




1

QUICK SUMMARY
Legislative Session

- Legislative session began in January, recessed due to COVID until mid-February and then proceeded full steam through early June.
- OCR monitored over 70 bills, testified on 10 and participated in stakeholder meetings for many more.
- Special thanks to the OCR Legislative Committee -
 - Elizabeth Martinez
 - Megan Curtiss
 - Josi McCauley
 - Laura Locke
 - Beth Padilla
 - Erin Clift
 - Brittany Radic
 - Jim Plunhoff
 - Jennifer Zamarippa
- Meanwhile, the courts continued to hear cases on a variety of issues, and the Colorado Child Welfare Appeals Workgroup submitted its report: [https://www.courts.state.co.us/Media/Opinion_Docs/Appellate%20Workgroup%20Final%20Report%20\(2021-04-23\).pdf](https://www.courts.state.co.us/Media/Opinion_Docs/Appellate%20Workgroup%20Final%20Report%20(2021-04-23).pdf).
- Interesting Federal Cases were also decided



2



3

PEOPLE IN INTEREST OF A.M., 480 P.3D 682 (COLO. 2021)

- Best interests, rather than adequacy, applies to a court's TPR decision.
 - Primary consideration of the child's physical, mental, and emotional condition and needs requires more than a mere assessment of adequacy in order to satisfy the overall intent of the Children's Code.
 - Adequacy standard is not necessary to satisfy a parent's due process rights. Once parental unfitness has been established at a termination hearing, the interests of the parent and child diverge and "the separate interests of the child outweigh the risk of erroneous termination of the parent-child relationship." Due process is satisfied by the trial court's consideration of the statutory criteria for termination.
 - The Court also holds that express consideration is better practice but not necessary to protect parents' due process rights.
- Also addresses standards of review—COA failed to apply clearly erroneous standard of review and improperly substituted its judgment for trial court.

Other cases in which LDA determination upheld: R.J.B., 2021 COA 4, B.H., 2021 CO 39

4

HB21-1094

*Transition Of Youth
In Colorado's Foster
Care System To
Successful
Adulthood*

Changes the way foster youth experience the system as they turn 18.

Establishes the voluntary Foster Youth in Transition Program which allows youth to re-enter or continue after the age of 18.

Attorneys will change from best-interest legal representation to client-directed legal representation when a young person turns 18.

See OCR resources for additional information (search 1094 on the Litigation Toolkit)

Effective June 25th, 2021

5

**HB21-1084*****Drivers' Licenses For Foster Children***

effective September 6, 2021



Requires the state department to reimburse the county for costs paid to a public or private driving school for driving instruction to a foster youth aged 15 - 21.



Clarifies that the county or state department is not liable for a foster youth who is driving.



Alerts us to the possibility of using exceptions processing at the DMV for youth with issues showing the required documents.

6



DIVERSITY, EQUITY, INCLUSION (DEI)

7

DEI RELATED LEGISLATION

SB21-181: Equity Strategic Plan Address Health Disparities

HB21-1266: Environmental Justice Disproportionate Impacted Community

HB21-1251: Appropriate Use of Chemical Restraints on a Person

HB21-1250: Measures to Address Law Enforcement Accountability

HB21-1212: Diversity of Governor's Appointments to Boards

HB21-1010: Diverse K-12 Educator Workforce Report

8

SB21-199 REMOVE BARRIERS TO CERTAIN PUBLIC OPPORTUNITIES

- Repeals requirements that a person must demonstrate lawful presence in the US to be eligible for certain public benefits.
- Effective July 1, 2022

HB21-1075 REPLACE THE TERM ILLEGAL ALIEN

- Replaces with "worker without authorization"
- Effective 9/6/21

HB21-1054 HOUSING PUBLIC BENEFIT VERIFICATION REQUIREMENTS

- Creates a public or assisted housing benefit exception to the requirement that an applicant for federal, state or local public benefits verify lawful presence in the US.
- Effective 4/15/21

9

HB21-1072 Equal Access Services For Out-of-home Placements

- Requires providers of services related to child and youth OOH placement to provide fair and equal access to all available programs, benefits and services offered.
- Services must be culturally responsive to the complex social identity of the youth.
- Service provider is limited from denying any person the opportunity to become a foster or adoptive parent on the basis of real or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, marital status, national origin, ancestry or any communicable disease, including HIV.
- Effective 4/19/2021



10

PEOPLE IN INTEREST OF S.M. & E.M. 2021 COA 64

- Review of termination order by judge publicly censured for statements exhibiting racial bias.
- Parents' request for reversal based on censure/statements is denied.
- Limited remand for C.R.C.P. 60(b) motions.

11

FULTON V. PHILADELPHIA, 141 SCT 1868 (2021) JUNE 17, 2021

Philadelphia's refusal to contract with Catholic Social Services for the provision of foster care services unless agency agrees to certify same-sex couples as parents violates the free exercise clause of the First Amendment.

Enforcing nondiscrimination laws is not in conflict with the First Amendment; the constitutional issues arose from an antidiscrimination contract provision that permitted exceptions at sole discretion of the governor. This mechanism for entirely discretionary exceptions makes non-discrimination provision not generally applicable and therefore subject to strict scrutiny review.

12

ICWA*People in Interest of K.C. v. K.C., 2021 CO 33*

- Neither ICWA nor Colorado's implementing statute provide for an enrollment hearing.
 - Enrollment hearing conflicts with tribes' exclusive rights to determine membership
- Neither federal nor state law imposes on department any obligation to assist with enrolling eligible children.
 - Court acknowledges that assisting with enrollment and advising parents about enrollment may be a best practice.

People in Interest of My.K.M. and Ma.K.M., 2020COA33, certiorari granted No. 21SC245

- Whether the Court of Appeals erred in its analysis of the Indian Child Welfare Act (ICWA) in determining Department of Human Services ("DHS") did not make "active efforts" to provide services and programs designed to remediate the problems that caused DHS' involvement, rehabilitate parents, and prevent the breakup of the Indian family.

13

HB21-1151 INDIAN TRIBES TO CERTIFY OWN FOSTER HOMES

ALLOWS FEDERALLY RECOGNIZED TRIBES
TO CERTIFY THEIR OWN FOSTER HOMES

14



JURISDICTIONAL ISSUES

15

16

UCCJEA
People in Interest of S.A.G., 2021 CO 36

Temporary Emergency Jurisdiction: No TEJ at time of termination because no emergency existed.
Home state jurisdiction requires analysis of parental intent and whether child's time in CO was a temporary absence.

Remember:

- Parties must provide juvenile court with information about where the child has lived over the past 5 years and contact Court Order.
- Court Order may allow other court with home state jurisdiction.

1. Is there an emergency? (temporary emergency jurisdiction)
2. Is there an existing custody order and/or custody proceeding in another state? If so, do I have jurisdiction to modify any orders or to issue a new order?
3. If there is no emergency or existing order/proceeding, do I have initial child custody jurisdiction?
4. If I have jurisdiction to enter an initial custody order or to modify an existing order, should I decline to do so?
5. Are there any additional considerations?

Initial Custody Determination Hierarchy

Home State

Significant Connection

More Appropriate Forum

Last Resort

UCCJEA CONTINUED

People in Interest of B.H., 2021 CO 39

- Modification jurisdiction.
- Whether return home order in D&N case is a custody order under UCCJEA requires further inquiry.
- Even after acquiring home-state or significant-connection jurisdiction, the only way a Colorado court can assert modification jurisdiction without the agreement of the out-of-state court that issued the prior child-custody determination is for the Colorado court to find that the child and parents do not presently reside in the other state.
 - Totality of the circumstances that make up domicile, and mere physical presence is not dispositive.
- Colorado court must at least communicate with the court that issued the order.
- Also addresses counsel and less drastic alternatives

People in Interest of G.C.M.M., 2020 COA 152

- COA considers interplay between UPA and UCCJEA jurisdictional provisions for child conceived in CO but born in another state.
 - Patently proceeding under the UPA may be initiated before a child's birth and the juvenile court had jurisdiction to determine parentage and child support under the UPA.
 - The juvenile court did not have subject matter jurisdiction to determine custody because a court must also have jurisdiction under the UCCJEA before it can make a child custody determination. UCCJEA does not provide a basis for jurisdiction over an unborn child.

17

HB21-10

Continuing to modify orders due to dependency

- In re: The Parental Responsibilities Concerning W.C., 456 P.3d 1261 (Coko, 2020), held that the district court may modify parenting time on a change in circumstances if the order is being appealed in state court.

People in Interest of M.R.M., 2021 COA 22

APR order entered out of D&N case is final and appealable order, must be timely appealed.

Timeliness determined by date of APR order not date of termination of juvenile court's jurisdiction.

18



19

HB21-1187
Long-term Services
And Support Case
Management
Redesign

- Redesigns the case management system through HCPF requiring Case Management Agencies and Person-Centered Support Plans.
- Rules must be established no later than July 1, 2024 and requires stakeholder input and planning
- New language around eligibility and disability determinations
- 60 page - bill effective 9/6/2021

20

HB21-1018
*Adoptive Parents
Payments To Outside
Providers*

- Allows adoptive parents with an adoption assistance agreement to pay for medical services that would otherwise be reimbursable under the medical assistance program. Language added in 26-7-107 (3) and (5).
- (3)(b)(ii) IN ADDRESSING THE NEEDS OF AN ELIGIBLE ADOPTED CHILD OR YOUTH, ADOPTIVE PARENTS MAY KNOWINGLY TAKE ON ADDITIONAL COSTS FOR ITEMS OR SERVICES FOR THE CHILD OR YOUTH BEING ADOPTED, WHICH ITEMS OR SERVICES ARE OTHERWISE COVERED COSTS UNDER THE MEDICAL ASSISTANCE PROGRAM ESTABLISHED IN ARTICLES 4, 5, AND 6 OF TITLE 25.5 AND IDENTIFIED AS BENEFITS IN SECTION 25-7-505 (2)(b). THE LIMITATIONS ON RECIPIENT PAYMENTS CONTAINED IN SECTIONS 24-31-808 AND 25.5-4-301 DO NOT APPLY TO SUCH ADDITIONAL COSTS SO LONG AS THE ADOPTIVE PARENTS CONSENT TO BEAR THE COSTS AS PROVIDED IN SUBSECTION (3)(b)(ii) OF THIS SECTION, AND SO LONG AS THE PROVISIONS OF THIS SUBSECTION (3)(b) ARE NOT PROHIBITED UNDER FEDERAL LAW.
- Signed and became effective May 7th, 2021.

21

TREATMENT RELATED BILLS


- HB21-1021: Supporting Peer Support Professional Workforce: Requires CDHS to develop a procedure for recovery support services organizations to be approved, establishes requirements and a cash fund. Purpose is to expand the use of peer supports for treatment (effective 9/6/21).
- HB21-1258: Rapid Mental Health Response for Colorado Youth: Establishes a temporary program to facilitate youth mental health services through the Office of Behavioral Health (OBH). Reimburses providers for up to 3 mental health sessions (or more depending on funding). Portal is being developed (effective 6/18/21).
- SB21-056: Expand Cannabis-based Medicine at Schools: Requires school districts to implement policies for the storage, possession and administration of cannabis-based medicine by school personnel (effective 9/6/21).
- SB21-154: Suicide Prevention Lifeline Network: Implements the national 988 suicide prevention lifeline network in Colorado (effective 9/6/21).

22

Additional Resources

- HB21-1033 – STATE APPRENTICESHIP AGENCY
- HB21-1264 – FUNDS WORKFORCE DEVELOPMENT INCREASE WORKER SKILLS
- SB21-027 – EMERGENCY SUPPLIES FOR COLORADO BABIES AND FAMILIES
- SB21-232 – DISPLACED WORKERS GRANT

23



FAMILY CONNECTIONS, VISITS

24

HB21-1101

*Preserving Familial
Connections in Actions
Initiated Pursuant to the
Children's Code*

Visits/ Family Time (C.R.S. 19-3-217)

- At the shelter hearing, Court shall enter temporary orders for reasonable visitation, consistent with the age and developmental needs of a child and shall order contact within 72 hours unless there is agreement to delay or the court finds that a delay is in the child's best interests.
- Establishes that a parent granted visitation is entitled to a hearing prior to an ongoing reduction in, suspension of or increase in the level of supervision (absent the issuance of an emergency order).
- Parent entitled to a hearing re: the emergency order within 72 hours.
- Does not prevent cancellation if child's health or welfare would be endangered.
- Creates a taskforce to work on further visitation changes (C.R.S. 19-3-901).

25

HB21-1101

*Preserving Familial
Connections in Actions
Initiated Pursuant to the
Children's Code*

Open Adoption (C.R.S. 19-5-208)

- Only an adoptive parent can request a Post-Adoption Contact Agreement.
 - Contact agreements can be for visitation but they can also be for things like communication, photos, etc.
- Children 12 & older must consent
- If child/youth has a GAL in a corresponding D&N case, the GAL will be appointed in the adoption case to make a recommendation regarding whether the agreement is in the best interests of the child/youth.
- Cannot undo the adoption but there is a court mechanism to enforce the agreement (C.R.S. 19-5-217). Bio parent/family member is not a party to the adoption but has standing to bring an enforcement action.
- Cannot modify the agreement unless the parties all agree. Can motion the Court to terminate the agreement.

Effective July 7, 2021 except parts 1, 2, 3 and 4 take effect September 1, 2021.

26

VISITS/FAMILY TIME**People in Interest of A.A., 2020 COA 154**

- Court of Appeals reverses a termination order, concluding that the juvenile court completely denied visits between the parents and children without a sufficient showing that denial of visitation was appropriate and that the department did not exercise reasonable efforts to rehabilitate the father.
 - two weeks' sobriety requirement before reinstatement of visits
 - a denial of visits.
 - record failed to make clear how the magistrate's visitation order promoted the health, safety, and well-being of the children or facilitated the reunification of the family.
 - lack of evidence demonstrating why a more moderate approach than suspension would not have sufficiently addressed existing concerns.
- Court declines to resolve standard of review question: de novo or clear error.

People in Interest of E.S., 2021 COA 79

- Department's blanket policy of not allowing parent visits until outstanding issues are resolved violates reasonable efforts requirement
- Visit suspension must be grounded in a finding that visits would be detrimental to child's health and safety
- Visitation issue considered under a miscarriage of justice analysis even though father didn't raise it before the termination hearing
- Also considers appropriateness of treatment plan/DR treatment provisions, holding that record supports that component of treatment plan.

27



28

CHILD SUPPORT/PARENTAGE

People in Interest of E.Q., 2020 COA 118

- Juvenile court had jurisdiction to issue child support orders after approving parties stipulation regarding parental responsibilities.
- Juvenile courts ordering child support pursuant to 19-1-104(6) must follow the child support provisions set forth in 19-6-106, which require compliance with the child support guidelines set forth in 14-10-115.
- Juvenile court erred in entering orders regarding designation of representative payee for SSDI benefits—Commissioner of Social Security must make that determination.

People in Interest of K.L.W., 2021 COA 56

- UPA does not allow recognition of more than two legal parents for a child
- COA upholds court's parentage determination, holding that the court properly considered the children's best interests and other pertinent factors in making its determination.
- Standard of proof for parentage determination: parentage presumption may only be rebutted by clear and convincing evidence; preponderance standard applies to parentage determination if no presumption.

29

PEOPLE IN INTEREST OF J.G., 2021 COA 47

- Grandmother had standing to seek APR order
- Children's Code provisions rather than UDMA provisions govern APR analysis in D&N case
- Troxel presumption of fitness can be restored in a D&N case
 - When applicable, juvenile court must determine whether presumption has been overcome by C&C evidence AND/OR explain how special factors justified interfering with parent's determination of best interests.
- Granting sole decision-making authority to a nonparent over a fit parent's objection does not automatically infringe on parent's constitutional rights; Troxel presumption serves as adequate protection.



30



31

- Testimony of department employees re observations, statements, and conclusions of hospital personnel was inadmissible hearsay.
- "Rules of Evidence are not mere exercises in formalism; they, like our other rules of procedure, are designed to ensure the substantive integrity of the process and to elicit reliable evidence."
- Children's Code does not allow adjudication based on parents' criminal charges alone; court's findings and record do not establish link between charges and needs of the child.

PEOPLE IN
INTEREST OF
D.M.F.D., 2021
COA 95

Hearsay/Experts

32



COUNSEL ISSUES

LB-H-P, 2021 COA 5

- For counsel's medical condition to constitute excusable neglect for late filing, the party must show that counsel's condition or need for care was so disabling that it prevented counsel from filing the petition or requesting a time extension.

B.H., 2021 CO 39 (briefed above):

- Juvenile court did not violate father's due process rights or statutory right to counsel when it declined to appoint him a third attorney.

People in Interest of K.S.-E, 2021 COA 93

- 5th amendment privilege against self-incrimination
- Review of contempt order against RPC seeking to advise parent on this right.
- Contempt order vacated:
 - 5th amendment right encompasses contemporaneous advice and counsel entitled to advise mother.
 - Risk of irreparable harm was sufficient to excuse noncompliance

33



34

JUVENILE JUSTICE

People in Interest of N.D.O.,
2021 COA 100
Juvenile can be held accountable for crime of violence under complicity theory.

People in Interest of B.H.,
2021 COA 86
Prejudgment interest on restitution for property damage begins on date victim incurs replacement/repair costs.

35

HB21-1064
*Update Processes
Juvenile Sex Offender
Registry*
effective 6/24/2021

- Implements various recommendations from the legislative oversight committee concerning the treatment of persons with mental health disorders in the criminal and juvenile justice systems regarding juveniles who have committed sex offenses.
- Clarifies requirements that a juvenile moving from a state where the duty to register was terminated by court order is not required to register in Colorado.
- Expands judicial discretion regarding registration and notice requirements regarding the duty to register
- Provides for clean-up of the registry for those no longer under a duty to register
- And much more

36

HB21-1091**Sentencing Juveniles Transferred To Adult Court**

- Corrected the transfer statute to be consistent with the reverse transfer statute regarding sentencing.
- Effective 5/24/21 except sections 4, 5, and 6 take effect only if SB21-059 becomes law.

**SB21-059****Juvenile Justice Code Reorganization**

- DID become law, effective 5/13/2021
- 303 page bill
- Does not make substantive change, but instead reorganizes Article 2 of Title 19 to more closely follow the chronology of a case and grouped subject matter areas when possible.

Some helpful resources:**Overview-**

<https://drive.google.com/file/d/1HUNAr554Pv4Vg32Ttp2s1c9gHty5g/view?usp=sharing>

Slides (with resources)- <https://drive.google.com/file/d/1Uu-85mcoQet1z1FWNPh08XT55oca/view?usp=sharing>

Updated juvenile justice flow chart with new statutory cites: https://drive.google.com/file/d/1TlACmFK6GapePycLU_2-wd5-maC0d8uTJm0w0/view?usp=sharing

Old to new Cross walk:

<https://drive.google.com/file/d/1BkDq4qgth7g8tMv58u8Pcgm0bG8G6/view?usp=sharing>

37

| SB21-071 Limit the Detention of Juveniles | SB21-066 Juvenile Diversion | SB21-271 Misdemeanor Reform |
|--|--|--|
| Effective 7/6/21 | Effective 4/29/21 (except Section 3 only takes effect if SB21-059 does not become law; Section 6 takes effect only if SB21-059 does become law and on the same date, and section 7 only takes effect if SB21-059 becomes law, in which case it takes effect 7/1/21). | Effective 9/6/21 and applies to offenses committed on or after this date. |
| Eliminates monetary or property bonds for youth. (see also: Pre-trial Detention Reform Bill – HB21-1280) | Establishes pre-arrest diversion. | Another over 300 page bill, reduces penalties for a wide array of misdemeanor charges. |
| Reduces the juvenile detention bed cap to 215 (from 357). | Clarifies authority over diversion programs and funding. | Based on recommendations from the Colorado Criminal Justice Commission. |
| Creates a working group to establish criteria and consistency regarding placement, looking at alternatives to detention, and more. | Requires use of the risk screening to inform eligibility for the program, transparency regarding any eligibility criteria, and data collection. | |

38

HB21-1315**Costs Assessed to Juveniles in the Criminal Justice System**

- Changes language in 19-2-114 re: parent assessment for cost of care.
- Prevents Juvenile from being assessed costs of prosecution or cost of care.
- Limits the use of fines for Juveniles
- Eliminates some fees/surcharges
- Removes the reimbursement for counsel language in 19-2-706.
- Effective 7/6/21

HB21-1214**Record Sealing Collateral Consequences Reduction**

- Allows relief retroactively
- Creates some automatic processes (e.g. arrest record when no charges filed automatically sealed, certain drug convictions)
- Clarifies process when there are multiple convictions
- Effective 9/6/21

39



40

HB21-1309

CRIMINAL TRIAL
CONTINUANCES
COVID-19 PANDEMIC
(C.R.S. 18-1-405 &
16-4-107.5)

41

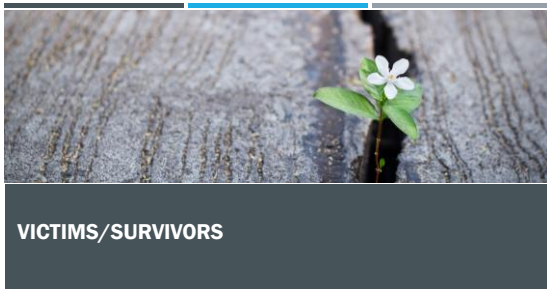
**PEOPLE IN
INTEREST OF R.J.B.,
2021 COA 4**

Court did not abuse discretion in holding
termination hearing via Webex.

Mother's due process and equal protection rights
were not violated by denial of continuance until
hearing could be held in person.

Less drastic alternatives determination upheld.

42



43

SB21-088

Child Abuse Sexual Accountability Act

- Creates a civil cause of action for a minor who is a victim of sexual misconduct against the organization that operates or manages the youth program if the sexual misconduct occurred while the victim was participating in the program if the organization knew or should have known of a risk of sexual misconduct.
- Claims brought when the misconduct occurred after January 1, 2022 have no statute of limitations
- When the misconduct occurred between January 1, 1960 and January 1, 2022 the claim must be brought before January 1, 2025.
- Effective Jan. 1, 2022

SB21-280

Concerning Bias Motivated Crimes – “Kiana Arrellano’s Law”

- Harassment becomes a class 1 misdemeanor (from a class 3) if the offender commits harassment because of that person’s actual or perceived race, color, religion, ancestry, national origin, and physical or mental disability.
- Effective 6/28/21

HB21-1069

Enforcement of Sexual Exploitation of a Child

- Updates language to reflect evolving technology and makes sexual exploitation of a child an extraordinary risk crime.
- Effective 9/6/21

44

HB21-1060**U VISA
CERTIFICATION
REQUIREMENTS**

- Visa path for victims of certain crimes
- Bill clarifies requirements and establishes timeframes to achieve consistent application state-wide
- Effective 5/10/21

45



46

HB21-1059
Online Student Protections "Isaiah's Law"

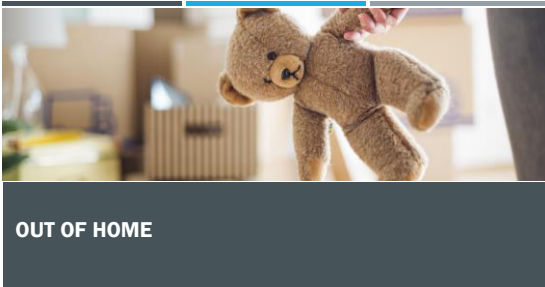
- Prevents education providers from:
 - prohibiting a student's parent from being in the same room except when person is continually disruptive
 - Requiring video if the student's technology doesn't not allow for such use of a camera
- Suspend or expel a student based on the presence of an item within the student's physical environment while participating in online instruction or based on the student's behavior (with some exceptions).
- If a student was suspended or expelled on or after March 23, 2020 in violation of this section then it must be revoked and expunged from the student's record.
- Effective 5/28/2021

47

OTHER EDUCATION RELATED BILLS

- SB21-106:** Concerning Successful High School transitions - opens the high school innovative learning pilot program to other schools, either independently or through a district. Creates the 4th year Innovation Pilot Program (effective 7/7/21).
- SB21-119:** Increasing Access to High-Quality Credentials - deals with the career development success program which provides financial incentives to school districts to encourage programs like we discussed above. Expands apprenticeship programs to those outside of construction services. Requires collaboration of various departments to identify each year the top 10 industry-recognized credentials that may be awarded to high school students and aligned state academic standards (effective 6/30/21).
- SB21-117:** Foster Care Student Services Coordination - amends provisions concerning students in OOH placement and mandates cooperation between the schools and county. Streamlines transportation billing practices and allows regional plans (effective 4/26/21).

48



49

SB21-278
Reimbursement For
OOH Placement
Services

- Changed some of the language in the FFPSA sections of Title 19 to allow ARD the full 60 days for the initial hearing for youth in DYS.
- Sets rules for negotiating reimbursing rates and doesn't allow negotiation below the set minimum.

50

SB21-269
Licensing Of
Respite Child Care
Centers

- Adds a licensing type to allow facilities to add programming to serve kids in foster or kinship care that need respite (for age 5-21).
- This would be recreational, peer interaction, skill development, and trauma-informed care, but not treatment.
- Effective 9/6/21

51



52
