

CHAPTER 269

CHILDREN AND DOMESTIC MATTERS

SENATE BILL 93-134

BY SENATORS Rizzuto, Bishop, Johnson, Mendez, and L. Powers;
also REPRESENTATIVES Grampas, Greenwood, Hagedorn, and Lawrence.

AN ACT**CONCERNING THE SUPERVISION OF JUVENILES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 19-1-107 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-1-107. Social study and other reports. (3) In any case where placement out of the home is recommended, the social study required by subsection (1) of this section shall include an evaluation for placement containing the information required by section 19-3-701 (5). Placement criteria shall be developed jointly by the department of education, the department of social services, and the department of institutions, ~~to~~ AND, IN THE CASE OF MATTERS INVOLVING JUVENILE DELINQUENCY, IN ACCORDANCE WITH THE CRITERIA FOR THE PLACEMENT OF JUVENILES SPECIFIED IN SECTION 19-2-1602 (1) (a). SUCH CRITERIA SHALL be used by the probation department or agency designated by the court to determine its recommendation about the need for placement.

SECTION 2. 19-1-115 (4) (d), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-1-115. Legal custody - guardianship - placement out of the home. (4) (d) A decree vesting legal custody of a child or providing for placement of a child with an agency in which public moneys are expended shall be accompanied by an order of the court which obligates the parent of the child to pay a fee, based on the parent's ability to pay, to cover the costs of the guardian ad litem and of providing for residential care of the child. When custody of the child is given to the county

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

department of social services, such fee for residential care shall be in accordance with the fee requirements as provided by rule of the department of social services, and such fee shall apply, to the extent unpaid, to the entire period of placement. WHEN A CHILD IS COMMITTED TO THE DEPARTMENT OF INSTITUTIONS, SUCH FEE FOR CARE AND TREATMENT SHALL BE IN ACCORDANCE WITH THE FEE REQUIREMENTS AS PROVIDED BY RULE OF THE DEPARTMENT OF INSTITUTIONS, AND SUCH FEE SHALL APPLY, TO THE EXTENT UNPAID, TO THE ENTIRE PERIOD OF PLACEMENT.

SECTION 3. 19-1-119 (1) (a), (1) (b), and (2) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

19-1-119. Confidentiality of juvenile records - delinquency. (1) (a) Except as provided in paragraph (b.5) of this subsection (1), court records in juvenile delinquency proceedings or proceedings concerning a juvenile charged with the violation of any municipal ordinance except a traffic ordinance shall be open to inspection to the following persons without court order:

- (I) The juvenile named in said record;
- (II) The juvenile's parent, guardian, or legal custodian;
- (III) Any attorney of record;
- (IV) The juvenile's guardian ad litem;
- (V) The juvenile probation department;
- (VI) Any agency to which legal custody of the juvenile has been transferred; ~~or~~
- (VII) Any ~~local~~ law enforcement agency IN THE STATE; OR
- (VIII) ANY PERSON OR AGENCY FOR RESEARCH PURPOSES, IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) THE PERSON OR AGENCY CONDUCTING SUCH RESEARCH IS EMPLOYED BY THE STATE OF COLORADO OR IS UNDER CONTRACT WITH THE STATE OF COLORADO AND IS AUTHORIZED BY THE DEPARTMENT OF INSTITUTIONS TO CONDUCT SUCH RESEARCH; AND

(B) THE PERSON OR AGENCY CONDUCTING THE RESEARCH ENSURES THAT ALL DOCUMENTS CONTAINING IDENTIFYING INFORMATION ARE MAINTAINED IN SECURE LOCATIONS AND ACCESS TO SUCH DOCUMENTS BY UNAUTHORIZED PERSONS IS PROHIBITED; THAT NO IDENTIFYING INFORMATION IS INCLUDED IN DOCUMENTS GENERATED FROM THE RESEARCH CONDUCTED; AND THAT ALL IDENTIFYING INFORMATION IS DELETED FROM DOCUMENTS USED IN THE RESEARCH WHEN THE RESEARCH IS COMPLETED.

(b) With consent of the court, records of court proceedings in delinquency cases may be inspected by any other person having a legitimate interest in the proceedings. ~~and by persons conducting pertinent research studies.~~

(2) (a) The records of law enforcement officers concerning juveniles, including identifying information, shall be identified as juvenile records and shall not be inspected by or disclosed to the public, except:

(I) To the juvenile and ~~his~~ THE JUVENILE'S parent, guardian, or legal custodian;

(II) To other law enforcement agencies who have a legitimate need for such information;

(III) To the victim in each case after authorization by the district attorney or prosecuting attorney;

(IV) When the juvenile has escaped from an institution to which ~~he~~ SUCH JUVENILE has been committed;

(V) When the court orders that the juvenile be tried as an adult criminal;

(VI) When there has been an adult criminal conviction and a presentence investigation has been ordered by the court; ~~or~~

(VII) By order of the court; OR

(VIII) TO ANY PERSON OR AGENCY FOR RESEARCH PURPOSES, IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) THE PERSON OR AGENCY CONDUCTING SUCH RESEARCH IS EMPLOYED BY THE STATE OF COLORADO OR IS UNDER CONTRACT WITH THE STATE OF COLORADO AND IS AUTHORIZED BY THE DEPARTMENT OF INSTITUTIONS TO CONDUCT SUCH RESEARCH; AND

(B) THE PERSON OR AGENCY CONDUCTING THE RESEARCH ENSURES THAT ALL DOCUMENTS CONTAINING IDENTIFYING INFORMATION ARE MAINTAINED IN SECURE LOCATIONS AND ACCESS TO SUCH DOCUMENTS BY UNAUTHORIZED PERSONS IS PROHIBITED; THAT NO IDENTIFYING INFORMATION IS INCLUDED IN DOCUMENTS GENERATED FROM THE RESEARCH CONDUCTED; AND THAT ALL IDENTIFYING INFORMATION IS DELETED FROM DOCUMENTS USED IN THE RESEARCH WHEN THE RESEARCH IS COMPLETED.

SECTION 4. 19-2-204 (3) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-2-204. Detention and shelter - hearing - time limits - confinement with adult offenders - restrictions. (3) (c) No juvenile taken to a detention or shelter facility or a temporary holding facility pursuant to section 19-2-201 as the result of an allegedly delinquent act which constitutes a felony WHICH IS A CRIME OF VIOLENCE AS DEFINED IN SECTION 16-11-309 (2), C.R.S., shall be released from such facility if a law enforcement agency has requested that a detention hearing be held to determine whether the juvenile's immediate welfare or the protection of the community requires that ~~he~~ THE JUVENILE be detained. No such juvenile shall thereafter be released from detention except after a hearing, reasonable advance notice of which has been given to the district attorney, alleging new circumstances concerning the further detention

of the juvenile. No juvenile being held when the juvenile is to be tried as an adult for criminal proceedings pursuant to a direct filing or transfer shall be held at any facility intended to be utilized by juvenile offenders, unless the district attorney and the defense counsel agree otherwise. Said juvenile shall be segregated from the adult offenders of the facility in which he SUCH JUVENILE is held.

SECTION 5. 19-2-211, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

19-2-211. Common assessment instrument and common criteria for juveniles taken into temporary custody. ~~(1) The department of institutions, the judicial department, the department of social services, including representatives of the directors of county departments of social services, the department of education, representatives of district attorneys, sheriffs from each congressional district, and two representatives of communities, who shall be appointed by the governor, shall develop a common assessment instrument to evaluate and assess juveniles taken into temporary custody in a uniform and consistent manner and shall also develop common criteria and guidelines which shall be used to determine whether placement or release of a juvenile is appropriate based on the juvenile's assessment and, if a juvenile is not released, to determine the appropriate level and type of placement for a juvenile based on his assessment. The common criteria and guidelines shall be designed to consider such factors as whether the juvenile is a danger to himself or to others and whether the juvenile constitutes a risk of escape and shall be used to determine what kind of security is appropriate for the particular juvenile, including the use of the least restrictive setting, whenever appropriate. Any variations from the common criteria and guidelines shall be approved by the court.~~

~~(2) The development and application of the assessment instrument and the common criteria and guidelines, insofar as possible, shall be free of any bias with regard to race, creed, sex, or color.~~

~~(3) The assessment instrument and common criteria and guidelines shall be finalized by and implemented on and after July 1, 1989.~~

~~(4) These guidelines shall not apply to juveniles ordered confined pursuant to section 13-10-113, C.R.S.~~

SECTION 6. 19-2-212, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

19-2-212. Staff assessment required - development of common criteria. ~~(1) A staff assessment concerning the appropriate placement and treatment of a juvenile pending adjudication is required to be conducted for any juvenile taken into temporary custody who is being detained and for whom transfer of temporary legal custody is being considered or who is in a nonsecure residential facility. Such staff assessment shall be performed jointly by the department of institutions and the county department of social services for the purpose of determining the appropriate level of care of the juvenile pending court disposition. When necessary, the staff assessment shall also include other relevant agencies, including but not limited to the probation department, the local school districts, and the appropriate mental health professionals if it appears that the juvenile may be in need of mental health services or the nearest~~

community centered board if it appears that the juvenile may be developmentally disabled. The department with temporary legal custody of the juvenile shall notify relevant agencies of such staff assessments. The staff assessment shall be conducted no later than twelve days from the time the juvenile is taken into temporary custody.

~~(2) The staff assessment shall be based on common criteria and guidelines developed jointly by the department of institutions, the department of social services, including representatives of the directors of county departments of social services, the judicial department, the department of education, representatives of district attorneys, sheriffs from each congressional district, and two representatives of communities, who shall be appointed by the governor. The assessment criteria shall be implemented on and after July 1, 1989. Before being implemented, the assessment criteria shall be approved by the department of institutions, department of social services, and judicial department. The assessment criteria shall be examined and reevaluated at least every two years. The criteria shall be designed to consider such factors as those considered pursuant to section 19-2-211 as well as the best interests of the child and the least restrictive setting appropriate for the particular juvenile. The assessment criteria shall not preclude maintaining the placement of a juvenile in the original placement if such placement is deemed appropriate for his needs.~~

~~(3) Any deviations from the staff assessment or the common criteria and guidelines shall be approved by the court.~~

SECTION 7. 19-2-703 (1) (j), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-2-703. Juvenile delinquent - sentencing - disposition - restitution - parental liability. (1) (j) The court, FOLLOWING THE CRITERIA FOR OUT-OF-HOME PLACEMENT ESTABLISHED PURSUANT TO SECTION 19-2-1602, may place legal custody in the county department of social services or a child placement agency for placement in a family care home or A child care facility CENTER. ~~or it may place the juvenile in a child care center.~~

SECTION 8. The introductory portion to 19-2-801 (2) and 19-2-801 (2) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

19-2-801. Mandatory sentence offender. (2) The court shall place or commit a mandatory sentence offender out of the home for not less than one year, UNLESS THE COURT FINDS THAT AN ALTERNATIVE SENTENCE OR A COMMITMENT OF LESS THAN ONE YEAR OUT OF THE HOME WOULD BE MORE APPROPRIATE; except that:

(a) If the person is eighteen years of age or older on the date of the sentencing hearing, the court may sentence that person to the county jail or to a community correctional facility or program for a period not to exceed two years, if ~~he~~ SUCH PERSON has been adjudicated a mandatory sentence offender pursuant to this article for acts committed prior to ~~his~~ SUCH PERSON'S eighteenth birthday; or

SECTION 9. 19-2-1110 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-2-1110. Contracts and agreements with public and private agencies.

(1) The executive director of the department of institutions ~~may~~ SHALL, SUBJECT TO AVAILABLE APPROPRIATIONS, enter into agreements or contracts DEEMED NECESSARY AND APPROPRIATE with any governmental unit or agency or private facility or provider cooperating or willing to cooperate in a program to carry out the purposes of this part 11. Such contracts or agreements may provide, among other things, for the type of work to be performed at a camp or other facility, for the rate of payment for such work, and for other matters relating to the care and treatment of juveniles.

SECTION 10. 19-2-1602, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-2-1602. Development of criteria for placement of juvenile offenders.

(1) The executive director of the department of institutions, the executive director of the department of social services, and the state court administrator of the judicial department, or any designees of such persons, in consultation with the division of criminal justice of the department of public safety, the office of state planning and budgeting, the Colorado district attorneys council, law enforcement representatives, representatives of local and county governments, and the criminal justice commission and any subcommittee of such commission relating to juvenile issues, shall form a working group which shall carry out the following duties:

(a) The working group established pursuant to this subsection (1) shall ~~propose~~ ESTABLISH a set of criteria FOR BOTH DETENTION AND COMMITMENT determining which juvenile offenders are appropriate for placement in the physical custody of the department of institutions or in the custody of the department of social services. This set of criteria, when adopted by the department of institutions, the department of social services, and the judicial department, shall be used to promote a more uniform system of determining which juveniles should be placed in the physical custody of the department of institutions or in the custody of the department of social services so that decisions for such placement of a juvenile are made based upon a uniform set of criteria throughout the state. In developing such set of criteria, the working group shall utilize any existing risk scale devised by the ~~division of youth services~~ DEPARTMENT OF INSTITUTIONS or any other measures to determine when it is appropriate to place a juvenile in the physical custody of the department of institutions or in the custody of the department of social services. ~~The uniform set of criteria shall be developed and approved by the department of institutions, the department of social services, and the judicial department on or before July 1, 1992, and submitted to the criminal justice commission for analysis and evaluation. The criminal justice commission shall make a written report to the general assembly regarding analysis and evaluation of such criteria on or before December 31, 1992. Such report may contain any recommendations by the criminal justice commission regarding such criteria.~~

(b) The working group established pursuant to this subsection (1) shall ~~propose~~ ESTABLISH a formula for the purpose of allocating funds ~~to~~ BY each ~~county or city and county~~ JUDICIAL DISTRICT in the state of Colorado for alternative services to placing juveniles in the physical custody of the department of institutions or in the custody of the department of social services. Such allocation shall take into consideration such factors as the population of the ~~county or city and county~~ JUDICIAL DISTRICT, the incidence of offenses committed by juveniles in such ~~county or city and county~~ JUDICIAL DISTRICT, and such other factors as deemed appropriate. The working group

shall consider and take into account whether any federal moneys or matching funds are available to cover the costs of juveniles within the system, including parent fees and third-party reimbursement as authorized by law or reimbursements under Title IV-E of the federal "Social Security Act", as amended. The working group shall propose such allocation formula in time for implementation on or before July 1, 1992. A written report shall be made to the general assembly concerning such formula and the level of funding adequate for implementation of such formula on or before such date.

(2) Of the members of the working group established pursuant to this subsection (1), the executive director of the department of institutions, the executive director of the department of social services, and the state court administrator of the judicial department, or any designees of such persons, shall have final authority to carry out the duty of creating the set of criteria pursuant to paragraph (a) of this subsection (1) and creating the formula pursuant to paragraph (b) of this subsection (1). This authority shall be exercised after working with and participating in the working group process established in this section.

SECTION 11. Part 16 of article 2 of title 19, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

19-2-1602.5. Transfer of appropriations between the department of social services and the department of institutions. NOTWITHSTANDING THE EFFECT OF THE "M" PROVISION IN THE 1992-93 AND SUBSEQUENT GENERAL APPROPRIATION ACTS, THE GOVERNOR MAY TRANSFER UNLIMITED AMOUNTS OF GENERAL FUND APPROPRIATIONS TO AND FROM THE DEPARTMENT OF SOCIAL SERVICES AND THE DEPARTMENT OF INSTITUTIONS WHEN REQUIRED BY CHANGES FROM THE APPROPRIATED LEVELS IN THE AMOUNT OF FEDERAL FUNDS EARNED THROUGH PROGRAMS OR SERVICES FOR ELIGIBLE YOUTH AUTHORIZED BY THE FEDERAL "SOCIAL SECURITY ACT" AND PROVIDED OR ADMINISTERED BY THE DEPARTMENT OF INSTITUTIONS.

19-2-1602.7. Local juvenile services planning committee - creation - duties. IF ALL OF THE BOARDS OF COMMISSIONERS OF EACH COUNTY OR THE CITY COUNCIL OF EACH CITY AND COUNTY IN A JUDICIAL DISTRICT AGREE, THERE SHALL BE CREATED IN SUCH JUDICIAL DISTRICT A LOCAL JUVENILE SERVICES PLANNING COMMITTEE WHICH SHALL BE APPOINTED BY THE CHIEF JUDGE OF THE JUDICIAL DISTRICT FROM PERSONS RECOMMENDED BY THE BOARDS OF COMMISSIONERS OF EACH COUNTY OR THE CITY COUNCIL OF EACH CITY AND COUNTY WITHIN THE JUDICIAL DISTRICT. THE COMMITTEE, IF PRACTICABLE, SHALL INCLUDE BUT NOT BE LIMITED TO A REPRESENTATIVE FROM THE COUNTY DEPARTMENT OF SOCIAL SERVICES, A LOCAL SCHOOL DISTRICT, A LOCAL LAW ENFORCEMENT AGENCY, A LOCAL PROBATION DEPARTMENT, THE DIVISION OF YOUTH SERVICES, PRIVATE CITIZENS, THE DISTRICT ATTORNEY'S OFFICE, AND THE PUBLIC DEFENDER'S OFFICE AND A COMMUNITY MENTAL HEALTH REPRESENTATIVE AND A REPRESENTATIVE OF THE CONCERNS OF MUNICIPALITIES. THE COMMITTEE, IF CREATED, SHALL MEET AS NECESSARY TO DEVELOP A PLAN FOR THE ALLOCATION OF RESOURCES FOR LOCAL JUVENILE SERVICES WITHIN THE JUDICIAL DISTRICT FOR THE FISCAL YEAR. SUCH PLAN SHALL BE APPROVED BY THE DEPARTMENT OF INSTITUTIONS.

SECTION 12. 19-2-1603, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-2-1603. Appropriations to department of institutions for services to juveniles. (1) ~~There is hereby created in the state treasury a fund to be known as the juvenile services fund which shall consist of moneys appropriated to the fund by the general assembly. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.~~

(2) ~~On and after July 1, 1993, all moneys in the juvenile services fund shall be subject to annual appropriation by the general assembly SHALL APPROPRIATE MONEYS FOR THE PROVISION OF SERVICES TO JUVENILES to the department of institutions for allocation to each county or city and county WHICH SHALL ALLOCATE SUCH MONEYS BY EACH JUDICIAL DISTRICT in the state. Such appropriation AND ALLOCATION shall be made based upon the formula developed in section 19-2-1602 (1) (b). The department of institutions shall administer this fund SUCH APPROPRIATED MONEYS. The moneys appropriated from the juvenile services fund to the department of institutions for allocation to BY each county or city and county may JUDICIAL DISTRICT SHALL be expended by such county or city and county, at the discretion of the governing body thereof, pursuant to local area plans approved by the department of institutions, such approval being made upon a review of outcomes provided and committed to by the governing body; IN SUCH JUDICIAL DISTRICT BY THE DEPARTMENT OF INSTITUTIONS for services to juveniles which may include, but shall not be limited to, intervention, treatment, supervision, lodging, assessment and bonding programs, AND family services. IF A JUDICIAL DISTRICT HAS A LOCAL JUVENILE SERVICES PLANNING COMMITTEE, THE EXPENDITURE OF MONEYS FOR JUVENILE SERVICES IN SUCH JUDICIAL DISTRICT SHALL BE MADE IN ACCORDANCE WITH THE PLAN DEVELOPED PURSUANT TO SECTION 19-2-1602.7. and payments to the state of Colorado pursuant to section 19-2-1604.~~

SECTION 13. 19-2-1604, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-2-1604. Services to juveniles - allocation of resources - placement of juvenile in violation of criteria. (1) ~~On and after July 1, 1993, the general assembly shall appropriate moneys to the juvenile services fund created pursuant to section 19-2-1603 which shall thereafter be distributed to each county and city and county pursuant to the formula created pursuant to section 19-2-1602 (1) (b). On and after July 1, 1993, if the general assembly has appropriated adequate moneys to the juvenile services fund for the fiscal year affected, each county or city and county may refer for commitment or placement in the custody of the department of social services any juvenile who meets NO JUVENILE SHALL BE PLACED IN VIOLATION OF the criteria created pursuant to section 19-2-1602 (1) (a). to the custody of the department of institutions or the department of social services without any cost being assessed to the county or city and county. However, on and after July 1, 1993, any county or city and county which refers for commitment to the custody of the department of institutions or placement in the custody of the department of social services any juvenile who does not meet the criteria created pursuant to section 19-2-1602 (1) (a) shall be required to pay a per diem amount for the commitment of such juvenile which shall be established by the department of institutions or the department of social services. Such payment may be made by such county or city and county from moneys~~

received by such county or city and county pursuant to section 19-2-1603 or from the general fund of the county or city and county.

~~(2) If a petition has been filed and granted pursuant to section 19-2-703 (2) (b), any costs incurred by a county or city and county for any juvenile committed to the custody of the department of institutions or placed in the custody of the department of social services, which commitment or placement is made contrary to the recommendations of the county or city and county or without consultation therewith, and which commitment or placement does not meet the criteria developed pursuant to section 19-2-1602 (1) (a) for commitment to the department of institutions or placement with the department of social services, shall be reimbursed by the state of Colorado to such county or city and county. Removal of a juvenile from any such commitment or placement during the pendency of any action pursuant to section 19-2-703 (2) (b) shall not render such matter moot.~~

~~(3) If a petition has been filed and granted pursuant to section 19-2-703 (2) (b), any costs incurred by the state of Colorado for any juvenile committed to the custody of the department of institutions or placed in the custody of the department of social services, which commitment or placement is made contrary to the recommendations of the state of Colorado or without consultation therewith, and which commitment or placement does not meet the criteria developed pursuant to section 19-2-1602 (1) (a) for commitment to the department of institutions or placement with the department of social services, shall be reimbursed by the committing or placing county to the state of Colorado. Removal of a juvenile from such commitment or placement during the pendency of any action pursuant to section 19-2-703 (2) (b) shall not render such matter moot.~~

SECTION 14. Effective date. This act shall take effect July 1, 1993.

SECTION 15. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 1993