



DETENTION HEARING ADVOCACY

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- Harms of Detention
- COVID-19
- Legal Framework
- Detention Hearing Strategies
- Implications of Families First Prevention Services Act

DETENTION IS HARMFUL TO CHILDREN

“[F]airly viewed, pretrial detention of a juvenile gives rise to injuries comparable to those associated with the imprisonment of an adult.”

–Justice Marshall for the minority in *Schall v. Martin*, 1984.

DETENTION IS HARMFUL TO CHILDREN

Research has shown family is critical to a child's development and the main source of a child's primary emotional, social, cultural, and spiritual development.

Children in the juvenile justice system are more likely to have mental health and behavioral issues.

- *Family Engagement in Juvenile Justice*, Office of Juvenile Justice and Delinquency Prevention (OJJDP)
 - <https://www.ojjdp.gov/mps/litreviews/Family-Engagement-in-Juvenile-Justice.pdf>

DETENTION IS HARMFUL TO CHILDREN

What is being TAKEN from child :

- Family Support
- Therapeutic Services
- Education
- Pro-Social Activities
- Employment
- Relationships

In exchange for:

- Trauma
- Exposure to negative peer influence/Institutionalization
- Gang violence
- Drugs
- New charges
(assault/introduction of contraband)

COVID-19

COVID-19

- The conditions in jails, prisons, community corrections facilities, and juvenile detention centers does NOT allow for appropriate infection control protocols and will worsen the current COVID-19 pandemic.
- Asymptomatic individuals can spread the infection
 - Staff traveling between homes and facilities
 - New individuals arrested and introduced to facilities
- Reducing the number of incarcerated individuals is necessary for effective infection control and sanitization practices
- *Dr. Carlos Franco-Parades, MD, MPH, DTMH (Gorgas): Associate Professor of Medicine Division of Infections Diseases, University of Colorado*

COVID-19

- **April 11, 2020**

- Governor Jared Polis Executive Order suspends CDHS obligation to provide detention services
- Directs CDHS to identify criteria that would justify acceptance of juvenile into detention facility

- **April 17, 2020**

- DYS releases “criteria” which instead is a detention bed cap
- Not a hard cap
- Youth can be physically moved to other facilities but no virtual bed borrowing

COVID-19

Youth Center Name	Total
Adams Youth Services Center	17
Platte Valley Youth Services Center	23
Gilliam Youth Services Center	36
Marvin Foote Youth Services Center	40
Mount View Youth Services Center	18
Pueblo Youth Services Center	12
Spring Creek Youth Services Center	40
TOTAL	200

COVID-19

- What can you do?
 - File a Motion for Release (Sample Motion)
 - Plan with client and family
 - Supervision-EHM, Check-in
 - Communicate with Probation and Pre-Trial/CYDC to brainstorm cases to avoid warrants

DETENTION HEARINGS

A New Legal Standard

JUVENILE JUSTICE REFORM BILL

CRS § 19-2-211.5 (JULY 1, 2019)

- The general assembly declares that the placement of children in a detention facility exacts a negative impact on the mental and physical well-being of the child and such detention may make it more likely that the child will reoffend. Children who are detained are more likely to penetrate deeper into the juvenile justice system than similar children who are not detained, and community-based alternatives to detention should be based on the principle of using the least-restrictive setting possible and returning a child to his or her home, family, or other responsible adult whenever possible consistent with public safety. It is the intent of the general assembly in adopting [section 19-2-507.5](#) and amending [sections 19-2-212](#), [19-2-507](#), and [19-2-508](#) to **limit the use of detention to only those children who pose a substantial risk of serious harm to others or that are a flight risk from prosecution.**

GENERAL DETENTION STATUTES

CRS 19-2-507: Release or Detention?

- (Effective July 1, 2020)
- SHALL NOT DETAIN UNLESS:
 - Scores into detention (*new screening tool per 19-2-212*)
 - Grounds to override screening instrument
 - Screening team finds “that the juvenile poses a substantial risk of serious harm to others or a substantial risk of flight from prosecution and finds that community-based alternatives to detention are insufficient to reasonably mitigate that risk.”
 - *Current law allows for detention if finding that “juvenile’s immediate welfare or the protection of the community requires detention.”*
- Failure to appear does not equal flight from prosecution
 - “record of repeat, recent willful failures to appear for scheduled court appearance”

GENERAL DETENTION STATUTES

CRS 19-2-507.5: Limitations on Detention

- (Effective July 1, 2020)
- A juvenile SHALL NOT be placed in detention solely:
 - Due to lack of supervision alternatives, service options, or more appropriate facilities
 - Due to the community's inability to provide treatment or services
 - Due to lack of supervision in the home or community
 - In order to allow parent to avoid their legal responsibility
 - Due to risk of juvenile's self-harm
 - In order to attempt to punish, treat, or rehabilitate the juvenile
 - Due to a request by victim, law enforcement, or the community
 - In order to permit more convenient administrative access to the juvenile
 - In order to facilitate further investigation or interrogation
 - As a response to technical violations of probation

GENERAL DETENTION STATUTES

19-2-507(2)(II)(e)

Further Limits on Detention

- (Effective July 1, 2020)
- If a juvenile must be taken from home but does not require physical restriction, then **MUST** be given temporary care to family or other suitable person
- Placed in temporary shelter
- Or placed within DHS
- **AND MUST NOT BE PLACED IN DETENTION**

GENERAL DETENTION STATUTES

CRS 19-2-508: Detention Hearing

- (Effective July 1, 2020)
- Hearing within 48 hours
 - (24 hours for violation of valid court order for status offense)
- Represented by Counsel
- Purpose: determination by court if the juvenile shall be detained further and define conditions of release after finding of
 - Probable Cause
 - Detention Eligible per Screening Instrument
 - **Juvenile poses substantial risk of serious harm to others or a substantial risk of flight from prosecution and community-based alternatives to detention are insufficient to reasonably mitigate that risk.**

GENERAL DETENTION STATUTES

CRS 19-2-508: Detention Hearing

- Presumption of Dangerousness
 - Rebuttable presumption juvenile poses substantial risk of serious harm to others if:
 - Felony COV
 - Possession of Dangerous Weapon/Firearm
 - Note: used to say “danger of harm to himself or herself or to the community” now “poses substantial risk of serious harm to others”
- Allows juvenile to be held WITHOUT BOND
 - No constitutional right to bail for juveniles (*L.O.W. v. District Court in and For Arapahoe County*, 623 P.2d 1253, 125-59 (Colo. 2981).

PRESUMPTION OF DANGEROUSNESS

- HELD WITHOUT BOND
 - Triggers speedy trial rights pursuant to CRS 19-2-108
- THINGS TO DO
 - Ask for FULL CYDC Report
 - Reserve rebuttal/bond for ROC
 - Still ask for PE and/or PIL
 - Demand prelim, set motions hearing and trial
 - Spend time before the hearing talking with the youth and family to put together a mitigation argument.

GENERAL DETENTION STATUTES

19-2-508: Options for the Court

- Release to custody of parent, guardian, legal custodian, kin or other suitable person without posting of bond
- Placed in temporary shelter
- Bail be set and released upon posting of bail
 - (think PR Bond, Low Cash)
- No bail be set
- Referred to DHS for placement and authorization of placement in lieu of bond

PREPARING FOR HEARING

MEET WITH YOUR CLIENT

- Review pertinent documents (PC affidavit, screening forms, probation complaint)
- GAL v. Defense Counsel
 - Role
 - Confidentiality
 - Advise of Right to Remain Silent
 - Parent or Guardian? Can you speak to them? Do they want to go home?
 - Next steps and what will happen

TALK TO PARENTS

Assessing Best Interest of Child-Areas to Explore with Parent/Guardian

- Behaviors at home
- Compliance with curfew
- Previous runaways
- Previous cases and responses to supervision
- Sibling involvement with system
- Family supports
- Substance use
- Need for services
- Willingness to comply with services
- Peers/gang affiliation
- School
- Employment

NOW IT'S TIME FOR THE HEARING...

- Reason to Hold?
 - No PC
 - Not w/in 48hrs
 - Age/Charge (see 19-2-508)
- Bond Argument

CJRA Risk Assessment	Prior Detention/Adjudication
Severity of allegations	Parental support/ability to supervise
School/Job/Sports	Age
Mental Health	Need for Services

WHAT ARE JUDGES LOOKING FOR

- Placements have been actively explored (reasons why child has been denied)
- Community safety plans to provide supervision and crisis management
- Services packages to wrap around the client
 - Therapy
 - MH evaluations
 - Medication evaluations
 - Family Therapy
 - Mentor
 - Substance abuse treatment and monitoring
 - Gang intervention
 - Pro social Activities
 - School plan
 - Employment

STRATEGIES FOR RELEASING KIDS FROM DETENTION

- File motions
- Write up safety plans with guardians and juvenile
- Strategize with DHS, Pre-Trial, and Probation
 - Start working the stakeholder procedures ASAP
- Do home visits
- Identify school plan
- Meet with placements
- Get court to order DHS placement packets
- MH evals and referrals

CURRENT ISSUES IMPACTING DETENTION

- More aggravated crimes
- Increased substance use
- More transfer and direct files
- Decrease of detention beds
- Lack of shelter placements
- Family First Prevention Services Act (FFSPA)

THE FAMILY FIRST PREVENTION SERVICES ACT (FFPSA)

Implications for Out of Home Placement

FFPSA

- Federal legislation regarding child welfare system and reimbursement from Title IV-E funds
 - Themes: Safely prevent unnecessary removals, promote kinship involvement, reduce overreliance on institutional care
 - Restricts funding for institutional care if it is not clinically appropriate
 - Creation of Qualified Residential Treatment Programs (QRTF)
- Colorado opted in beginning of 2020

FFPSA

- Title IV-E maintenance payments are available for limited types of placements: foster family homes (six or less kids) and Qualified Residential Treatment Programs (QRTP)
- QRTP Requirements
 - Timely assessments
 - Protocols to prevent inappropriate diagnosis
 - Court approval and ongoing review of placement
 - Family outreach
 - Discharge planning and aftercare for at least six months
 - Registered or licensed nursing staff (additional clinical staff 24/7)
 - Certain licenses and accreditations

FFPSA IMPACTS

- Placements cannot comply with QRTP requirements so forced to close
- Losing group home and RCCF placements (monthly basis in 2020)
- Longer waitlists
- Quicker commitments to DYS
- Children are returning to the community with inadequate services and picking up additional, more aggravated, charges

RESPONSE TO FFSPA

- What is DHS doing about the loss of placements?
 - Nothing really...no additional placements, no adjustment in service providers
 - Denver: emergency release meetings, small group of intake JD caseworkers
- What can you do about it?
 - Know what is going on with your stakeholders, specifically DHS policies impacting placements
 - Denver Examples: Request court orders that state, “DHS to investigate for placement, to include RCCF levels of care.” ARCH Staffing – complete referral ASAP. Know your caseworkers.
 - Bring it up in court, request more frequent hearings for DHS to report to the court
 - Collaborate with stakeholders (pretrial and probation) to access service providers, refer to Medicaid service providers you trust
 - See previous slides on argument ideas and strategies!!

QUESTIONS?

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