



HB21-1094 – **FAQ**

HB21-1094 was signed into law by Governor Polis on June 25, 2021. The bill establishes a more youth-driven and empowering way to serve young people who are currently in the child welfare system and are 18 and older, or about to turn 18 as well youth who are over 18 and have exited the system. It establishes a new case type for youth receiving services after the age of 18 and provides them with client-directed legal representation rather than a GAL. It also allows eligible youth to re-enter child welfare after the age of 18 if needed.

Eligible youth are:

- 18 years of age but less than 21 years of age or such greater age of foster care eligibility as required by Federal Law.
- In foster care on or after the youth's 16th birthday.
- In noncertified kinship care on or after the youth's 16th birthday and was adjudicated dependent and neglected.

The eligible youth must be engaged in or intend to engage in at least one of the following¹:

- Completing secondary education or an educational program leading to an equivalent credential,
- Attending an institution that provides post-secondary or vocational education,
- Working part- or full- time for at least 80 hours per month,
- Participating in a program or activity designed to promote employment or remove barriers to employment.

These requirements do not apply to a youth who is not capable of engaging in these activities due to a medical condition.

How does an eligible youth request to participate in the transition program after their case has closed?

- Make a request to the county department where the youth resides.
 - Youth must provide documentation of legal name and date of birth (or self-attest).
- The county determines whether the youth is eligible within 3 business days.
- If eligible, the county explains the transition program and provides the voluntary services agreement.
- Within 3 days of the youth deciding they want to enter the program, the county must prepare and execute the voluntary services agreement and provide a copy to the youth.
- Upon entering the voluntary services agreement, the county department must make a referral to the OCR in writing and provide the youth with the OCR's contact information. This will enable the OCR to assign an attorney for the youth.
- The voluntary services may remain in effect for up to 90 days.
- After 90 days a petition must be filed with the juvenile court.

- The youth may participate in the transition program for any length of time up to the day before their 21st birthday (or greater age of foster care eligibility as required by federal law).
- There are no limits on a youth leaving and re-entering again.

How does this work for a youth who is currently in the system and is about to turn 18?

- On the date the youth turns 18, the appointed GAL shall begin acting as counsel and providing client-directed representation until either the case is dismissed or new counsel is appointed, unless the youth is deemed incapacitated, in which case the GAL will continue in that role and separate counsel will be appointed.
- A transition hearing must be held within 35 days of a youth turning 18 to determine whether the youth will opt into the transition program or choose to emancipate. The county department is required to file a report at least 7 days prior to this hearing.
- At the first hearing following the youth's 18 birthday, the court shall advise the youth of their option to consent to the GAL continuing as counsel (if the lawyer remains available and does not have a conflict of interest) or to request new counsel from the OCR appointment list.
- The youth may request a continuance of the transition hearing for up to 119 days if the youth would like additional time to make a decision or prepare for emancipation.
- If a youth chooses to emancipate, the court must hold an emancipation transition hearing. Prior to the participating youth's emancipation, the court must:
 - Review the emancipation transition plan,
 - Determine if the county has made reasonable efforts toward the youth's permanency goals and preparing the youth for successful transition to adulthood,
 - Determine whether the youth has been provided with all necessary records/documents required,
 - Determine if the youth has been enrolled in Medicaid and advise the youth about eligibility for former foster care Medicaid,
 - Advise the youth about the right to re-enter up to the maximum age allowed.
- The court may continue the emancipation transition hearing for up to 119 days.
- If a youth opts-in to the transition program, a petition must be filed with an executed copy of the voluntary services agreement and the youth's current roadmap to success.
- Once the transition program petition has been filed, the Court shall dismiss the youth from the case (leaving the case open for any siblings, or if the youth is the only named minor then dismissing the case) and open a new case. This action cannot result in an interruption of case management services, housing, etc.

Who can file a petition?

- A youth may file a petition at any time.
- A county may file a petition at any time and must file a petition if a voluntary services agreement remains in effect for more than 90 days.

What happens if a youth is determined to be not eligible?

- The county department must notify the youth and provide reasons for such determination, provide information on how to appeal the denial, and provide contact information for the OCR.
- The OCR may assign a GAL to work with the youth pre-petition or review the eligibility determination and assist with the appeal process.

What will be different?

- The youth has a choice and a safety net – the transition program is completely voluntary.
- A case cannot remain open past the age of 18 ½ unless the youth consents to enter the transition program (unless that determination is pending or the youth is waiting to transition to adult disability services).
- Legal representation is client-directed instead of best interest once a youth turns 18.
- Living requirements are less restrictive, allowing youth to live in a wider variety of situations with financial support.
- The youth may request a case be dismissed at any time.
- Licensed foster parents have the right to be heard at hearings but cannot be made a party to the action solely on the basis of notice and the right to be heard.
- Prior to closing a case after a youth's 16th birthday, the court shall advise the youth of the transition program.

What if the youth runs away?

- A case may be closed for a youth between the ages of 16-18 who has run away and whose whereabouts are unknown for more than 90 days if the county files a motion to terminate jurisdiction.
 - The court shall set a hearing no later than 35 days after the motion to determine if the county department has made reasonable efforts to locate the youth prior to terminating jurisdiction. This hearing may be waived by the stipulation of all parties.
- For youth 18 and over participating in the transition program, the county department may file a motion to request termination of the voluntary services agreement because the youth no longer meets the eligibility requirements. The department must include in the motion its efforts to reengage the participating youth.
 - The court must set a hearing within 35 days of the motion to determine if the youth still meets the eligibility requirements and if they do not the court must have an emancipation discharge hearing and make the required findings and advisements.

How does the case end?

- The case ends with an Emancipation Discharge Hearing which must be held within 35 days of the youth's request or of a county department's motion to determine if the youth still meets the eligibility requirements, or prior to the last day of the month the youth turns the maximum age allowed.
- When a youth requests discharge or when the youth is approaching the date of the maximum age allowed, an emancipation transition plan must be developed at the direction of the youth and with assistance and

support from the county. This plan must be personalized for the participating youth and developed and finalized no more than 90 days prior to the emancipation discharge hearing.

- Prior to the participating youth's emancipation, the court must:
 - Review the emancipation transition plan.
 - Determine if the county has made reasonable efforts toward the youth's permanency goals and preparing the youth for a successful transition to adulthood.
 - Determine whether the youth has been provided with all necessary records and documents required.
 - Determine if the youth has been enrolled in Medicaid and advise the youth about eligibility for former foster care Medicaid.
 - Advise the youth about the right to re-enter up to the maximum age allowed.
- The county department must file a report with the court at least 7 days prior to the emancipation discharge hearing.
- With the youth's consent, the emancipation discharge hearing may be continued for up to 119 days but not past the last day of the month in which the participating youth turns the maximum age allowed.

What happens to youth that are 18 ½ when the bill goes into effect?

While the bill does state that the court will lose jurisdiction once a youth turns 18 ½ unless the youth is opting into the transition program (or that determination is pending, or the youth is waiting to transition to adult services), there is a section that states jurisdiction is not required to be terminated due to age prior to October 1, 2021, so those youth have some time to make this decision and will not be forced out of the court's jurisdiction.

Where can I find this bill?

https://leg.colorado.gov/sites/default/files/documents/2021A/bills/2021a_1094_enr.pdf

ⁱ Note: these requirements are temporarily waived by federal law under the Division X Pandemic Relief Act