



Timothy Montoya Task Force | Meeting 16

April 10, 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.

Roadmap

The first part of the meeting focused on outlining the task force's roadmap and schedule for upcoming activities. On this day, the group separated into two subcommittee groups. The Prevention Subcommittee, led by Trace Faust, will address issues related to restraints and the clarity of Colorado laws. The Intervention Subcommittee, led by Doris Tolliver, will work on temporary replacement policies and procedures.

A survey, designed to gather information from facilities in the state, is expected to be ready to be sent out soon. Becky Miller Updike and Brandon Miller collaborated to develop the survey questions. Two additional meetings were added to the task force's schedule. The first meeting will review the survey results and discuss how to incorporate them into past and future discussions. The second meeting will address the parameters of the task force's enabling statute, specifically considering recommendations for foster homes as well as facilities.

Prevention Subcommittee Discussion

Pre-meeting Survey

Trace shared the results of a survey sent to task force members about the clarity of Colorado law regarding the use of physical restraints in emergency situations. The survey results indicated that there is a lack of clarity about whether Colorado law adequately defines what constitutes an emergency situation warranting the use of physical restraint. The current definition of emergency states that physical restraint is permissible only in cases of a serious, probable, imminent threat of harm to self or others. The survey results show a nearly equal split between those who believe the law provides sufficient clarity and those who do not.

Members were then asked whether Colorado law, as currently drafted, effectively prevents children and youth from running away from out-of-home care. The majority of members

indicated that they believe Colorado law, as it stands, is not effective in preventing children and youth from running away from out-of-home care.

Discussion

Some members highlighted the benefits of the vagueness in the law regarding the use of physical restraints. Some points made include:

- There is a need for clarity on what actions are permissible to prevent children from running away and the liability implications of those actions, for individuals and providers.
- The vagueness in the law allows providers to demonstrate that they acted in good faith when making split-second decisions in emergencies.
- Too much specificity in the law could lead to confusion and interpretation issues among staff members.
- The concept of acting in good faith could provide a level of protection for providers and emphasize the importance of deeper discussions on its meaning.
- There is a need to balance clarity in the law with the flexibility necessary for providers to act in the best interest of children in emergency situations.
- Too much detail could possibly lead to more confusion and potential liability issues.

Jenna Coleman highlighted the complexity of making the law more prescriptive, drawing parallels to statutes related to involuntary psychiatric holds, which use similar language. Interpretations can vary, especially in clinical settings, where decisions about imminent risk may differ based on individual assessments. She emphasized the importance of documentation for providers to demonstrate the rationale behind their actions.

Jenna also mentioned alternative models where risk assessments are documented in advance to determine appropriate actions for different youth. The law itself may not be the problem, but rather the implementation and interpretation of it. If the task force recommends the use of physical restraint for preventing children from running away, it should be explicitly stated in the law.

Stephanie Villafuerte suggested that clarifying what factors contribute to an imminent threat could help determine the urgency of the situation for different age groups and individual circumstances. Considering the present situation rather than past behaviors when assessing imminent risk was stressed.

Dave Hayes acknowledged the room for interpretation in assessing imminent risk, drawing parallels to similar language used in psychiatric and medical contexts, where imminent risk can be interpreted more broadly, allowing for consideration of additional factors beyond the immediate situation. While the interpretation of imminent risk may vary, it doesn't necessarily restrict the assessment process significantly.

The need for standardized training for facility staff on the use of physical restraints was discussed. Additional comments from some members suggested the need for robust training

for facility staff to ensure clarity and consistency in determining when physical restraint is warranted. Some ideas discussed include:

- There is a significant gap between the law and the actual practices in facilities.
- At a minimum, there should be statewide training to provide guidance on what constitutes a restraint, how to perform it properly, and considerations before implementing it.
- Misunderstandings about the law have led to incorrect assumptions about staff's ability to intervene in crisis situations.
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House Bill 24-138, which proposes the creation of a training academy for residential care staff, was highlighted as a potential solution to address the training gap. The task force could recognize and support initiatives like this bill to ensure uniform and effective training for facility staff.

Pre-planning and Early Assessment

- Some task force members believed that having access to comprehensive case files detailing a child's history of running away and any associated risk factors could provide staff with clear guidance in crisis situations.
- Pre-planning and early assessment could not only clarify the use of restraints but also potentially reduce the need for them altogether.
- The subcommittee highlighted the potential benefits of proactive approaches to addressing runaway risk, such as pre-planning and early assessment, in minimizing the need for restraints and ensuring clearer guidance for staff in crisis situations.

Level of Recommendations – Statute v. Regulations

The focus of the task force is on analyzing the clarity and comprehensiveness of existing laws and regulations rather than prescribing specific changes at this stage. A recommendation could focus on acknowledging the need for clarity and identifying the next steps to achieve it without necessarily specifying that the clarity must be achieved through changes to the law. This approach would allow for flexibility and leave room for interpretation and implementation through regulations and policies.

Professional discretion, or "good faith," emerged as a strong recommendation to support providers. There was consensus on the importance of gathering more information, possibly through interviews with experts from other states like Wyoming, as well as input from providers and regulators within the state. The possibility of scheduling another meeting to delve deeper into these issues and gather additional insights was also discussed. Becky will be at a conference with providers the first week of May and will bring additional information to the group from discussions with attendees.

Stephanie highlighted a perceived gap between the law and the interpretation or application of regulations surrounding restraints on children. Often there is a belief that the state department prohibits any physical contact with children, despite the law indicating otherwise. This discrepancy leads to confusion and varying interpretations among regulators and

providers. Training could help bridge this gap by providing clear guidance on the law's interpretation and implementation.

The discussion highlighted the need to revisit and clarify the perspectives of the Colorado Department of Human Services (CDHS) provider licensing unit regarding the interpretation and application of regulations surrounding restraints on children. It was suggested that Dennis Desparrois, who is a task force member and is closely involved in this work, could provide a more focused presentation on the current stance and training procedures of the licensing and monitoring team to clarify how regulators are trained and evaluated in their roles.

Additional points raised during the discussion include:

- There is a potential for misuse or abuse of a good faith clause in situations where staff may prioritize avoiding liability over ensuring the safety and well-being of the youth.
- Prevalent lawsuit culture and the tendency to second-guess decisions made in the heat of the moment may complicate efforts.
- A more detailed approach or consideration of liability implications may be necessary to address these concerns effectively.
- Defining the scope and parameters of a good faith exception would be necessary to move forward.
- These considerations could be incorporated into the regulatory framework, where staff members acting in good faith would be considered during licensing determinations.
- The need for documentation and regulatory discretion in evaluating facility compliance was also discussed, taking into account staff actions in accordance with the law.

The focus remains on analyzing the clarity and comprehensiveness of existing laws and regulations rather than prescribing specific changes at this stage. Jordan Steffen suggested a recommendation that both clarifies the law and provides discretion for regulations, ensuring clarity while allowing flexibility in implementation. This approach aims to address concerns while providing support and accountability for staff.

Wyoming Example

Trace highlighted the policies from Wyoming regarding physical restraints and asked task force members about potential implications for Colorado. Wyoming's approach provides clarity on the degree of restraint and situations where restraint should not be used, without being overly prescriptive. Key aspects of Wyoming's policies include the purpose of physical restraint, the requirement to release the child once they regain control, restrictions on restraint use for children with documented health conditions and a training requirement.

Additional points discussed:

- Adding language about acting in good faith could provide additional support to providers without prescribing specific actions.

- There is an interest in exploring language that emphasizes a continuum of care and prompt release of children from restraints once they regain control.
- Subcommittee members also considered documented physical or mental health conditions.
- There is a need for clarity in defining imminent risk and the circumstances under which physical restraint is appropriate.
- There was an interest in incorporating language that allows for individualized assessments based on factors like age, medical condition, and psychological well-being.
- The merits of interpreting the law based on the current situation rather than solely relying on past behaviors were discussed.
- Task force members also discussed the benefits of assessing imminent risk in the present moment and ensuring reasonable belief in harm before applying physical restraint.

Intervention Subcommittee Discussion

Pre-meeting Survey

The subcommittee meeting began with a review of survey results and research conducted by the Office of the Child Protection Ombudsman to inform the conversation. Research on special investigative staff programs in other states, particularly in Texas and Vermont, were highlighted as potential starting points for discussion.

Most respondents were in favor of the survey question which asked if respondents supported developing recommendations on temporary placement for youth who have run from out-of-home care. Today's discussion concentrated on two questions: (1) The goals for temporary placements; and (2) The elements to include or exclude from policy recommendations based on respondents' narrative responses.

Based on the feedback from the survey responses, there was a range of concrete potential elements identified for temporary placement. These included:

- Providing a caring and secure environment where staff can connect with youth.
- Collecting post-run data.
- Allowing youth to decompress before returning to programming.
- Providing supervision and care tailored to the individual circumstances and vulnerabilities of each youth.
- Ensuring staff training includes topics such as motivational interviewing, crisis response, human trafficking awareness, trauma response, and care for high-risk youth.
- Incorporating built-in support for other service providers, akin to shelters, allowing for extended stays beyond 48 hours.
- Considering risk factors, law enforcement input, and advocacy input in decision-making processes.

These elements highlight the importance of tailored interventions, comprehensive staff training and collaboration with relevant stakeholders. The elements to be avoided, as highlighted in the survey responses, include:

- Using a law enforcement facility as a temporary placement, reflecting concerns raised in prior discussions about avoiding a law enforcement approach.
- Failing to prioritize input from youth about their preferences, which could increase the risk of them running away again.
- Assuming that family placement is always the best option, as it could potentially trigger danger or endangerment.
- Ensuring that financial constraints or other external factors do not interfere with providing necessary programming and support.

These points underscore the importance of prioritizing youth input, avoiding approaches perceived as punitive or restrictive, and ensuring transparent communication about decision-making processes. Doris Tolliver emphasized the need for bold and open-minded brainstorming to overcome potential barriers to progress.

Discussion

Kevin Lash highlighted the complex intersection between youth in out-of-home care and the criminal justice system. He proposed that 70% of youth in such facilities also have criminal justice issues, indicating that decisions regarding temporary placement may sometimes involve magistrates or probation officers.

Jenelle Goodrich expanded on Kevin's point regarding the decision-making process for holding youth in law enforcement facilities versus alternatives like juvenile assessment centers. She acknowledged the complexity of these decisions, particularly when dealing with out-of-state runaways and high-risk factors such as human trafficking. Holding youth in detention is often a safety measure rather than a punitive action. The priority should be to ensure the safety of youth.

Beth McNalley provided clarification on the legal framework surrounding temporary placement for youth who run away, particularly those from out of state. While there are protocols for holding youth for transport purposes, placing them in out-of-home care becomes more complex, especially regarding human trafficking concerns. Youth who are not already involved in the justice system would not be placed in detention as the only available option.

Doris underscored the diversity of cases and the need for creativity on the part of caseworkers in finding suitable placements for youth who run away. While kinship placements may seem ideal, they can sometimes be harmful, as in cases involving domestic violence. Additionally, facilities that provide temporary placement have very few beds. Facilities like Urban Peak and The Source in Boulder, which can provide temporary shelter for youth for up to 21 days, cannot serve children and youth in the child welfare system.

Dennis explained that federal funding regulations prohibit these shelters from accepting youth who are involved in the child welfare system because they are the responsibility of the county or state agency that has custody of them.

Lynette Overmeyer highlighted the extreme difficulty in finding placements for youth who have run away, emphasizing the lack of suitable options available. She highlighted the need for specialized receiving homes or temporary shelters, similar to ones that used to exist in Colorado but were discontinued. She is concerned by the current situation where runaway youth are staying in department lobbies or motel rooms. Her comments underscored the urgent need for improved resources and support for runaway youth in finding appropriate placements.

Norma Aguilar-Dave provided insight into Shiloh House, which offers four temporary beds for youth in crisis. She stressed the importance of being intentional and defining exactly what is needed from these temporary beds. The program was initiated to address the challenges faced by delinquent children who were not successful in placement settings. Norma cautioned against simply seeking temporary placements without considering the specific needs of each child, as this could result in the same ineffective outcomes seen with traditional placement options.

Goals for Temporary Placement

The subcommittee then discussed potential goals for temporary placement. Goals discussed included:

- A need to address the root causes of why children run from care.
- The importance of understanding the underlying issues and collaborating to develop effective solutions to address them.
- There is a desire to tailor interventions accordingly.
- Trust and rapport can be built with youth in order to address their needs effectively.
- The subcommittee will be better off focusing on the goals and solutions before worrying about funding.
- Some members expressed an interest in partnering with community organizations to provide additional resources and support for youth in temporary placements.
- A need was highlighted for providing a safe space for youth who are located after running away.
- There was value recognized in conducting comprehensive assessments to understand the reasons behind a youth's actions and to evaluate potential harm or trauma experienced during their absence.
- Personnel will need to develop intervention plans tailored to each individual's needs to prevent future runaway incidents.

Members expressed some concerns about relying on temporary placements. For example, could the same goals be achieved with the original provider? The identified objectives, such as ensuring safety, assessing for trauma, and addressing root causes, could be

accomplished within the existing provider system. If a child moves to a temporary placement, their bed at the original facility will be immediately filled, potentially leaving them stuck in the temporary placement. Additionally, clustering multiple runaway youth in one facility could exacerbate the problem.

Others believe that temporary placements are still preferable to the alternatives. Elizabeth Montoya proposed flexible policies and protocols that don't strictly mandate temporary placements for all runaway youth. Instead, she valued having options that include returning to the original placement or exploring other suitable placements based on individual circumstances. Kevin Lash emphasized the need for adequate security measures in temporary facilities to prevent additional runaway incidents from occurring.

Norma emphasized the need for small-scale temporary placements. Every moment spent with a child in such a facility must be purposeful, geared towards learning more about them, building discharge plans, and facilitating transitions. Norma highlighted the importance of engaging with the children and involving them in the process, ensuring that they understand the purpose of their stay and actively participate in planning for their future. Temporary placements should not merely serve as a place to stay but rather as an opportunity for children to contribute to shaping their own paths forward.

Criteria for Determining Whether Youth Should be Placed in a Temporary Facility

The subcommittee then turned to discussing what criteria should be in place when determining if it is appropriate to place youth in a temporary facility. Considerations included:

- The importance of assessing a youth's progress in their current placement, their engagement in trauma work, and their history of chronic running away.
- The need for a more holistic approach, considering various factors such as the youth's behavior, progress, and feedback from case workers and supervisors.
- The decision-making process should consider whether a temporary placement for assessment and intervention may be necessary to ensure a youth's safety and well-being.
- One member stated that it is crucial to listen to the youth and consider their individual needs and circumstances in making this determination.
- The subcommittee discussed that, if the original placement is not equipped to address the specific needs of a youth who may have experienced trafficking, then a temporary placement might be necessary to ensure the youth's safety and provide appropriate support and services.
- Members also reflected on the importance of having expertise in working with trafficked youth in temporary placement facilities.

Janelle Goodrich emphasized the need to address the gap in placements for high-risk youth, particularly those who chronically run away from care, who face challenges finding foster homes willing to accept them due to their history. She suggested establishing therapeutic foster homes specifically tailored to this population, where they can receive temporary support and holistic care. She envisions these homes as part of a step-down approach, providing stability and support while preparing youth for their next goals.

Dennis suggested that the model used by CDHS for contracted beds could be applied to address the need for placements for high-risk youth. He explained that CDHS contracts with providers, guarantees payment, and determines who fills the beds, which has been successful in other contexts. This approach could potentially be adapted to create successful placements for high-risk youth without necessarily requiring them to enter foster care.

Lynette highlighted the challenges faced by older youth who abscond from placements, often because they have struggled in family foster homes and residential treatment. Regulations prevent them from accessing these options once they turn 18. She mentioned a program at Third Way that operates like an independent living program with apartments and has had success in reducing incidents of youth running from care. These considerations broaden the discussion beyond temporary placement to encompass the entire continuum of options for youth who run away.

Length of Stay

The length of time a youth would stay in a temporary placement was an important question for the subcommittee. Discussions of this topic included the following:

- Some suggested considering a time limit or parameter for the temporary placement to prevent it from becoming longer-term than intended due to a lack of placement options.
- A member stated that, while caps are important, there should be provisions for extensions with oversight to ensure that efforts are being made to transition the youth to a different level of care.
- The current appeals process, where the county submits an appeal to CDHS for a length of stay exceeding 21 days, could also apply to these placements.

Oversight and Other Considerations

Next, the subcommittee took on the topics of oversight, size, and continuity of care considerations.

- Subcommittee members discussed an appeals process for placements exceeding 21 days.
- Some suggested that these placements should be licensed, giving CDHS authority over the provider.
- The group agreed to include funding as part of CDHS's role in establishing and funding a network of providers to serve these youth.
- The subcommittee considered facilities on the smaller side, with a four to five bed capacity.
- Regional placement was suggested as an angle to pursue.
- Members voiced concern that temporary placement facilities be able to maintain the same services that were provided in the previous facility for youth.

- A need was acknowledged for service providers to have at least one with training in working with trafficked youth.
- Some expressed concern about if a youth was receiving substance use treatment or therapy before running away and then entering the temporary placement, there could be delays or gaps in receiving those services again.
- Efforts must be made to minimize service disruptions.
- Some identified a shortage of substance abuse treatment providers for adolescents, particularly on the Western Slope, emphasizing the challenge of finding seamless care transitions when a youth leaves a facility providing such services.

Public Comment

Steve Fisher, a civil engineer and board member of the Federation of Families for Children's Mental Health Colorado chapter, addressed the task force. He expressed his interest in the task force due to his proximity to Tension Center and his observations of hundreds of runs and rescues in the area since 1995.

He questioned the effectiveness of studying, responding to, and mitigating these issues using methods similar to those employed in the past, suggesting that thousands of practitioners, parents, and stakeholders have grappled with similar problems nationwide for decades.

Fisher emphasized the expectation that licensed institutional residential care facilities should keep children safe, possibly even safer than at home. However, he argued that laws and regulations do not allocate enough responsibility and liability to these institutions. He criticized the lack of sufficient vetting or licensing requirements for staff working at these facilities, despite their significant role in child care. Comparing the situation to other licensed professions like nursing, physical therapy, and engineering, he asserted that residential care facilities lack similar mechanisms for compelling compliance and accountability when things go wrong.

Fisher mentioned a justification often used by residential facilities for acts of omission, stating, "We are not responsible." He called for increased accountability and liability for residential care facilities to ensure the safety and well-being of children in their care.