

OVERVIEW OF STATE STATUTES: CUSTODY RELINQUISHMENT

STATE	EFFECTIVE DATE	SECTION	POPULATION
Colorado	1991	Children's Code: Dependency and Neglect	Children with emotional, physical or intellectual disabilities
Connecticut	1997		Children or youth with mental illness, emotional disturbance, a behavioral disorder or physical disability
Idaho	1997	Juvenile Proceedings: Children's Mental Health Services	Children with serious emotional disturbance
Maine	1996	Child and Family Services and Child Protection Act: General Provisions	All children
North Dakota	1995	Public Welfare: Department of Human Services	Medicaid-eligible children with emotional and behavioral problems
Oregon	1979 (institutional placements)	Human Services: Juvenile Code; Corrections: Child Welfare Services	Children with emotional, behavioral or mental disorders or developmental or physical disabilities
Rhode Island	1996	Delinquent and Dependent Children: Proceedings in Family Court	Children with emotional, behavioral or mental disorders or developmental or physical disabilities
Vermont	1987	Human Services: Programs and Services for Children and Youth	Children and adolescents with severe emotional disturbance

OVERVIEW OF STATE JUVENILE COURT JURISDICTIONAL STATUTES

STATE	EFFECTIVE DATE	SECTION	POPULATION
Iowa	1992	Juvenile Code: Juvenile Justice	Children with mental retardation, developmental disability or organic mental illness
Minnesota	1989	Juveniles: Dispositions	Children with physical or mental disabilitites
Pennsylvania	DRAFT 4/29/1990	Pennsylvania Juvenile Act	Children with physical or mental disabilities
Wisconsin	1997	Children's Code	All children

SELECTED TEXT: STATE STATUTES ON CUSTODY RELINQUISHMENT

STATE	STATUTE	TEXT
Colorado	C.R.S. 19-3-701(1)	The court shall not transfer or require relinquishment of legal custody of or otherwise terminate the parental rights with respect to a child with such an emotional, physical, or intellectual disability who was voluntarily placed out of the home for the purposes of obtaining special treatment or care solely because the parent or legal guardian is unable to provide the treatment or care.
Connecticut	Public Act 97-272	There shall be no requirement for the Department of Children and Families to seek custody of any child or youth with mental illness, emotional disturbance, a behavioral disorder or developmental or physical disability if such child is voluntarily placed with the department by a parent or guardian of the child for the purpose of accessing an out-of-home placement or intensive outpatient service.... Commitment to or protective supervision of or protection by the department shall not be a condition for receipt of services or benefits delivered or funded by the department.
Idaho	I.C. 16-2406	It is the policy of the legislature and the state of Idaho that services for children with serious emotional disturbance should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. S. 16-2402(1).... Services shall be individually planned to meet the unique needs of each child and family ... The continuum of services shall include, but not be limited to, individual and family counseling, crisis intervention services, day treatment, respite care, therapeutic foster homes, family support services, residential treatment, and inpatient services. <i>Services shall be provided without requiring that parents relinquish custody of the child.</i> S. 16-2402(3) ...To utilize out-of-home placement only after families are provided supportive services and those services are inadequate to provide a reasonable level of safety and well-being for the child and family, or when an emergency exists which requires immediate intervention. S. 16-2402(4)(c) <i>Access to services for children with serious emotional disturbance and their families shall be voluntary whenever informed consent can be obtained. Involuntary treatment or commitment to the department's custody shall not be required as a condition for obtaining, providing or paying for treatment by the department.</i> ...S 16-2406. When a child is placed out of his home pursuant to a services agreement, the department shall have the responsibility for the child's placement and care. The financial obligation of the family will be determined, after consideration of all available payment and funding sources including Title XIX (Medicaid), all available third party sources and parent resources.... Services shall not be conditioned on transfer of custody or parental rights. S. 16-2406(3) (continued on the next page)

SELECTED TEXT: STATE STATUTES ON CUSTODY RELINQUISHMENT (continued)

STATE	STATUTE	TEXT
Idaho (continued)	I.C. 16-2406	(continued) When a child is in a voluntary, out-of-home placement which is funded in whole or in part by state or federal funds, the department may have the propriety of the placement reviewed by the district court of the county in which the child is placed or the county of the child's residence every 180 days after placement or as required by statutes which govern federal funding for children who are placed out of their homes. S. 16-2407(3)
Maine	22 M.R.S. § 4004-A	If the following conditions are met, the department and a custodian may enter into a mutual agreement in which the custodian retains custody of the child and the department agrees to provide services to the child. A) The department finds that staying in the custodian's home would be detrimental to the welfare of the child. B) The department finds that, absent a mutual agreement, the child is at risk of entering the child protection system of the juvenile justice system. 22 M.R.S. § 4004-A (1).
North Dakota	N.D. Cent. Code § 50-06-06.13	The department shall establish in all human service regions a program to provide out-of-home treatment services for a medicaid-eligible child with a serious emotional disorder. If a child is placed in an out-of-home treatment program established under this section, the juvenile court must make a judicial determination as to whether the placement is in the best interests of the child. <i>The department may not require a parent or legal guardian to transfer legal custody of the child in order to have the child placed in an out-of-home treatment program when the sole reason for the placement is the need to obtain services for the child's emotional or behavioral problems....</i> N.D. Cent. Code, § 50-06-06.13.

SELECTED TEXT: STATE STATUTES ON CUSTODY RELINQUISHMENT (continued)

STATE	STATUTE	TEXT
Oregon	ORS § 418.312	<p>(1)The Children's Services Division of the Department of Human Resources shall not require any parent or legal guardian to transfer legal custody of a child in order to have the child placed...in a foster home, group home, or institutional child care setting, when the sole reason for the placement is the need to obtain services for the child's emotional, behavioral, or mental disorder or developmental or physical disability. In all such cases, the child shall be placed pursuant to a voluntary placement agreement. When a child is placed pursuant to a voluntary placement agreement, the Children's Services Division shall have responsibility for the child's placement and care. When a child remains in voluntary placement for more than 180 days, the juvenile court shall make a judicial determination, within the first 180 days of placement, that the placement is in the best interest of the child. In addition, the juvenile court shall hold a dispositional hearing no later than 18 months after the original voluntary placement, and every two years thereafter during the continuation of the placement, to determine the future status of the child.</p> <p>(2) As used in this section, 'voluntary placement agreement' means a binding written agreement between the Children's Services Division and the parent or legal guardian of a minor child that does not transfer legal custody to the Children's Services Division but that specifies, at a minimum, the legal status of the child and the rights and obligations of the parent or legal guardian, the child and the Children's Services Division while the child is in placement. ORS § 418.312</p>
Rhode Island	R.I. Gen. Laws § 14-1-11.1	<p>The department of children, youth, and families shall petition the family court and request the care, custody, and control of any child who is voluntarily placed with the department for the purpose of foster care by a parent or other person previously having custody and who remains in foster care for a period of twelve (12) months. However, <i>there shall be no requirement for the department to seek custody of any child with an emotional, behavioral, or mental disorder or developmental or physical disability if such a child is voluntarily placed with the department by a parent or guardian of the child for the purpose of accessing an out-of-home program for such child</i> in a program which provides services for children with disabilities, including but not limited to residential treatment programs, residential counseling centers, and therapeutic foster care programs... R.I. Gen. Laws 14-1-11.1.</p>
Vermont	33 U.S.A. § 4305	<p>...[R]eceipt of appropriate services for a child or adolescent with a severe emotional disturbance or the child or adolescent's family, including an out-of-home placement, shall not be conditioned on placement of the child or adolescent in the legal custody, protective supervision or protection of the department of social and rehabilitation services. 33 U.S.A. § 4305</p>

SELECTED TEXT: STATUTES ON JUVENILE COURT JURISDICTION

STATE	STATUTE	TEXT
Iowa	C.I. 232.178	<p><i>Petition for voluntary placement shall "describe the child's emotional, physical, or intellectual disability which requires care and treatment; the reasonable efforts to maintain the child in the child's home; the department's request to the family of a child with mental retardation, other developmental disability, or organic mental illness to determine if any services or support provided to the family will enable the family to continue to care for the child in the child's home; and the reason the child's parent, guardian, or custodian has requested a foster care placement.... 232.178(4).</i></p> <p><i>In initial determination proceedings for voluntary placement, a court may only order foster care placement if it makes "a determination that services or support provided to the family of a child with mental retardation, other developmental disability, or organic mental illness will not enable the family to continue to care for the child in the child's home. If the court finds that reasonable efforts have not been made and that services or support are available to prevent the placement, the court may order the services or support to be provided to the child and the child's family. 232.182(5)(d).</i></p>
Minnesota	Minn. Stat. § 260.191	<p>[I]f the child is in need of special treatment and care for reasons of physical or mental health, the court may order the child's parent, guardian, or custodian to provide it. If the parent, guardian, or custodian fails or is unable to provide this treatment or care, the court may order it provided. <i>The court shall not transfer legal custody of the child for the purpose of obtaining special treatment or care solely because the parent is unable to provide the treatment or care.</i> If the court's order for mental health treatment is based on a diagnosis made by a treatment professional, the court may order that the diagnosing professional not provide the treatment to the child if it finds that such an order is in the child's best interests. Minn. Stat. § 260.191(1)(a)(3).</p>
Pennsylvania	DRAFT 42 Pa.S.C. §6301	<p>WHEREAS some children are adjudicated dependent solely because they have special needs due to a physical or mental handicap that their parents, through no fault, cannot meet, and WHEREAS some of those parents have been compelled to relinquish legal custody of their special needs children in order to obtain necessary services, and WHEREAS it is against public policy to compel parents to make a choice between relinquishing custody of their children or denying them necessary services, and WHEREAS it is in the interest of children who receive services from the state to have their status reviewed regularly by the juvenile court, consistent with the requirements of federal and state law and the constitutional guarantee of due process of law, (3) (a) IN THE CASE OF A CHILD WHO IS DEPENDENT THROUGH NO FAULT OF THE PARENT, BUT SOLEY BECAUSE HE IS IN NEED OF SPECIAL TREATMENT OR CARE DUE TO A PHYSICAL OR MENTAL DISABILITY, THE COURT SHALL ADJUDICATE THE CHILD TO BE 'SPECIAL NEEDS DEPENDENT.' <i>(continued on next page)</i></p>

SELECTED TEXT: STATUTES ON JUVENILE COURT JURISDICTION (continued)

STATE	STATUTE	TEXT
Pennsylvania (continued)	42 Pa.S.C. §6301	(b) (i) FOR CHILDREN WHO ARE SPECIAL NEEDS DEPENDENT, THE COURT MAY TRANSFER PHYSICAL CUSTODY ONLY AND ONLY WITH THE CONSENT OF THE PARENT OR LEGAL GUARDIAN; (ii) WHEN A CHILD IS THE SUBJECT OF A PROCEEDING UNDER THIS SUBSECTION, THE COURT SHALL ORDER THAT THE CHILD RECEIVE NECESSARY SPECIALIZED SERVICES IN THE LEAST RESTRICTIVE APPROPRIATE ENVIRONMENT, AND SHALL HAVE JURISDICTION OVER THE APPLICABLE EDUCATION AND COUNTY MENTAL HEALTH/MENTAL RETARDATION AGENCIES.
Wisconsin	WIS. STAT. § 48.13 WIS. STAT. § 38.13	<p>Child protective jurisdiction may be taken over a child “whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child.” WIS. STAT. § 48.13(4). Juvenile justice jurisdiction may be taken over a juvenile “whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to control the juvenile.” WIS. STAT. § 938.13(4).</p> <p>Dispositional Options under either child welfare or juvenile justice: if the child/juvenile is in need of special treatment or care, as identified in an evaluation..., the judge may order the child's/juvenile's parent to provide special treatment or care. If the parent fails or is financially unable to provide the special treatment or care, <i>the judge may order an appropriate agency to provide the special treatment or care whether or not legal custody has been taken from the parents...</i> An order of special treatment or care under this paragraph may not include an order for the administration of psychotropic drugs. WIS. STAT. § 48.345(6a); WIS. STAT. § 938.34(6)(ar).</p> <p><i>“If it is shown that the rehabilitation or the treatment and care of the child cannot be accomplished by means of voluntary consent of the parent or guardian.”</i> the court shall transfer legal custody.... WIS. STAT. § 48.345(4).</p> <p>‘Special treatment or care’ means professional services which need to be provided to a child or his or her family to protect the well-being of the child, prevent placement of the child outside the home or meet the special needs of the child....This term includes, but is not limited to, medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other service which the court finds to be necessary and appropriate.</p> <p>Payment for services: If a child/juvenile whose legal custody has not been taken from a parent or guardian is given educational and social services, or medical, psychological, or psychiatric treatment by order of the court, the cost thereof, if ordered by the court, shall be a charge upon the county. This section does not prevent recovery of reasonable contribution toward the costs from the parent or guardian of the child/juvenile as the court may order based on the ability of the parent or guardian to pay. This subsection shall be subject to § 46.03(18) [Department of Human Services' fee scale provisions]. WIS. STAT. § 48.36; WIS. STAT. § 938.36</p>

SELECTED TEXT: SYSTEM-OF-CARE STATUTES

GEORGIA

Section 2 of Ga. L. 1990, effective July 1, 1990

Population: Children and adolescents with severe emotional problems

§ 49-5-220. Legislative findings and intent; State Plan for the Coordinated System of Care for severely or emotionally disturbed children or adolescents.

(a) The General Assembly declares its intention and desire to:

(1) Ensure a comprehensive mental health program consisting of early identification, prevention, and early intervention for every child in Georgia:

(2) Preserve the sanctiyy of the family unit;

(3) Prevent the unnecessary removal of children and adolescents with a severe emotional disturbance from their homes;

(4) Prevent the unnecessary placement of these children out of state;

(5) Bring those children home who through use of public funds are inappropriately placed out of state; and

(6) Develop a coordinated system of care so that children and adolescents with a severe emotional disturbance and their families will receive appropriate educational, nonresidential and residential mental health services, and support services, as prescribed in an individualized plan.

(b) In recognition of the fact that services to these children are provided by several different agencies, each having a different philosophy, a different mandate, and a different source of funding, the General Assembly intends that the Division of Mental Health, Mental Retardation, and Substance Abuse of the Department of Human Resources shall have the primary responsibility for planning, developing, and implementing the coordinated system of care for severely emotionally disturbed children.

(f) The receipt of services under this article is not intended to be conditioned upon placement of a child in the legal custody, protective supervision, or protection of the Department of Human Resources.

§ 49-5-222. Guiding principles for coordinated system of care.

The following ideals shall be the guiding principles for the coordinated system of care:

(1) Services shall be child and family centered and give priority to keeping children with their families.

SELECTED TEXT: SYSTEM-OF-CARE STATUTES (continued)

Families shall be fully involved in all aspects of planning and delivery of services; however, no family shall be required to accept services for any family member;

(2) Services shall be community based, with decision-making responsibility and management at the community level;

(3) Services shall be comprehensive, addressing the child's physical, educational, social, and emotional needs;

(4) Agency resources and services shall be shared and coordinated with written interagency agreements detailing linkages;

(5) Services shall be provided in the least restrictive setting consistent with effective services and as close to the child's home as appropriate;

(6) Services shall address the unique needs and potential of each child and shall be sufficiently flexible to meet the individual needs of the child and family;

(7) Services shall promote early identification and intervention;

(8) Services shall be culturally and ethnically sensitive;

(9) All legal rights of these children shall be protected; and

(10) The parent or guardian shall be involved in the development of the individualized plan and the delivery of services as defined by the individualized plan.

§ 49-5-225. Local interagency committees; membership; function of committees.

(a) At least one local interagency committee shall be established for each administrative district of the Division of Mental Health, Mental Retardation, and Substance Abuse of the Department of Human Resources whose permanent membership shall include a local representative from each of the following:

(1) The community mental health agency responsible for coordinating children's services;

(2) The Division of Family and Children Services of the Department of Human Resources;

(3) The Division of Youth Services of the Department of Human Resources;

(4) The Division of Public Health of the Department of Human Resources;

(5) A member of the special education staff of the local education agency;

SELECTED TEXT: SYSTEM-OF-CARE STATUTES (continued)

§ 49-5-226. Placement of children and adolescents out of state for treatment.

(6) The Rehabilitation Services Division of the Department of Human Resources.

(b) In addition to the permanent members, the local interagency committee reviewing the case of a child or adolescent may include as ad hoc members the special education administrator of the school district serving the child or adolescent, the parents of the child or adolescent, and caseworkers from any involved agencies.

(c) The local interagency committee shall:

(1) Staff cases and review and modify as needed decisions about placement of children and adolescents in out-of-home treatment or placement, monitor each child's progress, facilitate prompt return to the child's home when possible, develop a reintegration plan shortly after a child's admission to a treatment program, review the individual plan for the child or adolescent and amend the plan if necessary, and ensure that services are provided in the least restrictive setting consistent with effective services.

(a) Effective July 1, 1993, no children or adolescents with a serious emotional disturbance shall be placed out of state for treatment except after all community resources have been exhausted, all administrative procedures and remedies have been exhausted, or the court has ordered placement or services other than in Georgia.

(b) The cases of all children and adolescents currently placed out of state for treatment of serious emotional problems shall be reviewed to determine the appropriateness of their placement, their readiness to return to their home community, and needed services. All children currently in out-of-state placement shall be brought home no later than July 1, 1995, but only after each child has been given an individual reintegration plan specifying in detail the services, both in terms of human services and in fiscal resources, that shall be available and provided for that child and family. The services for each child shall be provided from the funds appropriated, including funds now used for out-of-state placement of such child, and all such services shall be provided in the least restrictive environment.

SELECTED TEXT: SYSTEM-OF-CARE STATUTES (continued)

VIRGINIA

Effective June 1, 1998

Population: At-risk youth and families

§ 2.1-751. Community policy and management teams; membership; immunity from liability.

The community policy and management team to be appointed by the local governing body shall include, at a minimum, at least one elected official or appointed official or his designee from the governing body of a locality which is a member of the team, and the local agency heads or their designees of the following community agencies: community services board established pursuant to § 37.1-195, juvenile court services unit, department of health, department of social services and the local school division. The team shall also include a representative of a private organization or association of providers for children's or family services if such organizations or associations are located within the locality, and a parent representative.

§ 2.1-752. Community policy and management teams; power and duties.

The community policy and management teams shall manage the cooperative effort in each community to better serve the needs of troubled and at-risk youths and their families and to maximize the use of state and community resources. Every such team shall:

1. Develop interagency policies and procedures to govern the provision of services to children and families in the community.
2. Develop interagency fiscal policies governing access to the state pool of funds by the eligible populations including immediate access to funds for emergency services and shelter care;
3. Establish policies to assess the ability of parents or legal guardians to contribute financially to the cost of services to be provided and, when not specifically prohibited by federal or state law or regulation, provide for appropriate parental or legal guardian financial contribution, utilizing a standard sliding fee scale based upon ability to pay,
4. Coordinating long-range, community-wide planning which ensures the development of resources and services needed by children and families in its community including consultation on the development of a community-based system of services established under § 16.1309.3;

SELECTED TEXT: SYSTEM-OF-CARE STATUTES (continued)

<p>§ 2.1-753. Family assessment and planning team; membership; immunity from liability.</p>	<p>5. Establish policies governing referrals and reviews of children and families to the family assessment and planning teams and a process to review the teams' recommendations and requests for funding;</p> <p>6. Establish quality assurance and accountability procedures for program utilization and funds management;</p> <p>7. Establish procedures for obtaining bids on the development of new services;</p> <p>8. Manage funds in the interagency budget allocated to the community from the state pool of funds, the trust fund, and any other source;</p> <p>9. Authorize and monitor the expenditure of funds by each family assessment and planning team.</p>
<p>§ 2.1-754. Family assessment and planning team; powers and duties.</p>	<p>Each community policy and management team shall establish and appoint one or more family assessment and planning teams as the needs of the community require. Each family assessment and planning team shall include representatives of the following community agencies who have authority to access services within their respective agencies: community services board established pursuant to § 37.1-195, juvenile court services unit, department of health, department of social services, local school division and a parent representative.</p> <p>The family assessment and planning team, in accordance with § 2.1-746, shall assess the strengths and needs of troubled youths and families who are approved for referral to the team and identify and determine the complement of services required to meet these unique needs.</p> <p>Every such team, in accordance with policies developed by the community policy and management team, shall:</p> <ol style="list-style-type: none">1. Review referrals of youths and families to the team;2. Provide for family participation in all aspects of assessment, planning and implementation of services;3. Develop and individual family services plan for youths and families reviewed by the team which provides for appropriate and cost-effective services;4. Where parental or legal guardian financial contribution is not specifically prohibited by federal or state law or regulation, or has not been ordered by the court

SELECTED TEXT: SYSTEM-OF-CARE STATUTES (continued)

or by the Division of Child Support Enforcement, assess the ability of parents or legal guardians, utilizing a standard sliding fee scale, based upon ability to pay, to contribute financially to the cost of services to be provided and provide for appropriate financial contribution from parents or legal guardians in the individual family services plan;

5. Refer the youth and family to community agencies and resources in accordance with the individual family services plan;

6. Recommend to the community policy and management team expenditures from the local allocation of the state pool of funds; and

7. Designate a person who is responsible for monitoring and reporting, as appropriate, on the progress being made in fulfilling the individual family services plan developed for each youth and family, such reports to be made to the team or the responsible local agencies.

§ 2.1-757. State pool of funds.

A. Effective July 1, 1993, there is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriations act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families. The purpose of this system of funding are:

1. To place authority for making program and funding decisions at the community level;

2. To consolidate categorical agency funding and institute community responsibility for the provision of services;

3. To provide greater flexibility in the use of funds to purchase services based on the strengths and needs of youth and families; and

4. To reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children according to differing required local match rates for funding streams.

B. The state pool shall consist of funds which serve the target populations identified in subdivisions 1 through 5 below in the purchase of residential and nonresidential services for children. References to funding sources and current placement authority for the targeted populations of children are for the pur-

SELECTED TEXT: SYSTEM-OF-CARE STATUTES (continued)

pose of accounting for the funds in the pool. It is not intended that children be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;

2. Children with disabilities placed by local services agencies or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children.

3. Children for whom foster care services, as defined in § 63.1-55.8 are being provided to prevent foster care placements, and children placed through parental agreements, entrusted to local social service agencies by their parents or guardians or committed to the agencies by any court of competent jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential facilities or independent living arrangements, as authorized by § 63.1-56;

4. Children placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program; and

5. Children committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility in accordance with § 66-14.