



**The Timothy Montoya Task Force To Prevent Children From
Running Away From Out-Of-Home Placement | Meeting 16**

Prevention Subcommittee

Members: See Appendix A

<p>Prevention Subcommittee</p>	<ul style="list-style-type: none"> ● Trace Faust welcomed the subcommittee. They read the directive, the question of the day as well as the current definition regarding use of restraint to prevent youth from running from out of home care. ● They displayed the survey results and additional comments from the survey. They gave time for subcommittee members to review. They said that they noticed that everyone agrees that the law is vague; the question is if it should be vague or not. They displayed the survey results and additional comments for the next question. They provided time for subcommittee members to review. They displayed the survey results and the additional comments for the final questions. They explained that there was a specific request in the comments to make the statute less vague. They provided the link to the slides for future reference. <ul style="list-style-type: none"> ○ Slides ● Trace explained that the directive is to analyze the topics. They opened up the conversation about vagueness. ● Becky Miller Updike said that the tricky word is ‘imminent’ in relation to imminent risk or imminent danger. There is a difference in the definition depending on the situation. Trace asked if this means that the definition is too vague. Becky said yes. Trace asked if this causes people to not act or people to get in trouble for acting. Becky said yes to everything. Trace asked if the request is to make the law more clear or to create and implement better training. Becky said yes to both; she also mentioned a parent perspective about parents wanting their children to be stopped from running. ● David Lee said that he is thinking about liability. All of the words need to be defined since the interpretation can be different for everyone. ● Jenna Coleman said that, working in foster care, she likes the vagueness. They use volume 7. When things happen, they can share the steps that they took and show that they acted in good faith. She asked if a good faith protection could be provided. She worries about getting too specific; specificity is not always in volume 7 which allows them to show they acted in good faith. Becky agreed and said that she likes the conversation about good faith and exploring what that means. ● Dr. Renee Marquardt said that this is a tough question. Laws about involuntary psychiatric holds and medical interventions have similar language since it is so hard to make it prescriptive, so that would be a tough way to go. Many aspects are open to interpretation. Someone might say they are not suicidal but there is a whole body of knowledge that suggests this person is at risk. Her department interprets and enforces these situations. This is where the wiggle room is, training on both sides. There are different providers who had different experience with licensing and regulatory agencies who had different takeaways. On the provider side, there is also documentation to demonstrate the “why” for things if one is worried about consequences. Some
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sites have documentation ahead of time based on a child's assessment so regardless of the situation. This setup sometimes prompts an emergency response when a child tries to run due to an order in the books; hands can go on earlier. The benefit of this system is it allows one to do the thinking and planning ahead of time. The law is not where the problem is; changes to how it's acted upon would come elsewhere.

- David Lee said that if the task force is going to recommend the use of force, this should be added into the law. He reads the statute as a child running away is not an emergency. Some runs do not mean serious threat to bodily harm which means the run is not an emergency by this definition. Trace asked about different clarifications around aspects that would make a run dangerous. They mentioned risk factors associated with a run. David said that when he reads the definition, it means the here and now rather than any past considerations. Renee said that is a way to interpret it and that can be how the culture reads it. It's similar to the use of an emergency mental health M1 hold; people can be at imminent risk even if at the moment they are not doing anything. She brings this up as a similar concept that defines imminent much more broadly.
- Stephanie Villafuerte said that she agrees with so much said. She agrees that there will never be a perfect answer. She knows there is a huge gulf between the law and how facilities perceive the law. In conversations with the Colorado Association of Family and Children's Agencies (CAFCA), there is a massive gap. At a minimum, there should be an argument for a standard statewide training about restraints and how to perform them as well as considerations around restraints. Some staff could be mistaken about what the law says. Training can be an unsatisfying solution but she mentioned HB 24- 1038 about creating training for staff. It is a Colorado Department of Human Services (CDHS) bill. This can be an area to consider since there could be a training academy for staff to be trained uniformly. She also brought up Sgt. Cotter's comments about pre-planning and guidance in advance based on an assessment so staff know when to restrain. Becky said that she agrees. Stephanie also said that she reviewed Wyoming's policy. She read the policy. She thought it was interesting and there is room for further discussion.
- Trace asked from other subcommittee members if these examples would be helpful to get more clear while exploring training. Stephanie also said that a good faith protection is not in the law currently. This could be explored since it gives providers support but won't dictate the actions taken. Trace said this can be added into considerations for discussion.
- Renee said that another place to put clarification is in policy and rule; this can be a better choice.
- Jenna Coleman said she likes the parts of WY's law as an aspect of a continuum of care. She likes the idea of being hands off when a child regains control. This is to avoid long term holds.
- Trace moved the subcommittee to notecatchers to start to identify themes.
- Trace brought the subcommittee back and asked Stephanie and Renee about recommendations not being in the law but in policy and regulation. Stephanie said that the law is the law; it's binding and easy to access. Regulations and rules are guidelines. Practice concerns are addressed in regulations and



rules. She can argue a preference either way since people do not always turn to reg plus it is non-binding. She personally tends to like things being in law. The question is, 'should the law reflect anything additional upfront where the prominence can be recognized'. The regs and rules still are approved by many people and by state boards but there is a prominence included in laws. Renee said that there are pros and cons to them all; there are different avenues. Holds are more at the policy level which has pros and cons. Trace asked Becky for the provider point of view. Becky said that she is wrestling too, she leans to law for the sake of clarity. She likes the binding aspects if it works in their favor. She wants to give professional discretion to providers; the way they are monitored doesn't always feel that way. Trace said that the policy regulation side can address nuance; perhaps it is both. There can be clarity in the law and that then moved to regs. Becky said that she likes clarity in the law. Stephanie said that a good faith exception would be a new concept that can go into law. Regulations interpret the law. It is all very muddy but generally anything that is new is a law and anything that interprets that is a regulation.

- Renee said that she would be interested to hear from Wyoming regulators and providers. She would also be interested to hear from states similar to Colorado. This subcommittee might not be able to come to a fully informed recommendation about the best avenue. Trace said that the directive is an analysis. There are things to coalesce around rather than providing specific recommendation language.
- Jordan Steffen said that the directive is more at a high level; the subcommittee is farther along that it might seem. There might not be a need to go to a detailed level. Renee said that there seems to be a problem with the whole process so there needs to be clarity and a next step without including specifics. Trace asked for people's thoughts on this as well as the good faith exception.
- Stephanie said Trace and Jordan interpreted the directive correctly. She wants to be cautious around a high level recommendation to avoid it being acted on. She likes to provide examples. It would be helpful to understand other states like Wyoming to inform the recommendations. It's not recommending anything but providing examples for law makers. Trace asked if Bryan Kelley can do an interview with folks and then have people respond via survey. Jordan said that she can follow up with Bryan about this. She said it might be easier to make a meeting with just this subcommittee and Wyoming. They could also try to schedule another meeting about all of the states considered. Stephanie said that she is amenable to another meeting since this is a long standing issue. Becky said that she is meeting with other states' CAFCA equivalent and she would love another meeting. Jordan asked if there could be guest speakers of providers to give feedback. Becky said yes. Stephanie said that getting regulators in on the conversation could also be helpful. She referenced a gap. Trace asked what she meant by a gap. Stephanie said that there is a folklore that someone can never touch a child since children have rights. However, the law says that is not true. There are different interpretations among regulators. No one has clarified this. Trace



said that there is an opportunity here about an additional recommendation that the law made is clear but there is a gap so this lends to the training issue.

- Renee asked if this task force has invited the CDHS licensing group to speak. Jordan said yes. It has been a year since the presentation. It could be good to refresh. Renee said that the presentation did not go into great detail and it could be great to narrow in on where exactly the gap is. Jordan asked if this is something to coordinate on to organize. Renee said that Dennis is a more direct avenue. Jordan said that works. Becky said that it would be important to know how the licensing team is training. Renee said this makes sense. Trace said that it sounds like there are opportunities to have a conversation.
- Trace moved the conversation to the good faith concept. David said that he agrees with it. In a common sense world, he gets it. He thinks that there are a lot of people in the residential world that are lawsuit happy. Staff have to make quick decisions and reviewers have time to think about it. There are some providers that would rather let the youth run away than putting hands on them and having something happen; there is more risk and liability there. This needs to be spelled out more in detail or reduce the liability. Becky said that staff are instructed to back off when in doubt. Trace asked if a good faith concept would be a welcomed support. David said it would be helpful but not 100%.
- Stephanie said that typically good faith exceptions include a what or an avoided consequence. These situations would not have no liability as an outcome. So, maybe this is a part of a regulatory framework. Licenses matter to people so this could come into play in regulation instead. Trace said that there were a lot of head nods. Jenna said that this makes a lot of sense. The good faith exception gives the ability to give support to staff and to trust them; most staff do not like to put hands on kids and they are acting in good faith. The policy part can be a root cause analysis to see if the staff followed protocol to still keep staff accountable. Another part can be hands off when a child regains control. Accountability is important and so is clear documentation to ensure least restrictive care.
- Trace asked for more comments. Jordan said that there is flexibility. Trace asked Renee if this is helpful. Renee said that she is agnostic to where things should go, it could work in multiple ways. Finding out exactly where the gap is and addressing it could help. She said she is not informed enough about the good faith concept but this subcommittee is clearly knowledgeable. Trace thanked her.
- David chatted about solutions that are both black and white; there is not always a clear translation. He said that sometimes people find it hard to be in the gray area. Becky said that the example of putting a hand on a child versus bringing them to the ground is a good example and she would love to have a conversation about this with many stakeholders.
- Trace moved the subcommittee to planning the subsequent meetings and the corresponding materials.

Appendix A:
Becky Miller Updike
Chelsea Hill



POLICY COLLABORATIVE
FOR CHILDREN
& FAMILIES



KEYSTONE
POLICY CENTER

David Lee
Jenna Coleman
Kelly Abbott
Kevin Lash
Lynette Overmeyer
Dr. Renee Marguardt
Stephanie Villafuerte
Trace Faust