

Colorado Department of Human Services (CDHS) / Division of Youth Corrections
House Bill 09-1306

“CONCERNING THE PROTECTION OF YOUTH IN JUVENILE FACILITIES IN THE DEPARTMENT OF HUMAN SERVICES”

Section	Description	Requirements	Current Statute	Comments
19-2-1402: (1) (a) (I) - (III)	Juveniles, who claim to be injured as a result of known or suspected child abuse, use of physical force, or an assault facilitated by an employee.	Report of the alleged injury must be made to the state department of human services (CDHS) and local law enforcement	<ul style="list-style-type: none"> Section 19-1-103, (1)(a)(I)-(VI) defines child abuse. Section 19-3-304, (1)-(3) identifies mandatory reporters of child abuse. This includes staff of facilities operated by CDHS. Prohibits false reporting of abuse and neglect. Establishes penalties for violations of the statute. Section 19-3-307 (1) - suspected child abuse must be reported to local county department or law enforcement agency... followed by a written report. The county department shall file a report with the State Department of Human Services within 60 days. Section 19-3-308 (5)(3) (e)- local law enforcement agencies have the responsibility for investigating all third party abuse... notify local department of social services if abuse or neglect is suspected... report is made within 60 days to the State Department of Human Services. Section 19-2-404 (1)-Facilities operated for short-term or long-term commitment or detention are authorized to respond in a reasonable manner to issues of control and restraint of adjudicated juveniles as necessary. Each facility or program shall establish clearly defined policies and procedures... Section 18-1-703 -- Makes it justifiable and not criminal to use reasonable and appropriate force to maintain discipline and order in a correctional institution. Section 18-1-707 (8-9)-Authorizes detention facility staff to use appropriate physical force to prevent escape. 	<ul style="list-style-type: none"> The Division currently reports to local county departments of social services all known or suspected incidents of child abuse in DYC facilities. Currently, local law enforcement and county departments of social services investigate reports of child abuse and neglect, and third party/ institutional abuse and neglect. The Division complies with all current statutes regarding reporting. HB 1306 creates a new process for DYC reports (of injuries as a result of abuse, physical management or assault) and would require reports to be made with CDHS and local law enforcement. The requirement to report any incident where a juvenile claims to have been injured as the result of physical force or restraint by an employee or other person makes every injury reportable. The proposed legislation potentially creates a conflict with Section 19-2-404 giving authority to facilities that house or provide programs to adjudicated youth to maintain control. The bill does not distinguish between juveniles under the age of 18 (child abuse) and juveniles over the age of 18 (adults). Child abuse or neglect can only be committed to children under the age of 18, which must be reported to county Departments of social service, child protection. Contract providers will have to create a parallel system to comply with current law and new provisions.
19-2-1402: (1) (b) (I)-(III)	Reporting of alleged incidents of injuries resulting from the conditions noted above.	Report submitted to CDHS requires: 1. Factual statement by a witness 2. Factual statement from the youth 3. List of persons present 4. Photographs of injuries 5. Medical reports 6. Report from any investigation conducted by law enforcement or any other agency 7. Incident to be completed by the end of the employee's shift 8. Access to the report restricted to supervisory level staff with authorization to view reports 9. Updated to include new medical or investigatory information	<ul style="list-style-type: none"> Section 19-3-307, (1)-(4) requires immediate reporting of suspected abuse or neglect to the county Department of social services or law enforcement and followed promptly by a written report. Reports must include: 1. Name, address, age, sex, and race of the child 2. Name and address of the person responsible for the suspected abuse 3. Nature and extent of the child's injuries, including any evidence of known or suspected abuse or neglect of the child 4. Family composition 5. Source of the report, name, address and occupation of the person making the report 6. Any action taken by the reporting source 7. Any other information that may be helpful Section 19-1-306, photographs and x-rays may be taken of the areas of trauma visible on the child. Copies or originals must be forwarded to the county department or local law enforcement. 	<ul style="list-style-type: none"> HB 1306 places specific reporting requirements on allegations of injuries to juvenile delinquents in State operated secure facilities and those private contract residential programs that serve DYC youth. HB 1306 requires the Department to enter youth's protected health information into a Trails database accessible to non-medical personnel. HB 1306 requires the Division of Youth Corrections to forward protected health information to the State Department potentially violating federal HIPAA statutes These records would contain the names of youth under the age of 18 and should be confidential. Since the reports are going to the Department, they could be subject to the Open Records Act.

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19-2-1402 (1) (f)	The retention of incident reports	The Department must retain incident reports for a minimum of 5 years	No current statute	<ul style="list-style-type: none"> Current Division of Youth Corrections Policy 6.2 requires that NYC maintain detention case records for four years following the juvenile's last discharge. Policy 6.2 requires the Division to maintain committed youth records for four years after final discharge from the custody of the Department or at age 23, whichever is longer.
19-2-1402 (2) (b)	Process for adding or amending to a written incident report in Trails	Any addition or amendment to the original incident report other than those written by a person who is not an employee of the Department shall be written, recorded and entered in such a manner that preserves the a record of the original language of the written incident	No current statute	<p>NYC Policy 9.8 requires that Critical Incidents be recorded in the Trails data system by the end of the shift in which the incident occurred. The policy requires any changes to the original report be addendums added to the original report. Once the final disposition of the incident is determined, i.e., child abuse findings, law enforcement investigations or personnel actions, all information is added into Trails.</p> <p>Pursuant to statutes, The Governor's Office of Information Technology Access Control Policy P-CCSP-008, log-in requirements include: "Users are required to utilize their own individual, unique User Ids...and CDHS Policy OPVII-14, B. states, "Users will not share their passwords with any other individual either in writing or verbally."</p> <p>Section J states, "Unauthorized use, destruction, modification, and distribution of CDHS information or information systems are prohibited."</p>
19-2-1402 (2) (b)	Employees use of the state computer and data management systems	Employees shall not use the computer code or login of another person to add or amend a Trails entry or other computer record of an incident.	Section 24-37.5-403 (2) (b)-(c), Section 24-37.5-404 (1), and (2) (b) Requires information security planning within each public agency... formulate policies, standards and guidelines.	
19-2-1402 (3)	Concerns the advisement of juvenile of his/her legal rights	When juvenile is served with a notice of legal rights with respect to an incident that occurs in a facility, an employee who was neither involved in the incident nor a witness shall serve the notice	No current statute	<ul style="list-style-type: none"> This creates the obligation to serve juveniles with a "notice of his or her legal rights" without defining what rights are being referenced. Although it is limited to an incident occurring in a facility, this does not make it clear whether this means the right to file a civil tort action or the right to not self-incriminate oneself if the juvenile was involved in an assault or other crime, or any other legal rights that may be applicable. The Division of Youth Corrections does not currently advise youth of their legal rights. Staff in NYC facilities are not peace officers, and therefore not authorized to advise youth of their legal rights.
19-2-1402 (4)	Juveniles can file a formal complaint of injury.	A person who is not an employee or an employee who was not involved in the incident asks the juvenile in a private setting if they want to make a formal complaint.	No current statute	<p>NYC Policy 13.2 Requires that the juvenile be informed of their right to grieve any inappropriate or infringing behavior or action of staff or other juveniles. If the complaints cannot be resolved informally, a formal grievance can be filed and "Juveniles who choose to file a formal grievance shall not be subject to any disciplinary sanctions or adverse action as a result of choosing to file a formal grievance."</p>

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19-2-1402 (5)	Juvenile access to a "hotline" for reporting alleged injuries	Juvemiles who claim to be injured as a result of the conditions stated in paragraph (a) subsection (1) are allowed to make a private telephone call to the "hotline" within two hours of the incident. The youth may make a follow up phone call within 30 days of the incident and/or receive follow up calls from the hotline. Persons who violate the provisions of this statute commit a class 3 misdemeanor and are liable for damages caused by the violation and are subject to administrative action by the Department.	No current statute	Fiscal Note Required
19-2-1402 (6)	Establishes penalties for persons who willfully violate the provisions of this section.		Section 19-3-304 (4) Any person who willfully violates the provisions of subsection (1) of this section or who violates the provisions of subsection (3.5) of this section: (a) Commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501 C.R.S.	<ul style="list-style-type: none"> Makes employees liable for damages for any willful violations of the act, which appears to contradict the authority granted in Section 19-2-404, which allows facility employees to restrain youth and not be liable for damages as long as the actions are not willful. The act contains no exceptions or allowances for the authority granted to juvenile correctional facilities. An incident report is required for every instance where the juvenile claims to have been injured as a result of physical force or restraint.
19-2-1402 (7)	Departmental rules and policies necessary to implement the provision of the statute	The Department shall adopt rules and policies to implement the provision of the statute and provide for administrative action to be taken against employees who do not comply	Section 19-3-308 (4.5) (a) - The state Department shall adopt rules to establish procedures for investigations of institutional abuse.	<ul style="list-style-type: none"> Colorado Department of Human Services Rules Volume VII, Rule 7.202.54 (c) – establishes the county department of social services as the entity responsible for investigating allegations of abuse occurring in a facility located within the county. The Department already has the authority to take actions for personnel matters when an employee is not following DYC policies; however, those actions are governed by Colorado Department of Personnel Regulations. HB 09-1306 appears to give authority to the Department to establish rules outside of the personnel system, creating a potential conflict with the DPA statutes and rules.
19-2-1403(1)	Creation of a "hotline" for reporting juveniles or their representatives to report alleged injuries.	CDHS is required to establish a telephone "hotline" for a juvenile or someone representing the juvenile to make a formal complaint alleging injury due to the conditions described in Section 19-2-1402 (1) (a).	Each County is required to operate a 24-hour child abuse hotline. Section 19-3-308 requires county departments to respond immediately to reports of abuse and neglect.	CDHS Rules Volume 7 requires county departments to receive calls of allegations of abuse 24 hours per day. CDHS does note have staffing for a "hotline".

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19-2-1403 (2)	Departmental rules and procedures for the telephone hotline	The Department shall adopt rules and procedures necessary to establish and operate the hotline for a juvenile to have access and that calls be recorded.	No current statute	Fiscal Note required.
19-2-1403 (3)	Making information regarding the hotline available	The Department shall post information regarding the hotline in facilities so that juveniles, families, friends and other representatives are aware of the hotline, the number and its purpose.	No current statute	Fiscal Note required.
19-2-1403 (4)	Records of calls	The Department for a minimum of 5 years after the call date shall keep records of calls either written or recorded.	No current statute	Fiscal Note required.
19-2-1403 (5) (a)	Juvenile Facility Hotline Fund	Creates the "Juvenile Facility Telephone Hotline Fund" consisting of gifts, grants and donations and any funds appropriated to the fund by the General Assembly.	No current statute	Fiscal Note required. Clarification needed to require funding to establish and operate Hotline
19-2-1403 (5) (b)	Department authorization to accept gifts, grants and donations.	The Department is authorized to accept gifts; grants and donations from public and private sources consistent with the purposes of this section, except the Department may not receive gifts, grants or donations that are inconsistent with this section or any other law of the state. The Department shall transmit all monies gifted or donated to the State Treasurer who will credit the fund.	No current statute	Clarification needed to require funding to establish and operate Hotline.
19-2-1403 (c)	Monies in the fund subject to annual appropriation	Funds subject to appropriation by the General Assembly for the operation of the hotline.	No current statute	Fiscal Note required. Clarification needed to require funding to establish and operate Hotline
19-2-1403 (d)	Monies in the fund not expended	Funds not expended for the purposes of the section may be invested by the State Treasurer; all interest and income derived from the investment and deposit of monies in the fund shall be credited to the fund.	No current statute	
19-2-1404 (1)	Annual report to the Health and Human Services Committees	The Department shall report annually to the Senate and House Health and Human Services Committee concerning compliance with the provisions of 19-2-1402 and the implementation and operation of the hotline. The Department shall also report on the complaints received through the hotline and the resolution of those complaints.	No current statute	
19-2-1404 (2)	Reporting on the Department's web site.	The Department shall report the number of complaints received monthly by the hotline of injuries to juveniles allegedly resulting from an incident described in 19-2-1402 (1) (a). Information shall be reported by facility with annual totals for facilities.	No current statute	Fiscal Note required.
19-3-307	Amends the current Reporting procedures statute	A facility housing juveniles within the Division of Youth Corrections in the Department of human services shall comply with Section 19-2-1402.	No current statute	Creates parallel reporting process for contracted providers who house DYC clients.