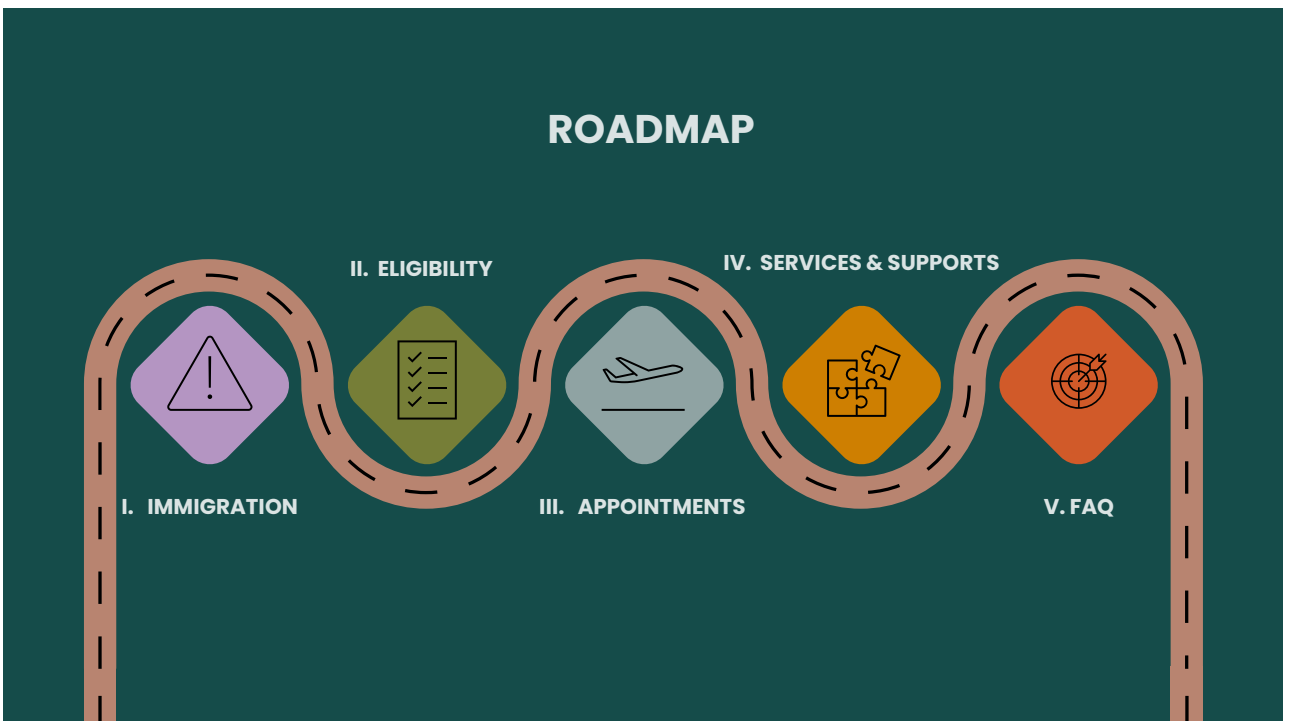




COLORADO'S FOSTER YOUTH IN TRANSITION PROGRAM

An opportunity for youth to make important decisions about their lives and receive services and supports while transitioning into adulthood.

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No worries if we run out of time.

- This session is being recorded.
- The slides at the end are intentionally very detailed and easy to read/use.
- FYTP is a recurring townhall topic.
- You can always contact your OCR Staff Attorney Liaison!



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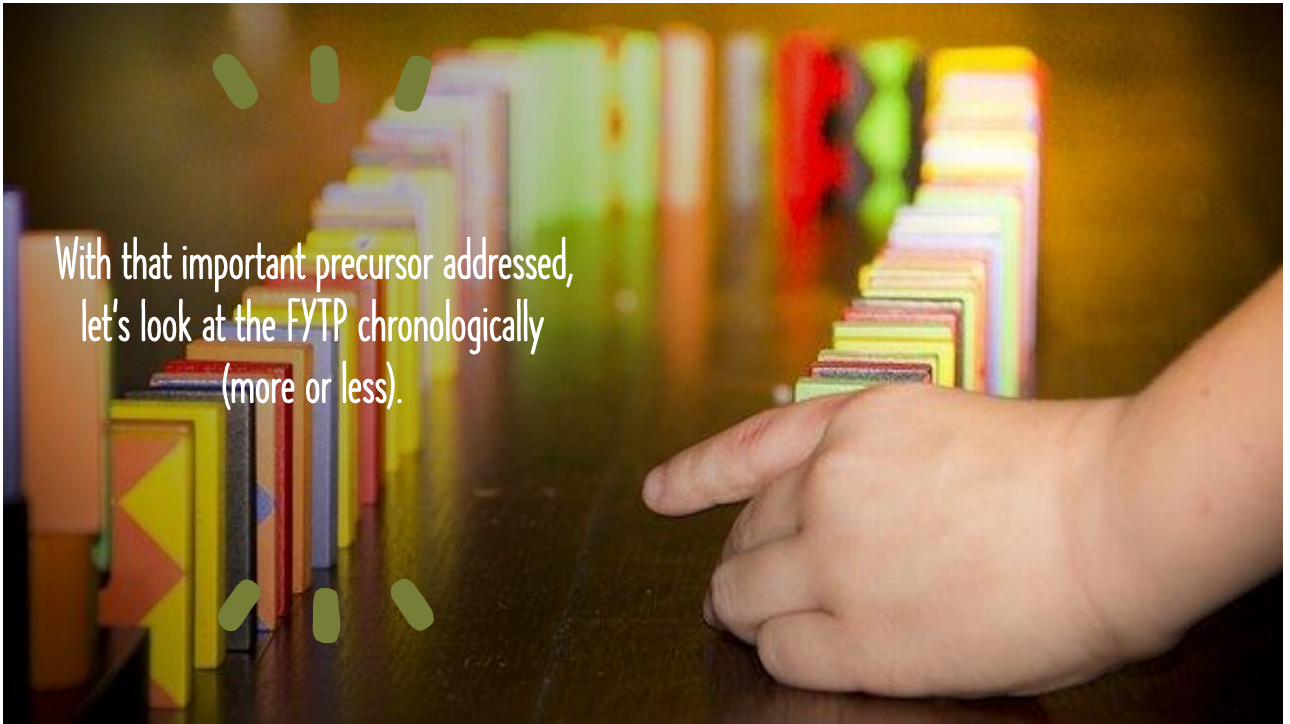


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Immigration

If you are working with an 18+ year-old non-citizen youth, **please contact EBrock@rmian.org or AHarrington@rmian.org. This is particularly important if you have a hearing coming up.** Whether a youth emancipates or transitions into the FYTP, the closing of the Article 3 D&N proceeding could have a negative impact on a youth's immigration case. RMIAN would like the opportunity to evaluate the case before that happens.

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With that important precursor addressed,
let's look at the FYTP chronologically
(more or less).

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Eligibility appeals

Within 3 days of youth making a request to participate in the FYTP, department determines whether youth is eligible.

If youth is eligible, department explains the program to youth and provides youth a Voluntary Services agreement (VSA).

Within 3 days of youth deciding to enter FYTP, department executes VSA with youth and provides youth a copy. Upon executing VSA, department notifies OCR.

If youth is not eligible, department notifies the youth of decision, reasons for decision, and **how to appeal**. Department also provides youth OCR contact information. 19-7-304(3).

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FYTP Eligibility requirements: 19-7-304(1)

Age: At least 18 BUT younger than 21 (OR such greater age of foster care eligibility set by federal law such as **Division X, which currently extends the age.**)

Care: In foster care on or after 16th birthday OR in noncertified kinship care on or after 16th birthday and adjudicated dependent and neglected.

Employment or Education: **Engaged in or intends to engage in**, at least one of the following:

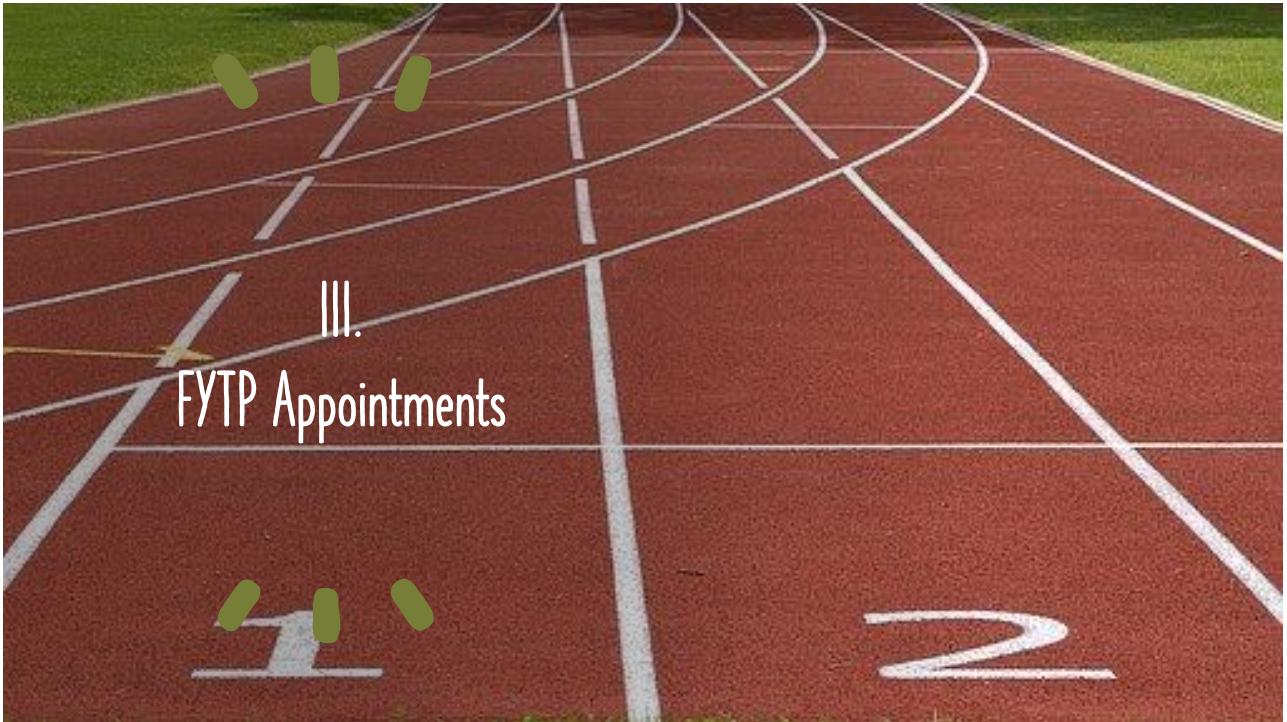
- Completing secondary education **or an educational program leading to an equivalent credential**,
- Attending an institution that provides postsecondary or vocational education,
- Working part- or full- time for at least 80 hours per month, or
- Participating in a **program or activity designed to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

BUT!

- Waived by Division X until 9/30/2021 and Division X may be extended.
- Not required for youth incapable of engaging in such activities as a result of a medical condition supported by regularly updated documentation in youth's case plan.

Voluntary Services Agreement: Seeks to enter a VSA OR has entered and is **substantially complying** with a VSA. .

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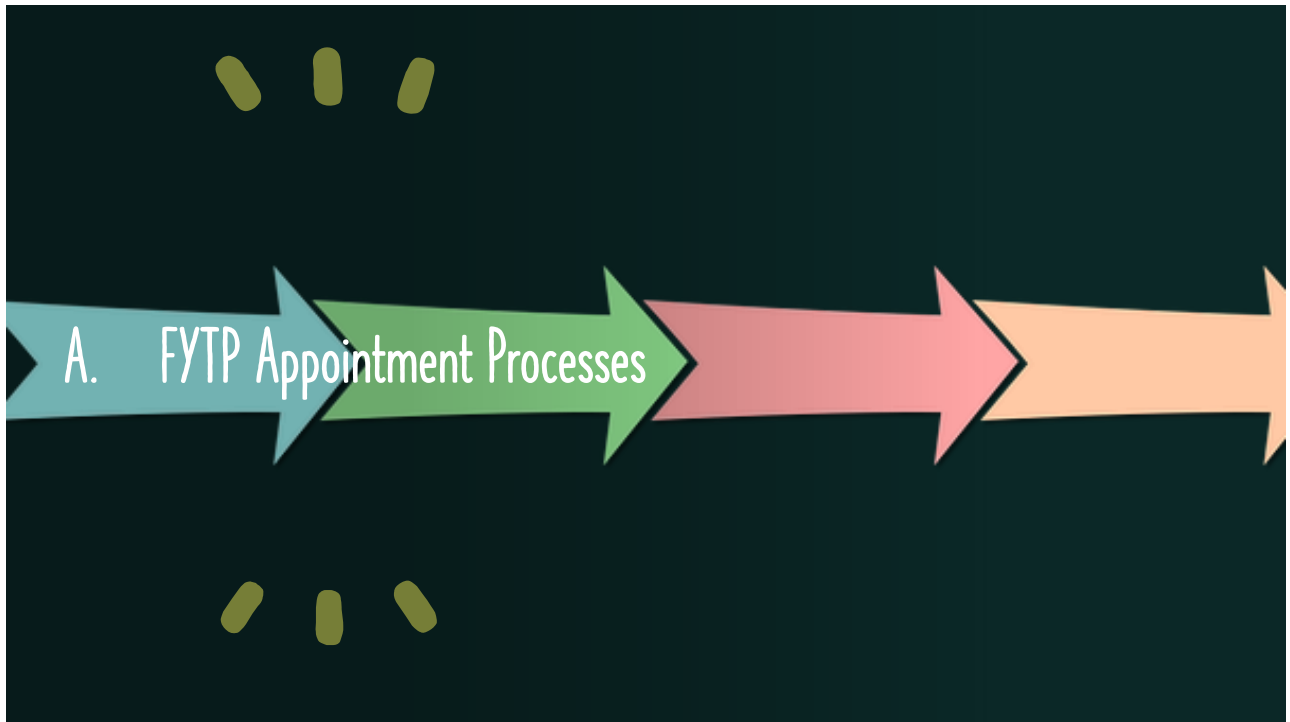


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Mandatory nature of appointments

“At the first hearing following a youth’s [18th] birthday, the court shall advise each youth who has a current [GAL] appointed [...] of the youth’s **right to counsel** and the **option to either** consent to have the same person continue as counsel, if the lawyer remains available and has no conflict of interest, or to have a new person appointed as counsel. If the youth elects to have a new person appointed as counsel, the court shall appoint an attorney from the list of attorneys approved by the [OCR]” 19-3-203(5).

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General appointment processes

If youth is REMAINING in the system...	If youth is REENTERING the system...
<p>Upon youth's 18th birthday, D&N GAL shall begin acting as counsel, provide client-directed representation, and continue acting in this role until case is dismissed or new counsel is appointed. 19-3-203(4).</p> <p>If youth elects to have new counsel: contact the court.</p>	<p>Youth makes a request to DHS. 19-7-304(2).</p> <p>Within 3 business days, DHS explains FYTP & provides a voluntary services agreement. 19-7-304(3).</p> <p>Within 3 business days of eligible youth's decision to enter FYTP, DHS prepares and executes VSA in collaboration with youth and provides copy to youth. <i>Id.</i> Upon entering VSA, DHS makes a written referral to OCR. 19-7-306(1)(b).</p> <p>OCR receives referral and assigns counsel or petition is filed in court and court appoints.</p>

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FYTP referral form for reentering youth

<https://coloradochildrep.org/youth-center/transition-program/>

Youth Information

Youth's First Name * Youth's Last Name * Youth's Date of Birth Youth's Age

Youth's Preferred Pronouns Youth's County of Residence

Youth's Street Address City

State Zip Code Preferred Contact Method(s) *

Colorado ☐ Phone
☐ Text
☐ Text via Email
☐ Email

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Reentry appointments: the sooner, the better

VSAs are binding standardized agreements, written in a client-driven and developmentally-appropriate manner, between the department and a youth. 19-7-306(1). VSAs must contain an explanation of the youth's rights and obligations, including the right to counsel. 19-7-306(1)(b). Upon entering a VSA with a youth, counties must make a referral to OCR and provide the youth OCR's contact information upon entering a VSA. *Id.* However, "Nothing in this section limits the power of the court to appoint counsel or the power of the [OCR] to assign counsel prior to the filing of a petition." *Id.*

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Appointment processes related to youth deemed incapacitated

A party may request that the court determine whether a youth is an incapacitated person as defined in 15-14-102. 19-3-704. Motion must be filed prior to youth's 18th birthday. Id.

If youth is deemed to be an incapacitated person:

- Jurisdiction continues as set forth in 19-3-205; and
- the GAL must remain GAL and separate counsel for the youth must be appointed.

19-3-704(2) & 19-3-203(4).

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Incapacitated persons defined

“‘Incapacitated person’ means an individual other than a minor, who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.” 15-14-102(5).

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Ethical considerations with representation of clients with diminished capacity

Colorado Rule of Professional Conduct 1.14. Client with Diminished Capacity.

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, **the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.**

(b) **When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action,** including consulting with individuals or entities that have the ability to take action to protect the client and, **in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.**

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

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Appointment orders

Resources: Litigation Toolkit has an Appointment Order and an Entry of Appearance.

Recommendation: Releases of Information + Order of Appointment.

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No special FYTP appointment list

“Attorneys currently on an appointment eligibility list are eligible to be Counsel for Youth and for assignment or appointment in Article 7 proceedings.” Second Addendum to OCR Billing Policies and Procedures Manual, page 25, available at <https://coloradochildrep.org/wp-content/uploads/2021/07/Billing-Policies-and-Procedures.pdf>.

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Requirements upon appointment

“While timely contact and communication with the youth is essential to effective representation in this new case type/model of representation, the initial CJD requirements related to placement visits do not apply to these cases. During the implementation of this program, OCR will be monitoring initial contact with youth rather than monitoring initial in-placement visits.” Second Addendum to OCR Billing Policies and Procedures Manual , page 26, available at <https://coloradochildrep.org/wp-content/uploads/2021/07/Billing-Policies-and-Procedures.pdf>.

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Communication requirements

Rule 1.4. Communication

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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Billing in general

Resources:

- Second Addendum to OCR Billing Policies and Procedures Manual , page 26, available at <https://coloradochildrep.org/wp-content/uploads/2021/07/Billing-Policies-and-Procedures.pdf>.
- Your OCR Staff Attorney Liaison.

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Billing detail

Billing

Current youth in an open D&N case who is 18 or older:

- Do NOT change your appointment capacity in the open CARES appointment:

Appointment Capacity*
 GAL for Child

- Record your first direct contact (in person or via phone/electronic means) with the youth about this change as the activity type “Re-Entry Contact”. Using this specific activity type at the beginning will allow the OCR to track data related to this new program.
- Continue to bill in CARES on the case until the court closes the case or terminates jurisdiction as to that youth.
- If the current D&N case closes because the youth is opting-in to the transition program, enter the child party end reason in the D&N case as “Opt-in to Transition Program”.

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Billing detail...part deux

Current youth transitioning from a D&N or former foster youth opting-in to the Foster Youth Transition Program:

- When the court opens the new article 7 case (petition is filed and court appoints counsel), open a new appointment with the case type "Foster Youth Transition Program".
- Assign yourself in the appointment capacity as "Counsel for Child in a D&N".
- Record your first contact with the youth, after the article 7 case opens, as activity type "Re-Entry Contact". Using this specific activity type at the beginning will allow the OCR to track data related to this new program
- Continue to bill in CARES on the case until the court closes the case or terminates jurisdiction as to that youth.

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Billing detail...part trois

Attorney assigned by OCR to represent an eligible youth in the Foster Youth Transition Program (without an open court case):

- The Attorney, and his/her/their staff, as applicable, must enter their time by utilizing the Foster Youth Transition Program (FYTP) paper billing form, found in the Common Billing Forms section here: <https://coloradochildrep.org/attorney-center/billing/>
- The Managing Attorney must review and submit the FYTP paper billing form for the Attorney's office on a monthly basis (solo practitioners are automatically considered "Managing Attorneys").
- FYTP paper billing forms are **due by midnight on the 15th of each month for all work/expenses performed during the previous month**. Only one billing form may be submitted for each month. Exceptions will be made only in extraordinary circumstances and must be approved by the Executive Director.
- FYTP paper billing forms must be submitted via email to: billing@coloradochildrep.org
- If the court opens a case pursuant to Article 7, the Attorney should follow the procedures in the "Current youth transitioning from a D&N or former youth opting-in to Foster Youth Transition Program" section above.

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Recommendation upon appointment: review and use documents in Litigation Toolkit

Location: Bottom of Litigation Toolkit has the heading, “Navigate by GRID Chapter or Document Type.”

- 6. Non-D&N Proceeding Type: Foster Youth in Transition Program (HB21-1094)
 - Foster Youth in Transition Program (HB 21-1094) Notice and Request to Set Advisement Regarding Counsel
 - Foster Youth in Transition Program (HB 21-1094) Petition
 - Foster Youth in Transition Program (HB 21-1094) Table of Contents for HB1094
 - Foster Youth in Transition Program (HB 21-1094) Youth Resource
 - Foster Youth in Transition Program (HB21-1094) and Immigration
 - Foster Youth in Transition Program (HB21-1094) Engagement Letter
 - Foster Youth in Transition Program (HB21-1094) Entry of Appearance
 - Foster Youth in Transition Program (HB21-1094) FAQ
 - Foster Youth in Transition Program (HB21-1094) GAL and Counsel Visual
 - Foster Youth in Transition Program (HB21-1094) Order of Appointment
 - Foster Youth in Transition Program (HB21-1094) Procedures
 - Foster Youth in Transition Program (HB21-1094) Resource Page
 - Foster Youth in Transition Program (HB21-1094) Talking Points with Youth about the Program and Counsel
 - Foster Youth in Transition Program (HB21-1094) Voluntary Services Agreement

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A closer look at some documents in the Litigation Toolkit, AKA “I have an appointment...now what?”

Review the following resources about the FYTP in general:

- FAQ,
- Procedures, and
- Resource Page.

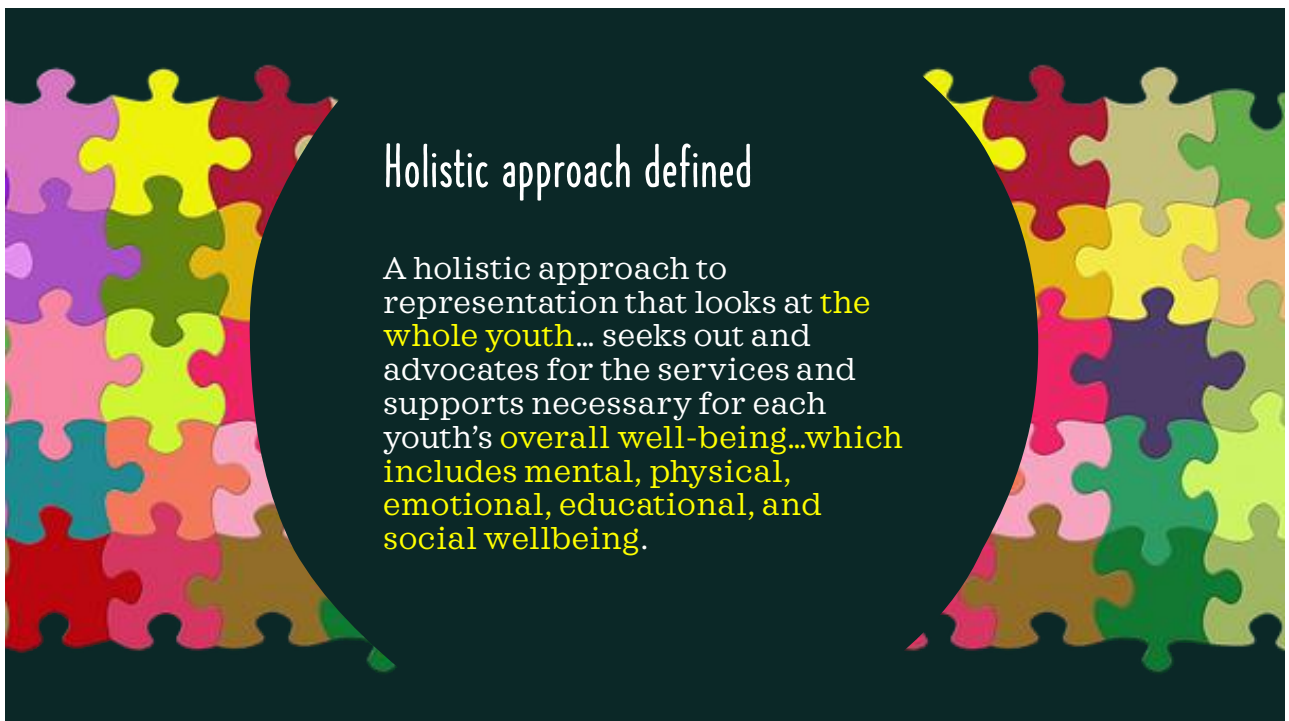
Chat with the youth, using the following documents:

- Talking Points about the Program and Counsel, and
- Youth Resource,
- GAL and Counsel Visual, and
- Engagement Letter.

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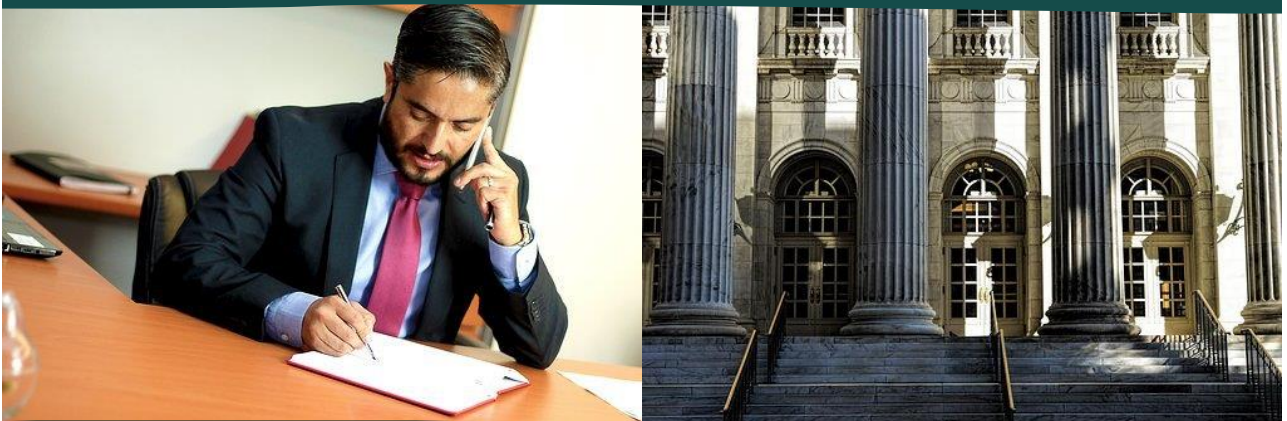
Legislative support for a holistic approach

“Available research shows that emancipating youth benefit from extended foster care services and supports until age twenty-one, and community-based supports through early adulthood, **but for the benefits of such services and supports to last, youth in foster care need developmentally appropriate services, including freedom to test their independence and to make mistakes with proportional consequences and a reasonable safety net.**” 19-7-301(1)(g).

“The child welfare services provided through the transition program must be **client-directed** and **developmentally appropriate...**” 19-7-303.

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Advocacy: critical to a holistic approach



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Case Consultants: critical to the holistic approach

Why: Can help identify individual youth needs AND identify and access developmentally-appropriate services and supports.

Recommendation: Get CCs involved early and often!

How: Email alexwolff@coloradochildrep.org to request an OCR CC

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Holistic approach to available services and supports: 19-7-305

Each county department **shall offer, at a minimum,** the following services & supports.

1. Assistance enrolling in Medicaid.
2. Assistance **securing safe, affordable, & stable housing.**
 - o If county has legal authority for placement: Housing paid by foster care maintenance & other assistance; youth contribution based on ability to pay. **With youth's consent,** housing **approved by county or court** for which youth is eligible & that is **the least restrictive option to meet youth's needs.** If Q RTP, 19-1-115 requirements apply.
 - o If county does not have legal authority for placement: Reside **anywhere eligible** & access financial support.
3. Case management services including case plan with roadmap for success & assistance in the following areas, **as appropriate, & with youth agreement:**
 - Resources to assist youth in transition to adulthood;
 - Obtaining **employment or other financial support** & enhancing **financial literacy;**
 - Obtaining driver's license or other government-issued ID card;
 - Obtaining appropriate community resources & public benefits;
 - Upon request, & **if services are available,** referral to services satisfying **any juvenile/criminal system requirement** & assisting with expunging court records, **as appropriate;**
 - **Pursuing educational goals & applying for financial aid, if necessary;**
 - Upon request, & **if services are available,** referral to services for obtaining necessary court findings & applying for SIJS, as applicable, or applying for other immigration relief for which the youth may be qualified;
 - Obtaining copies of health & education records;
 - Maintaining & building relationships with people **important to youth,** including searching for people youth lost contact with; &
 - Accessing info about relatives, including siblings.

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Services and supports throughout the case

“The court may order the county department to provide **additional services and supports** to help the participating youth achieve the goals outlined on the participating youth's roadmap to success or comply with state or federal law.” 19-7-312(4).

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Reasonable efforts

- Where removal of a youth from the home is sought, the FYTP petition must either state that **reasonable efforts were made to prevent foster care** or an explanation why such services were not provided, or a description of the emergency that precluded the use of such services to prevent foster care or out-of-home placement. 19-1-307(3).
- During periodic review hearings, courts must find whether DHS made **reasonable efforts to implement the youth's case plan, including the youth's roadmap to success**. 19-7-312(7)(a).
- Prior to a youth's emancipation, the court must determine whether DHS made **reasonable efforts toward the youth's permanency goals and to prepare the youth for a successful transition not adulthood**. 19-7-310(3)(b).

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Plans and roadmaps

	Voluntary Services Plan	Roadmap to Success	Emancipation Transition Plan
Definition	Standardized voluntary services entered into by a participating youth pursuant to 19-7-306. 19-7-302(15). LT has the form.	Written description of a youth's goals, programs, and services provided during an open case that will assist youth who are 14 or older and in foster care to the youth's eventual transition from foster care to successful adulthood. Developed collaboratively with the youth. 19-7-302(10). LT has a form.	Plan developed pursuant to 19-7-310 that addresses how the youth will meet the youth's needs upon the youth's imminent emancipation from foster care.
Primary statute	19-7-306.	Scattered throughout HB21-1094.	19-7-310.
Timing	Can be executed before filing the petition and must be filed with a petition. 19-7-307(3) & 19-1-307(6).	Must be attached to the petition for youth with Article 3 D&N cases who are remaining in the system through an Article 7 FYTP case. 19-1-307(6). Must be filed along with DHS reports for review hearings. 19-7-312(5)(a).	No more than 90 days prior to the youth's emancipation discharge hearing. 19-7-310(1).

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DHS role

Question: What if DHS objects to a youth with an Article 3 D&N remaining in the system via an Article 7 FYTP case?

Answer: Arguments can include the following references to 19-3-705.

- A transition hearing **must** occur within 35 days after a youth's 18th birthday. 19-3-705(1). The **purpose** of a transition hearing is to determine whether the youth will be opting into the FYTP program **or** choosing to emancipate. 19-3-705(1).
- If it is anticipated that the **youth will chose** to emancipate, the report DHS files with the court 7 days before the hearing **must** include a copy of the youth's transition plan executed pursuant to 19-7-310. 19-3-705(2)(d)(II).
- The Court **shall** advise the youth of the **youth's right to choose to emancipate or remain**. 19-3-705 (3)(a).
- Court requirements prior to emancipation are laid out in 19-3-705(4).

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DHS custody

Question: Can DHS have custody of the youth in a FYTP case?

Answer: DHS cannot have custody of a youth through a FYTP case but can have “legal authority for physical placement.”

However: “Legal authority for physical placement” has many of the same effects as “custody.” When DHS has “legal authority for physical placement,” the placement must be approved by DHS **or the court**, must be the least restrictive option to meet the youth’s needs, and can be paid for in whole or part with foster care maintenance payments. 19-7-305(b)(II).

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Educational surrogates

Question: Does a GAL need to remain as the educational Surrogate for a FYTP youth who is 19 and has an IEP/etc.?

Answer: It might be permissible under the law. While 18 is the age of majority and the FYTP may allow more self-advocacy and voice in legal proceedings, education law is flukey in some ways. Until a student graduates from high school or reaches 21 (whichever occurs first), parents/guardians retain rights and legal decision-making authority for the young person.

Note: Engage in a conflict analysis about this role!

Suggestion: Call an education attorney on the Education Litigation Support List
<https://coloradochildrep.org/wp-content/uploads/2021/07/Litigation-Support-List.pdf>.

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Question for you: additional ideas of how OCR can spread the FYTP word to others?

So far, we:

- Have spoken with youth at Camp to Belong and during a project Foster Power meeting.
- Sent Youth Resource and cover letter to courts, providers, county attorneys, and CDHS for distribution to departments.
- Met with CDHS and at least one county attorney to share resources and plans.
- Created OCR FYTP web page <https://coloradochildrep.org/youth-center/transition-program/>, which houses Youth Resource, FAQ, Procedures, and referral link.
- Will record/distribute training for other stakeholders.

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