



Timothy Montoya Task Force | Meeting 18

May 15, 2024 Meeting Recap

Overview

The Timothy Montoya Task Force to Prevent Children from Running Away from Out-of-home Placement is legislatively charged with analyzing the root causes of why children and youth run from out-of-home care to help develop a consistent, prompt and effective response for when children and youth do run. It is also charged with assessing how to address the safety and well-being of children and youth upon their return to care.

Introduction and Roadmap

The purpose of today's meeting is for the task force to review the outcomes of prior subcommittee meetings and to make recommendations. Upcoming subcommittee meetings on June 12 will focus on education regarding trauma-informed recovery and the risks of running away. Full task force meetings are planned for late July and August. The July meeting will cover foster care-specific recommendations and differentiate between foster care and facility situations. August and September will be dedicated to finalizing recommendations and the report.

Facilities Survey Update

Becky Miller Updike and Brandon Miller worked on a survey for facility staff that will be distributed soon. Bryan Kelley and Trace Faust will be responsible for collecting and analyzing the survey results. These results will aid the task force in making informed recommendations.

Updates from the Prevention Subcommittee

The subcommittee is not yet ready to draft recommendations but will update the full task force on their progress. The subcommittee reviewed key themes from their discussions and were invited to add insight.

Directive Overview

The subcommittee is wrestling with a directive that includes assessing the effectiveness of existing laws and protocols for promptly addressing situations in which a youth has run from care. The current law permits restraint or seclusion only in emergencies or after less restrictive alternatives either fail or it has been determined that they would not be successful. The definition of emergency includes a serious, probable, imminent threat of bodily harm.

Key Questions

The subcommittee is assessing if Colorado law provides sufficient clarity on when restraint is appropriate in emergency situations. The effectiveness of current laws in preventing youth from running away is also being examined.

Subcommittee Findings

Over half of the subcommittee members believe that Colorado law lacks clarity on emergency situations. Seventy-one percent of the subcommittee do not consider current laws effective in preventing youth from running from out-of-home care.

Stephanie Villafuerte and Brandon provided an overview of high-level themes and discussions from the subcommittee's conversations to date. Stephanie highlighted concerns about the lack of clarity regarding what constitutes an emergency for administering restraints on youth. Some members believe this ambiguity can lead to staff either not intervening, risking harm to the youth, or restraining them, potentially causing injury and legal liability.

There was a debate on whether the definitions of "imminent" and "emergency" in the law provide sufficient guidance for facilities to restrain youth who attempt to run away. Stephanie emphasized that the subcommittee has not reached a consensus but engaged in a thorough discussion on whether the laws need clarification.

Definition of Emergency - There was debate on whether running away should be considered an emergency. Some team members argued that any instance of a youth running away constitutes an emergency due to the high-risk nature of their situations.

Definition of Imminent - The definition of "imminent" was also questioned. Discussion centered on whether it refers to an immediate threat of harm or if it can be based on cumulative knowledge of the youth's history and current circumstances.

Legal Research

Brandon provided legal research regarding the definitions discussed. Apart from statutory definitions, there is significant case law interpreting these terms. There was a question about whether statutory clarity should also consider incorporating relevant case law. Brandon's research indicated that case law has interpreted "imminent danger" to be relative and not necessarily requiring an immediate threat. Case law suggests that "imminent danger" is measured more by the potential consequences rather than the immediacy of the threat.

Duty to Intervene

The discussion focused on the duty of facilities to intervene in situations involving individuals under their care, particularly those with health or behavioral health issues. Case law was referenced to support the notion that facilities have a legal obligation to intervene when they accept a patient into their care. This duty stems from the agreement to provide care and ensure the safety of the patient. It was noted that while there is legal precedent establishing this duty to intervene, it may not be explicitly addressed in Colorado law. This discussion raised concerns about potential gaps or omissions in Colorado law regarding the duty of facilities to intervene in situations involving the safety of individuals under their care.

Hands-Off Policies

Some facilities adopt a hands-off policy, which may not be widely known. It is crucial to inform parents or custodians about these policies to manage expectations and ensure informed decisions about placing a youth in a facility. Brandon added that informing parents about facility policies, particularly regarding hands-off approaches, is essential for managing expectations.

Consideration of Existing Recommendations

Bryan Kelley reminded the task force about previously approved recommendations that suggest creating multi-tiered categories of risk for youth running from care. Tailored responses to youth would be based on their assigned risk category. Bryan emphasized the importance of considering how these previous recommendations intersect with the current discussions. This will help to ensure alignment and coherence in the task force's overlapping recommendations and strategies.

Running Away as an Emergency

The task force continued to wrestle with whether youth running away should be automatically considered an emergency. Stephanie emphasized that youth with various behavioral health challenges or disabilities are inherently at risk when they run away. Brandon added that the analysis goes deeper, considering the high acuity levels and specific characteristics of the youth involved. He believes that fleeing, especially in an irrational state of mind, is evidence of an emergency and a safety issue. Regardless of the classification, there must be clarity on whether youth running away is considered an emergency in the state of Colorado.

Brandon clarified that categorizing the behavior of running away as an emergency doesn't necessarily mean that physical restraint is always appropriate. He advocates for considering the behavior of running away as indicative of a crisis, regardless of the specific interventions allowed or appropriate in such situations.

Dr. Renée Marquardt expressed concern about defining the behavior of running away itself as an emergency. She suggests that while some instances of the behavior or running away could be emergencies, defining all behavior of running

away as emergencies might not be appropriate. Renée emphasized the importance of considering each situation individually to determine if the behavior of running away qualifies as an emergency.

There was discussion about whether statutes should explicitly name specific behaviors as emergencies or if clinical judgment should be relied upon. Renée highlighted potential difficulties that may arise from listing specific behaviors as emergencies in statutes, emphasizing the need for careful consideration.

Renée and Doris Tolliver expressed concerns about defining the behavior of running away itself as an emergency, preferring a case-by-case consideration. Dennis Desparrois shared that the vast majority of incidents of youth running from care result in the youth returning unharmed. Brandon agreed with Dennis and added that the majority of runs seem to occur when youth need a break from the facility.

Brandon emphasized the need for proportional responses based on individual circumstances, without assuming that every situation of a youth running requires physical restraint. He stressed the importance of preventing unsafe situations despite them being a minority occurrence. He highlighted the role of clinical judgment in determining the appropriate response to the behavior of running away. He advocates for viewing physical restraint as a possible tool when appropriate.

Doris suggested that while discussing whether the behavior of running away constitutes an emergency, it's essential to consider potential changes in the law. She emphasized the significance of clinical judgment in determining whether a youth running away is an emergency. She also highlighted the need for equitable interventions, particularly regarding the attention given to youth of color when they run away.

Michelle Bradley highlighted the diversity in situations involving youth running from care, ranging from simple departures to more urgent cases involving self-harming behavior. She distinguished between youth who leave temporarily to cope with stress and those who run due to mental health crises. Michelle expressed reservations about using physical restraint, particularly with highly agitated youth, as it can escalate the situation and cause injuries. She acknowledged the difficulty in responding appropriately to highly agitated youth, where physical restraint may seem necessary for safety despite its potential risks.

Different Levels of Risk

Lynette Overmeyer highlighted cases where youth with intellectual disabilities pose higher safety risks when they run away, engaging in behaviors like entering other people's homes or running into traffic. She contrasted this with other youth who may run away as a means to cool down when angry, presenting lower safety risks. Lynette suggested that recommendations should allow facilities to assess

each youth individually and develop tailored plans in their treatment plans for managing the behavior of running away.

Legal Prohibition

Dennis clarified that Colorado state statutes explicitly prohibit the inclusion of restraints in treatment plans for individuals. This prohibition is under a section titled "right to be free from restraint and seclusion." He suggested that since restraints cannot be included in treatment plans, the definition of emergency must be clearly defined elsewhere to guide facility responses to the behavior of running away. Dennis indicated that he will follow up with the specific statute reference for further clarity.

Interpretation of Imminent

Stephanie provided insights into the subcommittee's discussion on the definition of "imminent," highlighting the complexity and differing perspectives among professionals. Case law was referenced, showing varying interpretations of what constitutes imminent danger, whether it's immediate or relative to the nature of circumstances rather than the lapse of time.

Professional Judgment and Intervention

Brandon emphasized the importance of considering the actions of the person in crisis and the role of professionals in ensuring safety, even if the threat may not manifest immediately. Professionals often face challenges in predicting and intervening in situations where a person is escalating towards a crisis, questioning whether they should wait until the last minute or intervene earlier based on their assessment of risk.

Dennis emphasized that from the Colorado Department of Human Service's (CDHS) perspective, "imminent" means "now," implying an immediate threat rather than a potential threat that could occur later.

Lynette suggested that in child welfare, the term "imminent" is interpreted differently. In child welfare settings, "imminent" is categorized as "present" (happening right now) or "impending" (likely to happen very soon, within the next hour or two). Lynette proposed using the term "danger" as it may better convey the severity of the situation. There's a distinction between the possibility of harm and the presence of danger, where the likelihood of moderate to severe harm is high.

Dennis cautioned about relying solely on administrative interpretation, given the potential for changes with each new governor. He suggested that if the task force's recommendation involves examining the department's interpretation of "imminent," there's a risk of inconsistency over time. To address this concern, Jordan proposed solidifying definitions in statute, which would provide clearer and more stable guidelines regardless of changes in administration.

Stephanie emphasized the need for facilities and providers to have a legal obligation to intervene on behalf of a patient when there's a potential for harm. She highlighted that existing statutes and case law lack clarity on this duty. The omission of this duty in statute leaves room for incorrect policies like "hands-off" approaches, which contradict legal obligations.

Brandon highlighted the significant challenges organizations face due to unrealistic expectations and inadequate risk considerations, which affect service provision and youth placements. He stressed the need for clear, specific guidelines to define organizations' obligations in crisis interventions, noting that current standards lack clarity and complicate regulatory compliance. This ambiguity leads to broader issues in securing services and placements for youth.

Stephanie emphasized an additional layer of obligation for providers and facilities to act on behalf of patients, which may be heightened due to the nature of care being provided. Patients have a legal expectation for providers to understand their conditions and keep them safe until they receive treatment or help. Stephanie underscored the importance of recognizing that legal obligations exist not only from the provider's perspective but also from the patient's perspective, as patients have the right to expect a certain level of care and can enforce it through contracts.

Parental Perspective

Kevin Lash shared his experience as a parent receiving calls about his child running away from facilities, considering it a dire emergency every time. He highlighted the distress and devastation such situations cause him, emphasizing the urgency from a parental standpoint. Kevin mentioned instances where facilities couldn't physically intervene when his child ran away, leading to involvement of law enforcement for intervention.

Stephanie clarified that parents have rights, which are constitutional in nature and include the right to raise their child free of government interference. However, when parents entrust another party with the care of their child, such as a facility, the situation becomes more complex. She cautioned against oversimplifying the idea that kids have rights, noting that while there are laws that protect children and youth, the concept is nuanced and varies internationally.

Brandon emphasized the importance of informed consent in addressing these complex issues. He believes that transparency about procedures and obtaining consent from both patients and parents can provide clarity and assurance in gray areas. Brandon suggested that if informed consent is properly obtained and aligns with the desires of both the patient and the parent, it should carry significant weight in discussions surrounding interventions in situations where a youth has run away.

Good Faith Requirement

Discussion turned to the idea that facilities desire a good faith provision in the law, allowing them to make decisions based on their knowledge of the youth and the situation. They seek acknowledgment of their assessments and understanding of the youth's background when deciding to intervene.

Stephanie summarized the subcommittee's conversation as aiming to establish a standard where facilities can demonstrate to regulators that they acted in good faith when administering restraint. This would involve presenting evidence such as case files and prior attempts to handle the situation before resorting to restraint.

Brandon highlighted the importance of addressing uncertainty around consequences for professionals and organizations in the industry. He emphasized the need for individuals to feel both accountable and safe in their roles, as this is critical for treatment communities. Implementing measures like a good faith requirement can help provide clarity and protection, akin to the concept of prudent parenting. Such measures can mitigate risks and ensure that the actions taken are in the best interest of those under care.

Lynette acknowledged Brandon's point about applying the concept of the prudent parent standard to create recommendations for facilities. It would ensure that everyone involved, including the treatment team, the county, and the guardian, has a voice in determining the plan of action and what is considered appropriate for each individual youth based on their unique needs and circumstances. This framework allows for tailored solutions that take into account the specific challenges and requirements of each youth.

Jenna Coleman emphasized that the concept of good faith provides professionals with the opportunity to make decisions based on their expertise and training. Becky emphasized the significance of respecting professional discretion among providers, noting that they undergo extensive training and are held accountable.

Clear Documentation

Jenna emphasized the need for clear documentation to support claims of acting in good faith, cautioning against potential misuse of the concept by bad actors. Accountability measures should accompany any good faith requirement to ensure that claims are supported by evidence and documentation.

Notice to Parents

The conversation highlighted the need for facilities to notify parents or custodians about their hands-off policies. This arose from concerns raised by a provider who mentioned having such a policy without clarity on whether parents were informed. The subcommittee recognized the importance of parents knowing facility policies to ensure they act in the best interest of their youth.

Elizabeth Montoya emphasized the importance of parents being fully informed about facility policies in a way that they can understand and make informed decisions for their children, especially considering the stress and crisis they may be experiencing. She highlighted the need for clear and scenario-based communication from facilities to ensure parents understand how policies will be applied in specific situations, such as when a youth runs away from the facility. Stephanie echoed Elizabeth's point, emphasizing the need for transparency from facilities regarding their internal policies and procedures.

Jenna raised a question about whether there is a requirement for facilities to have safety plans in place, specifically run safety plans for children like Timothy Montoya. She suggested that having such plans could be beneficial, as they would outline specific procedures for the youth, parents, and staff to follow in the event of a youth running from care.

Brandon mentioned that he is unsure if there is a requirement for facilities to have safety plans for every youth, including run plans. He highlighted the importance of clarity and communication regarding facility policies, particularly in situations involving physical intervention and youth running from care. Brandon emphasized that many conflicts arise from mismatched expectations between parents and facilities regarding interventions in situations where a youth has run. He suggested that clarifying facility policies in this regard could help prevent misunderstandings and conflicts.

Kevin shared a real-life example involving his child being placed in a facility where there was a form for parents to consent to physical restraint if necessary. Despite signing the form, Kevin's child was not restrained during a subsequent incident due to a change in the facility's policy, resulting in negative consequences. This example underscores the importance of clear policies and procedures regarding physical restraint in facilities.

Updates from the Intervention Subcommittee

Doris Tolliver provided a recap of the intervention subcommittee's discussions on temporary placements for youth who run from out-of-home care. The subcommittee discussed the purpose of temporary placements and what policies or recommendations should be included to address this issue effectively. In their second meeting, the subcommittee organized a panel discussion to explore the use of emergency sheltering or temporary placements for youth who run from out-of-home care. They sought to understand past and current practices, including responses to situations where youth run away and the availability of long-term placements for these youth. The subcommittee aimed to gather insights from this discussion to inform their recommendations regarding temporary placements for youth who run away.

Beth McNalley reiterated that the focus of the discussion was not just on any youth who had been located after running away, but specifically on high-risk youth or those who chronically run from facilities.

Dennis Desparrois highlighted a crucial financial challenge related to implementing a facility with beds specifically for temporary placements of youth who run away. He explained that providers typically receive a daily rate from counties when they place a youth, but for this type of program to be successful, it would require empty beds available for when a youth is found after running away. However, providers are not paid for empty beds, which makes it financially challenging to sustain such a facility.

Brandon highlighted the operational challenges of maintaining a facility specifically for youth who are prone to running away. He expressed concerns about the difficulty of ensuring adequate staffing ratios and maintaining security, especially considering the nature of the population served.

Criteria for Determining the Appropriateness of Temporary Placement

These criteria, which were discussed by the subcommittee, aim to guide decision-making regarding temporary placements for youth who have run away, ensuring that their safety and well-being are prioritized.

1. Lack of progress in prior placements.
2. Prior placement is no longer an option.
3. Unsuitability of prior placement.
4. Chronic behavior of running away.
5. Disclosure of safety concerns at the prior placement.
6. Previous experience of having been trafficked.
7. Utilizing a multi-disciplinary team approach to understand the youth's needs and plan for both temporary and long-term placement options.

Stephanie asked about the exploration of available options for temporary placements, including kinship placements and facilities such as Urban Peak. She also raised concerns about federal laws that restrict the duration of sheltering for youth and how they relate to this issue.

Doris explained that the subcommittee didn't conduct a comprehensive mapping of all available options for temporary placements. Instead, they discussed how some counties cobble together mechanisms to address immediate placement needs for youth, but there's no statewide approach.

Beth McNalley highlighted concerns about kinship placements potentially becoming harmful if they extend beyond a strictly temporary arrangement. She also noted that foster homes may be reluctant to accept youth labeled as "chronic runaways" due to perceived risks.

Dennis clarified that federal funding restrictions prevent children and youth in the child welfare system from being served in facilities like youth who have run away and homeless youth shelters such as Urban Peak. Urban Peak typically

accommodates youth who have run away and homeless youth but must adhere to federal regulations regarding the use of their beds for child welfare-involved youth.

Michelle Bradley shared a real-life scenario highlighting the challenges of finding immediate placement for a youth who has been kicked out of their facility with no notice. The situation underscores the urgency and complexity of finding suitable placements for such youth, especially when there are limited options available, and the need for collaborative efforts to address these systemic challenges and prevent similar situations in the future.

Dennis emphasized the importance of adequately resourcing facilities to support difficult youth cases. Facilities like Southern Peaks, with sufficient staffing and resources, are better equipped to manage such cases compared to standard residential child care or qualified residential treatment programs (QRTPs), which may struggle due to insufficient staffing levels.

Doris made the distinction that policies and procedures can differ depending on whether youth are placed by parents or are in state custody.

Key Elements and Recommendations

Doris then presented the following key elements and recommendations for temporary placements:

1. *Comprehensive Programming*: Temporary placements should not be mere holding places but should include programming to identify and meet the clinical needs of the youth. This includes continuity in education and service or treatment plans established before the run.
2. *Communication and Collaboration*: There should be effective communication and collaboration across various disciplines and entities involved with the youth to ensure cohesive support.
3. *Intake Assessments*: Upon intake, there should be an assessment to understand the root causes of the youth running away and to inform longer-term placement planning.
4. *Medication Continuity*: Temporary placement facilities should ensure that youth who are on medications continue to receive them in temporary placements, addressing liability concerns.
5. *Removing Disqualifiers*: Temporary placement facilities should eliminate disqualifiers such as a history of running away, which often prevent youth from being placed in temporary placements.
6. *Focus on Stabilization and Planning*: Temporary placement facilities should emphasize stabilization, safety planning, and permanency planning as integral parts of the temporary placement process.

7. *Developmental Considerations*: Temporary placement facilities should take into account the developmental stage and any intellectual or developmental disabilities of the youth.

8. *Systemic Approach and Data Collection*: Temporary placement facilities should address gaps in data to better understand the scope of the issue and inform future planning efforts. They should also embed requirements for data collection and use.

9. *Equity and Cultural Relevance*: Temporary placement systems and policies should ensure that temporary placements meet the culturally relevant needs of youth and that there is consistency in options available for both temporary and longer-term placements.

Input from Pam Treloar, who is not a member of the task force but was in attendance, was invited. Pam raised several points regarding temporary placements for youth:

1. *Insight from Current Providers*: It's crucial to include current residential providers in the workgroup to offer real-time insights into the challenges faced today.

2. *FFPSA Alignment*: The approach should align with the Family First Prevention Services Act (FFPSA), which aims to limit the number of moves and placements for youth.

3. *Impact of Multiple Placements*: Frequent moves can negatively impact youth, especially from a trauma-informed care perspective.

4. *Group Dynamics and Trauma*: Placing multiple youth with a history of running together could exacerbate groupthink and related behaviors. Providers typically manage by mixing different behavior profiles.

5. *Length of Stay Concerns*: Current systems sometimes extend stays due to a lack of available placements, leading to escalated behaviors due to a loss of hope and connection.

6. *Adequacy of 21-Day Interventions*: A 21-day period might be insufficient for addressing chronic running behaviors, which often require a deeper clinical intervention to understand and address underlying causes.

7. *Focus on Root Causes*: More emphasis should be placed on understanding why youth run and how current systems and placements can better support them. Resources should be directed towards addressing the root causes of running behaviors.

8. *Feasibility for Providers*: Operating such a placement might be challenging for providers, considering the complexities and resources needed.

Doris reflected on Pam's points and highlighted additional considerations. For example, without proper placements, youth are often left in offices or motels, underscoring the need for safe, proper placements where clinical work can begin, even if it's just understanding what prompted the youth to run.

Locked Facilities

Becky raised a question about whether the subcommittee had bridged the conversation about locked facilities. Beth and Dennis discussed the complex issue of locked facilities for temporary placements. The subcommittee had discussions about locked facilities, considering legal parameters and the rights of the youth. There were concerns about the legal and ethical implications of such facilities. Legally, the facilities being discussed cannot be locked. Dennis emphasized that if locked gates were allowable, they would be preferred over physical restraints, citing safety concerns. Dennis mentioned that CDHS is building a Psychiatric Residential Treatment Facility (PRTF) at Fort Logan, which will likely have a locked perimeter fence. However, this does not necessarily set a precedent for other providers due to legal ambiguities.

Temporary Placements and Interventions for Youth who Run Away

Some larger trends from the discussions of the intervention subcommittee were then highlighted:

- *Intervention as Prevention*: The subcommittee discussed the dual role of interventions both as a response to incidents of youth running from care and as a preventive measure against future run events and harm. This dual role makes the issue complex, as it intersects with ongoing prevention efforts.
- *Targeted Temporary Placements*: The focus is on creating temporary placements for a specific subset of youth who have run away, particularly those at higher risk, such as those who have been trafficked or frequently run away.
- *Root Cause Analysis*: The subcommittee aims to use temporary placements to begin addressing the root causes of the behavior of running away.

Beth mentioned that having independent living-focused facilities, like the ones Third Way operates, could be beneficial for older youth (16 to 17). These facilities provide apartments and focus on transitioning youth into independent living. However, Beth noted that in her experience, running issues are typically not a concern in these types of facilities.

Doris reflected on a point Stephanie made about the scale of the potential solution for temporary placements, highlighting the need for data collection to better understand the number and specific needs of youth who run away.