age of 18. There is not a mandatory reporter for an individual between the ages of 18-21 in a facility. Maybe that is where the gap is in the criminal code: there is no mandatory reporting for 18-21 year-olds in a youth facility.</p> <p>Richard asked if there were mandatory requirements for individuals who are under 18 when there is suspected abuse or institutional abuse?</p> <p>Blake stated that it could lead to the Department of Human Services (DHS) doing an investigation but it may not lead to a child abuse charge, but rather it would be an assault charge since the victim was over age 16.</p> <p>Richard mentioned that the group had identified that there was a gap in mandatory reporting requirements for people who are in various residential settings in the custody of CDHS. Between the ages of 18-21 years of age, the mandatory reporting requirements could be expanded where there is an allegation of institutional abuse.</p> <p>Anders summarized that what we are suggesting is increasing mandatory reporting for up to age 21 for individuals who fit the definition of "institutional abuse" and are in a CDHS "facility" as defined in statute.</p> <p>Blake mentioned that the gap is when an individual is in an institution and they are assaulted at 16+. If the incident is not founded, they could still be convicted anyway. They will not be placed in the registry because they are not convicted of child abuse but they can still be convicted of assault.</p>
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<b>Issue/Topic:</b>	Richard stated that there was one issue that needed to be addressed. Should criminal penalties for specific types of child abuse in an institution be increased, amended, or notated differently?
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	<p>Blake mentioned that he believed that there was no requirement of an individual who is convicted of child abuse to attend parenting classes. The individual might be required as a condition of probation to attend, but there is not statutory requirement for treatment like there is for domestic violence convictions. One way that this could be addressed would be to include child abuse up to the age of 21. CDAC did not want to allow this because it would impact a significant number of other statutes.</p> <p>Kim explained that the mandate states to study whether existing criminal statutes address abuse of a child/youth in a facility and identifying any gaps.</p> <p>Richard mentioned that this might be good for the group to consider exploring the existing criminal penalties that address at-risk populations or assaults on police officers.</p> <p>The at-risk statutes increase the criminal penalty one classification level. A misdemeanor third degree assault on a person aged 65+ would be elevated to a felony because the victim is considered an at-risk adult. We could take the same approach: If someone is in DHS custody do we increase the penalty when a crime committed against them?</p> <p>It was suggested to maybe increase the penalties in the criminal code as mentioned in previous meetings. CDAC is ok with increasing the penalties but some legislators may not want to increase the penalties.</p>
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<p><b>Issue/Topic:</b> Next Steps/Adjourn</p>	<p>Richard stated that the group has identified there is a problem with how this information is reported. The bill that passed last year addressed a number of issues in regards to potential gaps. Maybe this group can document what has been improved. The one area that I think remains appropriate for additional consideration is the issue around mandatory reporting for youths who are over 18. Maybe the group could take a look at the mandatory reporting statute and decide how it could be amended in order to capture what we are trying to do.</p> <p>The group agreed to clarify the mandatory reporting statutory language and require mandatory reporting of institutional abuse to include those ages 18-21. Specifically, the group agreed that C.R.S. 19-3-304(11) be amended to include a new paragraph (C) that states:</p> <p><i>For the purpose of this section only, child shall include the definition of youth in a facility, as defined in Title 19, section 19-1-103(66), C.R.S.</i></p> <p>Richard asked for a motion to recommend modification of the mandatory reporting statute to clarify that it applies to the offense of institutional abuse of a youth up to age 21 who reside in a facility. The group unanimously approved the recommendation.</p>
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	<ul style="list-style-type: none"><li>● Joe, Kim, and Laurence will draft a recommendation and send it to the group. With the groups approval we will present a preliminary recommendation to CCJJ in April.</li><li>● Blake and Effie offered to present the information at the next CCJJ meeting.</li></ul> <p>Joe thanked Richard and the Committee members for their time and efforts and mentioned that next week's meeting would be cancelled.</p>
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**Next Meeting**

April 18, 2019/ 1:30PM – 3:00PM  
710 Kipling, 3<sup>rd</sup> floor conference room