

ISSUE BRIEF

STRENGTHENING COLORADO'S FOSTER YOUTH PROTECTION LAWS

INTRODUCTION

Every year, thousands of Colorado children are removed from their homes due to abuse or neglect by their parents or caretakers.¹ These children are often placed in foster care, group homes and/or residential child care facilities (RCCF). Many have been exposed to drug addiction, physical abuse, sexual abuse, emotional abuse and domestic violence. Some have been denied access to food, medical care and education.

There are many who assume that placing an abused child in foster care resolves these problems.

Unfortunately, this is not the case. All too often, entering the foster care system marks the beginning of a child's long and often traumatic journey. By law, children who enter this system are forced to wait until government agencies can make their homes safe again or, when that cannot be accomplished, they wait for a new home altogether. This process can take months if not years. In the meantime, these children are traumatized by lingering too long in a system that was designed for short-term, emergency care. After all, the foster care system was never intended to be a substitute for parents.

When a child welfare agency removes a child from their family home and places them into foster care, the agency responsible proceeds on two fundamental assumptions. First, they believe and must legally show the child is in danger and cannot be safely cared for by their family. Secondly, the agency is entrusted with providing a child with a safe home – one that will not result in further abuse nor deprive the child of their basic needs and developmental care.² As such, it is the duty of the agency to assure that the quality of substitute care is as close as possible to the care and nurturing that we would expect from a family. This responsibility is the primary reason that foster care bill of rights legislation has been developed across the country: To hold public child welfare agencies accountable for providing appropriate care for the children that they remove from homes.³

In addition to a safe home, many foster youth require specialized care and services due to the trauma associated with abuse and neglect. And while Colorado is below the national standard, statistics show that these children can be at additional risk for abuse in their new homes.⁴ Many foster youth are unable to participate in essential activities that help them mature into



adulthood. Unlike their peers, they are required on a moment's notice to relinquish their lives and are forced into a child welfare system that requires them to navigate complex court systems, bond with strangers, go to new schools and develop a new social order. Critical growth opportunities – such as hanging out with friends, conversations with trusted adults, and participating in community activities – are often limited for foster youth who are acclimating to a new way of life.

To ensure the needs of these youth are met and to counterbalance any potential negative impact of the foster care system on youth, there is a growing national consensus that child welfare agencies and caregivers need to facilitate age-appropriate experiences for youth in foster care so that they can achieve the key markers of child and adolescent development. These same advocates believe that foster youth deserve to know, in age-appropriate language, what they can anticipate when they enter the foster care system, including what services and care they are entitled to. To improve the quality of foster youths' experience, legislatures in approximately 20 states have enacted laws for foster youth.⁵ Colorado is one of these states.

However, nearly 10 years after passing the "Protections for Youth in Foster Care" law, Colorado has yet to deliver on its promise to foster youth. The Office of Colorado's Child Protection Ombudsman (CPO) has reviewed the law and regulations that dictate how foster youth are advised of their care and protections. While well intended, Colorado's current law falls short of protecting foster youth from the challenges articulated above. Specifically, the law does not create comprehensive mandated protections for foster youth. This omission has also resulted in a disjointed system that provides foster youth inconsistent – and sometimes inaccurate – information.

Without complete and accurate information, foster youth are not as equipped to advocate for their care. For Colorado's law to fully inform foster youth about the standard of care to which they are entitled, the law must be amended. This brief will outline the current omissions in Colorado's law, as well as the confusion caused by those omissions. It also provides a list of key components necessary to ensure that Colorado's law is providing proper protections and information to foster youth.

THE LAW

Colorado Law

In 2011, Colorado joined more than a dozen states and passed Senate Bill (SB) 11-120, "Protections for Youth in Foster Care."⁶ Colorado's law outlines 29 protections for foster youth including:

- The ability to participate in their court case;
- Access to their guardian ad litem (GAL);⁷
- Access to mental, behavioral and physical health care; and
- Access to or communication with their siblings and family members.⁸

¹ Colorado's 5-year average of children entering foster care was calculated using 2014 – 2018 data from the Annie E. Casey Foundation Kids Count Data Center, <https://datacenter.kidscount.org/data/tables/6269-children-entering-foster-care>

² When the State intervenes, it becomes that child's substitute parents, under the concept of *parens patriae*. *Parens patriae* is a legal principle whereby the government, or another authority, becomes the legal guardian of citizens who are unable to protect themselves.

³ National Council for State Legislators, Foster Care Bill of Rights, October 29, 2019.

⁴ According to the Colorado Department of Human Services' Community Performance Data Center, Colorado's rate of maltreatment in out-of-home care during FY 2019-20 was 7.09 victimizations per 100,000 days in care. The national standard is 8.5 victimizations per 100,000 days in care.

⁵ In 2019, the National Council for State Legislators identified 15 states as having formal Foster Care Bill of Rights. The CPO identified additional states with similar provisions during its review in 2020.

The law also requires child welfare agencies to provide foster youth with access to their credit reports,⁹ and requires foster parents to make a reasonable effort to allow youth to participate in extracurricular activities.¹⁰ In 2019, the Colorado General Assembly passed a law to ensure foster youth have ongoing and meaningful contact with their siblings.¹¹ While the 2019 law contains crucial protections for foster youth, this brief addresses the protections for foster youth created in 2011. At the time of publication, there was not enough data or information to evaluate the effectiveness of the 2019 law.

A review of legislative history illustrates that SB 11-120 was intended to ensure that youth are advised of the care they should receive while in foster care and to provide mechanisms for youth to redress any wrongs they might suffer. While this legislation was well intended, nearly a decade later there is direct and anecdotal evidence that the law is not living up to its full potential.

The ineffectiveness of SB 11-120 is in large part due to omissions in state statute. Unlike similar laws across the country, Colorado's law does not provide foster youth with any rights or actual safeguards. Rather, Colorado law provides a list of protections which represent "guidelines" that "promote the physical, mental, social, and emotional development of youth in foster care and to prepare them for a successful transition back into their families or the community."¹² The specification of "guidelines," rather than enforceable rights, has dramatically impacted the effectiveness and the implementation of this legislation.

Additionally, while Colorado law provides a comprehensive list of protections for youth, state law does not require government agencies with authority to remove children and place them in foster care or other out-of-home placements to develop a uniform process for notifying foster youth of these protections.¹³ This has led to a disjointed approach that has in large part failed to educate and protect all of Colorado's youth who are placed into foster care. Put simply, the law is not fulfilling the role for which it was originally envisioned.

The three primary deficiencies in the law include a failure to require:

- I. A single, consistent state-wide implementation strategy that ensures every foster youth is provided an advisement of each protection that has been articulated in law;
- II. An updated grievance process that provides foster youth with a current and complete list of resources to voice concerns about their safety and well-being; and
- III. A designated entity to evaluate the implementation of the law to ensure that the adults in the child protection system are educating foster youth on these protections and that youth are aware of, and able to benefit from them.

⁶ SB 11-120 is codified in state statute at C.R.S. 19-7-101 to 103. Federal law also mandates certain protections for youth in foster care. On September 29, 2014, P.L. 113-183—the Preventing Sex Trafficking and Strengthening Families Act, was unanimously passed by the House and Senate. Among the law's important provisions is the section "Supporting Normalcy for Children in Foster Care." The "Supporting Normalcy" section directs states to promote foster youth participation in age-appropriate activities, and to institute the reasonable and prudent parent standard for substitute caregivers to consent to such participation. The law also promotes "normalcy" by expanding the existing obligation to include youth in case planning, restricting the use of Another Planned Permanent Living Arrangement (APPLA) as a permanency plan, and requiring courts to play an active role in ensuring that youth experience normalcy.

⁷ In Colorado, a guardian ad litem is an attorney who represents the "best interests" of children and adults in dependency and neglect matters, guardianship, family and adoption proceedings

⁸ See C.R.S. 19-7-101

⁹ See C.R.S. 19-7-102

¹⁰ See C.R.S. 19-7-103

¹¹ See C.R.S. 19-7-201 to 19-7-204

¹² See C.R.S. 19-7-101

¹³ The one exception is in C.R.S. 19-7-102 which mandates that child welfare workers provide a credit history to youth.

Attorneys who represent foster youth see the impacts of these gaps on foster youth in their practice. They reported to the CPO that child welfare agencies, providers and judges seldom provide their clients information about their rights. Foster youth rarely, if ever, assert such knowledge.

Colorado's Office of the Child's Representative (OCR), which oversees the state's GALs, summarized the issue this way:

"The OCR believes strongly in the rights of children and youth and requires GALs to advocate for those rights. While the protections laid out in C.R.S. 19-7-101 are important, they do not rise to the level of a right as currently written. This inhibits the effectiveness of the statute in contested litigation or as a strong basis for advocacy. While the protections can certainly be used in a persuasive manner, they lack enforceability and therefore are rarely used or provided to youth."

National Law

To better understand the commonalities among laws for foster youth throughout the nation, the CPO reviewed documents from 40 states that assert the rights for foster youth to identify those that provide legally enforceable rights.¹⁴ The goal of the review was to understand how many laws provide legal rights to foster youth, compared to those that are silent regarding whether rights exist at all. When determining which documents to include in the analysis, the CPO excluded those not in statute, such as those that were issued by a jurisdiction's human services agency.¹⁵ The CPO identified 23 statutes.

Of the 23 statutes, the CPO found that 35 percent specially allow foster youth to seek legal recourse if their rights are violated, and 30 percent were silent as to whether foster youth could seek recourse.¹⁶ The jurisdictions providing legal recourse – California, Delaware, Nevada, New Hampshire, New Jersey, Puerto Rico, Rhode Island and South Carolina – specifically use the term "rights," providing clarity regarding their statutes enforceability.

STATE REGULATIONS

State law regarding child welfare services is implemented through state regulations that are vetted through a process established in the Colorado Administrative Procedures Act and passed by the Colorado State Board of Human Services. These regulations, often referred to as Volume 7, contains the state's child welfare regulations. These regulations are akin to a user's manual and serve to guide caseworkers on how to conduct their practice.

Without specific mandates in law, the regulations written to implement SB 11-120 add yet another layer of confusion to an already opaque system. For example, state regulations refer to the foster youth protections created in SB 11-120 as "rights" rather than "guidelines." This is an incorrect statement of the law and the two terms have dramatically different implications for foster youth. To say a youth has a "right" means that the youth has an entitlement to certain standards of care and has the right to file a grievance and seek a remedy if harmed. "Guidelines," on the other hand, provide tremendous discretion to an agency to abide by the law. As such, the current terminology in regulations regarding protections for foster youth has the potential to create false expectations for youth. As they are currently written, the regulations imply that foster youth have rights that they simply do not.

¹⁴ Many jurisdictions' proclamations are entitled "Foster Care Bill of Rights;" however, some jurisdictions use other terminology to describe entitlements for foster youth, such as safeguards, protections and guidelines. Also, please note that proclamations specific to the rights of siblings in foster care were excluded from the analysis.

¹⁵ Jurisdictions include states and the Commonwealth of Puerto Rico.

¹⁶ The remaining 35 percent include provisions that prohibit lawsuits stemming from rights violations

There are three primary ways that state regulations fail to effectively capture and implement state law.

First, state regulations do not list all 29 protections available to foster youth contained in state law. State regulations truncate or paraphrase the protections listed in state law and at times omit them altogether.¹⁷

Secondly, the specific protections youth are notified of differs depending upon where a youth is physically placed, as is the process for advising youth of their protections. Currently, there is one list of “rights” provided to youth in RCCFs and group homes,¹⁸ and another list of “rights” provided to youth in foster homes.¹⁹ Neither list mimic the complete list of protections contained in state law.

As for the notification process, RCCFs and group homes are required to post youth protections in public places so that youth and their families may read them, and it is also expected that staff explain “rights” to youth and their parents/guardians in a manner in which they can understand. However, the notification process in foster homes is less straightforward. Some child placement agencies that certify foster homes rely upon foster parents to communicate to youth their “rights,” whereas some agencies notify youth directly. Additionally, certifying agencies require foster parents to obtain signatures from foster youth once the youth is notified, while others do not. It should be noted that concerns have been expressed by child protection stakeholders that some foster parents may not view it in their best interest to advise youth of their “rights” because of the possible negative impact it could have on their foster care license, and that the process of relying upon foster parents to advise youth of their protections carries with it a potential conflict of interest.

Third, state regulations vary dramatically on whether youth are advised of a grievance policy in which to express their concerns related to maltreatment. Regulations are silent on the grievance process for youth in foster homes. This is despite the fact that state law states that youth are free to “contact the child protection ombudsman, county department of human or social services, or the state department of human services regarding any questions, concerns, or violations....and to speak to representatives of those offices privately, and being free from threats of punishment for making complaints.” Youth in RCCFs and group homes, however, are provided a grievance form and information on how to voice their concerns.

CONCLUSION AND RECOMMENDATION

Foster youth bill of rights legislation was developed nationally to provide youth with concrete information about the care they can expect to receive while away from their families. Rights not only serve to educate youth, but they also provide youth with tools to advocate for themselves. It ensures that those who are responsible for caring for these vulnerable youth are aware of and administer youth’s rights. This in turn ensures that they are educated regarding the unique needs that each child or youth may face. Such knowledge only serves to empower foster providers to be even more responsive to these youths’ needs and provides a better experience for the youth – minimizing disruption and harm.

Revising the Protections for Youth in Foster Care bill is critically important for foster youth to understand that they are deserving of protection and that the child welfare system is designed to keep them safe. Rights give youth the ability to effectively advocate for their care. Though it has been 10 years since the original legislation was made law, it’s not too late for us to fulfill the goal that we set out to achieve.

¹⁷ This statement is based upon a comparison of C.R.S. 19-7-101 and state regulations C.C.R. 7.708.33 (Foster Children’s Rights Pertaining to Children in Foster Homes) and C.C.R. 7.714.31 (Children’s Rights Pertaining to Children in RCCF’s and group homes).

¹⁸ Note that C.C.R. 7.714.31 provides additional rights that are unique for youth who are in higher level, more restrictive placements.

¹⁹ See C.C.R. 7.708.33

As such the CPO recommends the Colorado General Assembly and stakeholders should work together to amend C.R.S. § 19-7-101-103 to incorporate the following components:

- I. Determine whether the statute should be revised to list “rights” as opposed to the current language, which lists “protections”;
- II. A single, consistent state-wide implementation strategy that ensures every foster youth is provided an advisement of each protection that has been articulated in law;
- III. An updated grievance process that provides foster youth with a current and complete list of resources to voice concerns about their safety and well-being; and
- IV. A designated entity to evaluate implementation of the law to ensure that the adults in the child protection system are educating foster youth on these protections and that youth are able to benefit from them.

The CPO would like to thank all the stakeholders and families for sharing their time and expertise. Pursuant to C.R.S. 19-3.3-103(2), the CPO respectfully submits this report to the citizens of Colorado, child protection stakeholders and the Colorado General Assembly.

A handwritten signature in black ink that reads "Stephanie Villafuerte". The signature is written in a cursive style with a large initial 'S'.

Stephanie Villafuerte
Child Protection Ombudsman