



# COLORADO

## Commission on Criminal & Juvenile Justice

Department of Public Safety  
Colorado.gov/CCJJ

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## Memorandum

To: The Judiciary and the Public Health Care & Human Services Committees of the Colorado House of Representatives, and the Judiciary and Health & Human Services Committees of the Colorado Senate

From: The Colorado Commission on Criminal and Juvenile Justice

RE: House Bill 2018-1346

In 2018, the Colorado General Assembly passed House Bill 1346, *Concerning child abuse related to youth who are under the continuing jurisdiction of the court in an out-of-home placement when they are younger than 21 years of age*. This bill, among other things, mandated that the Commission on Criminal and Juvenile Justice undertake the following: “To study whether existing criminal statutes address abuse of a child or youth in a facility and issue corresponding recommendations concerning any identified gaps in law that may need to be addressed.”

To address this mandate, the Commission convened a subcommittee of representatives from the following organizations:

- Colorado Department of Human Services, Office of Children, Youth and Families
- Colorado Department of Human Services, Division of Child Welfare, Institutional Abuse Review Team
- Colorado District Attorneys’ Council
- Colorado Office of the Public Defender
- The Office of the Child Protection Ombudsman
- Colorado Department of Public Safety, Division of Criminal Justice

The subcommittee met regularly between September 2018 and March 2019. The group discussed the concerns that led to the study mandate, including that while the victims of child abuse are defined as youth ages 16 and younger, individuals may be held in a facility<sup>1</sup> until their 21<sup>st</sup> birthday. Efforts to investigate alleged incidents of child abuse or, for older youth, assault, frequently fall to county social services where practices can vary across jurisdictions.

<sup>1</sup> “Facility” as defined in House Bill 2018-1346 means a residential child care facility, specialized group facility, foster care home, family child care home, or any other facility subject to the Colorado Child Care Licensing Act, noncertified kinship care providers that provide care for children with an open child welfare case who are in the legal custody of a county department, or a facility or community placement for a juvenile committed to the custody of the Department of Human Services.





The subcommittee reviewed multiple statutes and concluded that a significant gap was addressed by House Bill 2018-1346 when it clarified the definition of “institutional abuse” (§19-1-103 (66), C.R.S.) as follows:

“Institutional abuse” includes an act or omission that threatens the life, health, or welfare of a child or a person who is younger than twenty-one years of age who is under the continuing jurisdiction of the court pursuant to this Title 19.

The subcommittee determined that the statutory changes in the definition of institutional abuse, combined with a rule change in the Colorado Code of Regulations, Department of Human Services, 12 CCR 2509-1, Volume 7 (7.000.2, Definition Section), that aligned the definition of institutional abuse with the statutory definition, addressed major areas of concern.

However, the statute (§19-3-304, C.R.S.) that obligates certain professionals to report child abuse/neglect to child protective services or law enforcement applies only to youth up to the age of 18. The subcommittee decided that, given the age range in the new definition of institutional abuse, an important gap exists in the protection of youth in facilities who are not covered by the current mandatory reporting statute.

To this end, the subcommittee recommends that a new section of statute be included in reference to mandatory reporting.

**Recommendation FY19-AYIC #01.**

Amend §19-3-304 to include the following:

**§ 19-3-304.1 PERSONS REQUIRED TO REPORT INSTITUTIONAL ABUSE.**

- (1)(A) EXCEPT AS OTHERWISE PROVIDED BY PARAGRAPH (B) OF THIS SUBSECTION (1), ANY PERSON SPECIFIED IN SUBSECTION (2) OF THIS SECTION WHO HAS REASONABLE CAUSE TO KNOW OR SUSPECT THAT A PERSON HAS BEEN SUBJECT TO INSTITUTIONAL ABUSE AS DEFINED IN 19-1-103(66) OR WHO HAS OBSERVED A PERSON BEING SUBJECTED TO CIRCUMSTANCES OR CONDITIONS THAT WOULD REASONABLY RESULT IN INSTITUTIONAL ABUSE SHALL IMMEDIATELY UPON RECEIVING SUCH INFORMATION REPORT OR CAUSE A REPORT TO BE MADE OF SUCH FACT TO THE COUNTY DEPARTMENT OR THE LOCAL LAW ENFORCEMENT AGENCY.
- (B) THE REPORTING REQUIREMENT DESCRIBED IN PARAGRAPH (A) OF THIS SUBSECTION (1) SHALL NOT APPLY IF THE PERSON WHO IS OTHERWISE REQUIRED TO REPORT DOES NOT:
- (I) LEARN OF THE SUSPECTED INSTITUTIONAL ABUSE UNTIL AFTER THE ALLEGED VICTIM OF THE SUSPECTED INSTITUTIONAL ABUSE IS TWENTY-ONE YEARS OF AGE OR OLDER; AND
  - (II) HAVE REASONABLE CAUSE TO KNOW OR SUSPECT THAT THE PERPETRATOR OF THE SUSPECTED INSTITUTIONAL ABUSE:
    - (A) HAS SUBJECTED ANY OTHER PERSON CURRENTLY UNDER TWENTY-ONE YEARS OF AGE TO INSTITUTIONAL ABUSE OR TO CIRCUMSTANCES OR CONDITIONS THAT WOULD LIKELY RESULT IN INSTITUTIONAL ABUSE; OR
    - (B) IS CURRENTLY IN A POSITION OF TRUST, AS DEFINED IN SECTION 18-3-401(3.5), C.R.S., WITH REGARD TO ANY CHILD CURRENTLY UNDER EIGHTEEN YEARS OF AGE.





- (2) PERSONS REQUIRED TO REPORT SUCH ABUSE OR NEGLECT OR CIRCUMSTANCES OR CONDITIONS INCLUDE ANY:
- (A) PHYSICIAN OR SURGEON, INCLUDING A PHYSICIAN IN TRAINING;
  - (B) CHILD HEALTH ASSOCIATE;
  - (C) MEDICAL EXAMINER OR CORONER;
  - (D) DENTIST;
  - (E) OSTEOPATH;
  - (F) OPTOMETRIST;
  - (G) CHIROPRACTOR;
  - (H) PODIATRIST;
  - (I) REGISTERED NURSE OR LICENSED PRACTICAL NURSE;
  - (J) HOSPITAL PERSONNEL ENGAGED IN THE ADMISSION, CARE, OR TREATMENT OF PATIENTS;
  - (K) CHRISTIAN SCIENCE PRACTITIONER;
  - (L) PUBLIC OR PRIVATE SCHOOL OFFICIAL OR EMPLOYEE;
  - (M) SOCIAL WORKER OR WORKER IN ANY FACILITY OR AGENCY THAT IS LICENSED OR CERTIFIED PURSUANT TO PART 1 OF ARTICLE 6 OF TITLE 26, C.R.S.;
  - (N) MENTAL HEALTH PROFESSIONAL;
  - (O) DENTAL HYGIENIST;
  - (P) PSYCHOLOGIST;
  - (Q) PHYSICAL THERAPIST;
  - (R) VETERINARIAN;
  - (S) PEACE OFFICER AS DESCRIBED IN SECTION 16-2.5-101, C.R.S.;
  - (T) PHARMACIST;
  - (U) COMMERCIAL FILM AND PHOTOGRAPHIC PRINT PROCESSOR AS PROVIDED IN SUBSECTION (2.5) OF THIS SECTION;
  - (V) FIREFIGHTER AS DEFINED IN SECTION 18-3-201(1.5), C.R.S.;
  - (W) VICTIM'S ADVOCATE, AS DEFINED IN SECTION 13-90-107(1)(K)(II), C.R.S.;
  - (X) LICENSED PROFESSIONAL COUNSELORS;
  - (Y) LICENSED MARRIAGE AND FAMILY THERAPISTS;
  - (Z) REGISTERED PSYCHOTHERAPISTS;
  - (AA)(I) CLERGY MEMBER.
    - (II) THE PROVISIONS OF THIS PARAGRAPH (AA) SHALL NOT APPLY TO A PERSON WHO ACQUIRES REASONABLE CAUSE TO KNOW OR SUSPECT THAT A PERSON HAS BEEN SUBJECTED TO INSTITUTIONAL ABUSE DURING A COMMUNICATION ABOUT WHICH THE PERSON MAY NOT BE EXAMINED AS A WITNESS PURSUANT TO SECTION 13-90-107(1)(C), C.R.S., UNLESS THE PERSON ALSO ACQUIRES SUCH REASONABLE CAUSE FROM A SOURCE OTHER THAN SUCH A COMMUNICATION.
    - (III) FOR PURPOSES OF THIS PARAGRAPH (AA), UNLESS THE CONTEXT OTHERWISE REQUIRES, "CLERGY MEMBER" MEANS A PRIEST, RABBI, DULY ORDAINED, COMMISSIONED, OR LICENSED MINISTER OF A CHURCH, MEMBER OF A RELIGIOUS ORDER, OR RECOGNIZED LEADER OF ANY RELIGIOUS BODY.
  - (BB) REGISTERED DIETITIAN WHO HOLDS A CERTIFICATE THROUGH THE COMMISSION ON DIETETIC REGISTRATION AND WHO IS OTHERWISE PROHIBITED BY 7 CFR 246.26 FROM MAKING A REPORT ABSENT A STATE LAW REQUIRING THE RELEASE OF THIS INFORMATION;
  - (CC) WORKER IN THE STATE DEPARTMENT OF HUMAN SERVICES;
  - (DD) JUVENILE PAROLE AND PROBATION OFFICERS;
  - (EE) CHILD AND FAMILY INVESTIGATORS, AS DESCRIBED IN SECTION 14-10-116.5, C.R.S.;





- (FF) OFFICERS AND AGENTS OF THE STATE BUREAU OF ANIMAL PROTECTION, AND ANIMAL CONTROL OFFICERS;
  - (GG) THE CHILD PROTECTION OMBUDSMAN AS CREATED IN ARTICLE 3.3 OF THIS TITLE;
  - (HH) EDUCATOR PROVIDING SERVICES THROUGH A FEDERAL SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN, AS PROVIDED FOR IN 42 U.S.C. SEC. 1786;
  - (II) DIRECTOR, COACH, ASSISTANT COACH, OR ATHLETIC PROGRAM PERSONNEL EMPLOYED BY A PRIVATE SPORTS ORGANIZATION OR PROGRAM. FOR PURPOSES OF THIS PARAGRAPH (II), "EMPLOYED" MEANS THAT AN INDIVIDUAL IS COMPENSATED BEYOND REIMBURSEMENT FOR HIS OR HER EXPENSES RELATED TO THE PRIVATE SPORTS ORGANIZATION OR PROGRAM.
  - (JJ) PERSON WHO IS REGISTERED AS A PSYCHOLOGIST CANDIDATE PURSUANT TO SECTION 12-43-304(7), MARRIAGE AND FAMILY THERAPIST CANDIDATE PURSUANT TO SECTION 12-43-504(5), OR LICENSED PROFESSIONAL COUNSELOR CANDIDATE PURSUANT TO SECTION 12-43-603(5), OR WHO IS DESCRIBED IN SECTION 12-43-215;
  - (KK) EMERGENCY MEDICAL SERVICE PROVIDERS, AS DEFINED IN SECTIONS 25-3.5-103(8) AND 25-3.5-103(12) AND CERTIFIED PURSUANT TO PART 2 OF ARTICLE 3.5 OF TITLE 25;
  - (LL) OFFICIALS OR EMPLOYEES OF COUNTY DEPARTMENTS OF HEALTH, HUMAN SERVICES, OR SOCIAL SERVICES; AND
  - (MM) NATUROPATHIC DOCTOR REGISTERED UNDER ARTICLE 37.3 OF TITLE 12.
- (3) IN ADDITION TO THOSE PERSONS SPECIFICALLY REQUIRED BY THIS SECTION TO REPORT KNOWN OR SUSPECTED INSTITUTIONAL ABUSE AND CIRCUMSTANCES OR CONDITIONS WHICH MIGHT REASONABLY RESULT IN INSTITUTIONAL ABUSE, ANY OTHER PERSON MAY REPORT KNOWN OR SUSPECTED INSTITUTIONAL ABUSE AND CIRCUMSTANCES OR CONDITIONS WHICH MIGHT REASONABLY RESULT IN INSTITUTIONAL ABUSE TO THE LOCAL LAW ENFORCEMENT AGENCY OR THE COUNTY DEPARTMENT.
- (4) NO PERSON, INCLUDING A PERSON SPECIFIED IN SUBSECTION (1) OF THIS SECTION, SHALL KNOWINGLY MAKE A FALSE REPORT OF INSTITUTIONAL ABUSE TO A COUNTY DEPARTMENT OR A LOCAL LAW ENFORCEMENT AGENCY.
- (5) ANY PERSON WHO WILLFULLY VIOLATES THE PROVISIONS OF SUBSECTIONS (3) OR (4) OF THIS SECTION:
- (A) COMMITS A CLASS 3 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-501, C.R.S.;
  - (B) SHALL BE LIABLE FOR DAMAGES PROXIMATELY CAUSED THEREBY.
- (6) NO PERSON SHALL BE PROSECUTED, TRIED, OR PUNISHED FOR AN OFFENSE PURSUANT TO SUBSECTION (5) OF THIS SECTION UNLESS THE INDICTMENT, INFORMATION, COMPLAINT, ACTION, OR PETITION IN DELINQUENCY IS FOUND OR INSTITUTED WITHIN THREE YEARS AFTER THE COMMISSION OF THE OFFENSE.

