



EXECUTIVE SUMMARY

ISSUE BRIEF: DYS RULEMAKING

Nearly six months after the Colorado Department of Human Services (CDHS) announced the discontinuation of a degrading restraint technique used in the Division of Youth Services' (DYS) facilities -- known as the WRAP -- the Office of Colorado's Child Protection Ombudsman received a complaint. The complaint alleged that, after the CDHS announced the discontinuation of the technique, staff in DHS facilities were using an almost identical technique. Citizens reported to the CPO that DHS staff were still placing youth in a helmet and handcuffs and physically restraining their limbs. Staff and youth inside DHS facilities referred to the technique as a "modified WRAP."

The CPO reviewed the case and found that not only was the restraint method being used in DHS facilities, it was an officially sanctioned DHS technique. Stakeholders from multiple juvenile advocacy organizations -- who monitor DHS closely -- had no knowledge of this policy. More importantly, few had knowledge of the policymaking process through which it was created.

Unlike most state agencies in Colorado, the DHS -- which is overseen by the CDHS -- develops its policies internally among agency leadership with no opportunity for outside entities to participate or observe. This raised questions about whether the DHS operates in compliance with state laws that require agencies provide notice and accept feedback on proposals for new rules.

The CPO reviewed hundreds of pages of DHS policy documents, researched associated laws and regulatory procedures and interviewed DHS staff, leadership and juvenile advocates. That study was used to produce an issue brief outlining concerns with the DHS' lack of a formal, transparent or publicly accessible process. Specifically, the CPO found that the DHS' current guidelines lack elements that are common in the inclusive and transparent rulemaking processes of other state agencies. These include:

- ▶ No stakeholder process that includes interested parties from outside of the DHS.
- ▶ No public notice of proposed changes to DHS rules regarding the care and safety of youth.
- ▶ No public hearing or other opportunity for public input on proposed changes.
- ▶ No publication of the underlying research, evidence or rationale that supports a policy change.
- ▶ No guidelines on the DHS director's authority to override the standard process.

The gaps identified by the CPO are relatively rare among state agencies, most of which conform to the requirements of the State Administrative Procedure Act. For reasons that are not clear, the DHS does not have a process for formulating rules, regulations or policies in accordance with this act.

I CPO's RECOMMENDATIONS

The CPO made three recommendations to the DYS aimed at developing a more open and participatory policy making process.



✓ **RECOMMENDATION 1**

DYS should implement various practices to improve the transparency of its rulemaking process, including publishing guidelines, providing research and reasoning for policy changes and creating a notification system for when DYS policies are finalized.

✓ **RECOMMENDATION 2**

DYS should expand and increase public participation in its rulemaking process through methods such as, creating a feedback loop for the public, study how to formally incorporate input from stakeholders and create a notification system to alert the public about policy revisions.

✓ **RECOMMENDATION 3**

The CDHS should determine whether the DYS is in compliance with the State Administrative Procedures Act.

The CPO monitors the implementation of all of its recommendations. Public updates regarding this process may be found on the CPO's website: www.coloradocpo.org.

To view a complete copy of the CPO's report visit, www.coloradocpo.org.