

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

Minutes

December 20, 2018, 2018 1:30PM-3:00PM

710 Kipling, 3rd Floor Meeting Room

ATTENDEES:

SUBCOMMITTEE MEMBERS

Joe Thome, Subcommittee Chair, Division of Criminal Justice
Gretchen Russo, CDHS Judicial & Legislative Administrator
Blake Harrison, 2nd Judicial District Attorney's Office
Effie Seibold, Public Defender's Office
Joseph Brozek, CDHS Child Welfare
Natasha Mitchell, Office of the Child Protection Ombudsman

ABSENT

Anders Jacobson, CDHS, Division of Youth Services

STAFF

Kim English, Division of Criminal Justice
Laurence Lucero, Division of Criminal Justice
Stephane Waisanen, Division of Criminal Justice

Issue/Topic:	Discussion
Welcome and Introductions	Joe Thome, Subcommittee Chair, welcomed the group and asked attendees to introduce themselves. He also mentioned that Tony Gheradini of CDHS would no longer be a part of this committee.

Issue/Topic:	Discussion
Recap of November Meeting	<p>Joe stated that the recap would be fairly short, and Gretchen mentioned that there needed to be some corrections made to the minutes.</p> <p>Gretchen clarified that H.B. 18-4346, which included the mandate for this study group, now gives authority to the Colorado Department of Human Services (CDHS) to assess cases of abuse and neglect for youth over 18 and residing at a CDHS facility. The piece that CDHS wanted to add were modifications to the criminal code to include youths in CDHS facilities in the criminal statute under child abuse which currently applies to youth ages 16 and under (the crime is assault for victims ages 17+). This piece of the proposed bill was amended, and creating this CCJJ study committee was put in its place.</p> <p>A facility is defined in H.B. 18-1346 as the following:</p> <ol style="list-style-type: none"> 1. Residential care 2. Specialized group home 3. Foster care home 4. Kinship homes 5. Other facilities under the Colorado Child Care Licensing Act <p>A facility does not include adult detention or a correctional facility.</p> <p>Joe mentioned that at the last CCJJ meeting there was considerable interest in this subject and the scope of the Abuse of Youth Subcommittee. Joe also informed the group that, at a prior CCJJ meeting several months ago, Chief Kilpatrick from the Golden Police Department mentioned that his department responds to incidents at DYC facilities such as Lookout Mountain and, in his view, this burden on local law enforcement is an unfunded mandate, given that the Department of Corrections has internal resources, the Inspector General's Office, to investigate criminal acts that occur in those facilities. The Chief inquired if a recommendation could be brought forth to fund or reimburse law enforcement expenses for these very time consuming investigations. Joe said he believes this issue is beyond the scope of the Subcommittee. Gretchen responded that CDHS has many more youth in foster homes and community placements than in DYS, and CDHS has no inspector general for foster homes.</p>

<p>Issue/Topic: Recap of November Meeting (continued)</p>	<p>Joe continued the recap of the last meeting, stating that the group talked about the child abuse/neglect investigation process from beginning to the end. We were still vague on the process, so we asked our Subcommittee member Joey Brozek from CDHS to explain the process today. Additionally, we have Blake Harrison’s report on what CDAC’s expectations are for this Subcommittee as we partner with them to move a recommendation forward to the legislature.</p>
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<p>Issue/Topic: CDAC Update</p>	<p>Discussion</p>
	<p>Blake Harrison stated that the CDAC would oppose any expansion of the child abuse statute beyond anyone who is 18 years or older. They know there is a need to extend it, and maybe the need is to extend more protections for this vulnerable population who reside in a facility, perhaps identifying the group as “at-risk” which bumps up the felony class to the next level. Currently, in the child abuse statute, a child is defined as someone 16 years of age or younger. For a child who is 17 and older, abuse is not perceived as <i>child</i> abuse in the statute because it is harder for them to be placed in an unreasonable situation. In statute, an abuse of a youth over 16 is an “assault” and for those 16 and under, the crime is “child abuse.” To change the child abuse statute could be complicated because many other statutes would require modification, including sexual assault on a child and sexual assault on a child in a position of trust.</p> <p>Blake mentioned that, in the current statutes, there might be some gaps with regards to whether a person is charged with child abuse versus assault. He provided a list of definitions and requirements related to mandatory reporting and mentioned that in child abuse there is also sexual assault on a child, and sexual assault on a child in a position of trust.</p> <p>The group discussed that a potential foster parent could have assault charges versus child abuse charges and quite possibly still could become a foster parent, particularly if the charge was pled down to harassment. The penalties for assault are not as significant as a charge for child abuse.</p> <p>Natasha mentioned that perhaps there should be a separate category in statute for vulnerable people over the age of 16 or 18 who are in CDHS’s care. Gretchen said that she works with Child Welfare as much as DYS, and she feels there is a big piece missing. Sometimes foster parents abuse their kids, and there are child welfare kids in residential care who have been abused. Effie asked if there was anything in statute to reflect the power imbalance for victims in facilities ages 16-21.</p> <p>Gretchen explained one impetus behind H.B. 18-4346 was to mandate that the counties actively investigate (or conduct an assessment of) allegations of abuse in the 18+ population. Prior to passage of the bill, counties did not have the authority to assess an individual when they were 18+ and legally it was not their jurisdiction but rather law enforcement’s jurisdiction. She stated the bill resolved this issue.</p>

<p>Issue/Topic: CDAC Update (continued)</p>	<p>Joe mentioned that, depending on the situation, sometimes there is not a penalty but rather a consequence. If a 17 year-old is abused it will be criminal assault, a lesser charge than child abuse, and it will not appear in the CDHS information system. It might not be known in another county that this kid was abused by a potential foster parent. An employee of the Department might be able to retain his employability because theoretically he was not legally founded on a child abuse charge.</p> <p>Blake stated that he sees the need to address three issues:</p> <ol style="list-style-type: none"> 1. To make sure DHS can get involved when there is an allegation (basically how do law enforcement and other entities know this is a requirement?) 2. If there is a charge, is that information retained and available for people that may need the information? 3. Is there any designation for someone who is charged with a crime against one of these youth in a vulnerable population? What increased penalties are necessary? <p>Gretchen mentioned that CBI and that the FBI do background checks and run fingerprints on these people. The real concern is: are these kids being protected at the highest level? Many child abuse cases are never charged, and when they are, most are misdemeanor charges. It has to be pretty significant for a felony to be charged.</p> <p>Blake asked the group if the legislature would think it is appropriate to increase penalties for assault or child abuse type crimes that happens to this population. Are we to make a recommendation that they head down this path? The right authorities need to get the right information, also. On someone who is over 16, how is it known whether it is an assault that happened in a facility versus a regular assault? This distinction is very important. The third step could be an increase in penalties/consequences for incidents involving that population.</p>
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<p>Issue/Topic: Assessment/Investigation process</p>	<p style="text-align: center;">Discussion</p> <p>Joey Brozek, an Institution Specialist at CDHS and chair of the Institutional Abuse Assessment Review Team, spoke about institutional assessments for foster care, foster care homes and DYS facilities. He stated that this team looks at every assessment (investigation) that occurs.</p> <p>He explained the procedures for an institutional assessment from the beginning to the end of an incident (see flowchart at the end of this document). When an incident occurs in a DYC facility, there is a requirement to have an internal facility report on the incident. All workers are considered mandated reporters within this process. The person that is claiming abuse/neglect is not mandated to make a call but there needs to be a report filed in order to start the process.</p>
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<p>Issue/Topic: Assessment/Investigation process (continued)</p>	<p>He stated that some counties have developed an enhanced screening process. Larger counties may use a high level manager review the institutional assessments to see if a second review is required to determine if it is a child welfare referral or child welfare inquiry. The county will determine the response time of the referral. There are three response times:</p> <ol style="list-style-type: none"> 1. Significant – There are safety concerns and there is a high risk action that needs to be taken immediately. 2. Moderate – There are safety concerns and there is a moderate risk action that can take up to three days. 3. Low – There are no safety concerns, and there is a low risk action that can take up to five days. <p>Joey mentioned that the majority of institutional assessments in a DYS facility, foster care, non-certified and certified kinship providers are provided a five-day response time. He stated that any facility (foster care, non-certified and certified kinship provider) that falls within the Child Care Licensing Act is considered an institution. If a foster home is under a Certified Placing Agency (CPA), DYS contacts them about any concerns they have with the foster home and there are certain actions the CPA can take. He mentioned that most of the time, unless it is a non-kinship home, there are governing bodies that can mitigate safety concerns.</p> <p>Gretchen clarified that there are two ways to become a foster parent in Colorado. The individual could go through the county Department of Human Services to take the appropriate classes to get certified, although some counties do not offer a certification process. The second way would be through a Child Placement Agency (CPA). These agencies are certified through the Colorado Department of Human Services and then the CPA certifies the foster homes. What gets confusing is there is also a non-certified kinship category for those who do not become certified, and in these cases the county retains custody of the child. A certified kin is when an individual was identified as the next of kin and has gone through the appropriate classes to become certified, they are technically then classified as a foster parent. A traditional foster care home is referred as a “family like setting.” A foster care parent has no relation to the child but they have gone through the appropriate classes and have undergone a background check. Treatment foster care is where there is a limit of two kids per home. She mentioned that there are not that many of these in Colorado yet. Group homes also considered a “family like setting” but have too many kids to be under the definition of a foster home. Group Centers have rotating staff, but also offer a group home setting. Residential Care has child welfare kids and DYS kids that are placed in the community.</p> <p><i>How quickly is there a response to an incident?</i></p> <p>Joey explained that the response time depends on the county where the call is made. If it happens to be at night after closing it will be reviewed the next morning. The DYS hotline uses a designated group, the Hotline County Connection Center (HCCC), that takes calls for 32 counties, and then they</p>
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<p>Issue/Topic: Assessment/Investigation process (continued)</p>	<p>transfer the information in the CDHS Trails database. Some of the larger counties such as Denver and Jefferson have their own hotline team. If HCCC believes that the incident is significant, it is transferred immediately. A supervisor will then determine whether to take action immediately or the next day.</p> <p><i>Are there some counties that route their calls to law enforcement agencies?</i></p> <p>There are some counties that route their calls <u>after hours</u> to law enforcement agencies. Once the required response time is determined, an assessment will be conducted. A local county worker then concludes whether the abuse is physical, sexual and/or injurious. They have 60 days to complete that assessment. They have to complete all assessments to meet the response time. For example, if they have multiple victims and they saw all the victims except for one, then they didn't meet the response time.</p> <p>Joey noted that the biggest struggle we see with institutional assessments is the backlog of notifications. There are requirements regarding who must be interviewed and who must be notified. The biggest struggle we see with the institutional assessments backlog is related to the number of notifications required. I have seen workers notify up to 84 parents about an incident. If we have a staff member who has potentially caused abuse or neglect, we want to make sure that facility has taken the appropriate steps. With our notifications process we make sure everyone is notified.</p> <p><i>What occurs in a DYS facility?</i></p> <p>In a DYS facility notification is immediate. In the interfamilial case, the licensing agencies and facilities are required to make notifications. The DYS does have a licensing and monitoring team that is part of quality assessment procedures. When there is an incident in a DYS facility, a report notification is generated immediately. It then goes into the Trails database; there is a person that that is responsible for making sure proper notification occurs. There are then steps that the governing bodies mitigate to see if there are any safety concerns or risks.</p> <p><i>There are some counties that are better at this than other. Can a county go on probation and have to put together a remediation plan?</i></p> <p>Part of the process of the Institutional Abuse Review Team is giving feedback to the counties, identifying areas where they can improve. Some of the larger counties have an Institutional Specialist that perform institutional abuse assessments. We reach out to the smaller counties that are struggling. They study DYS policies and take training classes.</p> <p><i>How often are reports founded and unfounded?</i></p> <p>Joey noted that approximately 7% of assessments are founded and this includes DYS secure facilities. We screen about 14-20% each month and, from</p>
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<p>Issue/Topic: Assessment/Investigation process (continued)</p>	<p>there, 6-10% maybe founded. Our child welfare licensing agency conducts an assessment, and determines if there are any licensing issues that occurred. If there is a founded allegation, an individual has 30 days to appeal and then it is reviewed by the Child and Adult Mistreatment Dispute Review Section (CAMDRS) to determine if it is founded, unfounded or a requires a differential response (where there is no finding). If it is founded, the DA’s office must be notified. Foster care has the highest rate of “founded,” with 33-48% founded, depending on the year, but they also serve a larger population. DYS has the majority of 18-20-year-old population incident referrals.</p>
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<p>Issue/Topic: Next steps and Adjourn</p>	<p style="text-align: center;">Discussion</p> <p>Joe Thome thanked the group members for their participation and Joey Brozek for his presentation and for helping us to understand the process.</p> <p>Joey stated that he will pull together some institutional reports that reflect the 7% founded figure.</p> <p>Gretchen mentioned that she can bring some data to the next meeting. Also if the group wants to talk to CAMDRS in the future it can be arranged. See, colorado.gov/cdhs/child-and-adult-mistreatment-dispute-review-section</p> <p>The next meeting will focus on discussing Blake’s three topics:</p> <ol style="list-style-type: none"> 1. Ensure CDHS can intervene when needed. 2. Ensure officials have information that they need. 3. What increased penalties are necessary?
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Next Meeting

January 17, 2018

1:30pm – 3:00pm

710 Kipling, 3rd Floor Meeting Room

