

# KEEPING YOUR NORTH STAR (even when things go south)

Effective advocacy for justice-involved youth

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## THE LAY OF THE LAND: GAL v. CFY

- ▶ GAL represents the **BEST INTEREST** of youth ages 11 and under in dependency and neglect proceedings and the **BEST INTEREST** of youth in delinquency and direct file proceedings
- ▶ CFY represents the **EXPRESSED INTEREST** of youth ages 12 and over in dependency and neglect proceedings

**YOU CAN'T BE CFY  
AND GAL FOR THE  
SAME YOUTH!**

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CAUTION: WORDY SLIDES COMING

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## COMPASS CHECK: Children's Code Purpose

### ► C.R.S. §19-1-102

- “(1) The general assembly declares that the purposes of this title are:
  - (a) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society;
  - (b) To preserve and strengthen family ties whenever possible, including improvement of home environment
  - (c) To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered and, in either instance, for the courts to proceed with all possible speed to a legal determination that will serve the best interests of the child; and
  - (d) To secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him in becoming a responsible and productive member of society.”

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## COMPASS CHECK: Article 2.5 Intent

### ► C.R.S. §19-2.5-101

- “(1)(a) The general assembly finds that the intent of this article 2.5 is to protect, restore, and improve the public safety by creating a system of juvenile justice that will appropriately sanction juveniles who violate the law and, in certain cases, will also provide the opportunity to bring together affected victims, the community, and juvenile offenders for restorative purposes.
- (b) The general assembly further finds that, while holding paramount the public safety, *the juvenile justice system must take into consideration the best interests of the juvenile, the victim, and the community in providing appropriate treatment to reduce the rate of recidivism in the juvenile justice system and to assist the juvenile in becoming a productive member of society.*
- (2) The general assembly finds that the public has the right to safe and secure homes and communities and that when a delinquent act occurs, safety and security is compromised; and the result is harm to the victim, the community, and the juvenile offender. The general assembly finds that the juvenile justice system should seek to repair such harm and that victims and communities should be provided with the opportunity to elect to participate actively in a restorative process that would hold the juvenile offender accountable for the offense.”

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## COMPASS CHECK: Detention Is Harmful

### ► Increased involvement in the justice system

- 8.5% more likely to be found guilty
- 2x more likely to reoffend than non-detained youth

### ► Lack of access to education

- 60% do not return to school or drop out within five months
- Less special education services
- Fewer hours of instructions

### ► Poor mental health outcomes

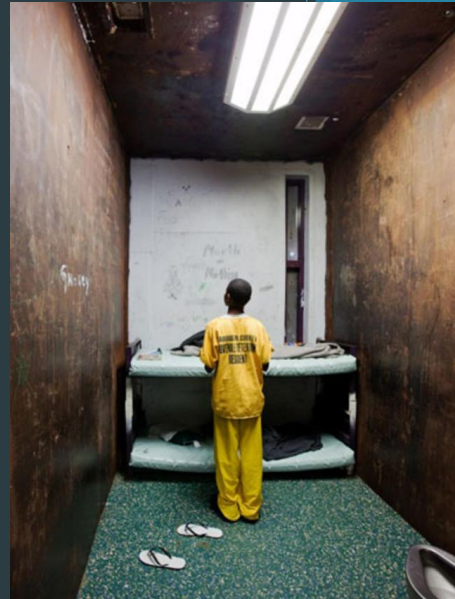
- 1 in 3 detained youth who are diagnosed with depression developed the condition *after placement in detention*

Source: The Gault Center infographic, “The Harms of Juvenile Detention”

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## COMPASS CHECK: Detention is Usually Illegal

- ▶ At least most of the time...more on this in a bit!



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## COMPASS CHECK

- ▶ Our juvenile delinquency kids are crying out for help
  - ▶ Studies have suggested that two thirds of youth in detention or correctional settings have at least one diagnosable mental health disorder (compared with somewhere between 9% and 22% of the general population).
- ▶ Detention is not the place to get that help
  - ▶ There are estimates that only 15% of youth diagnosed with psychiatric disorders and functional impairment received treatment while in detention.

CITATION: Development Services Group, Inc. 2017. "Intersection Between Mental Health and the Juvenile Justice System." Literature review. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. <https://www.ojjdp.gov/mpg/litreviews/Intersection-Mental-Health-Juvenile-Justice.pdf>

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## HOW WE LOSE OUR WAY

- ▶ Kid who runs from placement part I: “He’s going to get hurt!”
- ▶ Kid who runs from placement part II: “He can’t stay put long enough to get help!”
- ▶ Kid who picks up new case: “She’s just going to end up picking up new charges again, that’s not in her best interest.”
- ▶ Kid involved in family conflict: “she needs to learn a lesson/there need to be consequences”
- ▶ Kid with severe mental health disorder or substance use disorder: “He needs to be somewhere safe while we find the ‘right’ treatment”

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## HELPFUL TRAVELING COMPANIONS

### Purpose of the Children’s Code

- ▶ A brief reprise...
  - ▶ C.R.S. §19-1-102, our faithful old friend
    - ▶ “(1) The general assembly declares that the purposes of this title are:
      - ▶ (a) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society;
      - ▶ (b) To preserve and strengthen family ties whenever possible, including improvement of home environment
      - ▶ (c) To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered and, in either instance, for the courts to proceed with all possible speed to a legal determination that will serve the best interests of the child; and
      - ▶ (d) To secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him in becoming a responsible and productive member of society.”

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# HELPFUL TRAVELING COMPANIONS

## Detention reform legislative intent

### ► C.R.S. §19-2.5-301

- “The general assembly declares that the placement of children and juveniles in a detention facility exacts a negative impact on the mental and physical well-being of the child or juvenile, and such detention may make it more likely that the child or juvenile will reoffend. Children and juveniles who are detained are more likely to penetrate deeper into the juvenile justice system than similar children or juveniles 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 or juvenile to his or her home, family, or other responsible adult whenever possible consistent with public safety. It is the intent of the general assembly...to *limit the use of detention to only those children and juveniles who pose a substantial risk of serious harm to others or that are a flight risk from prosecution*”

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# HELPFUL TRAVELING COMPANIONS

## Limits on Detention

### ► C.R.S. §19-2.5-304

- “(3) A juvenile shall not be placed in detention solely:
  - (a) Due to lack of supervision alternatives, service options, or more appropriate facilities;
  - (b) Due to the community’s inability to provide treatment or services;
  - (c) Due to a lack of supervision in the home or community;
  - (d) In order to allow a parent, guardian, or legal custodian to avoid legal responsibility;
  - (e) Due to a risk of the juvenile’s self-harm;
  - (f) In order to attempt to punish, treat, or rehabilitate the juvenile;
  - (g) Due to a request by a victim, law enforcement, or the community;
  - (h) In order to permit more convenient administrative access to the juvenile;
  - (i) In order to facilitate further interrogation or investigation; or
  - (j) As a response to technical violations of probation unless the results of a detention screening instrument indicate that the juvenile poses a substantial risk of serious harm to others or if the applicable graduated responses system adopted pursuant to section 19-2.5-1108 allows for such a placement.”

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## HELPFUL TRAVELING COMPANIONS

### Required findings for continued detention

#### ► C.R.S. §19-2.5-305 (a summary)

- (IV) At the detention hearing, the court can only make a finding of continued detention if:
  - (A) there is probable cause,
  - (B) they screen into detention level of care or there is reason for an override, AND
  - (C) *The juvenile 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.*

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## HELPFUL TRAVELING COMPANIONS

### Volume 7 Regs?!

#### ► 12 CCR 2509-1:7.000.1 - Program Areas

- Specifically, PA4: "Program Area 4 services are provided to reduce or eliminate conflicts between a child/youth and their family members, which may include the community, when those conflicts affect the child/youth's well-being, the normal functioning of the family or the well-being of the community. The focus of services shall be on alleviating conflicts, protecting the child/youth, family, and the community, re-establishing family stability, and/or assisting the youth to emancipate successfully."

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## HELPFUL TRAVELING COMPANIONS

### Volume 7 Regs, cont'd

- ▶ 12 CCR 2509-3:7.201.1 - Provision of Ongoing Youth in Conflict Case Services
  - ▶ “Services shall be offered that preserve the child/youth's permanency with their family, caregiver, kin and/or community whenever possible. If placement is required, the child/youth shall be placed in the least restrictive setting, consistent with the child/youth and family's assessed needs.”
- ▶ Consider: single case agreements?

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## HELPFUL TRAVELING COMPANIONS

### Case consultants!

- ▶ What assessments are needed?
- ▶ What kind of treatment is appropriate, and where can we get it?
- ▶ BUT: proceed with caution



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## HELPFUL TRAVELING COMPANIONS

### Limits on Detention Beds and Emergency Bed Utilization

- ▶ Statewide bed “cap” is 215
- ▶ Each jurisdiction has a certain number of beds of those 215
- ▶ HB23-1307 created...
  - ▶ GAL appointment for detained youth
    - ▶ See C.R.S. 19-2.5-305(2.5)
  - ▶ 22 temporary emergency beds to be utilized under certain circumstances
    - ▶ See: C.R.S. 19-2.5-1407.3

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## JD and JV COLLISION COURSE

Some considerations if your client is under investigation for a delinquent act

- ▶ Well within your role to advise your client of their rights as it relates to the investigation
- ▶ Juvenile interrogation statute: C.R.S. §19-2.5-203
  - ▶ The statute requires the presence of a “parent, guardian, or legal or physical custodian” for interrogation to occur.
    - ▶ A GAL is recognized as an adequate representative under the statute that requires the presence of a “parent, guardian, or legal or physical custodian” at interrogation. *People v. S.M.D.* 864 P.2d 1103 (CO 1994).
    - ▶ CFY would likely fit under this umbrella.
- ▶ STOP AND STAFF!!



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