FAMILY FIRST AND JUVENILE JUSTICE REFORM IN COLORADO

Updates and GAL Strategies

Office of the Child's Representative – 2021

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PRESENTATION OVERVIEW

- FFPSA
- Juvenile Justice Reform Bill (SB19-108)
- Recent Juvenile Justice Reform Legislation

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PURPOSE OF FAMILY FIRST

To provide enhanced support to children and families and prevent foster care placements through the provision of mental health services, substance abuse prevention and treatment services, in-home parent skill-based programs and kinship navigator services.

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PURPOSE OF JUVENILE JUSTICE REFORM

- Increase use of diversion with funding and validated screening tool.
- Reduce negative impacts of over supervision of youth by using validated evaluation tool with probation requirements targeting recidivism.
- Reduce juveniles in detention by applying new detention standards, using validated screening tool, and using resources such as family information form.

https://leg.colorado.gov/bills/sb19-108

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FFPSA AND DELINQUENCY

- Candidacy and Prevention Services
- QRPT
- Required Findings

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CANDIDACY

In Colorado, for the purposes of Title IV-E Prevention Services, a child/youth is a candidate for foster care when at serious risk of entering or re-entering foster care and who is able to remain safely in the home with provision of mental health, substance use disorder, or in-home parenting services for the child/youth, parent, or kin caregiver. Foster youth who are pregnant and/or parenting are also candidates. A child may be at serious risk of entering foster care based on circumstances and characteristics of the family as a whole and/or circumstances and characteristics of individual parents or children that may affect the parents' ability to safely care for and nurture their children.

https://co4kids.org/family-first-implementation-guide-county-directors/implementation-guide-prevention-services/colorado%E2%80%99s-family-first-prevention-candidacy-definition

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FAMILY FIRST SERVICES

Colorado Initial Proposed Service Array:

1. Nurse Family Partnership
2. SafeCare
3. Parents as Teachers (PAT)
4. Healthy Families America
5. Parent Child Interactional Therapy (PCIT)
6. Fostering Healthy Futures
7. Multisystemic Therapy (MST)
8. Functional Family Therapy (FFT)

Colorado Proposed Service Array:
https://drive.google.com/file/d/1trNCaA8pPwjHjg27Iy1Fj9LEgFm73ZVN/view

Federal FFPSA clearinghouse:
https://preventionservices.abtsites.com/

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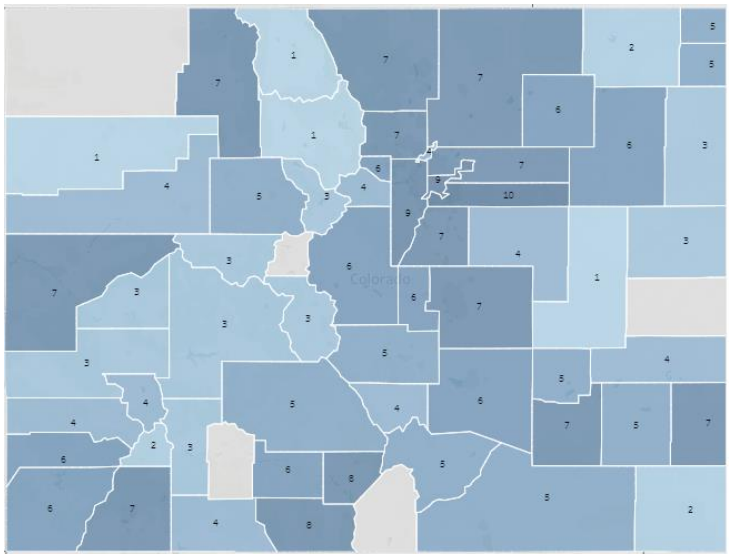
SURVEY OF CLEARINGHOUSE SERVICES IN COLORADO

https://public.tableau.com/app/profile/colorado.lab/viz/FamilyFirstPreventionServices/Dashboard1



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QRTP (QUALIFIED RESIDENTIAL TREATMENT PROGRAM)

QRTP process set forth in 19-1-115 requires:

- Review by court within 60 days of placement of youth in QRTP but within 30 days if the youth is in the QRTP and the Qualified individual does not support the QRTP level or any party (including GAL) objects.
  - ARD can do this review if juvenile is committed to DYS and the juvenile court no longer has ongoing jurisdiction.
- Findings re: most effective and appropriate level of care, least restrictive environment, whether placement is consistent with short and long term goals for the youth.
- Ongoing reviews requiring review of same initial findings, treatment needs, and efforts made to prepare the youth to return home or to be placed with a fit and willing family-like placement.
  - At permanency, review hearing; at least every 90 days
  - By court unless parties consent to ARD
- Court/ARD must give great weight to Qualified Individual recommendation and must make specific findings if deviates from QI.

QRTP training and benchcard are available at https://co4kids.org/family-first/legal and https://www.co4kids.org/sites/default/files/FamilyFirstQRTPBenchcard.pdf. Independent Assessment-QRTP Toolkit: https://drive.google.com/drive/folders/1nwJHWHlkPhmdw4Ehzuqo-qUw6lk3djSR

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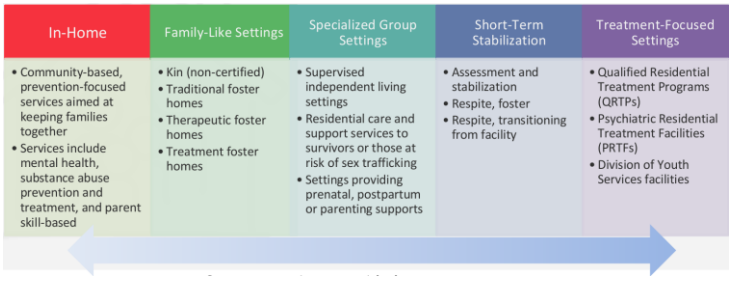
PLACEMENT ADVOCACY

- Family/Kin Supports
- Least Restrictive Placements
- Lack of resources
- Eligibility and Purpose of QRTP
- Alternative Placements to QRTP



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INDEPENDENT ASSESSMENT - GAL ROLE

- Youth Voice
- Participation
- Family and Permanency Meeting
- Accountability to the process

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REQUIRED FINDINGS FOR DYS COMMITMENT

- "To assist in the evaluation of the impact of Colorado's Implementation of the Federal 'Family First Prevention Services Act' on the State's juvenile justice system [the shall] make a finding of whether the lack of available and appropriate congregate care placements is a contributing factor in committing a juvenile to the Division of Youth Services." 19-2.5-1117; *formerly* 19-2-921 (1.5)(a).
- Federal legislation (42 U.S.C. 671(a)) requires:
  - State plan to certify that it "will not enact or advance policies or practices that would result in a significant increase in the population of youth in the State's juvenile justice system."
  - Comptroller General to evaluate impact on children in foster care who are also subject to juvenile justice system and placed in a juvenile justice system facility and "whether the lack of available congregate care placements under the jurisdiction of the child welfare systems is a contributing factor to that result."

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OTHER RESOURCES

- Juvenile Justice System Flowchart https://drive.google.com/file/d/1wySPkcYe5a4Jl9en7bEFzgZrsp4WvUhR/view
- Juvenile Justice System flowchart for youth is ***coming soon!***
- **Juvenile Justice Screening/Assessments guide is** *coming soon!*
- 18th JD Assessments Training: https://www.co4kids.org/family-first/legal (*click on Training and Resources for the Legal Community, then click on "Juvenile Justice and Family First" tab*)
- *Family First Prevention Services Act in Colorado: An Implementation Guide for County Directors* (has helpful delinquency section).
- Families over Facilities Report: https://www.childrensrights.org/familiesoverfacilitiesreport/
- Think of Us: https://www.thinkof-us.org/case-studies/away-from-home
- Videos on YouTube for families and youth -
  - What is an independent assessment and what is it used for? - https://www.youtube.com/watch?v=jQCDww6jJdw
  - What will happen with the Qualified Individual? https://www.youtube.com/watch?v=Zq9_oFcSQnE
  - What is a QRTP? https://www.youtube.com/watch?v=EXU5KdHEoKQ&feature=youtu.be
  - What services will I receive at a QRTP? https://www.youtube.com/watch?v=7nPDFCSti_s
  - Qualified residential treatment programs within the Division of Youth Services: https://www.youtube.com/watch?v=_HWyEozJbkw

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SB 19-108 UPDATES

- New Assessment Tools
- Detention limits
- Relative Information Form

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ARNA (ARIZONA RISK/NEEDS ASSESSMENT INSTRUMENT)

Diversion screening instrument

19-2-303: **All youth must be screened unless:**

- Currently committed or on parole
- Charged with class 1 or class 2 felony
- DA has already decided to divert the juvenile, or dismisses the case

Will roll out in phases and **fully implement statewide by January 1, 2022**

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ACCESS TO DIVERSION

Diversion may take place prefiling or postfiling as an alternative to adjudication.

Youth cannot be denied diversion based on:

- Ability to pay
- Previous or current DHS involvement
- Age, race, ethnicity, gender, sexual orientation, gender identity
- Legal representation

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NEW JDSAG

New risk assessment/detention screening tool

The new JDSAG will have a scoring portion to determine risk and five options for placement

- Home (low risk)
- Kinship (low risk)
- DHS referral/shelter care (low risk)
- Staff Secure (high risk)
- Detention (high risk)

On the new JDSAG, you CANNOT OVERRIDE UP, from low risk to high risk.

The plan is for the **new JDSAG to start being used January 1, 2022.**

The new JDSAG is currently being used alongside the old JDSAG for validation. The old JSAG still determines whether the child will be held pending the detention hearing.

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DETENTION HEARINGS

Court can further detain a juvenile ONLY if it finds:

- ✓ Probable Cause
- ✓ Detention screen showed detention-eligibility AND
- ✓ **Juveniles poses a 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.**
- ✓ Flight from prosecution is distinguished from simple failure to appear and must generally be evidenced by a demonstrated record of repeat, recent willful failures to appear at a scheduled court appearance

19-2.5-305 (*formerly* 19-2-508(3)(a)(IV))

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DETENTION LIMITS

Detention is NOT permitted for youth who::

- Have not committed, or have not been accused of committing, a delinquent act unless otherwise found in contempt of court;
- Delinquent and nondelinquent youth placed in the custody of DHS through a D&N and are solely awaiting out-of-home placement;
- Require medical care, are intoxicated, or are under the influence of drugs, to an extent that it is beyond the scope of the detention facility's medical service capacity;
- Are solely assessed as suicidal or exhibit behavior placing them at imminent risk of suicide;
- Have not committed a delinquent act but present an imminent danger to self or others or appear to be gravely disabled as a result of a mental health condition or an intellectual and developmental disability.

19-2.5-304 (Formerly 19-2-507.5:)

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MORE DETENTION LIMITS

A youth may not be placed in detention solely::

- Due to lack of supervision alternatives, service options, or more appropriate facilities.
- Due to community's inability to provide treatment or services.
- Due to lack of supervision in home or community.
- In order to allow parent/legal guardian/legal custodian to avoid his or her legal responsibility.
- Due to risk of youth's self-harm.
- In order to punish, threat, or rehabilitate the juvenile.
- Due to a request by a victim, law enforcement, or community.
- In order to permit more convenient access to the juvenile.
- In order to facilitate further interrogation or investigation.
- For technical probation violation unless screening instrument indicates substantial risk of serious harm to others or graduated response system allows for detention.

19-2.5-304 (Formerly 19-2-507.5:)

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NEW TOOL: RELATIVE/KIN INFORMATION FORM

Must be available at each judicial district.

Procedures for screened youth:

- Parents and legal guardians must complete no later than 2 business days after preadjudication service program release evaluation or prior to detention hearing.
- If completed, screening team/preadjudication service program shall file completed form to court.
- If it has not been completed, court shall direct parent/legal guardian to immediately complete form.
- GAL is to receive copy.

19-2.5-606 (*formerly* 19-2-302(1)(b).

Also applies to summons-19-2.5-501 (*formerly* 19-2-514) requires parents/legal guardians to complete 7 days after appearance on summons or prior to next hearing.

Available in OCR's litigation toolkit.

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NEW ASSESSMENT: YOUTH LEVEL OF SERVICE/CASE MANAGEMENT INVENTORY (YLS), JUVENILE ASSESSMENT SUMMARY REPORT (JASR)

Youth Level of Service/Case Management Inventory (YLS/CMI)-results reported to court and parties in the Juvenile Assessment Summary Report (JASR)

Informs terms and conditions of probation

The tool measures 42 risk factors organized around 8 domains:

- Prior and Current Offense/Dispositions (only static factor)
- Family Circumstances
- Education/Employment
- Peer Relations
- Substance Abuse
- Leisure/Recreation
- Personality/Behavior
- Attitudes/Orientation

YLS provides a score that indicates a youth's risk to recidivate: low, moderate, high, very high.

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NEW STATE RISK ASSESSMENT: CO-YASI (YOUTH ASSESSMENT AND SCREENING INSTRUMENT)

For youth committed to DYS

DYS policy requires DYS to:

- Use the CO-YASI to develop case plans and individualized service interventions (Youth Development Plan/Case Management Plan and Individual Treatment Plan)
- Use the CO-YASI in conjunction with other additional information to inform classification decisions and length of stay
- Use the CO-YASI for transition and release planning, and parole
- Reassess youth every three months

As of July 1, 2021 **DYS should be using the CO-YASI** (Youth Assessment and Screening Instrument) for all youth, instead of the CJRA

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MENTAL HEALTH/SUBSTANCE USE SCREENING/ASSESSMENT

Mental health and substance use treatment for juvenile, which may include residential treatment is authorized as condition of pretrial release only if a validated mental health or substance use assessment indicates that the juvenile has a need. 19-2.5-606 (formerly 19-2-302(1)(4)(d)) (describing what is allowed in local justice/supervision plan).

If party advises court that a juvenile could benefit from mental health, mental health screening shall be ordered unless court has sufficient information or youth has been screened within last three months. 19-2.5-612 (formerly 19-2-710(2)).

Mental health screening shall be ordered before sentencing unless court makes finding that mental health screening would not provide information that would be helpful in sentencing juvenile. 19-2.5-612 (formerly 19-2-710(2)).

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DISCUSSION

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ADVOCACY OPPORTUNITIES

- Request all screens/ assessments
- Ensure that youth get required screenings (i.e., diversion)
- Make sure relative/kin form is complete and get a copy! Don't rely on form alone–talk to the youth!
- Use required findings in your advocacy–don't let kids get detained who are not eligible and hold system accountable for FFPSA commitment findings
- Remember strong language of legislative declaration
- Participate in QRTP assessment process
- Remember placement continuum and reasons behind FFSPSA/JJR
- Advocate for families and kin to receive prevention services
- Remember to think about accessing prevention at all phases of JD proceedings
- Use Case Consultants

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EFFECTIVE USE OF CASE CONSULTANTS

- Enhanced GAL Investigation and thinking outside the box
- Conditions of facilities
- Information to Inform Screenings/Assessments
- Review Assessments
- Placement solutions
- Finding Community Resources
- Finding family/kin connections
- Ongoing communication with the youth

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What challenges and gaps are you seeing in your jurisdictions?

ADVOCACY OPPORTUNITIES

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RECENT JUVENILE JUSTICE REFORM LEGISLATION

- Detention Bed Cap
- No Money Bail for Kids!
- Juvenile Fees and Costs
  - Article 2 Reorder
  - And more . . .

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HB21-1315 JUVENILE FEES AND COSTS

General Rule: If it's not a fine or restitution, it cannot be charged in a juvenile case. All outstanding debt for juvenile fees and costs is forgiven.

Eliminated	Limited
Cost of Prosecution (unless required by federal law) Public Defender Fee Fees for Court Appointed Attorneys Victim Compensation Fund Victim and Witness Assistance Fund Sex Offender Surcharge Genetic Testing Time Payment fee Late Payment Penalty Diversion Fees	*Cost of Care*: Only parent, not child, can be charged, and only as required by federal law. *Restorative Justice*: sliding scale Suitability Assessment fee: up to $40 Victim-offender conference: up to $125

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SB 21-1071: DETENTION BED LIMITS

- DYS statewide bed cap reduced from 327 to 215.
- Working group charged with examining availability of alternatives to youth detention and necessary investments in alternatives to youth detention.
  - Beginning 7/1/23 DHS annual reports
- To see numbers in your local facility, visit: https://cdhs.colorado.gov/dys-covid-19-dashboard. *Use these numbers in your advocacy!*

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SB 21-1071: NO MONEY BAIL FOR KIDS

19-2.5-306 (*formerly* 19-2-509(10)): A JUDGE OR MAGISTRATE MAY ONLY IMPOSE AN UNSECURED PERSONAL RECOGNIZANCE BOND **WITHOUT MONETARY OR PROPERTY CONDITIONS** TO SECURE THE JUVENILE'S FUTURE APPEARANCE. **A JUDGE OR MAGISTRATE SHALL NOT IMPOSE A BOND WITH SECURED MONETARY OR PROPERTY CONDITIONS FOR A JUVENILE**

Under 19-2.5-305 (*formerly* 19-2-508(a)(VII),) after a detention hearing, the Court can find:

- **(A)** That the juvenile be released to the custody of a parent, guardian, legal custodian, kin, or other suitable person without the posting of bond;
- **(B)** That the juvenile be placed in a temporary shelter facility;
  - 19-1-103**(106.5)** "Temporary shelter": temporary placement of a child with kin…with an adult with a significant relationship with the child; or in a licensed and certified twenty-four-hour care facility.
- **(C)** That an **unsecured** personal recognizance bond be set **and that the juvenile be released accordingly**;
- **(D)** That no bail be set and that the juvenile be detained without bail upon a finding that such juvenile poses a substantial risk of serious harm to others.
- **(E)** That no bail be set and that, upon the court's finding that the juvenile poses a substantial risk of serious harm to others, the juvenile be placed in a preadjudication service program established pursuant to section 19-2.5-606 (formerly 19-2-302). This subsection (3)(a)(VII)(E) does not apply to any case in which the juvenile's alleged offense is one of offenses described in subsection (3)(a(IV) of this section.

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SB 21-1071: NO MONEY BAIL FOR KIDS

The Court does not have to set a PR bond for every child in every case.

However, under 19-2.5-306 (formerly 19-2-508), an unsecured PR bond has to be put in place (rather than straight release to parent or guardian) for a child charged with a felony or M1 (if certain conditions are met) , unless the DA consents to no PR bond.

Parent not picking up a child?

- 19-2.5-306 (formerly 19-2-508) provides that if an unsecured PR bond is set **the juvenile be released accordingly.** If a PR bond is set and the child is not subsequently released, the law is being violated. Child must be released to someone if there is no finding of substantial risk of serious harm to others. 19-2.5-306(7) does allow parent to petition to revoke a PR bond based on parent's inability to control the juvenile.

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SB 21-059 JUVENILE JUSTICE CODE REORGANIZATION

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/1HUNAztS54tPdVyg32Tfp2s1c9gtkiySq/view?usp=sharing

Slides (with resources)- https://drive.google.com/file/d/1LJr-R9nscqQeHz1jFWNtPbO8XffjSvcq/view?usp=sharing

Updated juvenile justice flow chart with new statutory cites: https://drive.google.com/file/d/1TL6OnFKEGzpePyjCU_Z-wcBmqLCOdLaT/view?usp=sharing

Old to new Cross walk: https://drive.google.com/file/d/1BklQqxkqtbZtqRMvt58uPOcgVmQbGBGA/view?usp=sharing

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OTHER JUVENILE JUSTICE BILLS

HB 21-1064- Sex Offender Registry

HB21-1094 JCAP Expansion-expands JCAP to people who committed offenses prior to age 21 (longer for 1st degree murder)

HB21-1091: Fair transfer sentencing: youth transferred to adult court are not subject to mandatory minimum adult sentences (same as youth subject to direct file).

SB21-146: YOS Study (due 12/21)

SB 21-066: Juvenile Diversion-clarification/transparency

SB21-271-Misdemeanor reform bill-reclassifies misdemeanors

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QUESTIONS? COMMENTS? OTHER TRAINING IDEAS/NEEDS?

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