

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 09-0833.01 Brita Darling

HOUSE BILL 09-1306

HOUSE SPONSORSHIP

Nikkel, Carroll T.

SENATE SPONSORSHIP

Renfro,

House Committees

Health and Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROTECTION OF YOUTH IN JUVENILE FACILITIES IN**
102 **THE DEPARTMENT OF HUMAN SERVICES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires employees of the department of human services (department) to file an incident report any time a youth in the youth corrections system in the department claims to have been injured as a result of child abuse or neglect, the inappropriate use of force or restraint, or an assault by another person in the facility that is facilitated by a facility employee.

Specifies the contents of the incident report, including but not

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

limited to a statement by the injured juvenile, and requires that the report be completed by the end of the work day and that access to the report be restricted.

Prohibits amendments or additions to the incident report or computer entry that are made in a manner that does not preserve a record of the prior entry. Prohibits the use of another employee's login to make a computer entry in an incident report and the alteration or amendment of another employee's entry that is done in a manner that does not preserve a record of the prior entry.

Makes it a class 3 misdemeanor to violate the provisions of the act.

Requires the department to adopt rules and policies to implement the provisions of the act.

Creates a telephone hotline in the department that allows a juvenile who claims to have been injured as a result of child abuse or neglect, the use of physical force or restraint by a department employee, or an assault by another person that is facilitated by a facility employee to report his or her injury to the department. Creates the juvenile facility telephone hotline fund. Allows the department to solicit gifts, grants, and donations to implement the telephone hotline.

Requires the department to report to the health and human services committees of the senate and house of representatives concerning reporting of claims of injury to youth in juvenile facilities and to post on the department's web site the number of complaints made each month to the telephone hotline by facility name.

Repeals the hotline.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 2 of title 19, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PART to read:

4 **PART 14**

5 **JUVENILE FACILITIES - REPORTING**

6 **19-2-1401. Definitions.** AS USED IN THIS PART 14, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "DEPARTMENT" MEANS THE DEPARTMENT OF HUMAN SERVICES.

9 (2) "EMPLOYEE" MEANS AN EMPLOYEE OF THE DEPARTMENT OF
10 HUMAN SERVICES OR IN A FACILITY OPERATED PURSUANT TO A CONTRACT

1 WITH THE DEPARTMENT.

2 (3) "FACILITY" MEANS A JUVENILE DETENTION OR COMMITMENT
3 FACILITY OPERATED BY OR PURSUANT TO A CONTRACT WITH THE
4 DEPARTMENT.

5 (4) "FUND" MEANS THE JUVENILE FACILITY TELEPHONE HOTLINE
6 FUND CREATED IN SECTION 19-2-1403.

7 (5) "HOTLINE" MEANS THE TELEPHONE HOTLINE ESTABLISHED
8 PURSUANT TO SECTION 19-2-1403.

9 (6) "TRAILS" MEANS THE CASE MANAGEMENT SYSTEM OF THE
10 DEPARTMENT OF HUMAN SERVICES.

11 (7) "WRITTEN INCIDENT REPORT" OR "INCIDENT REPORT" MEANS
12 A WRITTEN REPORT, INCLUDING ANY DRAFTS OF THE REPORT, FILED
13 PURSUANT TO THIS SECTION.

14 **19-2-1402. Juvenile facilities - reporting - alteration of report**
15 **- penalty - rules - definitions.** (1) (a) IF A JUVENILE CLAIMS TO HAVE
16 BEEN INJURED AS A RESULT OF ANY OF THE FOLLOWING INCIDENTS, A
17 WRITTEN INCIDENT REPORT SHALL BE FILED WITH THE DEPARTMENT AND
18 THE LOCAL LAW ENFORCEMENT AGENCY IN THE JURISDICTION WHERE THE
19 FACILITY IS LOCATED AND ENTERED INTO THE TRAILS SYSTEM:

20 (I) KNOWN OR SUSPECTED CHILD ABUSE OR NEGLECT AS DEFINED
21 IN SECTION 19-1-103 OCCURRING WITHIN THE FACILITY;

22 (II) USE OF PHYSICAL FORCE OR RESTRAINT BY AN EMPLOYEE OR
23 OTHER PERSON; OR

24 (III) AN ASSAULT BY A PERSON WHO IS NOT AN EMPLOYEE, WHICH
25 ASSAULT IS FACILITATED BY AN EMPLOYEE.

26 (b) THE INCIDENT REPORT SHALL INCLUDE, BUT NEED NOT BE
27 LIMITED TO, THE FOLLOWING:

1 (I) A STATEMENT OF THE FACTUAL BASIS OF THE INCIDENT
2 WRITTEN BY AN EMPLOYEE WHO WITNESSED THE INCIDENT AND ANY
3 OTHER EMPLOYEE WHO WAS INVOLVED IN THE INCIDENT OR, IF NO
4 EMPLOYEE WITNESSED THE INCIDENT, BY THE EMPLOYEE WHO WAS ON
5 DUTY AT THE TIME AND WHO WAS MOST DIRECTLY ASSOCIATED WITH THE
6 INCIDENT;

7 (II) A LIST OF PERSONS PRESENT AT THE INCIDENT, AS WELL AS ALL
8 PERSONS INTERVIEWED WITH RESPECT TO THE INCIDENT;

9 (III) A STATEMENT BY THE JUVENILE CONCERNING THE FACTUAL
10 BASIS OF THE INCIDENT WRITTEN BY THE JUVENILE, OR WRITTEN BY
11 ANOTHER PERSON ON BEHALF OF THE JUVENILE UPON THE JUVENILE'S
12 WRITTEN REQUEST, AS SOON AS POSSIBLE AFTER THE INCIDENT OCCURRED
13 BUT TAKING INTO ACCOUNT ANY NECESSARY DELAY DUE TO THE INJURIES
14 SUSTAINED BY THE JUVENILE AS A RESULT OF THE INCIDENT;

15 (IV) PHOTOGRAPHS OF ANY INJURIES TO THE JUVENILE, IF VISIBLE,
16 AND ANY MEDICAL REPORTS OF DIAGNOSES AND CARE OF THE INJURIES,
17 INCLUDING BUT NOT LIMITED TO X RAYS AND TEST RESULTS; AND

18 (V) THE REPORT FROM ANY INVESTIGATION OF THE INCIDENT BY
19 THE DEPARTMENT, A LOCAL LAW ENFORCEMENT AGENCY, OR ANY OTHER
20 ENTITY INVESTIGATING THE INCIDENT AS AUTHORIZED BY LAW.

21 (c) THE INCIDENT REPORT SHALL BE COMPLETED BY THE END OF
22 THE EMPLOYEE OR EMPLOYEES' SHIFT AND ACCESS TO THE INCIDENT
23 REPORT SHALL BE RESTRICTED TO ONLY SUPERVISORY-LEVEL EMPLOYEES
24 WHO ARE SPECIFICALLY AUTHORIZED BY THE DEPARTMENT TO REVIEW THE
25 INCIDENT REPORT.

26 (d) THE INCIDENT REPORT SHALL BE UPDATED TO INCLUDE ANY
27 REPORTS FROM AN INVESTIGATION CONCERNING THE INCIDENT, MEDICAL

1 REPORTS, TEST RESULTS, PHOTOGRAPHS, OR WRITTEN STATEMENTS BY A
2 JUVENILE PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (b) OF THIS
3 SUBSECTION (1) THAT BECOME AVAILABLE AFTER THE INCIDENT REPORT
4 IS INITIALLY COMPLETED.

5 (e) NOTHING IN THIS SUBSECTION (1) SHALL REQUIRE A PERSON TO
6 FILE A SEPARATE REPORT WITH THE DEPARTMENT OR A LOCAL LAW
7 ENFORCEMENT AGENCY IF THE INFORMATION REQUIRED TO BE PROVIDED
8 PURSUANT TO THIS SUBSECTION (1) HAS ALREADY BEEN PROVIDED TO THE
9 DEPARTMENT OR LOCAL LAW ENFORCEMENT AGENCY PURSUANT TO
10 SECTION 19-3-307.

11 (f) THE DEPARTMENT SHALL RETAIN THE INCIDENT REPORT FOR A
12 MINIMUM OF FIVE YEARS AFTER THE DATE OF THE INCIDENT.

13 (2) (a) ANY ADDITION TO OR AMENDMENT OF THE INFORMATION
14 CONTAINED IN THE WRITTEN INCIDENT REPORT AND **TRAILS** ENTRY
15 REQUIRED PURSUANT TO SUBSECTION (1) OF THIS SECTION, OTHER THAN
16 INFORMATION PREPARED BY A PERSON WHO IS NOT AN EMPLOYEE OF THE
17 DEPARTMENT, SHALL BE WRITTEN, RECORDED, AND ENTERED IN SUCH A
18 MANNER AS TO PRESERVE A RECORD OF THE ORIGINAL LANGUAGE OF THE
19 WRITTEN INCIDENT REPORT OR **TRAILS** ENTRY.

20 (b) AN EMPLOYEE SHALL NOT USE THE COMPUTER CODE OR LOGIN
21 OF ANOTHER PERSON TO ADD TO OR AMEND A **TRAILS** ENTRY OR OTHER
22 COMPUTER RECORD OF AN INCIDENT REPORT.

23 (3) IN AN INSTANCE IN WHICH A JUVENILE IS TO BE SERVED WITH
24 A NOTICE OF HIS OR HER LEGAL RIGHTS WITH RESPECT TO AN INCIDENT
25 THAT OCCURS IN A FACILITY, AN EMPLOYEE WHO WAS NEITHER INVOLVED
26 IN THE INCIDENT NOR A WITNESS TO THE INCIDENT SHALL SERVE THE
27 NOTICE TO THE JUVENILE.

1 (4) AN APPROPRIATE PERSON WHO IS NOT AN EMPLOYEE OR AN
2 EMPLOYEE WHO IS NOT INVOLVED WITH THE INCIDENT SHALL ASK THE
3 JUVENILE IN A PRIVATE SETTING WHETHER THE JUVENILE WISHES TO MAKE
4 A FORMAL COMPLAINT REGARDING AN INJURY CLAIMED PURSUANT TO
5 PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION.

6 (5) A JUVENILE WHO CLAIMS TO HAVE BEEN INJURED AS A RESULT
7 OF ANY OF THE INCIDENTS DESCRIBED IN PARAGRAPH (a) OF SUBSECTION
8 (1) OF THIS SECTION SHALL BE PERMITTED, WITHIN TWO HOURS AFTER THE
9 INCIDENT, TO MAKE A PRIVATE TELEPHONE CALL TO THE HOTLINE
10 ESTABLISHED PURSUANT TO SECTION 19-2-1403. THE JUVENILE MAY ALSO
11 MAKE A PRIVATE FOLLOW-UP TELEPHONE CALL TO THE HOTLINE AT ANY
12 TIME WITHIN THIRTY DAYS AFTER THE INCIDENT AND SHALL BE PERMITTED
13 TO RECEIVE AND RETURN TELEPHONE CALLS FROM THE HOTLINE.

14 (6) ANY PERSON WHO WILLFULLY VIOLATES THE PROVISIONS OF
15 THIS SECTION:

16 (a) COMMITS A CLASS 3 MISDEMEANOR AND SHALL BE PUNISHED
17 AS PROVIDED IN SECTION 18-1.3-501, C.R.S.;

18 (b) SHALL BE LIABLE FOR DAMAGES PROXIMATELY CAUSED BY THE
19 VIOLATION; AND

20 (c) SHALL BE SUBJECT TO ADMINISTRATIVE ACTION BY THE
21 DEPARTMENT.

22 (7) THE DEPARTMENT SHALL ADOPT SUCH RULES AND IMPLEMENT
23 SUCH POLICIES AS MAY BE NECESSARY TO IMPLEMENT THE PROVISIONS OF
24 THIS SECTION, INCLUDING PROCEDURES THAT REQUIRE APPROPRIATE
25 ADMINISTRATIVE ACTION TO BE TAKEN AGAINST AN EMPLOYEE WHO DOES
26 NOT COMPLY WITH THE PROVISIONS OF THIS SECTION.

27 **19-2-1403. Juvenile facilities - complaints of child abuse -**

1 **creation of hotline - rules - fund created - repeal.** (1) THE
2 DEPARTMENT SHALL ESTABLISH A TELEPHONE HOTLINE FOR A JUVENILE OR
3 A PERSON REPRESENTING A JUVENILE TO MAKE A FORMAL COMPLAINT TO
4 THE DEPARTMENT CONCERNING AN INCIDENT IN WHICH THE JUVENILE
5 CLAIMS TO HAVE BEEN INJURED AS THE RESULT OF AN INCIDENT
6 DESCRIBED IN SECTION 19-2-1402 (1) (a). THE DEPARTMENT SHALL
7 IMPLEMENT THE HOTLINE IN A MANNER THAT ALLOWS A JUVENILE OR A
8 FAMILY MEMBER, OR PERSON REPRESENTING A JUVENILE, TO LEAVE A
9 MESSAGE AND TO RECEIVE A RETURN TELEPHONE CALL IN A MANNER THAT
10 ENSURES THE JUVENILE'S PRIVACY WHILE MAKING AND RECEIVING A
11 TELEPHONE CALL. THE DEPARTMENT SHALL ENSURE THAT THE HOTLINE
12 IS MONITORED BY A DEPARTMENT EMPLOYEE WHO IS NOT EMPLOYED AT A
13 FACILITY.

14 (2) THE DEPARTMENT SHALL ADOPT ANY RULES OR PROCEDURES
15 NECESSARY FOR THE ESTABLISHMENT AND ONGOING OPERATION OF THE
16 HOTLINE INCLUDING PROCEDURES FOR A JUVENILE TO HAVE ACCESS TO
17 THE HOTLINE AND THE REQUIREMENT THAT CALLS TO THE HOTLINE BE
18 RECORDED.

19 (3) THE DEPARTMENT SHALL POST INFORMATION REGARDING THE
20 HOTLINE IN A MANNER AND LOCATION AT A FACILITY THAT ENSURES THAT
21 A JUVENILE, AS WELL AS A JUVENILE'S FAMILY MEMBERS OR FRIENDS OR A
22 REPRESENTATIVE OF THE JUVENILE VISITING THE FACILITY IS AWARE OF
23 THE PURPOSE FOR THE HOTLINE AND THE TELEPHONE NUMBER FOR THE
24 HOTLINE.

25 (4) RECORDS OF TELEPHONE CALLS MADE TO THE HOTLINE,
26 WHETHER RECORDED OR WRITTEN, SHALL BE KEPT FOR A MINIMUM OF FIVE
27 YEARS AFTER THE CALL DATE.

1 (5) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE
2 JUVENILE FACILITY TELEPHONE HOTLINE FUND. THE FUND SHALL CONSIST
3 OF GIFTS, GRANTS, AND DONATIONS AND ANY MONEYS THAT MAY BE
4 APPROPRIATED TO THE FUND BY THE GENERAL ASSEMBLY.

5 (b) THE DEPARTMENT IS AUTHORIZED TO ACCEPT GIFTS, GRANTS,
6 AND DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF
7 THIS SECTION; EXCEPT THAT THE DEPARTMENT MAY NOT ACCEPT A GIFT,
8 GRANT, OR DONATION THAT IS SUBJECT TO CONDITIONS THAT ARE
9 INCONSISTENT WITH THIS SECTION OR ANY OTHER LAW OF THE STATE. THE
10 DEPARTMENT SHALL TRANSMIT ALL PRIVATE AND PUBLIC MONEYS
11 RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS TO THE STATE
12 TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND.

13 (c) THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL
14 APPROPRIATION BY THE GENERAL ASSEMBLY TO THE DEPARTMENT FOR
15 THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH IMPLEMENTING THE
16 HOTLINE.

17 (d) ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE
18 OF THIS SECTION MAY BE INVESTED BY THE STATE TREASURER AS
19 PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE
20 INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED
21 TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS
22 REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN
23 THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE
24 GENERAL FUND OR ANOTHER FUND; EXCEPT THAT ANY UNEXPENDED AND
25 UNENCUMBERED MONEYS REMAINING IN THE FUND AS OF JUNE 30, 2013,
26 SHALL BE TRANSFERRED TO THE STATE GENERAL FUND.

27 (6) THIS SECTION SHALL BE REPEALED, EFFECTIVE JULY 1, 2013.

1 **19-2-1404. Reporting - repeal.** (1) THE DEPARTMENT SHALL
2 REPORT ANNUALLY TO THE HEALTH AND HUMAN SERVICES COMMITTEES
3 OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR
4 COMMITTEES, CONCERNING THE DEPARTMENT'S COMPLIANCE WITH THE
5 PROVISIONS OF SECTION 19-2-1402 AND THE IMPLEMENTATION AND
6 OPERATION OF THE HOTLINE AND INFORMATION CONCERNING COMPLAINTS
7 RECEIVED THROUGH THE HOTLINE AND THE RESOLUTION OF THOSE
8 COMPLAINTS.

9 (2) (a) THE DEPARTMENT SHALL REPORT ON THE DEPARTMENT'S
10 WEB SITE THE NUMBER OF COMPLAINTS RECEIVED MONTHLY BY THE
11 HOTLINE OF INJURIES TO JUVENILES ALLEGEDLY RESULTING FROM AN
12 INCIDENT DESCRIBED IN SECTION 19-2-1402 (1) (a). THE DEPARTMENT
13 SHALL DISAGGREGATE THE NUMBER OF COMPLAINTS REPORTED BY
14 FACILITY NAME AND SHALL REPORT ANNUAL TOTALS FOR EACH FACILITY.

15 (b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE JULY 1, 2013.

16 **SECTION 2.** 19-3-307, Colorado Revised Statutes, is amended
17 BY THE ADDITION OF A NEW SUBSECTION to read:

18 **19-3-307. Reporting procedures.** (5) IN ADDITION TO THE
19 PROVISIONS OF THIS SECTION, A FACILITY HOUSING JUVENILES WITHIN THE
20 DIVISION OF YOUTH CORRECTIONS IN THE DEPARTMENT OF HUMAN
21 SERVICES PURSUANT TO SECTION 19-2-403 AND SECTIONS 19-2-406 TO
22 19-2-408 SHALL COMPLY WITH THE PROVISIONS OF SECTION 19-2-1402
23 CONCERNING REPORTS OF KNOWN OR SUSPECTED CHILD ABUSE.

24 **SECTION 3. Act subject to petition - effective date.** (1) This
25 act shall take effect September 1, 2009.

26 (2) However, if a referendum petition is filed against this act or
27 an item, section, or part of this act during the ninety-day period after final

1 adjournment of the general assembly that is allowed for submitting a
2 referendum petition pursuant to article V, section 1 (3) of the state
3 constitution, then the act, item, section, or part, shall not take effect unless
4 approved by the people at a biennial regular general election and shall
5 take effect on the date specified in subsection (1) or on the date of the
6 official declaration of the vote thereon by proclamation of the governor,
7 whichever is later.