The Custody Rights of Grandparents
A Self-Help Manual

Solutions for Grandparents Seeking Custody of Their Grandchildren Who Are in Foster Care

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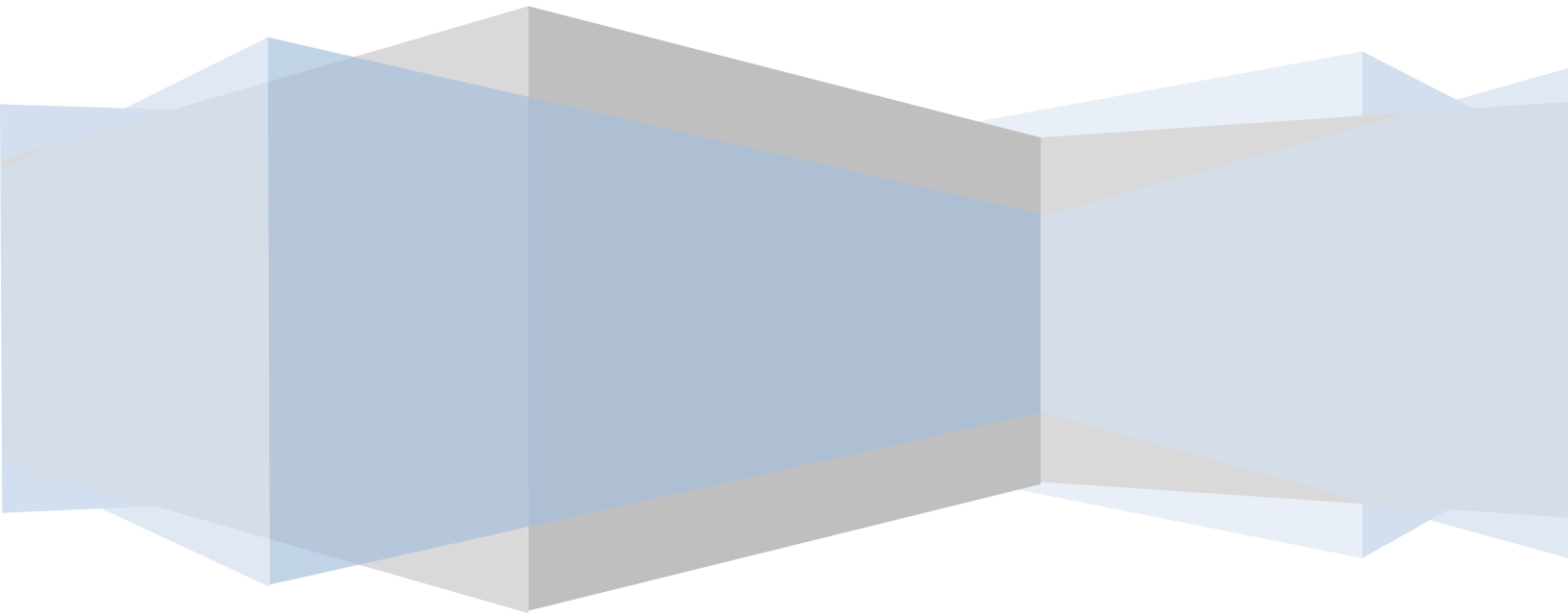
Advocate for Grandparents



Dedication

This book is dedicated to those grandparents who are fighting for custody rights to their grandchildren who are wandering through the bewildering and frustrating foster care and foster adopt systems.

This book is also dedicated to a special little girl,

Jessie Marie

Acknowledgements

A man who hasn't found something he is willing to die for is not fit to live.
Reverend Dr. Martin Luther King Jr.

Many thanks to those special angels who have supported me in my mission to help grandparents who are trying to get custody of their grandchildren who have been taken from their parents and placed in foster care:

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Honorable Dana Wakefield, retired Juvenile Court Judge, Second Judicial District

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Preface

I created the Grandparents Resource Center (GRC) 20 years ago with the mission of helping grandparents get visitation, custody, or adopting their grandchildren who were in the foster care system. I had just fought the foster care system to get my own grandchildren back, and I had realized that grandparents had no rights in regard to their grandchildren. I wanted to change that because I never wanted another grandparent to go through what I had gone through. After I won custody of my grandsons, I set out on a mission to gain rights for grandparents and to help grandparents remain connected to their grandchildren, whether through visitation, custody, or adoption. Through lobbying the state legislature, I have helped gain more rights for grandparents, and by creating the Grandparents Resource Center (GRC), I can encourage grandparents who may feel discouraged and that they can't win a case against a huge bureaucracy that has unlimited resources.

The GRC isn't a big operation. Our clients' fees don't finance fancy offices and a big staff for us in a downtown high-rise. The grandparents we target are those whose income is so low that they can't afford to hire an attorney but too high to qualify for Legal Aid. We teach them how the legal system works, and they become their own lawyers, representing themselves in court. To some grandparents, that may seem like another losing strategy, but our success rate over the past 20 years is 90%. The GRC is also carefully monitored by a practicing attorney.

Our ultimate goal is to bring the issue of grandparents' rights to the American people, who will pressure their politicians to change the foster care system. We believe that the best way to bring reform to the system is to approach the problem of grandparents' rights is "bottom up" rather than "top down," meaning that we work with individual grandparents to create change in the foster care system rather than waiting for the system to change itself. By confronting the system and saving one child at a time from an endless cycle of foster home and reuniting them with their grandparents, we have begun reforming the system.

I've chosen to focus on grandparents and make the reunification of families my life's work because of my father, the dearest man and my inspiration. My father came from a family of 13, where he learned family values and the value of family. Like every member of his big family, my father was always there for his family members in times of adversity, no matter what they needed from him. When a family member got ill and couldn't take care of her children or when a nephew or niece needed a place to live while his parents put their marriage back together, my father, along with the rest of the family, were there to take those children and nurture them. As a result, family members were secure in the knowledge that they could always rely on help from their family. The family was trustworthy, so the children learned trust. Each family member was given unconditional love, so they learned to love unconditionally.

The strengths that I got from my father have allowed me to be in a profession where I encounter a lot of broken hearts and other emotions. However, the cases I get involved with affect me deeply. I vary between sadness, particularly when children have been abused, and anger at the injustices families suffer from the insensitive policies of the foster care system. My feelings have also galvanized me to raise public awareness of grandparents' rights. Only when the citizens protest the system's treatment of grandparents will politicians be motivated to change it.

After spending time in other countries and lending my assistance to grandparents from around the world who are battling the same attitudes and policies as ours, I've realized how similar our family values are. A recent trip to Cambodia taught me that even if people come from different cultures and speak different languages, we have the same concerns about our children and grandchildren. I saw a mother on the streets of Phnom Penh who was raising her children on the sidewalk in front of a hotel because that was the safest place in the city for children. I saw grandparents on the border between Cambodia and Vietnam raising their grandchildren because the children's parents had either died or were too poor to raise their children.

Several things should be done to ensure that children all around the world will be raised in their families, not in orphanages or foster care. First, governmental attitudes toward children have to change if our children are to have a future worth living. We must have leaders that understand and advocate that:

- our children represent the future of our planet;
- the healthiest way to raise a child is in a family;
- children should not be abused or exploited for monetary gain;
- no societal resources should be spared in educating children;
- the people that make decisions for children should be held accountable for those decisions; and
- children should always be considered first when making public policy.

As citizens, we are responsible for the quality of our leaders. It is up to us to pressure our leaders to pass legislation that considers its impact on children. We must vote out those government officials that don't put children first and vote in those who will reform government policies that ignore or hurt children and make policy friendly to children.

Families need to reclaim the power that government has taken from them. If we want our children to value families, all of us—government, grandparents, parents, and citizens—have to make these changes, or we'll ensure more generations that accept the values dictated by the state rather than those based on loving and nurturing.

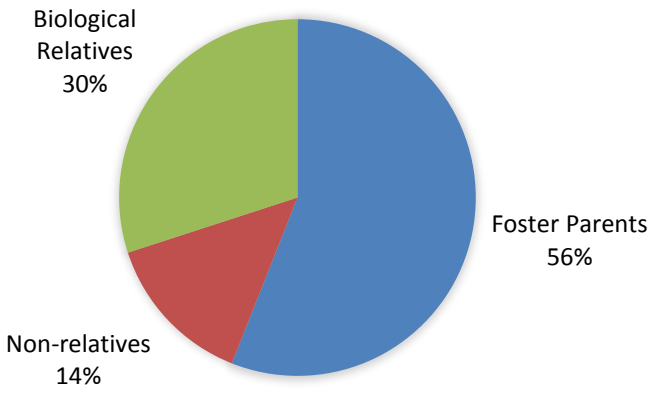
Shirley M. Berens

Introduction

In researching for this book, we scoured the literature for statistics that showed the numbers of foster children adopted by their biological family members versus those placed with non-related foster parents and adopted by them. We knew beforehand that documentation of the specific issues involving foster children are scant, but our search was even more frustrating than we had imagined it would be. Besides some general census statistics that apply, the Adoption and Foster Care Analysis and Reporting System (AFCARS) turns out to be the only somewhat comprehensive source for statistics related to foster care.

AFCARS statistics tell us that in 2012, 53% of foster children were living in non-relative foster homes while 24% were living in relative foster homes. AFCARS also reports that of the children who were adopted from foster care that year, 56% were adopted by their foster parents, 14% adopted by non-relatives, and 30% adopted by relatives (*http://www.acf.hhs.gov/sites/default/ files/cb/afcarsreport20.pdf)*

WHO ADOPTS FOSTER CHILDREN?



(adapted from AFCARS 2012 Statistics *http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport20.pdf)*

The figure for adoption by biological relatives is substantially lower because of factors that have a negative impact on relatives who want to adopt. Adoption by non-relative foster parents results in a financial windfall for the Department of Human Services (DHS) and the foster family, which greatly impact the determination of who DHS will encourage to adopt and who will be motivated to adopt and rewarded for adopting.

First, the state receives bonus funds from the federal government if a child is adopted by his or her non-relative foster family, which motivates placement of children with non-relative foster parents who will eventually adopt the child. Second, foster families are more incentivized to adopt their foster children because they are promised that the stipends and

state services they receive as foster parents will continue after they adopt the children until they reach the age of majority.

On the other hand, the government makes it difficult for families to adopt foster children who are their kin because, in most U.S. states, they receive very little in the way of support, financial and otherwise. In *Stepping Up for Kids: what government and communities should do to support kinship families*, the Annie E. Casey Foundation (AECF) states that kinship caregivers "receive much less financial support than what the USDA estimates it costs to raise a child." It doesn't have to be that way, AECF reports, since a federal program exists that will make ongoing payments to kinship-care parents who have become legal guardians. However, very few states publicize the program or employ it. (*http://www.aecf.org/~/media/Pubs/Initiatives/KIDS%20COUNT/S/SteppingUpforKids2012PolicyReport/SteppingUpForKidsPolicyReport2012.pdf*).

Finally, relatives of a foster child may not be able to afford the many thousands of dollars it takes to hire an attorney to take their case to court, especially grandparents who may have retired and live on a budget. If they try to get help from Legal Aid, they'll be told they make too much money to qualify. They may give up, not realizing that they can represent themselves in court, or they may believe that they couldn't possibly win in court against the money and power of the state even if they did learn to represent themselves. In fact, most of the grandparents who have worked with the Grandparents Resource Center (GRC) have triumphed in their cases against the state. The handbook is designed to help you add your name to the GRC's long list of victorious grandparents.

The grandparents you read about in this book—who will remain anonymous—contacted the Grandparents Resource Center (GRC) in Denver, Colorado, because they needed information and support. They wanted to know how they could intervene in the dependency and neglect (D&N) cases that involved their grandchildren and get visitation or custody of their grandchildren, or adopt them. This manual will teach you what those grandparents learned at the GRC: how to negotiate with and/or litigate against DHS to gain full access to your grandchildren and bring them home.

After reading and studying this book, you'll have the information you need to help you win your case against DHS. At first, you may be surprised at how much you'll have to learn about the workings of DHS and the court system. There is also a wealth of legal information in this book to aid you in building your own case and understanding and analyzing the case against you. Don't be overwhelmed or discouraged. The many grandparents who have preceded you have learned everything they needed to learn and done everything they needed to do to confront the foster care system, and most of them have been successful. You can do it, too, and you are wished the best of luck in your journey.

To begin this journey to reclaim your grandchildren, we'll identify the most daunting of the obstacles that that the system erects in the path of grandparents.

NOTE: Many chapters have a section called "Points of Law to Consider," in which current laws are cited on the issues covered by the chapter. Some of these laws will be instrumental in building your case against the Department of Human Services (DHS). In fact, you must use laws as the foundation of your case. You should also know the procedures and points of law so you can evaluate DHS's case against

you. It's not unusual for the case against you to have errors and gaping holes in it, and one major way you can win your case is to find and exploit the errors in the case against you.

Chapter 1

Why You Can't Get Custody of Your Grandchild

Why aren't grandparents the first people considered by the Department of Human Services (DHS) when a grandchild needs a temporary or permanent home? When grandparents volunteer to take care of their grandchildren, why does DHS dismiss them out of hand them and treat them as if they are invisible? Most cultures revere elders and place great importance on the relationship between grandparent and grandchild? They understand that grandparents offer children what they won't get anywhere else: unconditional love and acceptance and the wisdom that only a long life can bestow. The U.S. government seems to have forgotten the unique and loving relationship between most grandparents and their grandchildren, or they give no credence to it. We can speculate all we want on the psychological or cultural reasons grandparents are denied that all-important relationship with their grandparents, which are almost impossible to prove. Instead, we'll begin by looking at the most prominent and provable reasons grandparents are treated so shabbily by DHS.

Politics

Since very few studies have been done related to grandparents' rights to custody of their grandchildren and the denial of those rights by the foster care system, this issue continues to be ignored by U.S. politicians and mainstream media. As a result, it goes unnoticed by the American people. David Dougherty**,** a law professor at the University of Colorado Law School and a long-time worker in grandparents' rights, after examining the data that is emerging from the relatively few studies related to grandparents' rights to their grandchildren, noted that there is such a lack of public interest and research in the field that "there are no general statistics on how many grandparents are denied visitation and/or custody rights of their grandchildren in Colorado."

There is, however, one concern that Colorado lawmakers have expressed, but it isn't about the negative and long-lasting effects of foster care on children. These lawmakers object to DHS's questionable practices in allocating funds to the companies that find and pay the foster families.

Guilt by Association

Though social workers may mean well, the nature of their training and their work means they are often inclined to believe that child abuse has taken place, even when the evidence to support the child abuse claim is very slim. In some cases, social workers even decide to remove a child from your home before they even have had a chance to interview the family about the allegations. The belief that the parents are guilty of abuse may contribute to the social workers' reluctance to place the children with any of their birth family members.

Outsourcing of Administration of Foster Care

Lawmakers' objections stem from the DHS's allocation of funds to the for-profit companies that have assumed the functions of finding and paying foster families. The number of hands the funds pass through from Human Services on its way to foster families makes it almost impossible to "follow the money." Legally, these companies cannot be audited despite indications that they have overcharged the state. Some Colorado lawmakers have called for oversight of the companies, but as of now, there still is none. For these private enterprises, foster care, which was formerly a non-profit and governmental function, has become a profit center. Since the company makes a profit for every child placed in a foster home—rather than with his or her biological family—it is less likely that your grandchild will be placed with you or any other family member. There's no profit in that.

Close Relationships between Social Services and Family Court

Sometimes, Human Services is too close and so influential on a family court judge that the judge regularly rules in favor of the department. Traditionally, Human Services is predisposed to not return children to their families; grandparents have little chance of being awarded custody of their grandchildren, making the breakup of families almost inevitable. The consequences of tearing the family apart may have dire consequences. The child, victimized by a crony legal system, usually suffers long-term emotional and mental problems. Grandparents will spend the rest of their years mourning the loss of the child. Society itself suffers because the objectivity of the legal system has been compromised. Respect for the legal system is diminished and its credibility is called into question.

The Fostering Connections to Success and Increasing Adoptions Act (FCSIA)

http://www.childrensdefense.org/policy-priorities/child-welfare/fostering-connections/

Traditionally, Human Services has been against family reunification, which is reflected in its funding of Title XX of the Social Security Act. Uncapped funds were available for out-of-family placement, along with "guaranteed prosecution" for family members accused of child abuse. However, little funding was available for in-home support or rehabilitation services. No funds were made available for the legal defense of a family member who has been falsely accused of harming the child.

In an effort to bring some balance to the system, the Adoption Assistance Child Welfare Act *(https://www.childwelfare.gov/systemwide/laws_policies/federal/index.cfm?event=federalLegislation.viewLegis&id=22)* was passed in 1980. Its goals were threefold: to prevent foster care placement, to encourage reunification of families in the foster care system, and to provide permanent adoptive families for children who cannot be returned to their homes. A major requirement for continued funding was that the state makes "reasonable efforts" to keep the family together. However, this law has never been monitored by the United States Department of Health and Human Services, as it should have been. In lieu of making reasonable efforts to keep the child in the family, the states could choose to put children into foster care programs by way of "voluntary" placements.

The Adoption Assistance Child Welfare Act has since been replaced by the Fostering Connections to Success and Increasing Adoptions Act (FCSIA), which, instead of advocating keeping the family together, promotes placing children with foster families outside of their own and encouraging those families to adopt their foster children.

The FCSIA, passed in 2008, was intended to make it easier for foster children to get permanent homes by offering monetary incentives to the states' DHS Departments, to the companies that administer the foster care program, and to foster families. Offering no such incentives, the Act focuses on recruiting foster families to adopt their foster children, with the guarantee that their foster-care subsidies would continue. This focus, many people think, is more proof of DHS's bias against family adoption in favor of foster-family adoption because it is meant to ensure that more foster families adopt their foster children. According to DHS, "By setting adoption assistance rates equal to foster care rates, agencies can help ensure that foster parents have an incentive to adopt."

Another reason the state prefers out-of-family adoptions to adoption by the biological family is the result of an FCSIA provision that offers the state more financial rewards. States can now be reimbursed 25% more than it had under the previous law for costs associated with training the private agencies that place children exclusively with unrelated families instead of their biological families. Under the Act, states can also receive additional payments if their adoption rate exceeds the highest recorded since 2002, where "rate" refers only to foster care adoptions, omitting family reunification as a reimbursable expense. In fact, the federal government can penalize states that have high rates of family reunification. Although there was discussion at the time FCSIA was being considered about extending incentives to include guardianships and family reunification, the final bill includes incentives only for out-of-family adoptions.

The FCSIA never addresses the imbalance between the generous amount of federal funds allocated for foster care and adoption versus the meager funds allocated for prevention of child abuse and child protective services. Researchers and child advocates have expressed concern that states lack any financial incentive to achieve the federally mandated child-welfare goals of keeping families together and ensuring that children who have been removed from their homes will be placed in permanent living arrangements in a timely way. Unfortunately, reducing the number of children in foster care by placing the children with family members is at cross-purposes with the FCSIA, making it financially beneficial for states that encourage foster families to adopt their foster children rather, as opposed to reunifying the children with their biological families.

Despite the negative effects of the FCSIA, as discussed above, in future litigation of the Act, the courts will have the opportunity to influence the implementation of many of the key provisions of the Act by asking the following questions of the major players involved in implementing it:

1) Ask caseworkers:
   - if and how they have made due diligence to notify relatives of children in foster care

- what reasonable efforts were made to keep siblings in foster care together
- what efforts they have made to keep children in the schools they have been attending

2) Ask child welfare officials whether unlicensed kinship-care placements are safe, and if so, why they were not licensed with waivers of non-safety standards.

3) Ask caseworkers of foster youth who will be aging out of the systems and the foster youth themselves about the transition plan that has been developed.

4) Ask relatives if they were informed that they could become foster parents. If so, ask them why they were not licensed with waivers of non-safety standards.

5) Ask prospective adoptive grandparents if they have been informed that they are eligible for the federal adoption tax credit.

6) Even with the FCSIA's incentives for foster parents to adopt their foster children and the generous stipends given to them if they do adopt, the statistics on permanent adoptions are still dismal. According to an article published by the North American Council on Adoptable Children, an average of 25,000 children per state age out of foster care each year without ever having achieved permanence.

In Colorado, children remain in foster care for an average of three years. Children can spend more than two years in foster care before their adoption is finalized. The average age in Colorado of a child who is adopted is about 5.8 years while for a child 8.4 years and older, the likelihood of being adopted drops significantly. Eventually, these children get too old for foster care, never achieving the permanence and stability they need to become emotionally healthy adults, which they most likely would have achieved if they had been adopted by their grandparents or another member of their biological family.

The statistics quoted above point to the immense resource grandparents could be if Human Services enlisted them in the care of their grandchildren, who would avoid the long-term damage that foster care engenders. Allowing grandparents to participate directly in their grandchildren's lives would surely improve the above statistics. By maintaining the status quo, the existing federal financing structure limits the states' flexibility, fails to make states accountable for child or system outcomes, provides insufficient incentives for states, unnecessarily drains resources for administrative purposes, and/or simply denies states the resources needed to implement meaningful reforms.

As you see, numerous challenges exist for grandparents who are seeking custody of their grandchildren, with problems ranging from the knowledge of human services systems and family courts to financial needs and family communication. The pages ahead will address these issues and others that will prepare you to gain custody, visitation, or adoption of your grandchildren. Your chance of success is excellent since more than 90% of the grandparents who have received GRC training have won their cases against the Department of Human Services.

Chapter 2

Information and Important Advice about Dependency & Neglect (D&N) Cases

Now that you understand some of the major underlying reasons that grandparents have a hard time adopting or getting custody of their grandchildren, we'll jump right into the reality of your current situation and get a basic understanding of Dependency and Neglect (D&N) cases, something you've already encountered or might be encountering soon. Simply put, D&N cases are initiated by the Department of Human Services (DHS) when it becomes aware that the wellbeing of a child may be in jeopardy. Prompted by DHS, the city attorney files a petition requiring the parents ("respondents") to appear in court, at which time they can deny the allegations against them and demand that the case be heard at trial by either a jury of six people, by a judge, or by a juvenile magistrate. Parents also have the option of admitting to the allegations in the petition and moving forward to the treatment phase of the case.

Instead of a jury trial, the judge may refer the case to mediation. A mediator is a neutral third party, who is not affiliated with the court or social services but is a professional who provides a service to the court and DHS. The mediator will assist the family and other professionals attached to the case to reach an agreement for treatment that will best serve the interests of the children and the family.

The law requires the court and DHS to follow specific timeframes for holding court hearings. In addition, some courts have special time requirements for cases involving children under the age of six, which are referred to as Expedited Permanency Planning (EPP) cases. At any stage of the D&N legal procedure, the court can order that the child be returned home, with or without supervision by DHS, or be placed in foster care.

The following "How to Navigate the Dependency and Neglect Court Process" and "Timeline of a Dependency and Neglect Case" were copied from the following Colorado DHS website and describe the official process followed in a D&N case:

http://www.cokinship.org/component/content/article/675-kinship-toolkit/1154-court-process.html

A handbook for parents involved in a D&N case that might also be helpful for grandparents can be accessed at: *http://www.courts.state.co.us/userfiles/File/Self_Help/D_N_Handbook_-_English.pdf*

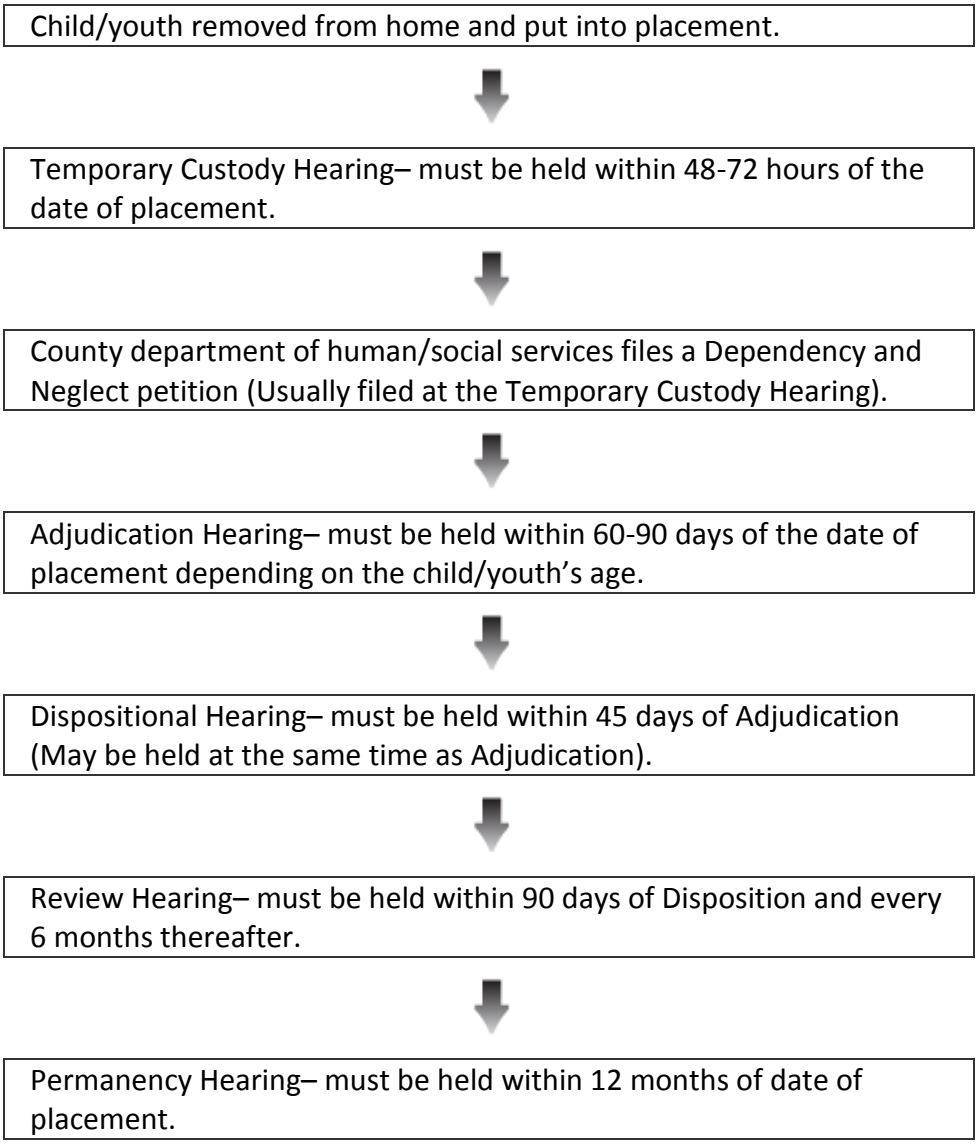
How to Navigate the Dependency and Neglect Court Process

http://www.cokinship.org/component/content/article/675-kinship-toolkit/1154-court-process.html

If the child/youth was placed by the county department of human/social services (due to abuse/neglect, abandonment or imminent danger), the court process will be handled through a Dependency and Neglect (D&N) proceeding in District Court, or for Denver County, it is the juvenile court. This is a civil and not a criminal proceeding; however, depending on the severity of the allegations, the perpetrator may also be charged criminally. Children under the age of six and any siblings are provided expedited procedures through the court process to assure their developmental needs for permanency are met. This process is called Expedited Permanency Planning (EPP).

Timeline of a Dependency and Neglect Case

http://www.cokinship.org/component/content/article/675-kinship-toolkit/1154-court-process.html



A **temporary custody hearing (sometimes known as a shelter hearing)** must be held within 48 to 72 hours of the placement of the child/youth in out-of-home care for the court to decide if the child/youth will remain in temporary placement. The investigating caseworker presents the facts of the case and the basis for placement of the child/youth. The judge determines whether or not the child/youth should remain in out-of-home care and whether the county department provided "reasonable efforts" to maintain the child/youth in the parental home. If the judge decides that placement is unnecessary, the child/youth is returned to the parents' home the same day. If the child/youth remains in placement, the judge will advise the birth parents that they may retain an attorney, or if they cannot afford one, the court can appoint an attorney (based on parental income). The court will also order the parent to identify relatives who are

suitable to care for the child/youth. The parents must provide this information to the county department within five (5) business days from the first court hearing (shelter or detention hearing). The child/youth is appointed a guardian-ad-litem (GAL), who is an attorney representing the best interests of the child/youth. It is part of the GAL's job to meet with the child/youth. Caregivers have a right to know who the GAL is and to communicate with him/her. The attorney representing the county department is ordered to file a Dependency and Neglect (D&N) petition on behalf of the child/youth. This is the legal action that will initiate the following process.

At the **adjudication**, the court makes a determination whether or not the child/youth is "dependent and neglected." The **adjudicatory hearing** must be held within 60 days from filing of the D&N petition, if the child is under 6 years of age (and any siblings). If the child/youth is 6 years and older, the court has up to 90 days to adjudicate. If the court finds the child/youth to be "dependent and neglected," the child/youth remains in the legal custody of the county department and remains in placement.

At the **dispositional hearing** a Family Services Plan (FSP-treatment plan) is submitted to the court by the county department caseworker. The dispositional hearing must be held within 45 days of adjudication. If a child is under age 6, the hearing must be held within 30 days of adjudication. If it is possible, the adjudication and dispositional hearings are held at the same time. The caregiver, as a part of the treatment team, must have some involvement and knowledge regarding the treatment plan, particularly the logistics of visitation between the parent and child/youth and the requirements for any special needs the child/youth may have. An example would be transportation to and from medical or mental health appointments. Any protective orders, such as restraining orders, which were filed earlier, may be changed at this time if appropriate. The treatment plans for the family must be reasonable and developed so the parent can learn to provide adequate parenting to the child/youth within a reasonable time, and it must relate to the needs of the child/youth. If the child/youth has been in care for more than three months, caregivers may intervene (which means they can be heard by the court) as a matter of right at this time with or without an attorney. Caregivers may write a letter to the judge, but it may be useful to hire an attorney who can advise and intervene on their behalf. Caregivers would intervene if they believe they have pertinent information to share that is not being reported to the court regarding the best interest of the child/youth. If the court finds that no appropriate treatment plan can be devised for a particular parent based on abandonment of the child/youth, significant abuse, or long-term, severe neglect, immediate permanency (including termination of parental rights) can take place.

The court may also decide that it is appropriate for the county department to place a child/youth with a kinship foster family, kinship family, a non-related foster family or a legal custodian who could care for the child/youth on a permanent basis, if needed. At the same time, the county must continue to make reasonable efforts to preserve and reunify the family through a treatment plan. This process is called concurrent case planning. Such procedures generally happen if the child is under 6 years of age, but it also occurs for older children if the prognosis for successful reunification with birth parents is poor. Concurrent planning means that the department is working towards two goals such as reunification and adoption at the same time.

At the **court review hearing**, the judge determines if the parents are in compliance with the treatment plan, if "reasonable efforts" are being made by the county department to reunite the family, and whether there are any other matters that relate to the best interest of the child/youth. A court review hearing must be held within 90 days of the dispositional hearing for any children/youth who are placed out of the home, and every six months thereafter.

At the **permanency hearing**, the court must determine whether the original placement goal (reunification) for the child/youth continues to be appropriate and determine whether "reasonable efforts" to find a safe and permanent home for the child/youth have been made. If the child/youth remains in out-of-home placement, the court must hold a permanency hearing no later than 12 months after entering out of home care. If the child/youth is under the age of 6 years (and the siblings), the permanency hearing must be held no later than 3 months after the disposition, which should be 6 months or less from the date the child/youth was placed in foster care.

If the court has previously made a determination that no appropriate treatment plan should be developed, the permanency hearing must take place within 30 days of disposition. If, based on the parents' noncompliance with the treatment plan, the court decides that the child/youth cannot be returned to the parents within 6 months, the court must enter an order determining the future status of the child/youth. This order must include information regarding the permanency goal for the child/youth:

- Returned to the parents,
- Referred for legal custody or guardianship proceedings with relative, kin, or other person,
- Placed for adoption with relative, kin, or other person, or
- Other planned permanent living arrangement.

When the child/youth cannot be returned home, the court may order the county department to show cause why it should not file a motion to terminate the parent-child legal relationship. Possible causes are called compelling reasons and include:

- The parents have maintained regular consistent contact with the child/youth, and it is not in the best interest of the child/youth to discontinue the relationship.

- The youth is 12 years of age or older, objects to termination, and will not consent to adoption.

- The foster parents of the child/youth are unable to adopt due to exceptional circumstances but are willing to provide a permanent home for the child/youth, and removal from that home would be detrimental to the child/youth.

- The criteria of the termination statute have not yet been met.

- A compelling reason is identified to document why it is not in the best interest of the child/youth to terminate the parent-child legal relationship.

If the county department has none of these reasons for not filing a motion to terminate the parent-child legal relationship, they will file such a motion, and the judge will set the date for a trial to hear the case.

Once the court terminates the parent-child legal relationship, the birth parents have 15 days to appeal. If the parents' attorney files an appeal, the adoptive parents must wait until the appeal process is concluded before they can file a motion to adopt. More information on adoption and termination of parental rights can be found in Article 5 of the Colorado Children's Code (19-5), which is Title 19 in the Colorado Revised Statutes.

If the child/youth was placed into your care by the biological parents, you as the caregiver will need to petition the district court for Allocation of Parental Responsibilities (Colorado's term for permanent custody), however it is recommended that an attorney is consulted and/or retained to assist because the legal process is quite complicated. The forms and instructions for filing a petition for Allocation of Parental Responsibilities can be found at *http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=15*. (Choose the version you want of JDF 1422 Allocation of Parental Responsibilities, and click on it.)

Legal Obstacles in DHS's Dependency and Neglect Court Process

Now that you've read about the D&N process above, as set forth by state law, you'll probably feel that you have a good chance of getting custody of your grandchildren because the law seems to stress "reunification" and "kinship care." However, it's important to take note that two concepts in the law, "concurrent planning" and "kinship care" and the 2008 Fostering Connections to Success and Increasing Adoptions Act can work against the best interests of your grandchildren and you:

Concurrent Planning
"Concurrent planning," discussed in the second paragraph under "Dispositional Hearing" above, means that "the department is working towards two goals such as reunification and adoption at the same time." In fact, concurrent planning can obscure the process and deceive grandparents into thinking that their grandchildren will be placed with them permanently.

Under a "kinship care" arrangement, DHS has placed your grandchildren with you. As a grandparent who wants your grandchildren with you until they turn 18 or until their parents are again able to nurture and protect them, you may think that because DHS has placed your grandchildren in your home, they'll be able to stay with you permanently and why wouldn't they? You're happy, and they're happy. DHS's home research study on you came out positively. To conclude that the children will be able to stay with you permanently is logical and reasonable. It would make no sense for DHS to spend the time, effort, and expense of placing the children elsewhere, especially with an unrelated foster/adoptive family. While "kinship care" sounds warm and promising, this arrangement is probably only temporary. In fact, DHS can take the children at any time and place them another home because concurrent planning mandates that at the same time the children are living with you, DHS is busy searching for a foster-adopt home for them. Besides the painful surprise that the kinship care arrangement can have in store for grandparents, it also restricts grandparents who are trying to build a successful case to adopt or get custody of their grandchildren.

Kinship Care
Since grandparents don't have legal custody under Kinship Care, they are only allowed to take care of their grandchildren's daily, temporary needs. They aren't allowed to make any major decisions concerning the children without first obtaining consent from a DHS caseworker, who acts as a representative for the state. DHS's goal is to place the children permanently, preferably in a foster-adopt family. The grandparents may be attempting to get permanent custody of their grandchildren, but the final decision is with DHS, but the odds are against them because DHS gets no grant money to place children with their grandparents. DHS will hurry to place children into foster-adopt homes so as not to interrupt the flow of federal dollars to the Department and jeopardize staff jobs.

Professionals Involved in a D&N Case

- **Parents' Attorney:** A dependency and neglect case may lead to the termination of parental rights so it is important for the parents to have a lawyer. The court process is complicated, and a lawyer can advocate for the parents' rights at every stage of D&N proceedings. An attorney can also help the parent's access resources necessary to resolving the case to their advantage.

- **County/City Attorney**: The county attorney represents the caseworker from DHS and is responsible for initiating the D&N case. The county attorney works with the caseworker to make recommendations to the court regarding the child's best interests.

- **Guardian Ad Litem (GAL)**: The GAL is a lawyer who legally represents the child's "best interests." The GAL is responsible for investigating the allegations against the parents, interviewing all of the professionals working on the case, and recommending to the court the very best course of action for the child. The GAL should is assigned to visit all of the key people in the case, including the parents, your grandchildren, and you. Every month, the GAL is required to visit the children at the location where they have been placed.
- **Parents' GAL**: A GAL, sometimes appointed for a parent who has severe mental illness or an intellectual disability, is responsible for representing that parent's best interests. The Parent's GAL collaborates with the parent and the parent's attorney to help the parent understand court proceedings and court orders.
- **Judge or Magistrate**: The judge or magistrate is responsible for reviewing court reports and testimony, and issuing orders that are in the best interests of the child. These orders will focus on what is best for the child—not necessarily what is best for the parents.
- **Caseworker**: Every family is assigned a caseworker who is responsible for ensuring the safety of the child. The caseworker is expected to set up visitation, coordinate county services for the family, and visit the child at least once every month.
- **Court-Appointed Special Advocates (CASA)**: CASA's are trained community volunteers who are appointed by a judge to gather as much information as possible about the child in a D&N case and to provide the judge with recommendations so that the judge can make informed decisions about the child. The CASA volunteer's only role is to advocate for the best interests and safety of the child. The CASA volunteer is not expected to act as an attorney. CASA's are not appointed in every case.

Important Advice for Grandparents Going through the D&N Process

Grandparents should intervene on the D&N case against their grandchildren as early in the process as possible to be assured of having a say in their grandchildren's future. Past a certain point, it will be impossible to stop the children from being placed permanently with a family unrelated and unfamiliar to them. It is also important to maintain an open channel of communication with their parents so you are able to respond effectively to any actions taken by DHS and the foster care system. The following sections contain some warnings about paths you shouldn't go down and more details about the things you should do to make your grandchildren remain in your family circle.

- Become an Intervenor instead of a Special Respondent. When your grandchildren have been placed in the foster care system, DHS will recommend that you be designated a Special Respondent *(see Attachment A, Family Services Plan and application for special respondent)*, which allows the department to investigate you and use your home as a temporary home for the children. You also won't be allowed to know anything about

your grandchildren's case, and you won't know whether DHS plans to leave the children with you until their parents are able to resume parenting or if they are planning to put the children into a foster-adopt home.

To become an intervenor in an open D&N case, grandparents must petition for visitation rights. Colorado law stipulates that visitation can be ordered by the court only "when there is or has been a child custody case or a case concerning the allocation of parental responsibilities relating to the child . . .". Furthermore, "the court shall order grandchild visitation only upon finding that such visitation is in the best interests of the child" (*http://www.kaplan-law.com/images/grandparent_visitation.pdf).*

If you find out your grandchildren are with you only temporarily, you will, no doubt, protest to DHS, asserting your intention to keep the children. Unfortunately, it will be too late because agreeing to become a Special Respondent has precluded you from becoming their permanent guardian. DHS may even allege that you never intended to adopt the children because you never took the necessary legal steps to become an Intervenor, which would have given you the legal "standing" to do so. That's why you must become an Intervenor in your grandchildren's case as early as possible in the D&N process. If you wait until the parents' rights have been terminated, you'll probably lose the opportunity to get custody of or adopt your grandchildren.

When you become an Intervenor, you gain legal "standing" in your grandchildren's case, indicating that you have a vested interest in the welfare of your grandchildren and are taking action to become a party to the case. ***To become an Intervenor, you must file certain legal documents with the court if your grandchildren have been placed in foster care and before their parents' rights have been terminated.***

- Communicate with your children to improve your chances for success. If you keep the lines of communication open between you and your children as they are being investigated by DHS, you'll have a better chance of getting custody of your grandchildren, should it come to that. First, you won't have to depend on getting information about the case from anywhere else, especially from a DHS caseworker, who will inform you that it is against the law to share confidential information with you. Your children can keep you abreast of the details and developments in the case and particulars. Without that knowledge, it makes it more difficult for a grandparent to become an Intervenor.

  Another reason to maintain open communication with your children is the strength in solidarity. When parents and grandparents are united in their love for the children and desire the best possible outcome for them, they'll be better able to withstand the forces that would separate the children from their family, avoiding needless pain to all of them and long-term psychological problems for the children.

- Stay calm because, as they say on *Law and Order*, "Anything you say can be used against you in a court or law." Now is not the time to have that emotional explosion, as the consequences can be long-term.
- Don't "run off at the mouth" when you interact with anyone connected with your case, except, of course, your attorney or staff at the Grandparents Resource Center, who are advocating for you. Outside of these allies, it may be difficult to figure out who's with you and who's not with you. Therefore, it's important that you keep details about yourself and your past to yourself.
- Listen to and take seriously your lawyer and/or GRC representative. Although it may be hard to hear what they tell you with your mind clouded by your emotions, their perceptions are probably clearer and their advice realistic. Take some time to consider their suggestions before you discard them.
- Be organized. Keep copies of all your paperwork related to your case, and keep it together in a place where you can easily access it.
- Keep in contact with your lawyer and/or GRC representative. Share everything relevant to the case with them—no matter if it's positive or negative. They need to know everything if they are to represent you and advise you effectively. If you can't reach your lawyer or GRC rep, leave a message on their voice mail with the information you called to give them. They should be kept current on your case.
- Keep a phone log with notes about telephone calls relevant to your case. No matter who you call or who calls you, if the call is related to your case, make notes about it in your phone log. If you leave a message for someone or they leave a message for you, make a note of that, too. You may need the phone log to document something days or months from now. Also, save all emails in a file on your computer.
- Get an email account. Anyone can get a free email account with Hotmail, Yahoo or Google, and if you don't have a computer that has internet access, you can use a computer at your nearest public library. Nowadays, it's common for professionals to communicate by email. And be sure to check your email frequently—at least once a day and more often, if possible.
- Treat everyone involved in your case—especially the court and DHS representatives—with respect (even when you don't feel they deserve it). Maintain proper dress and demeanor whenever you interact with DHS, the court, and other professionals. Your respectful behavior and appearance, in turn, will earn their respect.
- No matter how your adversaries behave, play by the rules. Do your best to act in a courteous and civil manner, and be sure to always provide information in a timely manner.

Points of Law to Consider

Colorado State Statutes

Child Abuse and Neglect

Child Witnesses to Domestic Violence
To better understand this issue and to view it across States, see the *Child Witnesses to Domestic Violence: Summary of State Laws* publication.

Circumstances That Constitute Witnessing
This issue is not addressed in the statutes reviewed.

Consequences
This issue is not addressed in the statutes reviewed.

Clergy as Mandatory Reporters of Child Abuse and Neglect
To better understand this issue and to view it across States, see the *Clergy as Mandatory Reporters of Child Abuse and Neglect: Summary of State Laws* publication.
Citation: Colo. Rev. Stat. Ann. § 13-90-107(1)(c) (LexisNexis through 2006 Supp.)
A clergy member, minister, priest, or rabbi shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or she belongs.

Citation: Colo. Stat. Ann. § 19-3-304(2)(aa) (LexisNexis through 2006 Supp.)
Persons required to report such abuse or neglect or circumstances or conditions shall include any clergy member.

> The provisions of this paragraph shall not apply to a person who acquires reasonable cause to know or suspect that a child has been subjected to abuse or neglect during a communication about which the person may not be examined as a witness pursuant to § 13-90-107(1)(c), unless the person also acquires such reasonable cause from a source other than such communication.
>
> For purposes of this paragraph, unless the context otherwise requires, "clergy member" means a priest, rabbi, duly ordained, commissioned, or licensed minister of a church, member of a religious order, or recognized leader of any religious body.

Cross-Reporting Among Responders to Child Abuse and Neglect
To better understand this issue and to view it across States, see the *Cross-Reporting among Responders to Child Abuse and Neglect: Summary of State Laws* publication.

Colo. Rev. Stat. Ann. § 19-3-307(3) (LexisNexis through 2007 Supp.)
A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the county department to the district attorney's office and to the local law enforcement agency.

When the county department reasonably believes a criminal act of abuse or neglect of a child in foster care has occurred, the county department shall transmit immediately a copy of the written report prepared by the county department to the district attorney's office and to the local law enforcement agency.

Colo. Rev. Stat. Ann. § 19-3-308(4)(b), (5) (LexisNexis through 2007 Supp.)
Upon the receipt of a report, if the county department reasonably believes that an incident of intra-familial abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his family and may file a petition in the juvenile court or the district court with juvenile jurisdiction on behalf of such child. If, before the investigation is completed, the opinion of the investigators is that assistance of the local law enforcement agency is necessary for the protection of the child or other children under the same care, the local law enforcement agency shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody in accordance with §§ 19-3-401(1)(a) and 19-3-405.

If a local law enforcement agency receives a report of a known or suspected incident of intra-familial abuse or neglect, it shall forthwith attempt to contact the county department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the county department, it shall forthwith make a complete investigation and may institute appropriate legal proceedings on behalf of the subject child or other children under the same care. As a part of an investigation, the local law enforcement agency shall have access to the records and reports of child abuse or neglect maintained by the State department for information under the name of the child or the suspected perpetrator. The local law enforcement agency, upon the receipt of a report and upon completion of any investigation it may undertake, shall forthwith forward a summary of the investigatory data plus all relevant documents to the county department.

Definitions of Child Abuse and Neglect
To better understand this issue and to view it across States, see the *Definitions of Child Abuse and Neglect: Summary of State Laws* publication.

Physical Abuse
Citation: Rev. Stat. § 19-1-103
Abuse or *child abuse or neglect* means an act or omission in one of the following categories that threatens the health or welfare of a child:

Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death and either:

Such condition or death is not justifiably explained

The history given concerning such condition is at variance with the degree or type of such condition or death

The circumstances indicate that such condition may not be the product of an accidental occurrence

Any case in which, in the presence of a child, on the premises where a child is found, or where a child resides, a controlled substance is manufactured

Any case in which a child tests positive at birth for either a schedule-I or schedule-II controlled substance, unless the child tests positive for schedule-II controlled substance as a result of the mother's lawful intake of such substance as prescribed

Neglect
Citation: Rev. Stat. §§ 19-1-103; 19-3-102
Child abuse or neglect includes any case in which a child is a child in need of services because the child's parent has failed to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take.

A child is *neglected* or *dependent* if:

- A parent, guardian, or legal custodian has subjected the child to mistreatment or abuse or has allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring.

- The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian.

- The child's environment is injurious to his or her welfare.

- A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other necessary care.

- The child is homeless, without proper care, or not domiciled with his or her parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian.

- The child has run away from home or is otherwise beyond the control of his or her parent, guardian, or legal custodian.

- The child tests positive at birth for either a schedule-I or schedule-II controlled substance, unless the child tests positive for a schedule-II controlled substance as a result of the mother's lawful intake of such substance as prescribed.

Sexual Abuse
Citation: Rev. Stat. § 19-1-103
Abuse or *child abuse or neglect* means any case in which a child is subjected to sexual assault or molestation, sexual exploitation, or prostitution.

Sexual conduct means any of the following:

- Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals
- Penetration of the vagina or rectum by any object
- Masturbation
- Sexual sadomasochistic abuse

Emotional Abuse
NO SUCH LAW IN THE STATE OF COLORADO. Read "*No Preponderance of Evidence" at GRC4usa.org in "Articles" section.*

Citation: Rev. Stat. § 19-1-103
Abuse or *child abuse or neglect* means any case in which a child is subjected to emotional abuse. *Emotional abuse* means an identifiable and substantial impairment or a substantial risk of impairment of the child's intellectual or psychological functioning or development.

Abandonment
Citation: Rev. Stat. § 19-3-102
A child is *neglected* or *dependent* if a parent, guardian, or legal custodian has abandoned the child.

Standards for Reporting
Citation: Rev. Stat. § 19-1-103
A report is required when a responsible person's acts or omissions threaten the child's health or welfare.

Persons Responsible for the Child
Citation: Rev. Stat. § 19-1-103
Responsible person means a child's parent, legal guardian, custodian, or any other person responsible for the child's health and welfare.

Spousal equivalent means a person who is in a family-type living arrangement with a parent and who would be a stepparent if married to that parent.

Exceptions
Citation: Rev. Stat. §§ 19-1-103; 19-3-103
Those investigating cases of child abuse shall take into account child-rearing practices of the culture in which the child participates, including the work-related practices of agricultural communities.

The reasonable exercise of parental discipline is not considered abuse.

No child who, in lieu of medical treatment, is under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing shall, for that reason only, be considered neglected. The religious rights of the parent shall not limit the access of a child to medical care in a life-threatening situation.

Definitions of Domestic Violence
To better understand this issue and to view it across States, see the *Definitions of Domestic Violence: Summary of State Laws*) publication.

Defined in Domestic Violence Civil Laws
Citation: Rev. Stat. § 13-14-101
"Domestic abuse" means any act or threatened act of violence that is committed by any person against another person to whom the actor is currently or was formerly related, or with whom the actor is living or has lived in the same domicile, or with whom the actor is involved or has been involved in an intimate relationship. "Domestic abuse" also may include any act or threatened act of violence against the minor children of either of the parties.

"Protection order" means any order that prohibits the restrained person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any protected person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises, or any other provision to protect the protected person from imminent danger to life or health.

Defined in Child Abuse Reporting and Child Protection Laws
Citation: This issue is not addressed in the statutes reviewed.

Defined in Criminal Laws
Citation: Rev. Stat. § 18-6-800.3
"Domestic violence" means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. "Domestic violence" also includes any other crime against a person, or against property, including an animal, or any municipal ordinance violation against a person, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

Persons Included in the Definition
Citation: Rev. Stat. § 18-6-800.3
"Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

Disclosure of Confidential Child Abuse and Neglect Records
To better understand this issue and to view it across States, see the *Disclosure of Confidential Child Abuse and Neglect Records: Summary of State Laws* publication.

Confidentiality of Records
Citation: Rev. Stat. § 19-1-307
Except as otherwise provided by law, reports of child abuse or neglect and the name and address of any child, family, or informant, or any other identifying information contained in such reports shall be confidential and shall not be public information.
Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a court for good cause.

Persons or Entities Allowed Access to Records
Rev. Stat. § 19-1-307
Except as otherwise provided in § 19-1-303, only the following persons or agencies shall be given access to child abuse or neglect records:

- A law enforcement agency, district attorney, coroner, or county or district Department of Social Services
- A physician who suspects that a child is abused or neglected
- An agency that is caring for, treating, or supervising a child who is the subject of a report
- The child's parent, guardian, or legal custodian
- In the case of an anatomical gift, a coroner and a procurement organization
- A person named as the victim in a report or, if the subject child is a minor, his or her guardian *ad litem*
- A court when access to such records is necessary for determination of an issue before it
- Members of a child protection team
- Other persons as a court may determine, for good cause
- The Department of Human Services, when requested by a county department, individual, or child-placing agency, for screening a prospective adoptive parent, family foster care parent, kinship care parent, or an adult residing in the home
- The Department of Human Services, when requested by the Department of Education, to aid the Department of Education in its investigation of an allegation of abuse by a school district employee

The State Department of Human Services and the county departments, for the following purposes:

- Conducting evaluations pursuant to § 14-10-127
- Screening prospective adoptive parents
- Private adoption agencies, including agencies located in other States, for screening prospective adoptive parents
- A person or organization engaged in a *bona fide* research or evaluation project or audit
- County commissions, city councils, and citizen review panels
- State, county, or local government agencies, and child-placing agencies located in other States, for screening prospective foster or adoptive parents

When Public Disclosure of Records is Allowed
Citation: Rev. Stat. § 19-1-307
Such disclosure shall not be prohibited when:

- There is a death of a suspected victim of child abuse or neglect, and the death becomes a matter of public record.
- An alleged juvenile offender is or was a victim of abuse or neglect.
- The suspected or alleged perpetrator becomes the subject of an arrest or the filing of a formal charge by a law enforcement agency.

Use of Records for Employment Screening
Citation: Rev. Stat. § 19-1-307
The State Department of Human Services, or a county or district Department of Social Services, or a child-placing agency may access records when investigating an applicant for a license to operate a child care facility or agency.

Access to records is permitted when the State Department of Human Services is requested by any operator of a licensed facility or agency to check records of child abuse or neglect for the purpose of screening an applicant for employment or a current employee.

The State Department of Human Services and county Departments of Social Services may access records for the following purposes:

- Screening any person who seeks employment with, is currently employed by, or who volunteers for service with the State Department of Human Services, Department of Health Care Policy and Financing, or a county Department of Social Services, if such person's responsibilities include direct contact with children

- Screening any person who will be responsible to provide child care pursuant to a contract with a county department for placements out of the home or private child care

The State Department of Human Services may access records for the following purposes:

- Investigating an applicant for a supervisory employee position or an employee of a guest child care facility or a public services short-term child care facility

- Investigating a prospective Court Appointed Special Advocate (CASA) volunteer for the CASA program)

Establishment and Maintenance of Central Registries for Child Abuse Reports
To better understand this issue and to view it across States, see the *Establishment and Maintenance of Central Registries for Child Abuse Reports: Summary of State Laws* publication.

Establishment
Citation: Rev. Stat. § 19-3-313.5
Effective January 1, 2004, Colorado repealed its law providing for a central registry.

The State Department [of Social Services] shall maintain the records and reports of child abuse and neglect.

Purpose
Citation: Rev. Stat. § 19-3-313.5
Records or reports may be used for purposes of employment checks or other background checks unless it is determined that a report is to be unsubstantiated or false.

The State department may maintain such records and reports in case files for the purpose of assisting in determinations of future risk and safety assessments.

Contents
Citation: Rev. Stat. § 19-3-313.5
The State department shall provide reliable, accurate, and timely information concerning records and reports of child abuse or neglect.

Maintenance
Citation: Rev. Stat. § 19-3-313.5
The State department shall provide training to county departments to achieve consistency and standardization in entering data into computer systems maintaining information related to records and reports of child abuse or neglect.

Immunity for Reporters of Child Abuse and Neglect
To better understand this issue and to view it across States, see the *Immunity for Reporters of Child Abuse and Neglect: Summary of State Laws* publication.
Citation: Colo. Rev. Stat. Ann. § 19-3-309 (LexisNexis through 2008 Supp.)

Statute:
Any person, other than the perpetrator, complicitor, coconspirator, or accessory, who participates in good faith in making a report pursuant to the reporting laws, the facilitation of the investigation of such a report or a judicial proceeding resulting there from, the taking of photographs or x-rays, the placing in temporary protective custody of a child, or otherwise performing his or her duties or acting pursuant to law, shall be immune from any civil or criminal liability or termination of employment that otherwise might result by reason of such acts of participation, unless a court of competent jurisdiction determines that such person's behavior was willful, wanton, and malicious.

> For the purpose of any proceedings, civil or criminal, the good faith of any such person reporting child abuse, any such person taking photographs or x-rays, and any such person who has legal authority to place a child in protective custody shall be presumed.

Making and Screening Reports of Child Abuse and Neglect
To better understand this issue and to view it across States, see the *Making and Screening Reports of Child Abuse and Neglect: Summary of State Laws* publication.

Reporting Procedures

Individual Responsibility
Citation: Rev. Stat. §§ 19-3-304; 19-3-307
A mandated reporter who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect shall report immediately to the Department of Human Services or a law enforcement agency. The reporter shall promptly follow up with a written report.

> A film processor shall report any suspicion of sexual abuse to a law enforcement agency, immediately by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident.

Content of Reports
Citation: Rev. Stat. § 19-3-307

> The department's report, when possible, shall include the following information:

- The name, address, age, sex, and race of the child
- The name and address of the person alleged responsible for the suspected abuse
- The nature and extent of the child's injuries, including any evidence of previous cases of abuse or neglect of the child or the child's siblings
- Family composition
- The source of the report, including the name, address, and occupation of the person making the report
- Any action taken by the reporting source
- Any other information that might be helpful

Special Reporting Procedures

Suspicious Deaths
Citation: Rev. Stat. § 19-3-305
A mandated reporter who has reasonable cause to suspect that a child has died as a result of abuse or neglect shall report that fact immediately to a local law enforcement agency and the appropriate medical examiner.

Substance-Exposed Infants
Not addressed in statutes reviewed.

Screening Reports
Citation: Rev. Stat. §§ 19-3-307; 19-3-308
The county department shall submit a report of confirmed child abuse or neglect within 60 days of receipt of the report to the State department in a manner prescribed by the State department. A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the county department to the district attorney's office and to the local law enforcement agency.

> The county department shall respond immediately upon receipt of any report of a known or suspected incident of intrafamilial abuse or neglect to assess the abuse involved and the appropriate response to the report. The assessment shall be in accordance with rules adopted by the State board of social services (see Code of Colorado Rules, 12 CCR 2509-4) to determine the risk of harm to such child and the appropriate response to such risks.
>
> Appropriate responses shall include, but are not limited to, screening reports that do not require further investigation, providing appropriate intervention services, pursuing reports that require further investigation, and conducting immediate investigations.

Mandatory Reporters of Child Abuse and Neglect
To better understand this issue and to view it across States, see the *Mandatory Reporters of Child Abuse and Neglect: Summary of State Laws* publication.

Professionals Required to Report
Citation: Rev. Stat. § 19-3-304
Persons required to report include:

- Physicians, surgeons, physicians in training, child health associates, medical examiners, coroners, dentists, osteopaths, optometrists, chiropractors, podiatrists, nurses, hospital personnel, dental hygienists, physical therapists, pharmacists, registered dieticians
- Public or private school officials or employees
- Social workers, Christian Science practitioners, mental health professionals, psychologists, professional counselors, marriage and family therapists

- Veterinarians, peace officers, firefighters, or victim's advocates
- Commercial film and photographic print processors
- Counselors, marriage and family therapists, or psychotherapists
- Clergy members, including priests, rabbis, duly ordained, commissioned, or licensed ministers of a church, members of religious orders, or recognized leaders of any religious bodies
- Workers in the State Department of Human Services
- Juvenile parole and probation officers
- Child and family investigators
- Officers and agents of the State Bureau of Animal Protection and animal control officers

Reporting by Other Persons
Citation: Rev. Stat. § 19-3-304
Any other person may report known or suspected child abuse or neglect.

Standards for Making a Report
Citation: Rev. Stat. § 19-3-304
A report is required when:

- A mandated reporter has reasonable cause to know or suspect child abuse or neglect.
- A reporter has observed a child being subjected to circumstances or
- Conditions that would reasonably result in abuse or neglect.
- Commercial film and photographic print processors have knowledge of or
- Observe any film, photograph, videotape, negative, or slide depicting a child engaged in an act of sexual conduct.

Privileged Communications
Citation: Rev. Stat. §§ 19-3-304; 19-3-311

The clergy-penitent privilege is permitted.

The physician-patient, psychologist-client, and husband-wife privileges are not allowed as grounds for failing to report.

Inclusion of Reporter's Name in Report
Citation: Rev. Stat. § 19-3-307
The report shall include the name, address, and occupation of the person making the report.

Disclosure of Reporter Identity
Citation: Rev. Stat. § 19-1-307
The identity of the reporter shall be protected.

Parental Drug Use as Child Abuse
To better understand this issue and to view it across States, see the *Parental Drug Use as Child Abuse: Summary of State Laws* publication.

Citation: Colo. Rev. Stat. Ann. § 19-1-103(1)(a) (LexisNexis through 2005 Supp.)

Statute Text:
"Abuse" or "child abuse or neglect" means an act or omission in one of the following categories that threatens the health or welfare of a child:

- Any case in which, in the presence of a child, or on the premises where a child is found, or where a child resides, a controlled substance, as defined in § 18-18-102(5), is manufactured

- Any case in which a child tests positive at birth for either a schedule-I controlled substance, as defined in § 18-18-203, or a schedule-II controlled substance, as defined in § 18-18-204, unless the child tests positive for a schedule-II controlled substance as a result of the mother's lawful intake of such substance as prescribed

Citation: Colo. Rev. Stat. Ann § 18-6-401(1)(c) (LexisNexis through Colo. 2006 Legis. Serv., H.B. 1145)

Statute Text:
A person commits child abuse if, in the presence of a child, or on the premises where a child is found, or where a child resides, or in a vehicle containing a child, the person knowingly engages in the manufacture or attempted manufacture of a controlled substance, as defined by section 18-18-102 (5), or knowingly possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to use the product as an immediate precursor in the manufacture of a controlled substance. It shall be no defense to the crime of child abuse that the defendant did not know a child was present, a child could be found, a child resided on the premises, or that a vehicle contained a child.

- A parent or lawful guardian of a child or a person having the care or custody of a child who knowingly allows the child to be present at or reside at a premises or to be in a vehicle where the parent, guardian, or person having care or custody of the child knows or reasonably should know another person is engaged in the manufacture or attempted manufacture of methamphetamine commits child abuse.

- A parent of lawful guardian of a child or a person having the care of custody of a child who knowingly allows the child to be present at or reside at a premises or to be in a vehicle where the parent, guardian, or person having care of custody of the child knows or reasonably should know another person possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to use the product as an immediate precursor in the manufacture of methamphetamine commits child abuse.

  Citation: Colo. Rev. Stat. Ann. § 19-3-401(3)(b)-(c) (LexisNexis through Colo. 2006 Legis Serv., H.B. 1123)

  Statute Text:
  A newborn child, who is not in a hospital setting, shall not be taken into temporary protective custody for a period of longer than 24 hours without an order of the court….
  The court orders shall not be required in the following circumstances:
  When a newborn child is identified by a physician, registered nurse, licensed practical nurse, or physician's assistant engaged in the admission, care, or treatment of patients as being affected by substance abuse or demonstrating withdrawal symptoms resulting from prenatal drug exposure.

  When the newborn child is subject to an environment exposing the newborn child to a laboratory for manufacturing controlled substances.

Penalties for Failure to Report and False Reporting of Child Abuse and Neglect
To better understand this issue and to view it across States, see the *Penalties for Failure to Report and False Reporting of Child Abuse and Neglect: Summary of State Laws* - 166 KB) publication.

Failure to Report
Rev. Stat. § 19-3-304(4)
Any mandatory reporter who willfully fails to report as required by § 19-3-304(1):
Commits a Class 3 misdemeanor and shall be punished as provided by law
Shall be liable for damages proximately caused.

False Reporting
Rev. Stat. § 19-3-304(3.5), (4)
No person, including a mandatory reporter, shall knowingly make a false report of abuse or neglect to a county department or local law enforcement agency.

Any person who violates this provision:
Commits a Class 3 misdemeanor and shall be punished as provided by law
Shall be liable for damages proximately caused

Review and Expunction of Central Registries and Reporting Records
To better understand this issue and to view it across States, see the *Review and Expunction of Central Registries and Reporting Records: Summary of State Laws* publication.

Right of the Reported Person to Review and Challenge Records
Rev. Stat. § 19-3-313.5
On or before January 1, 2004, the State Board of Human Services shall promulgate rules to establish a process at the State level by which a person who is found to be responsible in a confirmed report of child abuse or neglect filed with the State Department of Human Services pursuant to § 19-3-307 may appeal the finding of a confirmed report of child abuse or neglect to the State department. At a minimum, the rules established shall address the following matters, consistent with Federal law:

- The provision of adequate and timely written notice by the county departments of social services or, for an investigation pursuant to § 19-3-308(4.5), by the agency that contracts with the State, using a form created by the State department, to a person found to be responsible in a confirmed report of child abuse or neglect of the person's right to appeal the finding of a confirmed report of child abuse or neglect to the State department

- The timeline and method for appealing the finding of a confirmed report of child abuse or neglect

- Designation of the entity, that shall be one other than a county department of social services, with the authority to accept and respond to an appeal by a person found to be responsible in a confirmed report of child abuse or neglect at each stage of the appellate process

- The legal standards involved in the appellate process and a designation of the party who bears the burden of establishing that each standard is met

- The confidentiality requirements of the appeals process

When Records Must Be Expunged
Rev. Stat. § 19-3-313.5
The rules established by the State Board of Human Services shall, consistent with Federal law, provide for procedures that facilitate the prompt expunction of and prevent the release of any information contained in any records and reports that are accessible to the general public or are used for purposes of employment or background checks in cases determined to be unsubstantiated or false.

The State Department of Social Services and the county Department of Social Services may maintain information concerning unsubstantiated reports in casework files to assist in future risk and safety assessments.

Child Welfare
Case Planning for Families Involved With Child Welfare Agencies
To better understand this issue and to view it across States, see the *Case Planning for Families Involved With Child Welfare Agencies: Summary of State Laws* - 476 KB) publication.

When Case Plans Are Required
Citation: Rev. Stat. § 19-3-209
An individual case plan, developed with the input or participation of the family, is required to be in place for all abused and neglected children and the families of such children in each case that is opened for the provision of services beyond the investigation of the report of child abuse or neglect, regardless of whether the child or children involved are placed out of the home or under court supervision.

[This additional information is taken from Chapter 6 of the Child Welfare Handbook.]

The Family Service Plan (FSP) is to be completed within 60 calendar days after case opening.

A safety plan *(see Attachment B, Colorado Safety Assessment/Plan)* may substitute for the FSP for the first 60 calendar days in protective services cases.

The plan for transition to independent living/emancipation shall be completed within 60 calendar days of case opening or of the child's 16th birthday, for children age 16 and over in out-of-home placement.

Who May Participate in the Case Planning Process
Citation: Rev. Stat. § 19-3-209
The family may participate in the development of the individual case plan.

[This additional information is taken from Chapter 6 of the Child Welfare Handbook.]

The involvement of families in the joint development of the written services plan is essential and supported in Colorado policy and child welfare training. Policy states that the following parties should be involved:

- Both parents
- The child
- Immediate and extended family members as appropriate to the family and child's service needs
- Service providers, including foster parents

All parties are to be involved in all phases of the assessment and services planning, and assessment tools and community resources should be selected based on the culture, ethnicity, and other special strengths and needs of the family.

Contents of a Case Plan
Colo. Child Welfare Handbook, Ch. 6
[Note: This issue is not addressed in the statutes reviewed. The information below is taken from the Colorado Child Welfare Handbook.]

For all children:

Every plan must document the goal related to permanency and the projected date for achieving the goal. Permanency goals are:

- Remain home
- Return home
- Permanent placement with relatives through adoption
- Adoption by a non-relative
- Permanent placement with relatives through guardianship/permanent custody
- Non-relative guardianship/permanent custody
- Other planned permanent living arrangement through emancipation, with a relative, or with a non-relative

Specific, measurable, agreed upon, realistic, time-limited objectives and tasks must be assigned to the child, parents, foster care providers, kin caregivers, other service providers, Department of Human Services caseworkers, and other Department of Human Services staff.

For children in out-of-home placement:

A description of the type of placement facility and the appropriateness in relation to the needs of the child must be included. The plan must describe the factors that have been assessed that indicate this placement will provide a safe environment for this child.

Documentation must be included that the placement is the least restrictive setting based on the needs and best interests of the child and how the cultural, religious, and ethnic needs of the child will be met. Also, the plan must include documentation of previous and ongoing efforts to place the child with kin.

Information regarding the child's health and education providers such as names and addresses of medical providers and school must be stated.

Documentation of how the Department of Human Services will carry out court determinations or court orders concerning the child must be included.

The plan must include a description of the services and resources needs and documentation of how services will be provided to:

- Foster parents, kin caregivers, or adopted parents in order to meet the needs of the child
- The child while in placement
- The child and family in order to reunite the family, including a plan for parenting time and visitation with other family members
- The plan must also include a description of the services needed to prepare the older child for self-sufficiency and independent living, as early in placement as possible, but no later than age 16 years.
- The plan must also include a description of the nature and frequency of contacts between the child and family and identify the family like networks for children with a permanency goal of non-relative planned, permanent living arrangement.

Concurrent Planning for Permanency for Children
To better understand this issue and to view it across States, see the *Concurrent Planning for Permanency for Children: Summary of State Laws* publication.
Citation: Colo. Rev. Stat. Ann. § 19-3-508(7) (LexisNexis through 2007 Supp.)

Statute Text:
Efforts to place a child for adoption or with a legal guardian or custodian, including identifying appropriate in-State and out-of-State permanent placement options, may be made concurrently with reasonable efforts to preserve and reunify the family.

Court Hearings for the Permanent Placement of Children
To better understand this issue and to view it across States, see the *Court Hearings for the Permanent Placement of Children: Summary of State Laws*) publication.

Schedule of Hearings
Citation: Rev. Stat. § 19-3-702
Permanency hearings shall be held:

- As soon as possible after the dispositional hearing, but no later than 12 months after the child has entered foster care
- Every 12 months thereafter while the child remains in an out-of-home placement
- Within 30 days after a finding that reasonable efforts are not required
- In counties with expedited permanency planning for children under age 6, within 3 months

Persons Entitled to Attend Hearings
Citation: Rev. Stat. § 19-3-702
The following persons shall be present at all hearings:

- The parents of the child
- The child, if appropriate
- The foster parents, pre-adoptive parents, or relative caregivers, if any

Determinations Made at Hearings
Citation: Rev. Stat. § 19-3-702
At the permanency hearing, the court shall first determine whether the child shall be returned to the child's parent, and, if applicable, the date on which the child shall be returned, and whether reasonable efforts have been made to find a safe and permanent placement for the child. If the child is not returned to his or her parent, the court shall determine whether there is a substantial probability that the child will be returned within 6 months.

At any permanency hearing conducted by the court, the court shall make determinations as to the following:

- Whether procedural safeguards to preserve parental rights have been applied in connection with any change in the child's placement or any determination affecting parental visitation of the child

- Whether reasonable efforts have been made to finalize the permanency plan that is in effect at the time of the hearing

- If a child resides in a placement out of State, whether the out-of-State placement continues to be appropriate and in the best interests of the child

- If the child is age 16 or older, whether the permanency plan includes independent living services

Periodic reviews conducted by the court or, if there is no objection by any party to the action, in the court's discretion, through an administrative review conducted by the State Department of Human Services, shall determine the following:

- Whether the child's safety is protected in the placement

- Whether reasonable efforts have been made to find a safe and permanent placement

- The continuing necessity for and appropriateness of the placement

- The extent of compliance with the case plan, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care

- A likely date by which the child may be returned to and safely maintained at home or placed for adoption, legal guardianship, or another permanent safe placement setting

Permanency Options
Citation: Rev. Stat. §§ 19-3-702; 19-3-703
If the child cannot be returned to the parent, the court shall determine the future placement of the child. Options for placement may include:

- Adoption
- Legal guardianship or custody
- Placement with a fit and willing relative
- Another permanent living arrangement

In counties with expedited permanency planning, placement options for a child under age 6 include:

- Reunification with the parent
- Placement with a relative
- Placement with an adoptive parent
- Permanent custody granted to another
- If the child cannot be returned home, placement in the least restrictive level of care

Criminal Background Checks for Prospective Foster and Adoptive Parents
To better understand this issue and to view it across States, see the *Criminal Background Checks for Prospective Foster and Adoptive Parents: Summary of State Laws* publication.

Requirements for Foster Parents
Citation: Rev. Stat. §§ 26-6-107(1)(A7); 26-6-104(7)(a)(I)

For all family foster care or kinship care applicants, the county department or child-placing agency shall require each adult who is age 18 or older who resides in the home to obtain a fingerprint-based criminal history records check through the Colorado Bureau of Investigation and the FBI.

In addition, the department shall contact the appropriate entity in each State in which the applicant or any adult residing in the home has resided within the preceding 5 years to determine whether the adult has been found to be responsible in a confirmed report of child abuse or neglect.

An investigation shall be conducted for any new resident adult added to the foster care home.

The department shall not issue a license or certificate to operate a foster care home if the applicant or a person who resides with the applicant has been convicted of:

- Child abuse
- A crime of violence
- Any felony offenses involving unlawful sexual behavior
- Any felony act of domestic violence

- Any felony involving physical assault, battery, or a drug-related offense within the preceding 5 years
- A pattern of misdemeanor convictions within the preceding 10 years

Requirements for Adoptive Parents

Citation: Rev. Stat. §§ 19-5-207(2.5)(a); 19-5-208(5)

In all petitions for adoption, a fingerprint-based criminal history records check is required for any prospective adoptive parent or any adult residing in the home.

The department or the child-placing agency, as may be appropriate, shall report to the court any case in which a fingerprint-based criminal history record check reveals that the prospective adoptive parent or any adult residing in the home was convicted at any time of a felony or misdemeanor in one of the following areas:

- Child abuse or neglect
- Spousal abuse
- Any crime against a child, including, but not limited to, child pornography
- Any crime of domestic violence
- Violation of a protection order
- Any crime involving violence, rape, sexual assault, or homicide
- Any felony physical assault or battery conviction or felony drug-related conviction within the past 5 years

No person convicted of a felony offense specified above shall be allowed to adopt a child.

In addition to the fingerprint-based criminal history records check, the county department shall contact the State Department of Human Services and the appropriate entity in each State in which the prospective adoptive parent or any adult in the home has resided in the preceding 5 years to determine whether the prospective adoptive parent or any adult residing in the home has been found to be responsible in a confirmed report of child abuse or neglect.

In all stepparent, second parent, custodial, and kinship adoptions, the petition shall contain a statement informing the court of whether the prospective adoptive parent was convicted at any time by a court of competent jurisdiction of a felony or misdemeanor in one of the areas listed above. In addition, the petitioner shall submit a current criminal history records check paid for by the petitioner.

Determining the Best Interests of the Child
To better understand this issue and to view it across States, see the *Determining the Best Interests of the Child: Summary of State Laws* publication.

Citation: Colo. Rev. Stat. Ann. § 19-1-102(1), (1.5) (LexisNexis through 2007 Supp.)
Statute Text:
The General Assembly declares that the purposes of this title are:

- To secure for each child subject to these provisions such care and guidance, preferably in his or her own home, as will best serve his or her welfare and the interests of society

- To preserve and strengthen family ties whenever possible, including improvement of home environment

- To remove a child from the custody of his or her parents only when his or her welfare and safety or the protection of the public would otherwise be endangered and, in either instance, for the courts to proceed with all possible speed to a legal determination that will serve the best interests of the child

- To secure for any child removed from the custody of his or her parents the necessary care, guidance, and discipline to assist him or her in becoming a responsible and productive member of society

The General Assembly declares that it is in the best interests of the child who has been removed from his or her own home to have the following guarantees:

- To be placed in a secure and stable environment
- To not be indiscriminately moved from foster home to foster home
- To have assurance of long-term permanency planning

Grounds for Involuntary Termination of Parental Rights
To better understand this issue and to view it across States, see the *Grounds for Involuntary Termination of Parental Rights: Summary of State Laws* publication.

Circumstances That Are Grounds for Termination of Parental Rights
Rev. Stat. § 19-3-604
The court may order a termination of the parent-child legal relationship upon the finding by clear and convincing evidence of any one of the following:

The child has been abandoned by his or her parents.

The parent has been found to be unfit due to one of the following:

- Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs and conditions of the child

A single incident resulting in serious bodily injury or disfigurement of the child

- Long-term incarceration of the parent of such duration that the parent is not eligible for
- parole for at least 6 years after the date the child was adjudicated dependent or neglected or, if the child is under age 6, the parent is not eligible for parole for at least 36 months

- An identifiable pattern of sexual abuse of the child

- The torture of or extreme cruelty to the child, a sibling of the child, or another child of either parent

- The parent has not attended visitations with the child as set forth in the treatment plan, unless good cause can be shown for failing to visit

- The parent exhibits the same problems addressed in the treatment plan without adequate improvement

- The parent is unfit, and the conduct or condition of the parent is unlikely to change within a reasonable time

In determining unfitness, the court shall consider, but not be limited to, the following:

- Conduct towards the child of a physically or sexually abusive nature

- History of violent behavior

- A single incident of life-threatening or serious bodily injury or disfigurement of the child

- Excessive use of intoxicating liquors or controlled substances that affects the ability to care and provide for the child Neglect of the child

- Injury or death of a sibling due to proven parental abuse or neglect, murder, voluntary manslaughter, or circumstances in which a parent aided, abetted, or attempted the commission of or conspired or solicited to commit murder of a child's sibling

- Reasonable efforts by child-caring agencies that have been unable to rehabilitate the parent or parents

- Prior involvement with the Department of Human Services concerning an incident of abuse or neglect involving the child followed by a subsequent incident of abuse or neglect

- Felony assault committed by a parent that resulted in serious bodily injury to the child or to another child of the parent

- That the child has been in foster care under the responsibility of the county department for 15 of the most recent 22 months

- Whether, on two or more occasions, a child in the physical custody of the parent has been adjudicated dependent or neglected

- Whether, on one or more prior occasions, a parent has had his or her parent-child legal relationship terminated with respect to another child

Circumstances That Are Exceptions to Termination of Parental Rights
Rev. Stat. § 19-3-604
A petition to terminate parental rights will be filed when the child has been in foster care for 15 of the most recent 22 months, unless:

- The child is placed with a relative of the child.

- The department has documented in the case plan that such motion is not in the best interests of the child.

- Reasonable efforts to reunify the child with the parent have not been provided.

Infant Safe Haven Laws
To better understand this issue and to view it across States, see the *Infant Safe Haven Laws: Summary of State Laws* publication.

Infant's Age
Rev. Stat. § 19-3-304.5
A child who is 72 hours old or younger may be relinquished.

Who May Relinquish the Infant
Rev. Stat. § 19-3-304.5
The parent of the child may voluntarily relinquish the child.

Who May Receive the Infant
Rev. Stat. § 19-3-304.5
A child may be delivered to:

- A firefighter
- A hospital staff member who engages in the admission, care, or treatment of patients

Responsibilities of the Safe Haven Provider
Rev. Stat. § 19-3-304.5
When a firefighter is at a fire station or a hospital staff member is at a hospital, the firefighter or hospital staff member shall, without a court order, take temporary physical custody of the child if:

- The child is 72 hours old or younger.
- The parent did not express an intent to return for the child.

If a firefighter or hospital staff member takes temporary physical custody of a child, he or she shall:

- Perform any act necessary, in accordance with generally accepted standards of professional practice, to protect, preserve, or aid the physical health or safety of the child during the temporary physical custody

- Notify a law enforcement officer and the county department of the abandonment within 24 hours after the abandonment

Immunity for the Provider
Rev. Stat. § 19-3-304.5
A firefighter or hospital staff member shall incur no civil or criminal liability for any good faith acts or omissions performed pursuant to this section.

Protection for Relinquishing Parent
Rev. Stat. §§ 18-6-401(9): 19-3-304.5
A parent who utilizes the provisions of this section shall not, for that reason alone, be found to be responsible in a confirmed report of abuse or neglect.

> If a parent is charged with permitting a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, and the child was 72 hours old or younger at the time of the alleged offense, it shall be an affirmative defense to such charge that the parent safely, reasonably, and knowingly handed the child over to a firefighter or to a hospital staff member who engages in the admission, care, or treatment of patients, when such firefighter is at a fire station or such hospital staff member is at a hospital.

Effect on Parental Rights
Rev. Stat. § 19-3-304.5
A county department of social services shall:

- Place an abandoned child with a potential adoptive parent as soon as possible
- Proceed with a motion to terminate the parental rights of a parent who abandons a child

Placement of Children with Relatives
To better understand this issue and to view it across States, see the *Placement of Children with Relatives: Summary of State Laws* publication.

Relative Placement for Foster Care and Guardianship
Citation: Rev. Stat. §§ 19-3-508; 19-3-605
If the court finds that placement out of the home is necessary and is in the best interests of the child and the community, the court shall place the child with a relative, including the child's grandparent.

Following an order of termination of parental rights, the court shall consider, but shall not be bound by, a request that guardianship and legal custody of the child be placed with a relative of the child. When ordering guardianship and legal custody of the child, the court may give preference to a grandparent, aunt, uncle, brother, sister, half-sibling, or first cousin of the child when such relative has made a timely request and, the court determines that such placement is in the best interests of the child.

Requirements for Placement with Relatives
Citation: Rev. Stat. §§ 19-3-403; 19-3-406
The court may consider and give preference to giving temporary custody to a child's relative who is appropriate, capable, willing, and available for care if it is in the best interests of the child.

Any time a relative is identified as a potential emergency placement for the child, the local law enforcement agency shall conduct an initial criminal history record check of the relative prior to the county department placing the child in the emergency placement.

A relative who is not disqualified as an emergency placement and who authorizes a child to be placed with him or her on an emergency basis shall report to a local law enforcement agency for the purpose of providing fingerprints to the law enforcement agency no later than 5 days after the child is placed in the person's home. The local law enforcement agency shall obtain through the Colorado Bureau of Investigation a State and national fingerprint-based criminal history record check.

Relatives Who May Adopt
Citation: Rev. Stat. § 19-1-103(71.5)
A kinship adoption refers to the adoption of a child by a grandparent, brother, sister, half-sibling, aunt, uncle, or first cousin, and the spouses of such relatives.

Requirements for Adoption by Relatives
Citation: Rev. Stat. §§ 19-1-103; 19-5-208
The relative is eligible to adopt the child if he or she has had physical custody of the child for a period of 1 year or more, and the child is not the subject of a pending dependency and neglect proceeding.

The adoption petition shall contain a statement informing the court whether the relative was ever convicted of a felony or misdemeanor in one of the following areas:

- Neglect
- Spousal abuse
- Any crime against a child
- Domestic violence, violation of a protection order, or any crime involving violence, rape, sexual assault, or homicide
- Any felony physical assault or battery

The relative must undergo a criminal background check.

In the petition, the relative shall state that he or she has consulted with the appropriate departments to determine eligibility for Temporary Assistance for Needy Families, Medicaid, and subsidized adoption.

Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children
To better understand this issue and to view it across States, see the *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children: Summary of State Laws* publication.

What Are Reasonable Efforts
Citation: Rev. Stat. § 19-1-103(89)
"Reasonable efforts" mean the exercise of diligence and care for children who are in out-of-home placement or are at imminent risk of out-of-home placement. The term includes supportive and rehabilitative services that are required to prevent unnecessary placement of a child outside of a child's home or to foster the safe reunification of a child with a child's family, as described in § 19-3-208.

When Reasonable Efforts Are Required
Citation: Rev. Stat. § 19-1-115
Reasonable efforts must be made:

- To prevent or eliminate the need to remove the child from the home
- To reunite the child and the family if legal custody has been awarded to the department

When Reasonable Efforts Are NOT Required
Citation: Rev. Stat. § 19-1-115
Reasonable efforts are not required to prevent the child's removal from the home or to reunify the child and the family in the following circumstances:

- The court finds that the parent has subjected the child to aggravated circumstances, as described in § 19-3-604(1).

- The parental rights of the parent with respect to a sibling of the child have been involuntarily terminated, unless the prior sibling termination resulted from a parent delivering a child to a firefighter or a hospital staff member pursuant to § 19-3-304.5.

- The court finds that the parent has been convicted of murder or voluntary manslaughter of another child of the parent; aiding, abetting, or attempting to commit such crimes; or a felony assault that resulted in serious bodily injury to the child or to another child of the parent.

Standby Guardianship
To better understand this issue and to view it across States, see the *Standby Guardianship: Summary of State Laws* publication.

Who Can Nominate a Standby Guardian
Citation: Rev. Stat. § 15-14-202(2)
A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has. A guardian may also be appointed by will or other signed writing by a guardian of a minor child.

How to Establish a Standby Guardian
Citation: Rev. Stat. § 15-14-202
The writing shall be signed by the parent or guardian and at least two witnesses and all signatures shall be notarized. The appointment may specify the desired limitations on the powers to be given to the guardian.

Upon petition of an appointing parent or guardian and a finding that the appointing parent or guardian will likely become unable to care for the child within 2 years, the court, before the appointment becomes effective, may confirm the selection of a guardian by a parent or guardian and terminate the rights of others to object. If the child is age 12 or older, he or she must consent to the appointment of a guardian.

How Standby Authority is Activated
Citation: Rev. Stat. § 15-14-202
Subject to § 15-14-203, the appointment of a guardian becomes effective upon the death of the appointing parent or guardian, an adjudication that the parent or guardian is an incapacitated person, or a written determination by a physician who has examined the parent or guardian that the parent or guardian is no longer able to care for the child, whichever occurs first.

The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days after the guardian's appointment becomes effective. Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment.

Involvement of the Noncustodial Parent
Citation: Rev. Stat. §§ 15-14-203; 15-14-204; 15-14-205
Until the court has confirmed an appointee, the other parent may prevent or terminate the appointment at any time by filing a written objection with the court.

Consent is required unless either parental rights have been terminated or the parent is unwilling or unable to exercise such rights.

After a petition for appointment of a guardian is filed, the court shall schedule a hearing. Notice of the hearing and a copy of the petition must be given to the noncustodial parent.

Authority Relationship of the Parent and the Standby
Citation: Rev. Stat. § 15-14-202
The appointment of a guardian by a parent does not supersede the parental rights of either parent.

Withdrawing Guardianship
Citation: Rev. Stat. §§ 15-14-202; 15-14-210
The appointing parent or guardian may revoke or amend the appointment at any time before it is confirmed by the court. The authority of the guardian terminates upon the appointment of another guardian, the filing of an objection by another person, or the refusal of the minor age 12 or older to consent.

The guardianship terminates upon a minor's death, adoption, emancipation, or attainment of majority, or as ordered by the court.

Adoption

Access to Adoption Records

To better understand this issue and to view it across States, see the *Access to Adoption Records: Summary of State* publication.

Who May Access Information
Citation: Rev. Stat. §§ 19-5-304; 19-5-305
The following persons may have access to adoption records:

- The adopted person who is age 18 or older
- The birth parents
- The adoptive parent, custodial grandparent, or legal guardian of a minor adopted person
- An adult descendant of an adopted person or the adoptive parent, with the written consent of the adopted person
- The adopted person's spouse, adult stepchild, or adopted adult sibling, with the consent of the adopted person
- The birth grandparent with the consent of the birth parent
- The legal representative of any of the above listed persons

Access to Non-identifying Information
Citation: Rev. Stat. § 19-5-305
For adoptions finalized prior to 9-1-1999: Access to the adoption record is available through a confidential intermediary who must obtain consent from the parties before release of information.

For adoptions finalized on or after 9-1-1999, all adoption records shall be open to inspection by persons listed above. Adoption records, as defined by § 19-1-103, include:

- The adopted person's original birth certificate and amended birth certificate
- The final decree of adoption
- Any non-identifying information
- The final order of relinquishment
- The order of termination of parental rights

"Non-identifying information" means information that does not disclose the name, address, place of employment, or any other material information that would lead to the identification of the birth parents and includes, but is not limited to, the following:

- The physical description of the birth parents
- The educational background and occupation of the birth parents
- Genetic information about the birth family
- Medical information about the adopted person's birth
- Social information about the birth parents
- The placement history of the adopted person

The State registrar shall prescribe an updated medical history statement that a birth parent may submit with the completed contact preference form. The medical history statement shall be a brief narrative statement written by the birth parent indicating medical information about the birth parent or other biological relatives.

Mutual Access to Identifying Information
Citation: Rev. Stat. §§ 19-5-304; 19-5-305
Any of the parties listed above may file a motion with the court to appoint a confidential intermediary to determine the whereabouts of such individual's unknown relative or relatives. No one shall seek to determine the whereabouts of a relative who is younger than age 18.

The State registrar shall make available to any birth parent named on an original birth certificate a contact preference form on which the birth parent may state a preference regarding contact by an adult adopted person, an adult descendant of an adopted person, or a legal representative of the adopted person or descendant. The contact preference form shall allow the birth parent to voluntarily include his or her contact information in the adoption record and shall provide him or her with options to indicate a preference regarding whether he or she would prefer or not prefer future contact with the adopted person or adult descendant of the adopted person and, if contact is preferred, whether the birth parent would prefer contact directly or through a confidential intermediary or a child placement agency.

The contact preference form shall also indicate that the birth parent can change his or her contact preference form by notifying the State registrar in writing.

Access to Original Birth Certificate
Citation: Rev. Stat. § 19-5-305
The contact preference form provided by the State registrar shall include an option for the birth parent to authorize the release of the original birth certificate. An authorization to release may be exercised and submitted to the State registrar at any time after 1-1-2006.

Where the Information Can Be Located
Colorado Voluntary Adoption Registry, Colorado Department of Public Health
Colorado Confidential Intermediary Services
Child placement agency involved in the adoption

Collection of Family Information about Adopted Persons, Birth Parents, and Adoptive Parents
To better understand this issue and to view it across States, see the *Collection of Family Information about Adopted Persons, Birth Parents, and Adoptive Parents: Summary of State Laws* publication.

Agency or Person Gathering Information or Preparing Report
Citation: Rev. Stat. § 19-5-207
A written home research must be completed by:

- The county department of social services
- A child-placing agency
- A qualified individual

Contents of Report about Person to be Adopted
Citation: Rev. Stat. § 19-5-207
The prospective adoptive parents must be provided the following information:

- The child's physical and mental condition
- The child's family background, including names of parents if obtainable
- The child's disposition toward the adoption
- The length of time the child has been in the custody of the petitioner

Contents of Report About Birth Parents
Citation: Rev. Stat. § 19-5-207
The prospective adoptive parents must be provided the following information:

- The birth parents' family background, including names and other identifying information, if obtainable
- The reasons for terminating the birth parents' parental rights

Contents of Report about Adoptive Parents
Citation: Rev. Stat. § 19-5-207
The home research shall address the adoptive parents:

- Physical and mental health
- Emotional stability
- Moral integrity
- The parents' ability to promote the welfare of the adopted person
- The suitability of the match
- Criminal background history
- Child abuse and neglect and spousal abuse history
- Any history of drug convictions

Consent to Adoption
To better understand this issue and to view it across States, see the *Consent to Adoption: Summary of State Laws* publication.

Who Must Consent to an Adoption
Citation: Rev. Stat. § 19-5-207
When a child is placed for adoption by the county department of social services, a licensed child placement agency, or an individual, such department, agency, or individual shall file, with the petition to adopt, its written and verified consent to such adoption.

Age When Consent of Adoptee is Considered or Required
Citation: Rev. Stat. §§ 19-5-103; 19-5-203
Written consent to any proposed adoption shall be obtained from the person to be adopted if such person is age 12 or older. Children must undergo counseling.

When Parental Consent is not Needed
Citation: Rev. Stat. §§ 19-5-203; 19-3-604
Consent is not required when:

- The parent's rights have been terminated due to the parent's unfitness, as outlined in § 19-3-604.
- The parent has failed to provide support or has abandoned the child for 1 year.

When Consent Can Be Executed
Citation: Rev. Stat. §§ 19-5-104; 19-5-203
Consent may be executed any time after the birth of the child.

How Consent Must Be Executed
Citation: Rev. Stat. § 19-5-103
Any parent desiring to relinquish his or her child shall:

- Obtain counseling for himself or herself and the child from the county department of social services or from a licensed child-placing agency

- Petition the juvenile court upon a standardized form providing the name of both natural parents, if known; the name of the child, if named; the ages of all parties concerned; and the reasons relinquishment is desired

  The petition shall be accompanied by a standardized affidavit of relinquishment counseling that includes:

  - A statement indicating the nature and extent of counseling furnished to the petitioner, if any, and the recommendations of the counselor
  - A copy of the original birth certificate
  - A statement disclosing any and all payments, gifts, assistance, goods, or services received, promised, or offered to the relinquishing parent in connection with the pregnancy, birth, or proposed relinquishment of the child and the source or sources of such payments, gifts, assistance, goods, or services

  The petition for relinquishment shall include:

  - A statement indicating whether the child is an Native American child
  - The identity of the Native American child's Tribe, if the child is identified as a Native American child

Revocation of Consent
Citation: Rev. Stat. § 19-5-104(7)(a)
A relinquishment may be revoked only if, within 90 days after the entry of the relinquishment order, the relinquishing parent establishes by clear and convincing evidence that such relinquishment was obtained by fraud or duress.

Court Jurisdiction and Venue for Adoption Petitions
To better understand this issue and to view it across States, see the *Court Jurisdiction and Venue for Adoption Petitions: Summary of State Laws* publication.

Jurisdiction
Citation: Rev. Stat. § 19-1-104(1)
The juvenile court shall have exclusive original jurisdiction in proceedings for the adoption of a person of any age.

Venue
Citation: Rev. Stat.§ 19-5-204
A petition for adoption shall be filed in the county of residence of the petitioner or in the county in which the placement agency is located.

State Recognition of Inter-country Adoptions Finalized Abroad
To better understand this issue and to view it across States, see the *State Recognition of Inter-country Adoptions Finalized Abroad: Summary of State Laws* publication.

Effect and Recognition of a Foreign Adoption Decree
This issue is not addressed in the statutes reviewed.

Re-adoption After an Inter-country Adoption
Citation: Rev. Stat. § 19-5-205(1) & (2)
The adoptive parents may petition the court to validate an intercountry adoption that was finalized abroad. The petition must include:

- Confirmation that the petitioner has participated in adoption counseling, if the court deems it appropriate
- The physical and mental condition of the child
- The child's family background, including the names of birth parents and other identifying data regarding the parents, if obtainable
- The suitability of the adoption of this child by this petitioner and the child's own attitude toward the adoption in any case in which the child's age makes this feasible
- The length of time the child has been in the care and custody of the petitioner

The court will issue a decree validating the adoption if it finds that:

- At the time the petition is filed, it contains a verified statement or other evidence that at least one of the adopting parents is a U.S. citizen and State resident.
- The original or a certified copy of a valid foreign adoption decree, together with a notarized translation, is presented to the court.
- The child is either a permanent resident or a naturalized citizen of the United States.
- Any decree that validates a foreign adoption that was finalized abroad will have the same legal effect as any decree of adoption issued by the court.

Application for a U.S. Birth Certificate
Citation: Rev. Stat. § 25-2-113(1)(b)
A petition seeking a decree declaring valid an adoption granted by a court of any country other than the United States may be filed at any time by residents of the State of Colorado. The petition shall contain all information required in § 19-5-207(2), including:

- The physical and mental health, emotional stability, and moral integrity of the petitioner and the ability of the petitioner to promote the welfare of the child
- A certified copy of the final decree of adoption
- The juvenile court's findings of fact as to the date and place of birth and parentage of such person

The State Registrar will prepare the certificate in the new name of the adopted person and will seal the certified copy of the findings and final adoption decree, which will be kept confidential except as otherwise provided by statute.

The certificate will show the true or probable country of birth and will state that it is not evidence of U.S. citizenship for the adopted child.

Intestate Inheritance Rights for Adopted Children
To better understand this issue and to view it across States, see the *Intestate Inheritance Rights for Adopted Children: Summary of State Laws* publication.

Birth Parents in Relation to Adopted Person
Citation: Rev. Stat. § 15-11-103(6)-(7)

A birth child may inherit from a natural parent if there is no surviving heir under § 15-11-103(1)-(5), and if the birth child files a claim for inheritance with the court having jurisdiction within 90 days of the parent's death. For purposes of this subsection, the term "birth child" means a child who was born to, but adopted away from, his or her natural parent.

If the birth child dies without a surviving heir, the birth parents have 90 days to file a claim for inheritance.

Adoptive Parents in Relation to Adopted Person
Citation: Rev. Stat. § 15-11-114

For purposes of intestate succession by, through, or from a person, an adopted individual is the child of his or her adopting parent or parents and not of his or her birth parents, except for inheritance rights as specified in § 15-11-103(6) and (7).

Post-adoption Contact Agreements between Birth and Adoptive Families
To better understand this issue and to view it across States, see the *Post adoption Contact Agreements between Birth and Adoptive Families: Summary of State Laws* publication.
These issues are not addressed in statutes reviewed.

Regulation of Private Domestic Adoption Expenses
To better understand this issue and to view it across States, see the *Regulation of Private Domestic Adoption Expenses: Summary of State Laws* (PDF - 592 KB) publication.

Birth Parent Expenses Allowed
Citation: Rev. Stat. § 19-5-213
Attorney fees and other charges and fees, as may be approved by the court, are allowed.

Physicians and attorneys may charge reasonable fees for professional services.
Birth Parent Expenses Not Allowed
Citation:
This issue is not addressed in the statutes reviewed.

Allowable Payments for Arranging Adoption
Citation: Rev. Stat. § 19-5-213(b)

No person other than an adoption exchange or licensed agency may charge or receive money for locating or identifying a child or natural parent for adoption or a prospective adoptive parent.

Allowable Payments for Relinquishing Child
Citation: Rev. Stat. § 19-5-213(a)
No person shall offer or charge any money or other consideration in connection with the relinquishment and adoption.

Allowable Fees Charged by Department/Agency
Citation: Rev. Stat. § 19-5-207.5
Any person who, by his or her own request or by order of the court, is the subject of a home research report and investigation conducted by a county Department of Social Services, an individual, or a child-placing agency, shall be required to pay, based on an ability to pay, the cost of such report and investigation.

In public adoptions, the State Board of Human Services shall promulgate rules establishing the maximum amount that a county Department of Social Services, an individual, or a child-placing agency may charge a prospective adoptive family for the investigation, criminal records check, and home research report.

The county department may waive the fee if the fee poses a barrier to the adoption of a child for whom a county department has financial responsibility.

In addition to the fee specified above, if the county department has not placed a child available for a public adoption with a family who is the subject of an investigation and home research report after 6 months, then the county shall refer the family and the home research report for such family to the Adoptive Family Resource Registry if there is written consent for the referral. Prior to referral of a prospective adoptive family to the registry, the prospective adoptive family shall pay a nonrefundable administrative fee in an amount to be determined by rule of the State Board of Human Services.

Accounting of Expenses Required by Court
Citation: Rev. Stat. § 19-5-208(4)
The adoption petition shall be accompanied by a standardized affidavit disclosing all fees, costs, or expenses charged or to be charged by any person or agency in connection with the adoption.

Rights of Presumed (Putative) Fathers, The
To better understand this issue and to view it across States, see the *Rights of Presumed (Putative) Fathers, The: Summary of State Laws* publication.

Legal definition of "father"
Rev. Stat. § 19-4-105
A man is presumed to be the natural father of a child if:

- He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated.
- Before the child's birth, he and the child's natural mother have attempted to marry each other, although the attempted marriage is or could be declared invalid, and:

- If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination.
- If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

After the child's birth, he and the child's natural mother have married or attempted to marry, although the attempted marriage is or could be declared invalid, and:

- He has acknowledged his paternity of the child in writing filed with the court or Registrar of Vital Statistics.
- With his consent, he is named as the child's father on the child's birth certificate.
- He is obligated to support the child under a written voluntary promise or by court order.
- While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.
- He acknowledges his paternity of the child in a writing filed with the court or Registrar of Vital Statistics.
- The genetic tests or other tests of inherited characteristics have been administered, and the results show that the alleged father is not excluded as the probable father and that the probability of his parentage is 97 percent or higher.

A duly executed voluntary acknowledgment of paternity shall be considered a legal finding of paternity on the earlier of:

- 60 days after execution of such acknowledgment
- On the date of any proceeding concerning the support of a child to which the signatory is a party

Putative father registry
No

Alternate means to establish paternity
Rev. Stat. §§ 19-4-107; 19-4-113
A child, his or her natural mother, a man presumed to be the father, the State, or the Department of Human Services may bring a court action:

At any time for the purpose of declaring the existence of the father and child relationship presumed under § 19-4-105(1)(a), (1)(b), or (1)(c)

For the purpose of declaring the nonexistence of the father and child relationship, only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but no later than 5 years after the child's birth.

Evidence relating to paternity may include:

- Evidence of sexual intercourse between the mother and alleged father at any possible time of conception
- An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy
- Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity
- Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts
- All other evidence relevant to the issue of paternity of the child

Required Information
This issue is not addressed in the statutes reviewed.

Revocation of claim to paternity
Rev. Stat. § 19-4-105(2)
A presumption [of paternity] may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise that conflict with each other, the presumption that on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man. In determining which of two or more conflicting presumptions should control, based upon the weightier considerations of policy and logic, the judge or magistrate shall consider all pertinent factors, including but not limited to the following:

- The length of time between the proceeding to determine parentage and the time that the presumed father was placed on notice that he might not be the genetic father
- The length of time during which the presumed father has assumed the role of father of the child
- The facts surrounding the presumed father's discovery of his possible no paternity
- The nature of the father-child relationship
- The age of the child
- The relationship of the child to any presumed father or fathers
- The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child
- Any other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed father or fathers or the chance of other harm to the child

A legal finding of paternity may be challenged in court only on the basis of fraud, duress, or mistake of material fact, with the burden of proof upon the challenger. Any legal responsibilities resulting from signing an acknowledgment of paternity, including child support obligations, shall continue during any challenge to the finding of paternity, except for good cause shown.

Access to information
Rev. Stat. § 19-4-105(1)(e)
[When the father] acknowledges his paternity of the child in a writing filed with the court or Registrar of Vital Statistics, [the court or Registrar] shall promptly inform the mother of the filing of the acknowledgment.

Use of Advertising and Facilitators in Adoptive Placements
To better understand this issue and to view it across States, see the *Use of Advertising and Facilitators in Adoptive Placements: Summary of State Laws* publication.

Use of Advertisement
This issue is not addressed in the statutes reviewed.

Use of Intermediaries/Facilitators
Citation: Rev. Stat. § 19-5-213
No person, other than an adoption exchange whose membership includes county departments and child placement agencies, a licensed child placement agency, or a county department, shall offer, give, charge, or receive any money or other consideration or thing of value in connection with locating or identifying for purposes of adoption any child, natural parent, expectant natural parent, or prospective adoptive parent.

Physicians and attorneys may charge reasonable fees for professional services customarily performed by such persons.

Who May Adopt, Be Adopted, or Place a Child for Adoption
To better understand this issue and to view it across States, see the *Who May Adopt, Be Adopted, or Place a Child for Adoption: Summary of State Laws* publication.

Who May Adopt
Citation: Rev. Stat. § 19-5-202
The following persons may adopt:
- Any person who is age 21 or older, including a foster parent
- A minor upon court approval
- A person jointly with a living spouse, unless they are legally separated

Who May Be Adopted
Citation: Rev. Stat. § 19-5-201
Any child under age 18 who is present in the State may be adopted. A person who is over age 18 but under age 21 may be adopted if approved by the court.

Who May Place a Child for Adoption
Citation: Rev. Stat. § 19-5-206
An adoptive placement may be made by any of the following:
- The birth parent(s)
- The court The county Department of Social Services
- A licensed child-placing agency

Dependency and Neglect Cited Law: ***See Attachment C.***

Online Resources for State Child Welfare Law and Policy
To better understand the issues in this chapter and to view them across States, see the *Online Resources for State Child Welfare Law and Policy* publication.

Website for Statutes
www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=

Citations
Adoption: Title 19, Book 5
Child Protection: Title 19, Book 3, Part 3
Child Welfare: Title 19, Book 3

Regulation/Policy:

Website for Administrative Code
www.sos.state.co.us/CCR/NumericalCCRDocList.do?deptID=9&deptName=500,2500%20Human%20Services&agencyID=107&agencyName=2509%20Social%20Services%20Rules

Websites for Agency Policies
www.cDepartment of Human Services.state.co.us/policies.htm

www.cDepartment of Human Services.state.co.us/childwelfare/RulesandRegulationsPoliciesandProcedures.htm

Other Resources
Department of Human Services, Division of Child Welfare IV-E Manual
www.cDepartment of Human Services.state.co.us/childwelfare/IV-E.htm

Chapter 3

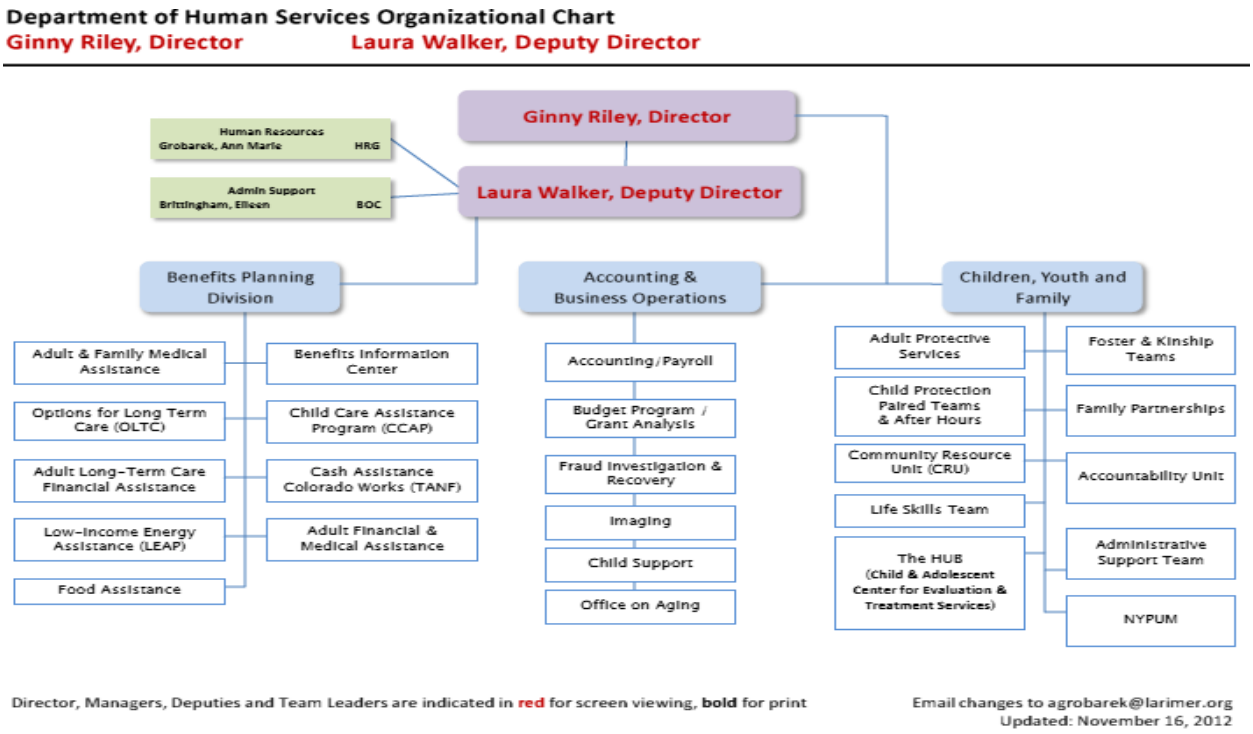
What You Need to Know about the Department of Human Services

The organizational charts below shows you just what a massive bureaucracy the Colorado Department of Human Services (DHS) is. It has power and a lot of money and expertise to oppose your case, but it is also inefficient. That means that individuals like you and organizations like the Grandparents Resource Center actually have the advantage because you have more freedom and maneuverability in relation to a behemoth like DHS that is choked with bureaucratic policies and procedures that have to be followed. It is, however, until you get satisfaction.

More information about DHS follows the organizational charts below.

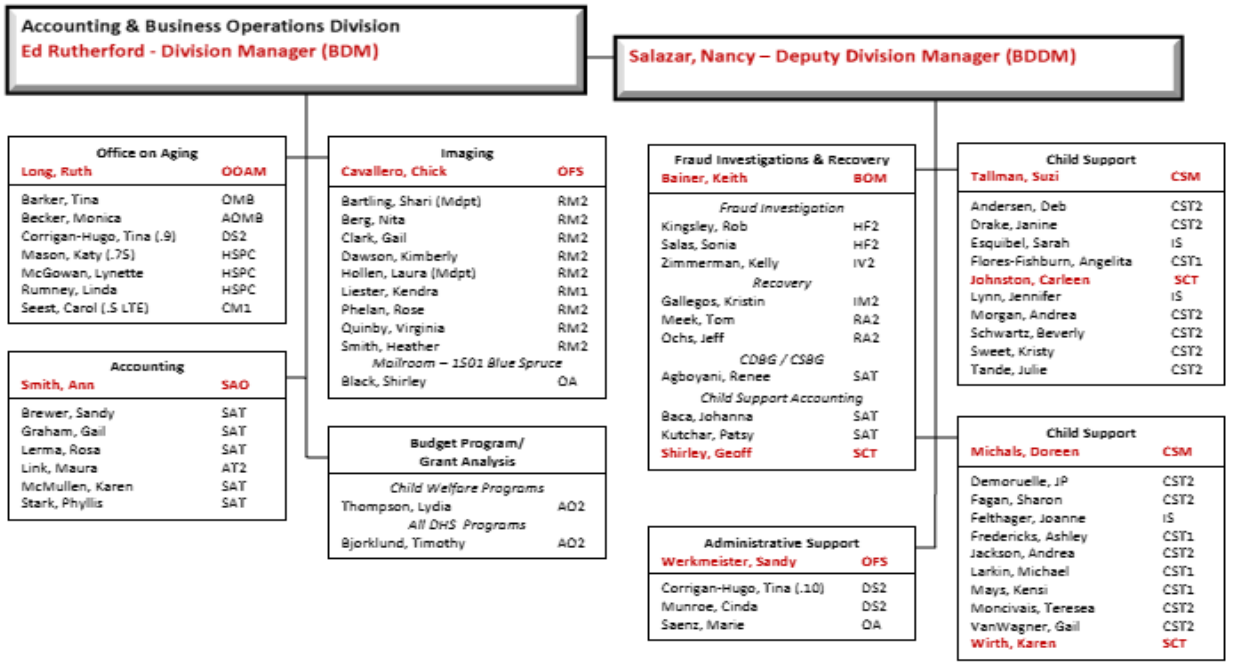
Colorado Department of Human Services
Organizational Charts

(*http://www.co.larimer.co.us/humanservices/hs_orgchart.pdf*)



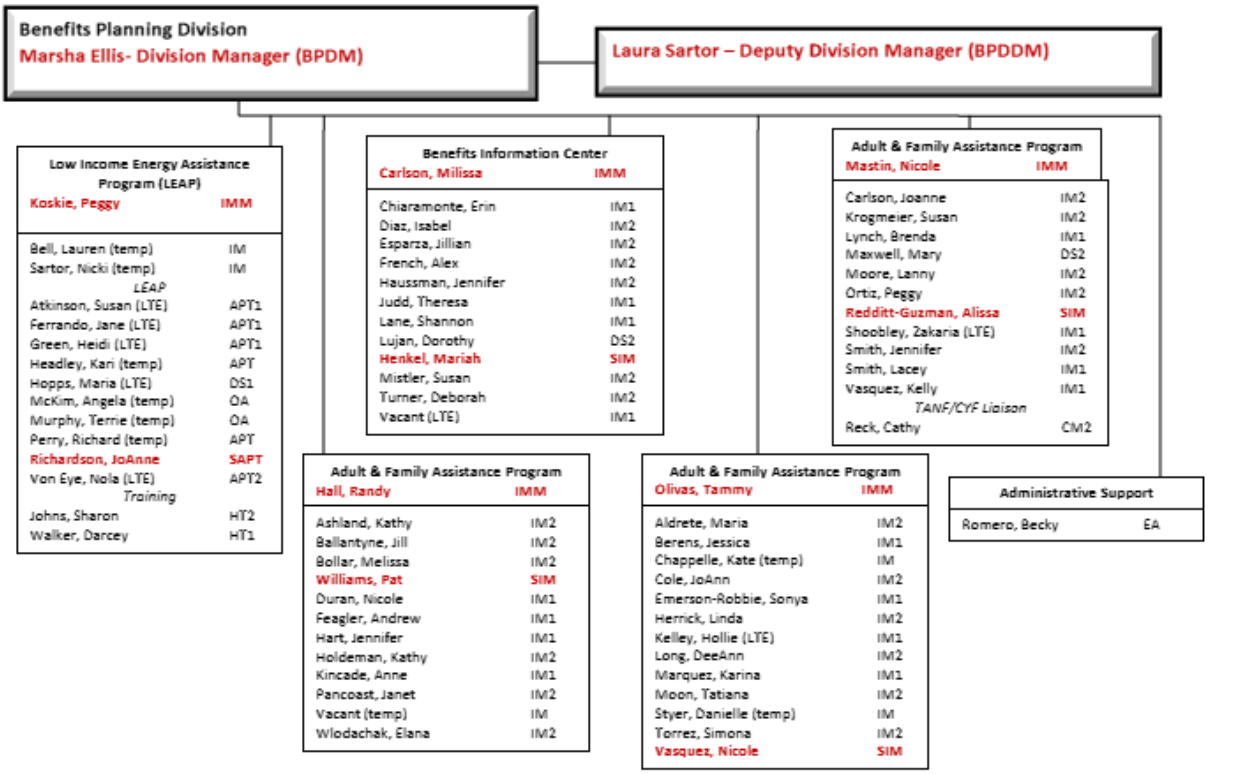
Department of Human Services Organizational Chart

Ginny Riley, Director **Laura Walker, Deputy Director**



Director, Managers, Deputies and Team Leaders are indicated in **red** for screen viewing, **bold** for print

Email changes to agrobarek@larimer.org
Updated: November 16, 2012



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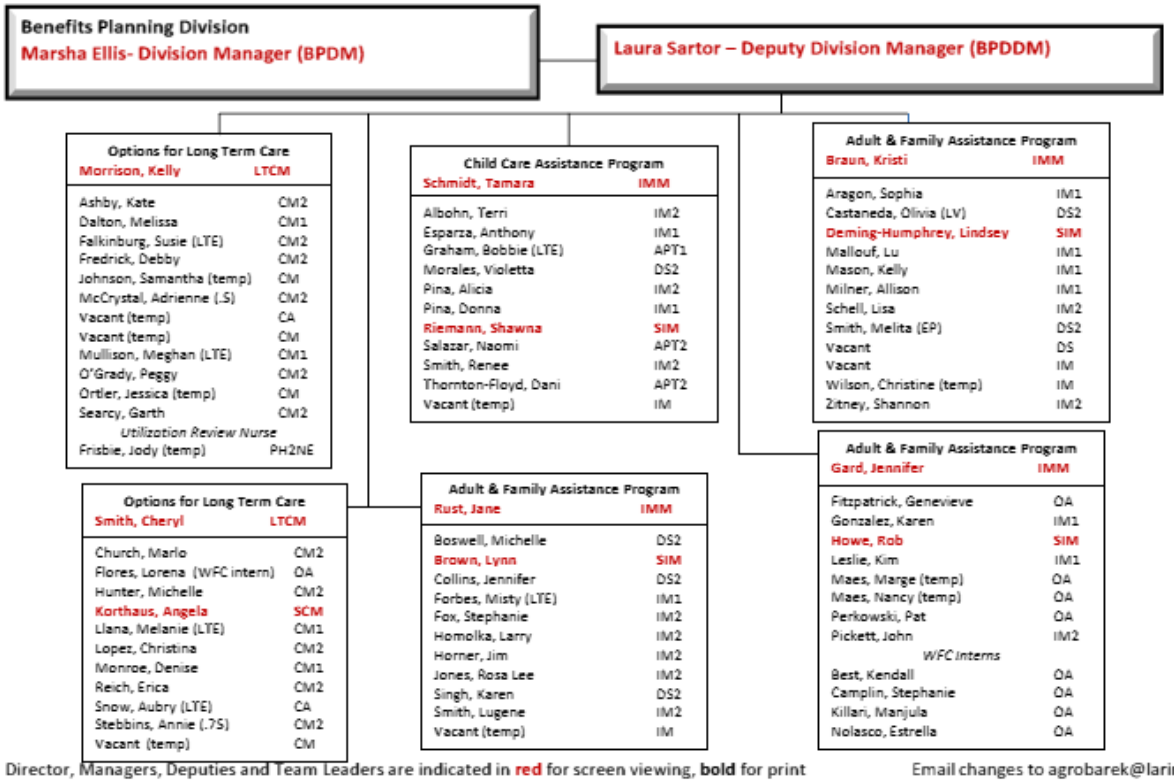

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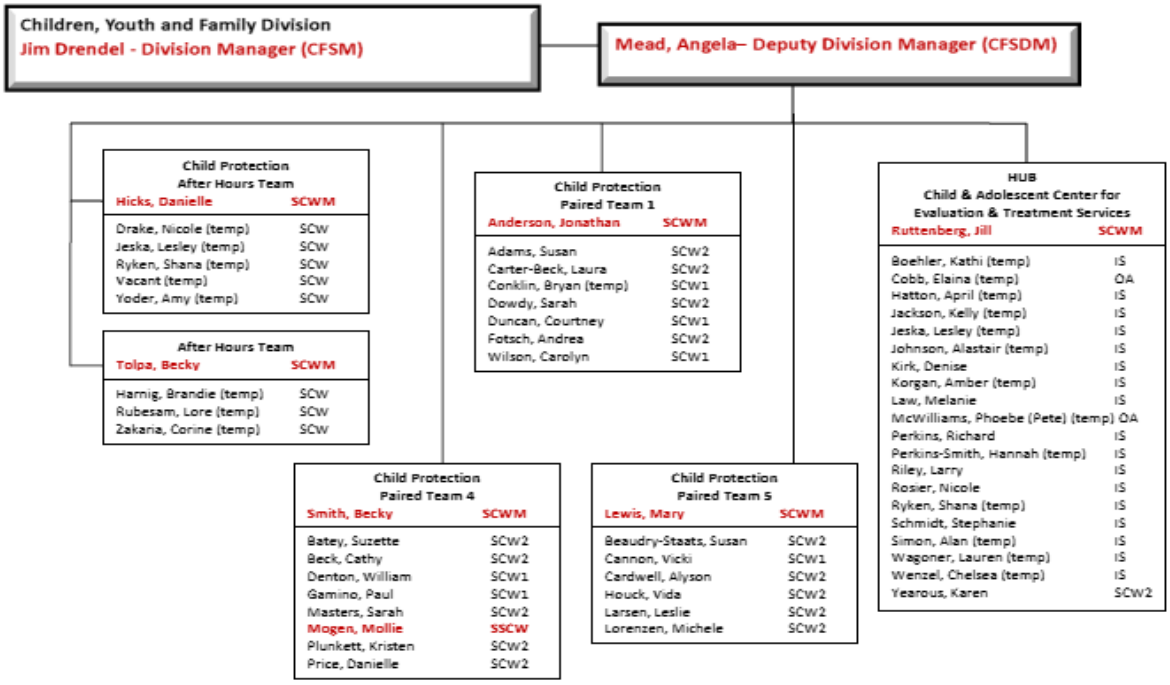

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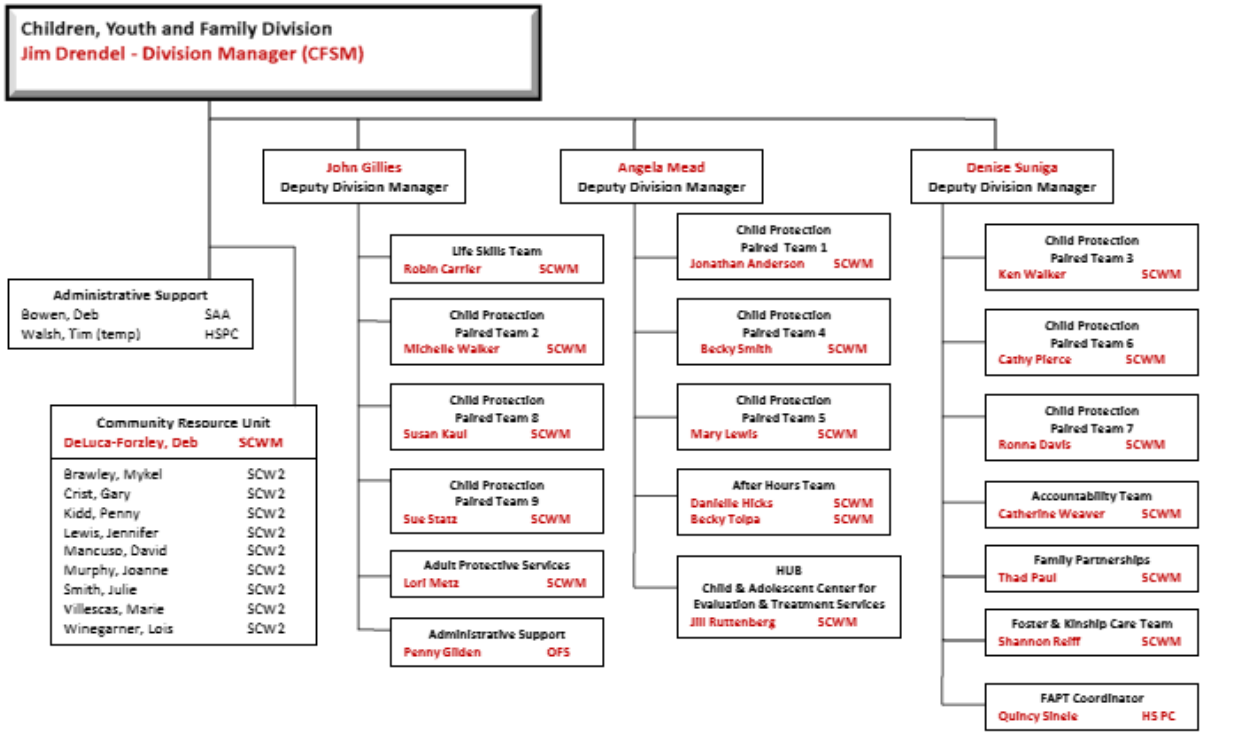


DHS Procedure

The first thing you should know is the initial procedure DHS follows when it takes a child away from his or her family. Your first contact with the Department of Human Services (DHS) may have been when your grandchildren were removed from the home of your son or daughter, so you may not be familiar with how the Department operates. However, it's important that you learn as much as you can about DHS because the more you know, the more effective your case will be. Let's start here by familiarizing you with the procedures DHS follows when a social worker removes a child from his or her parents:

- First, the juvenile court is authorized to issue emergency protection orders. Each judicial district is required to have a magistrate or judge available by phone to issue such orders when the court is closed for business. Children may only be removed from their homes by a law enforcement officer or through an emergency protection order.

- When children are removed from their homes, families are provided with a standardized form informing them of their rights and remedies. When temporary custody is placed with the county department of social services, the

court must hold a hearing within 72 hours, excluding Saturdays, Sundays, and court holidays, to determine further custody of the child. If the placement is in a facility not operated by the Department of Human Services, the hearing must be held within 48 hours, excluding Saturdays, Sundays, and court holidays. If the placement is in a juvenile detention facility, the hearing must be held within 72 hours, excluding Saturdays, Sundays, and court holidays. When petitions of Dependency and Neglect (D & N) are filed, adjudicatory hearings are generally required within 60 days for children under the age of six and within 90 days for other children. When petitions are sustained, dispositional hearings are often held immediately, with 30-day continuances granted for good cause. Motions for Termination of Parental Rights (TPR) must have a hearing within 114 days, unless good cause exists to continue the matter. Appeals of TPRs are given precedence on the calendar over all other matters, unless otherwise provided by law.

- When parental rights are terminated, a hearing is conducted within 90 days to review the status of the child. Permanency hearings for children six years of age or older who are in placement are required every 12 months after placement, although they may be held more frequently by court order or motions brought by any party. Permanency hearings for children under the age of six are generally required within three months after placement. Reviews are conducted every six months, and the child must be in a permanent home within 12 months after placement, unless the court determines that it is not in the child's best interest. Relinquishment hearings are given priority, and relinquishments of children under the age of one are expedited.

People outside the family usually assume that if parents lose their parental rights, they are guilty of harming their children, but that's not necessarily true. DHS might have accused the parents of something they didn't do, or maybe they were misled by their court-appointed attorney. The county appoints an attorney to parents whose children have been taken by DHS. As their lawyer, the attorney is supposed to fully inform them about the two choices open to them if they want their kids back: DHS's "treatment plan," in which the parents have to prove they are innocent, or a jury trial, where DHS will have to prove the parents guilty.

If their lawyer recommends they choose the treatment plan, the parents will take that option because they trust that—like all of us would—their attorney is looking out for their best interests. What they usually don't know or understand is that they are required to plea bargain, which amounts to the admitting they are guilty of DHS's charges. Their "guilty plea" gives DHS the right to retain control over the children and never return them to their parents, but adopt them out—which can be what happens. Unfortunately, parents don't know or understand the repercussions of their plea bargain until they complete the treatment plan and don't get their kids back. Our Constitution guarantees due process *(see Attachment D, Due Process)* to defendants, but if the parents aren't fully informed of their options and/or their lawyer misleads them, they didn't receive their constitutionally-protected right of due process.

If the parents are guided correctly by their lawyer, they learn that the jury trial is the better option because, unlike the treatment plan that forces a guilty plea on the parents, the court considers them innocent, and DHS will have to prove they are guilty. Going to trial offers the parents (and grandparents) the best chance for getting the children back. On the other hand, the treatment plans offers the worst chances for getting custody of the children.

Whether your son or daughter has lost their children unfairly or fairly, you want to bring your grandchildren back into the family fold because you love them. To be successful, you'll have to avoid the pitfalls that parents and grandparents fall into when they aren't prepared to deal with the confusing bureaucracy within the foster care system. That means that you'll have to become knowledgeable about the system and employ the best strategies for getting your grandchild back. Some critically important things that grandparents should keep in mind are:

- Never plead guilty to something you haven't done. Plea bargaining is the same as admitting that you're guilty.

- Request all of the reports the Department of Human Services has made on your case.

- Request copies of legal documents filed on your behalf. If you need to appeal later, you will need to know what is in the reports and documents DHS has on your case. You should request these documents early on in your case because the paperwork can get lost or DHS might refuse to give it to you.

The Importance of Working with a Clinical Social Worker (CSW)

At the end of the 1990's in Colorado, the percentage of child-welfare workers with master's degrees was only nine percent; the rest had degrees in unrelated fields. For instance, a caseworker who does child sexual abuse assessments in Colorado has a master's degree in Art. Now how does that help you when you have a case in child sexual abuse? A survey of forty-eight states found that four states required entry-level child protection workers to have a master's degree in social work. Fourteen states accepted college degrees in any field, and the rest accepted high school diplomas or had no educational requirements at all.

Former Colorado Governor Roy Romer and Hildegard Messenbaugh, a prominent Denver doctor, who runs Third Way Centers for At- risk Children and places many of those children with DHS, recommended that DHS require caseworkers to have a Master's Degree in social work. However, they were foiled by DHS, with this response: "Human Services can't afford to hire social workers who hold masters degrees."

When you get involved with DHS, you'll deal almost exclusively with a caseworker, a case manager, or a Clinical Social Worker (CSW). It's important that a CSW is in charge of your case because s/he has more education and has had more experience than the others. Social workers are required to have a master's degree in social work, a license, and a background in child development. Just as important is that they are required to follow a formal code of ethics (See code of ethics at *http://www.socialworkers.org/pubs/code/default.asp*).

The caseworker/manager, on the other hand, can have a B.A. or B.S. in any subject at all. In addition, the case s/he is not required to have a license or follow a formal code of ethics. However, the caseworker/manager, like the CSW has the power to make momentous decisions that will influence the child and his or her biological family for the rest of their lives. Under time pressure or because s/he doesn't have the background for making the best decisions for a child, the caseworker can't be counted on to put the necessary time into a case to do what is in the best interests of the child. Unfortunately, a wrong decision can cause irreversible harm to a child and his or her family.

Below is a short list of characteristics put together by people who have had experience observing or working with a CSW. According to them, a CSW should be:

- *exceptional listener and interviewer*
- *compassionate but objective*
- *effective advocate*
- *unprejudiced*
- *realistic in setting goals for clients*
- *calm in volatile situations*
- *effective in crisis management*
- *emotionally mature*

Above all, the goal of everyone assisting you should be to mend your broken family and not to contribute to shattering it.

Points of Law to Consider

(http://www.fastpencil.com/blocks/80491-volume-of-overview-of-child-welfare-services-program-areas-4-5-and-6-12-ccr-2509)

Volume of Overview of Child Welfare Services (Program Areas 4, 5, and 6) (12 CCR 2509-3)

7.200 OVERVIEW OF CHILD WELFARE SERVICES - PROGRAM AREAS 4, 5, and 6

7.200.1 CHILD WELFARE SERVICES

Child Welfare Services constitutes a specialized set of services that are intended to strengthen the ability of families to protect and care for their own children, minimize harm to children and youth, and ensure permanency planning. The goal shall be to support the intactness of families, when appropriate, through the provision of services aimed at stabilizing the family situation and strengthening the parents/guardians in fulfilling their parental responsibilities to their children. Intervention shall be guided by respect for the family's integrity, knowledge of the legal base for action, and sound social work practice.

The following principles shall underlie the provision of Child Welfare Services:

A. Children and youth shall have the right to be raised in an environment free from abuse or neglect preferably by their families of origin by providing reasonable efforts to maintain the family unit through the provision of in-home services.

B. Placement shall be considered when there is evidence that leaving the child in the home would jeopardize the safety of the child or community. Reasonable efforts shall be made to prevent placement or to reunite the family as soon as safely possible if removal is necessary. In determining reasonable efforts to be made, and in making such reasonable efforts, the child's health and safety shall be the paramount concern. A court may determine that reasonable efforts shall not be required; otherwise, reasonable efforts shall be made to preserve and reunify families.

C. Appropriate and culturally competent services that promote safety shall be provided to families, children, and youth in their own homes and in out-of-home placements.

D. Children and youth who have been removed from the care of their parents shall have the right to have extended family members considered as placement resources, to be placed in a safe environment, to not be moved indiscriminately from one placement to another, and to have the assurance of a permanency plan.

E. Consideration of the child's age, race, ethnicity, culture, language, religion, and other needs shall guide the choice of all services provided, including out-of-home and adoptive placements.

F. Case planning shall involve the parents so that relevant services can be provided to permit timely rehabilitation and reunification.

G. Child Welfare Services shall be provided in collaboration with other community agencies on behalf of children, youth, and their families. Assessment tools or resources available through these community agencies shall be incorporated in the assessment, based on the culture, ethnicity and other special needs of the family.

7.200.3 CHILD WELFARE GRIEVANCE RESOLUTION PROCESS

The governing body of each county, and city and county, shall establish a grievance process, including a citizen review panel, as required by Section 19-3-211, C.R.S. The following requirements apply to the grievance process:

Definitions

> "Grievance" means a complaint regarding the conduct of an employee of a county department of social services in performing his or her duties under Article 3 of the Children's Code. "Grievance" does not include complaints regarding conduct by the courts, attorneys, law enforcement officials, employees of the State, foster parents or other providers of services to children, or other family members.

"Citizen Review Panel" means an advisory body appointed by the governing body of a county or city and county pursuant to Section 19-3-211, C.R.S. The members of such citizen review panel shall be appointed by the governing body without influence from the state department or the county department, be representative of the community, have demonstrable personal or professional knowledge and experience with children, and not be employees or agents of the state department or any county department. At least one member of the citizen review panel in each county and city and county shall be the parent of a minor child at the time of his or her appointment to serve on such panel.

"Complainant" means any person who was the subject of an investigation of a report of child abuse or neglect or any parent, guardian, or legal custodian of a child who is the subject of a report of child abuse or neglect and brings a grievance against a county department in accordance with the provisions of Section 19-3-211, C.R.S.

"Recommendation" means a proposed course of action that may be implemented by a County Director to resolve a grievance. These proposed actions may include reassigning a case to a different employee, requiring an employee to receive training, or administering disciplinary action to an employee, subject to applicable safeguards afforded to the employee through the personnel system under which the employee is employed.

B. Time Frames for Resolving Grievances: County department shall attempt to resolve all grievances informally before using the formal grievance process. Any grievance not resolved to the satisfaction of the complainant shall be forwarded to the County Director within ten working days after it has been received by the county department. The County Director shall act on the grievance within twenty calendar days after s/he receives it. If the County Director is able to resolve the grievance to the complainant's satisfaction, s/he will issue a written decision setting forth the resolution. If the County Director is unable to resolve the grievance to the complainant's satisfaction within 20 calendar days, the County Director shall immediately refer the grievance to the Citizen Review Panel, together with the County Director's proposed resolution of the grievance. Within thirty calendar days after receipt of the grievance from the County Director, the Citizen Review Panel will convene a hearing on the grievance and send a written recommendation regarding the grievance, together with the basis for its recommendation, to the County Director and the complainant. If the County Director agrees with the Citizen Review Panel's recommendation, s/he will issue a written decision implementing the recommendation. If the County Director or the complainant disagrees with the recommendation, the grievance shall be referred to the governing body. Within thirty calendar days of receiving the grievance, the governing body shall send its written recommendation regarding the grievance, together with the basis for the recommendation, to the complainant, the County Director and to any county employee who is the subject of the grievance. The County Director shall issue a final decision including his or her plan to implement

the governing body's recommendation, and shall send a copy of this report to the complainant and to the county employee who is the subject of the grievance. Within thirty calendar days after issuing this final decision, the County Director shall submit a written report to the Citizen Review Panel including a disposition of the grievance, and shall send copies of the report to the complainant and to the county employee who is the subject of the grievance.

C. Citizen Review Panel: 1. Access to Information and Confidentiality A Citizen Review Panel shall have access to child abuse or neglect reports and any information from the complete case file that the governing body believes is pertinent to the grievance, which shall be reviewed solely for the purpose of resolving grievances pursuant to the provisions of this section, except that access to identifying information concerning any person who reported child abuse or neglect shall not be provided and no participant in the conflict resolution process shall divulge or make public any confidential information contained in a report of child abuse or neglect or in other case file records to which he or she has been provided access. 2. Informal Testimony Upon the request of the complainant, the county department, or the subject of a grievance, a citizen review panel may receive testimony from experts or other witnesses. Such testimony must be provided voluntarily and without a fee. Further, such testimony will be provided without an oath, will not be subject to objections from parties to the grievance process, and the witness will not be subject to cross-examination. Members of the Citizen Review Panel, however, may ask questions of the witness as the panel's procedures permit. 3. Scope of Inquiry and Recommendations The Citizen Review Panel shall only inquire into and make recommendations concerning grievances as presented by a complainant and as defined above. The Citizen Review Panel may not access records or receive testimony unless the record or testimony is directly related to a grievance properly referred to the panel. Once the panel has made a recommendation concerning a grievance, or the time for making such a recommendation has expired, the panel may not inquire further into the grievance. The panel may not inquire into the conduct of courts, attorneys, law enforcement officials, employees of the State, foster parents or other providers of services to children, or other family members, nor may the panel inquire into the conduct of a county department employee if no grievance concerning that employee or that conduct has been properly referred to the panel. The authority of the Citizen Review Panel is limited to making recommendations as defined above. Specifically, the panel may only recommend actions that: a. will resolve a particular grievance concerning the conduct of a county department employee performing his or her duties under Article 3 of the Children's Code, and b. can be implemented by the County Director.

D. Annual Reports On or before June 30 of each year, every county or city and county shall submit to the State Department an annual report regarding the resolution of grievances pursuant to this section. At a minimum, this report shall include: 1. The number of grievances received by the County Director, the number of grievances referred to the Citizen Review Panel, the number of grievances referred to the governing board, and the actual time frames for resolving grievances at each level. 2. A brief description of the disposition of the grievances, including the number that were concluded without any action taken, the number which were substantiated, the number resolved by case reassignment, the number resolved by requiring

additional training, the number resolved by imposing disciplinary action against a county employee, and the number resolved in other ways.

E. Counties shall publicize: 1. The availability of the process for all dependency and neglect cases through the "Notice of Rights and Remedies" and by informing child welfare clients, guardians, and legal custodians of the process during the initial contacts with parties and periodically throughout the provision of services related to dependency and neglect cases. 2. The rights and remedies for families as specified in Section 7.200.4. 3. Any other information about the process as deemed relevant by the governing body.

7.200.4 REQUIRED NOTICE OF RIGHTS AND REMEDIES [Rev. eff. 11/1/98]

A. All county departments shall utilize the state prescribed "Notice of Rights and Remedies for Families" in cases subject to Article 3 of the Colorado Children's Code, "Dependency and Neglect".

B. County departments shall add county-specific information to the state prescribed form and supply copies of the notice to all law-enforcement agencies within the county or district.

C. The notice shall be delivered at the time of a child's removal to the parent(s) and family from whom the child is removed by court order or by law enforcement personnel. The notice shall specify the cause of the removal of the child or children. 1. If the removal is an emergency pursuant to Section 19-3-401, C.R.S., a copy of the court order directing the removal of the child or children from the home shall be delivered to the family promptly upon its availability. 2. If the removal of the child or children is not an emergency, a copy of the court order directing the removal shall also be provided to the parents and family at the time of removal.

7.200.5 MANDATORY REPORTING OF CHILD ABUSE OR NEGLECT [Eff. 12/1/99]

All county department staff who have reasonable cause to know or suspect child abuse or neglect as set forth in Section 19-3-304, C.R.S., are mandated to report such information to the appropriate county department staff or local law enforcement. *(See Attachment E, Suspected Child Abuse Report.)*

7.200.6 REFERRALS [Eff. 12/1/05]

"Referral" means a report made to the county department that contains one or more of the following:

A. Allegations of child abuse or neglect as defined in Section 19-1-103(1), C.R.S.;

B. Information that a child or youth is beyond the control of his or her parent;

C. Information about a child or youth whose behavior is such that there is a likelihood that the child or youth may cause harm to him/herself or to others, or who has committed acts that could cause him/her to be adjudicated by the court as a delinquent; D. Information indicating that a child or youth meets specific Program Area 6 requirements and is in need of services.

7.200.61 Documentation of Referrals [Eff. 12/1/05]
All reports that meet the definition of a referral shall be entered into the State automated system (TRAILS). Any time a case is opened, it shall come through the referral or assessment process in TRAILS with the exception of Interstate Compact on the Placement of Children (ICPC), out of state subsidized adoption, and Division of Youth Corrections (DYC) Medicaid-only.

7.201 PROGRAM AREA 4 - YOUTH IN CONFLICT

7.201.1 DEFINITION OF PROGRAM AREA 4 (PA4) [Rev. eff. 11/1/98]
Program Area 4 services are provided to reduce or eliminate conflicts between youth and their family members or the community when those conflicts affect the youth's well-being, the normal functioning of the family or the well-being of the community. The focus of services shall be on alleviating conflicts, protecting the youth and the community, re-establishing family stability, or assisting the youth to emancipate successfully.

7.201.2 TARGET GROUPS [Rev. eff. 11/1/98]
A. Children and youth who are beyond the control of their parents or guardians.

B. Children and youth whose behavior is such that there is a likelihood they may cause harm to themselves or to others or who have committed acts that could cause them to be adjudicated a delinquent child by the court.

7.201.3 INITIAL ASSESSMENT [Rev. eff. 11/1/98]
A. The county department shall respond, either with a face-to-face intervention or by telephone, when notified by the court appointed detention screener or a law enforcement officer, of a child or youth in the custody of a law enforcement agency who is inappropriate for secure detention but cannot be returned home.

B. The county department shall complete a needs assessment for children or youth who do not require physical restriction but for whom immediate removal from the home appears necessary for his or her protection or the protection of others. The county department shall provide needed services, other than secure detention, such as temporary placement, crisis intervention, or in-home services.

C. A child or youth shall not be removed from the home without police protective custody or hold, a court order, or a signed voluntary placement agreement. Before or at the conclusion of the court-ordered placement (72 hours) or police hold (48 hours), the child or youth shall: 1. Be returned home; or, 2. Remain in court-ordered placement; or, 3. Continue in placement by virtue of a voluntary placement agreement signed by the parents/guardians.

7.202 PROGRAM AREA 5 - CHILDREN IN NEED OF PROTECTION

7.202.1 DEFINITION OF PROGRAM AREA 5 (PA5) [Rev. eff. 11/1/98]

To protect children whose physical, mental or emotional well-being is threatened by the actions or omissions of parents, legal guardians or custodians, or persons responsible for providing out-of-home care, including a foster parent, an employee of a residential child care facility, and a provider of family child care or center-based child care. The county shall provide services targeted to achieve the following:

A. Children are secure and protected from harm;
B. Children have stable permanent and nurturing living environments; and
C. When appropriate, children experience family continuity and community connectedness.

7.202.2 TARGET GROUPS [Rev. eff. 1/1/04]

A. Children whose physical, mental, or emotional well-being has been threatened or harmed due to abuse or neglect.

B. Children who are subjected to circumstances in which there is a reasonable likelihood that they are at risk of harm due to abuse or neglect by their parents or caretakers which shall include children who are alleged to be responsible for the abuse or neglect and are under the age of 10.

7.202.3 DEFINITIONS [Rev. eff. 11/7/08]

Child abuse or neglect is defined in Section 19-1-103(1), C.R.S.

The following terms shall be defined as:

"Colorado Safety Assessment Instrument" refers to the instrument in the automated case management system that guides a caseworker through a safety assessment process.

"De novo" means that the issue is reviewed once again as if the appeal were the first review.

"Expungement" means the designation of a report or record whereby it is deemed not to have existed for the purpose of employment and background screening. Expungement of a confirmed report of abuse or neglect shall not preclude the county department from maintaining records of the report in the case file or in the State automated system for purposes of future safety and risk assessments.

"Founded report" means that the child abuse or neglect investigation established that an incident(s) of child abuse or neglect has occurred, by a preponderance of evidence.

"Good cause" means a legitimate reason why the process set forth herein should be modified. Such reasons may be that it was not possible for a party to meet a specified deadline and there was incapacity of the party or representative, lack of proper notice of the availability of the appeal process, additional time is required to obtain documents which were timely requested but not delivered, or other circumstances beyond the control of the party.

"Inconclusive report" means that there was some likelihood that abuse or neglect occurred but the child abuse or neglect investigation could not obtain the evidence necessary to make a founded report of child abuse or neglect.

"Intrafamilial abuse" means any case of abuse or neglect as defined in Section 19-1-103(1) and 19-3-102(1) and (2), C.R.S., that occurs within a family context by a child's parent, stepparent, guardian, legal custodian, or relative, by a spousal equivalent, domestic partner, or by any other person who resides in the child's home or who has access to the child's home for the purpose of exercising care for the child; except that "intrafamilial abuse" shall not include abuse by a person who is regularly in the child's home for the purpose of rendering care for the child if such person is paid for rendering care and is not related to the child.

"Institutional abuse" means any case of abuse or neglect that occurs in any public or private facility in the state that provides childcare out of the home, supervision, or maintenance. "Facility" includes, but is not limited to, family child care homes, foster care homes, and any other facility subject to the Colorado "Child Care Licensing Act" and described in Section 26-6-102, C.R.S. "Institutional abuse" shall not include abuse that occurs in any public, private, or parochial school system, including any preschool operated in connection with said system; except that, to the extent the school system provides extended day service, abuse that occurs while such services are provided shall be institutional abuse.

"Moderate to severe harm" refers to the consequence of maltreatment at a level consistent with a medium, severe or fatal level of physical abuse, sexual abuse or neglect, as defined in Section 7.202.601.

"Preponderance of the evidence" means credible evidence, put forth by either party that the claim is more probably true than false.

"Safe" is a condition where there is no present or impending threat of moderate to severe harm to a vulnerable child from current known family conditions, or the protective capacities in the family are sufficient to control existing dangers or threats of danger and protect the vulnerable child.

"Safety plan" refers to a written plan that: 1. Establishes protection for the child; 2. Is made by the family, safety service providers, and the county department; 3. Does not rely on the person responsible for abuse or neglect to initiate protective actions in order for the plan to be operationalized. *See Attachment B, Colorado Safety Assessment/ Plan.*

"Spousal equivalent" or "domestic partner" means a person who is in a family-type living arrangement with a parent and who would be a stepparent if married to that parent.

"Third-party abuse" means a case in which a child is subjected to abuse by any person who is not a parent, stepparent, guardian, legal custodian, spousal equivalent, or any other person not included in the definition of intrafamilial abuse, as defined in this section.

"Threat of moderate to severe harm" relates to conditions, behaviors or attitudes that could result in moderate to severe harm.

"Unfounded report" means that the child abuse or neglect investigation showed there is clear evidence that no incident of child abuse or neglect occurred.

"Unsafe" is a condition where there is a present or impending threat of moderate to severe harm to a vulnerable child from current known family conditions and protective capacities in the family are insufficient to control danger or threats of danger.

7.202.4 REFERRAL PROCEDURES [Rev. eff. 11/7/08]

A. The county department shall have staff available twenty-four (24) hours a day to receive reports of abuse and neglect, conduct initial assessments of such reports and investigate those reports that are appropriate for child protective services. Continuously available means the assignment of a person to be near an operable telephone, pager system, or to have such arrangements made through agreements with the local law enforcement agencies.

B. The county department shall establish response protocols outlining the county plan for weekends, holidays, and after-hour coverage, to include: 1. How the county will ensure that those individuals reporting abuse or neglect after hours are directed to the designated number or agency for response; 2. Requirements for thorough documentation to support the disposition/actions of the emergency response worker; and, 3. That referrals must be entered into the automated case management system as outlined in Sections 7.200.6 and 7.200.61 by the next business day.

C. The county department shall provide appropriate referral information to the reporting party in those situations in which there are inadequate grounds to constitute assignment for assessment and investigation. Either casework or supervisory staff shall inform, whenever possible and appropriate, the reporting party of the decision not to investigate and the reasons for that decision.

D. The county department shall enter all referrals into the State Department's automated system as outlined in Sections 7.200.6 and 7.200.61, and conduct an initial assessment. The initial assessment shall decide the appropriateness of further investigation. It shall include, but not be limited to, the following activities: 1. Checking the State Department's automated case management system. 2. Reviewing county department files. 3. Obtaining information from collateral sources, such as schools, medical personnel, law enforcement agencies, or other care providers.

E. The county department shall gather and document the following information, as available: 1. Family members and birth dates. 2. Relationships of individuals in the household. 3. Identified alleged victims, birth dates, and their current location. 4. Reasonable effort to secure the identity of the person alleged to be responsible for the abuse or neglect, as well as the responsible person's date of birth, Social Security Number, and last known address. 5. Presenting problems - specific allegations. 6. Reporter's credibility and name, address, and phone number. 7. Relationship of reporter to family. 8. Other potential witnesses. 9. Collateral agencies and individuals involved with the family. 10. Records check - results of internal and State automated case management system inquiries. 11. Date and time intake report received. 12. Response assessment based upon reporter's information. 13. Referrals made. 14. Decision as to investigation response and caseworker's signature (name). 15. Supervisory approval of the decision and signature.

F. The county department shall assign a referral for assessment and investigation if it:
1. Contains specific allegations of known or suspected abuse or neglect as defined in statutes and regulations. A "known" incident of abuse or neglect would involve those reports in which a child has been observed being subjected to circumstances or conditions that would reasonably result in abuse or neglect. "Suspected" abuse or neglect would involve those reports that are made based on patterns of behavior, conditions, statements or injuries that would lead to a reasonable belief that abuse or neglect has occurred or that there is a serious threat of harm to the child. 2. Provides sufficient information to locate the alleged victim. 3. Identifies a victim under the age of 18. 4. Meets the conditions of #2 and #3 above, results in a third report of suspected child abuse or neglect within a two year period and the two previous reports were not accepted for investigation. All reports with a child welfare concern occurring in any jurisdiction concerning any child in the family are to be counted towards the three or more reports. At the time of a third report, the county department shall review the prior reports, assessments, and applicable cases. Prior involvement is to be reviewed in terms of actions taken and services provided and used to inform further action. The review shall be documented in the automated case management system. The supervisor is to ensure that the review and the documentation have occurred. Upon completion of the investigation, the count starts over with the next report of suspected abuse or neglect that is not accepted for investigation.

G. If a county department receiving a referral determines that another county has responsibility, the receiving county department shall forward the referral to the responsible county department by telephone and fax and by entering the referral into the automatic case management system. The sending county department shall contact the receiving county to verify receipt of the referral within the required response time. The timeframe for meeting response time requirements begins when the initial county receives the referral.

H. The county department shall ensure that referrals that do not need to be assigned for assessment and investigation are documented in the automated case management system with the reasons why further investigation was not needed. In those reports in which a full investigation is not going to be conducted, the supervisor shall approve that decision.

I. The county department's decision of how quickly to initiate an investigation is based on specific reported information that is credible and that indicates whether a child may be unsafe or at risk of harm.

J. The county department shall assign priority in response time using the following criteria: 1. Immediate and/or same day response is required when the report indicates that: a. Without immediate response, the child is in danger of moderate to severe harm, or b. The child's vulnerability or factors such as drug and alcohol abuse, violence, isolation, or risk of flight from one county to another county or state, increase the need for immediate response. If the report is received after regular business hours, the time frame is immediate and/or up to eight hours. 2. End of the third calendar day following receipt of the report when the report indicates that: a. Without a response within three days, the child is in danger of moderate to severe harm, or b. Factors such as drug and alcohol abuse, violence, isolation, or risk of flight from one county to another county or state, increase the need for intervention in the near future. 3. Within five (5) working days from the date the report is received when the report indicates maltreatment or risk of maltreatment to a child and indicates an absence of safety concerns.

7.202.5 INVESTIGATION/ASSESSMENT PROCEDURES [Rev. eff. 11/7/08]

The county department shall:

A. Assess for safety and take action to secure safety, if indicated;

B. Assess risk, needs, and strengths of children and families;

C. Determine the disposition of founded, inconclusive or unfounded, as an outcome of the investigation/assessment; and

D. Obtain appropriate resources for children and their families.

7.202.51 Written Procedures [Rev. eff. 8/1/08]

A. The county department shall develop written cooperative agreements with law enforcement agencies that include: 1. Protocol for cooperation and notification between parties on child abuse and neglect reports and child maltreatment deaths. 2. Protocol for distributing the Notice of Rights and Remedies when required by Section 19-3-212, C.R.S., and Section 7.200.3, G, of this staff manual. 3. Joint investigation procedures. 4. Procedures for independent investigation by either party. 5. Procedures for investigation of abuse or neglect in out-of-home-care settings. A law enforcement investigation regarding the criminal aspects of an institutional abuse case shall not relieve the county department of its responsibility to assess the safety of the children in out-of-home care settings.

B. The county department may develop a Memorandum of Understanding with Child Advocacy Centers as defined in Section 19-1-103(19.5), C.R.S., that is to include: 1. Protocols with advocacy center authorizing the use of their video tape or audio tape equipment; 2. Interviewers are to be competent; 3. Interviews should meet the National Children's Alliance performance forensic standards for persons conducting these forensic interviews, as found in the National Children's Alliance standards for accredited member programs; no later editions are incorporated. Copies of these standards are available from the Colorado Department of Human Services, Child Welfare Division, 1575 Sherman Street, Denver, Colorado 80203, or at any State publications depository library; 4. The county department is not responsible for the training of the forensic interviewer employed by the advocacy center; 5. Procedures for conducting forensic interviews in a manner that is of a neutral fact-finding nature and coordinated to avoid duplicate interviews; and, 6. The child advocacy center shall provide technical assistance for forensic interviews, forensic medical examinations, or evidence collection or preservation.

7.202.52 Investigation/Assessment Requirements [Rev. eff. 1/1/09]

The investigation of intra-familial, institutional, or third party abuse shall be conducted as set forth in Sections 19-3-308(2), (3), (4) through 19-3-308.5, C.R.S., to the extent that is reasonably possible. This shall occur as soon as possible following the receipt of the referral according to the county's prioritization of the incident.

A. Within the assigned response timeframe, the investigation shall include a face-to-face interview with or observation of the child who is the subject of a report of abuse or neglect. An interview shall occur if the child has verbal capacity to relate information relevant to safety decisions; otherwise, an observation of the child is sufficient.

B. The interview shall be conducted out of the presence of the suspected person(s) responsible for the abuse or neglect.

C. The investigation shall determine the names and conditions of any children living in the same place as the child who is the subject of the report.

D. Any person(s) alleged as responsible for the abuse or neglect at any time during the referral or investigation, an attempt shall be made to interview as part of the investigation, advised of the report, and given an opportunity to respond. Reasonable efforts shall be made to advise the person(s) alleged as responsible for the abuse or neglect when whereabouts or contact information is unknown.

E. The investigation shall include use of the Safety Intervention Model as described in Section 7.202.53. To assess for safety, interviews shall be conducted with all children, caregivers, and family members in the home to gather information that is relevant for determining whether a child is safe. These interviews shall determine: 1. Extent of child maltreatment; 2. Circumstances surrounding the child maltreatment; 3. Child functioning on a daily basis; 4. Adults and caregiver functioning on a daily basis; 5. Parenting practices; and, 6. Disciplinary practices.

F. Other persons identified through the investigation who may have information regarding the alleged maltreatment shall be interviewed, if possible, as part of the investigation.

G. A visit to the child's place of residence or place of custody shall be completed as part of the investigation if: 1. Home conditions are the subject of the referral; or, 2. Information obtained in the interview process indicates assessment of the home environment is necessary due to safety issues. 3. The visit will assist the investigator to determine the truth of the allegations.

H. The investigation shall include consideration of ethnic, religious, accepted work-related practices of agricultural communities, and accepted child-rearing practices of the culture in which the child participates.

I. Allegations of Sexual Abuse 1. When there are allegations of sexual abuse in assessment, counties shall, at a minimum, conduct in-state and out of state sex offender checks of the person(s) responsible for the alleged abuse/neglect (PRAN), using one of these two options: a. Option 1: Counties shall use *www.lexisnexis.com/gov* (Accurint® for government service) to check if a PRAN is a sex offender, or, b. Option 2: Counties shall use both the in-state and out-of-state government websites to check to see if a PRAN is a sex offender. 2. When conducting any website checks, counties shall: a. Use due diligence in following the specific check criteria for each website, and, b. Also check for adult misdemeanor and/or juvenile adjudication records with a sexual offense. 3. When conducting a website check, counties shall access or attempt to access: a. Government issued (tamper-resistive), photographic identification of the PRAN and record full name(s), to include nicknames and/or aliases, address(es) and date(s) of birth in the automated case management system, and, b. In order to conduct a website check, counties shall access or attempt to access information from the alleged PRAN on any possible involvement with law enforcement, probation, parole, corrections, community corrections,

and/or child protection services in Colorado, or in any other state, and/or jurisdiction (federal, military, tribe, and/or country). 4. In the interest of client and public safety, counties shall: a. Immediately report any possible violations of sex offender registration to local law enforcement; and, b. Report all law enforcement verified matches of sex offenders to the individual, supervising officer/agent or team responsible for community supervision and public safety. 5. When completing any website check, identity verification, and/or notification, counties shall document all results in the automated case management system.

J. The investigation shall include use of the risk assessment model as described in Section 7.202.54.

K. When a county department substantiates child abuse or neglect regarding any child under the age of five years, that county department shall refer the child to the appropriate state or local agency for developmental screening within sixty days after abuse or neglect has been substantiated.

L. All of the information resulting from the investigation shall be documented in the automated case management system including details relevant to the allegations gathered during interviews. Any specific evidence gathered, such as photographs or videotapes shall be filed in the case record and referenced in the automated case management system.

M. At the time of a new assessment, the county department shall specifically review the history of any county department's involvement occurring in any jurisdiction concerning any child in a household. Each prior involvement is to be reviewed in terms of actions taken and services provided. The supervisor is to ensure that the review and the documentation have occurred. The county shall: 1. Determine whether there is a pattern of behavior in the family that is a threat to the safety of the child(ren) and take action to secure safety, if indicated, or seek more information to make a determination, and 2. Document in the assessment closure section of the automated case management system that a review related to prior involvement occurred.

N. Reasonable efforts shall be made to prevent out-of-home placement, unless an emergency exists, and to maintain the family unit. Safety plans other than placement shall be considered, including but not limited to the provision of in-home and Family Preservation Program services, if appropriate and available; the possibility of removing the maltreating adult from the home rather than the child; the possibility of the non-maltreating parent placing child and self in a safe environment; or the availability of kinship placement.

O. Taking children into custody - See Section 19-3-401, C.R.S.

P. Upon completion of an investigation, the county department shall consider a report founded if there is a preponderance of evidence to support that abuse occurred.

Q. For purposes of investigation, the interview of the child may be audio or video taped. If audio or videotaping is conducted, the following standards shall be followed: 1. Any interview of a child concerning a report of child abuse may be audio taped or videotaped as set forth in Section 19-3-308.5, C.R.S. 2. The audiotaped or videotaped interview shall be conducted by a competent interviewer and may be conducted at the child advocacy center, as defined in Section 19-1-103(19.5), C.R.S., that has a Memorandum of Understanding with the county department responsible for the investigation or by a competent interviewer for the county department, except that an interview shall not be videotaped when doing so is impracticable under the circumstances or will result in trauma to the child, as determined by the county department. 3. The child shall be advised that audio or videotaping of the interview is to be conducted and the advisement shall be documented. If the child objects to videotaping of the investigation, such taping shall not be conducted by the county department. 4. If it is the county department's policy to routinely video or audio tape interviews, and an exception is made, the reason for the exception shall be noted in the record. 5. When there is a request by any party to the action to view or listen to an audio or video tape, the child or the guardian ad litem shall be notified in advance of the request, when possible. 6. Access to these tapes shall be subject to the rules of discovery and governed by the confidentiality provisions under Section 7.000.72.

7.202.53 Safety Intervention Model [Rev. eff. 11/7/08]

The Safety Intervention Model is defined as the actions and decisions required throughout CPS involvement to:

A. Identify and assess threats to child safety;

B. Plan for an unsafe child or children to be protected;

C. Facilitate caregivers in taking responsibility for child protection; and,

D. Manage plans designed to assure child safety while a safe and permanent home is established.

7.202.531 Child Safety at Initial Contact [Rev. eff. 11/7/08]

A. At the point of first contact with the alleged child victim(s), the investigation/assessment shall focus immediately on whether a child is unsafe.

B. To assess for safety, county departments shall consider the safety threshold criteria, the fifteen safety concerns, and caregiver protective capacities.

C. If the child is unsafe, the caseworker shall analyze whether an in-home safety plan can reasonably be expected to control safety concerns and either develop a safety plan as described in Section 7.202.534, or, if necessary, initiate an out-of-home placement.
See Attachment B, Colorado Safety Assessment/Plan.

D. The safety plan creates protection for a child and shall include reasonable means by which child safety can be assured while safety assessment continues.

7.202.532 Parameters for Use of the Colorado Safety Assessment Instrument [Rev. eff. 11/7/08]

A. Completion of the Colorado Safety Assessment Instrument is required: 1. As part of an assessment including when there are new allegations on an open child protective services case; 2. Whenever there is a significant change in family circumstances or situations that might pose a new or renewed threat to child safety; 3. Prior to reunification on an open CPS case; and, 4. Prior to supervisory approval for closing a CPS case.

B. Completion of the Colorado Safety Assessment Instrument is required for all Program Area 5 reports being investigated or assessed, except: 1. Institutional abuse investigations. 2. Third party investigations. 3. Fatality investigations when there are no surviving siblings. 4. When caregivers have abandoned the child. 5. When there is clear evidence, upon initial contact with the alleged victim and person alleged to be responsible for abuse or neglect that no incident of child abuse or neglect occurred. The reasons for making this determination shall be documented in the automated case management system.

C. The responses to the Colorado Safety Assessment Instrument shall be documented in the automated case management system and shall identify any safety concerns that are or were present during the assessment. Documentation is required within thirty (30) calendar days from the date the investigation/assessment was received.

7.202.533 The Colorado Safety Assessment Instrument [Rev. eff. 11/7/08]

A. The following safety threshold criteria must be present to determine that a safety concern exists. Meeting these criteria indicates that the family's behavior, condition or situation threatens the safety of a child. 1. The threat to child safety is specific and observable. 2. Conditions reasonably could result in moderate to severe harm to a child. 3. This harm is likely to occur if not resolved. 4. A child is vulnerable to the threat of harm due to his or her age, developmental level, cognitive impairment, physical disability, illness, ability to communicate, ability to meet basic needs, or similar factors. 5. The caregiver(s) is unable to control conditions and behavior that threaten child safety.

B. County departments shall assess for child safety using the fifteen (15) standardized safety concerns. The fifteen standardized safety concerns are as follows: 1. Caregiver(s) in the home is out of control and/or violent. 2. Caregiver(s) describes or acts toward child in predominately negative terms and/or has unrealistic expectations likely to cause moderate to severe harm. 3. Caregiver(s) has caused harm to the child or has made a credible threat of harm. 4. Caregiver(s)' explanations of injuries present are unconvincing. 5. The caregiver(s) refuses access to the child or there is reason to believe that the family will flee. 6. Caregiver(s) is unwilling or unable to meet the child's immediate needs for food, clothing, and shelter. 7. Caregiver(s) is unwilling or unable to meet the child's significant medical or mental health care needs. 8. Caregiver(s) has not or is unable to provide sufficient supervision to protect child from potentially moderate to

severe harm. 9. Child is fearful of caregiver(s), other family members, or other people living in, or having access to, the home. 10. Child's physical living conditions endanger the child's immediate health and safety. 11. Caregiver(s)' alleged or observed substance use may seriously affect ability to supervise, protect or care for the child. 12. Child sexual abuse is suspected and circumstances suggest that child safety is of immediate concern. 13. Caregiver(s)' alleged or observed emotional instability, developmental delay or cognitive impairment seriously affects his or her ability to supervise, protect, or care for the child. 14. Domestic violence exists in the home and places the child in danger of physical and/or emotional harm. 15. Caregiver(s) has previously abused or neglected a child or is suspected of such, and the severity of the past maltreatment or caregiver's response to previous intervention suggests the child may be unsafe.

C. The list of safety concern definitions shall be referenced when assessing threats to child safety and prior to checking safety concerns in the Colorado Safety Assessment Instrument.

D. Safety Assessment Conclusion 1. If none of the fifteen (15) safety concerns are identified at the conclusion of the safety assessment process, then it is reasonable to conclude that the child is safe and no further safety intervention is required. 2. If assessment of the child and family determines that the child is safe and emergency out-of-home placement occurred prior to the completion of the safety assessment, efforts should be made to return responsibility for the child's safety back to the caregiver(s). 4. The caregiver protective capacity shall be assessed to determine whether a caregiver has the capacity and willingness to assure the child's protection and, if so, no further safety intervention is necessary. If the caregiver is unwilling or the protective capacity is insufficient to assure the child's protection, then further analysis and planning are necessary.

E. Safety Intervention Analysis To determine whether an in-home safety plan *(see Attachment B, Colorado Safety Assessment/Plan)* can sufficiently manage the safety concerns, consider and document how the following are met: 1. The home environment is stable enough to support an in-home safety plan; 2. Caregivers are willing to accept and cooperate with the use of an in-home safety plan; and, 3. Resources are accessible and the level of effort required is available to sufficiently control safety concerns without it being necessary to rely on the person responsible for abuse/neglect to initiate protective actions.

7.202.534 Safety Planning and Documentation [Rev. eff. 11/7/08]

A. Safety plans do not have to be developed if the safety analysis results in a decision that out-of home placement is the only plan that is sufficient to control safety concerns.

B. A safety plan shall be developed for all situations in which an in-home safety plan can reasonably be expected to control safety concerns. It shall be documented in the automated case management system. All children in the household assessed to be unsafe shall be included in one plan.

C. Safety plans shall include the following: 1. Safety responses that are the least restrictive response for assuring safety; 2. Safety responses that have an immediate impact on controlling safety concerns; 3. Description of actions to be taken that address each specific safety concern, including frequency of each action and who is responsible for each action; 4. Safety response(s) that are readily accessible at the level required to assure safety; 5. Identification of each family member and safety management provider participating in the plan; 6. Parental acknowledgement of safety concerns and a willingness to participate in the safety plan; and; 7. Caseworker activities to oversee the safety plan.

D. Parents, caregivers, and others who are a part of a safety plan shall sign the safety plan and receive a copy, and the signatures and paper form shall be retained in the file. E. The safety plan shall be documented in the automated case management system within thirty (30) calendar days from the date the referral was received.

7.202.54 Colorado Family Risk Assessment [Rev. eff. 8/1/08]

A. The assessment/investigation shall include use of the risk assessment to: 1. Determine risk for future abuse or neglect, and 2. Aid in determining if case services should be provided, and 3. Aid in determining the appropriate level of case services.

B. The risk assessment is required for all Program Area 5 assessments except: 1. Institutional abuse investigations, 2. Third party investigations, 3. Fatality investigations when there are no surviving siblings, 4. When caregivers have abandoned the child, 5. When the investigation determined no basis for the allegations.

C. The Risk Assessment shall address the following factors: 1. Current type of allegation, 2. Previous child welfare investigations, services, and placement, 3. Number of children in household, 4. Age of youngest child in household, 5. Primary caregiver's description of incident, 6. Primary caregiver's provision of physical care or supervision, 7. Caregiver(s) use of alcohol and controlled substances, 8. Characteristics of children in the household, 9. Recent or historical domestic violence in the household, 10. Caregiver(s)' history of homelessness and mental health treatment, 11. Primary caregiver's history of abuse or neglect as a child, 12. Caregiver(s)' use of excessive/inappropriate discipline, 13. Caregiver(s)' involvement in disruptive/volatile adult relationships.

D. The risk assessment documentation is to be completed in the automated case management system within thirty (30) calendar days from the date the referral was received.

7.202.55 Institutional Abuse and Neglect Investigations [Rev. eff. 11/1/08]

Institutional abuse or neglect investigations shall:

A. Include those reports of child abuse or neglect by staff in any private or public facility that provides out-of-home childcare, including twenty-four (24) hour care and childcare homes and centers.

B. Not include abuse or neglect that occurs in public, private, and parochial schools and preschools operated in connection with those schools except when those schools provide extended day services and abuse or neglect occurs during that time. Those instances shall be considered as institutional abuse and investigated accordingly.

C. Be the responsibility of the county department of social services in which the facility named in the report is located.

D. Be conducted in those cases in which an allegation of abuse or neglect is made. A report of a minor injury resulting from physical restraint shall not, by itself, require a full investigation unless there are surrounding circumstances that would indicate abusive or neglectful behavior by the care provider. Such circumstances include those reports in which someone is specifically alleging the behavior to be abusive or those reports in which there has been a pattern of frequent injuries by the same caretaker or of similar incidents in the same facility.

E. Be conducted by a qualified and disinterested party in those situations in which the county department is the supervisory agency, such as for certified county foster and group homes. Such an investigation shall be arranged for by the responsible county department with either another county department, another agency within the community who accepts delegated responsibility, or a disinterested and qualified staff person within the county department.

F. Be initiated within twenty-four (24) hours to determine the child(ren)'s safety. 1. Children must be seen within twenty-four (24) hours when the report indicates that: a. Without immediate intervention the child(ren) is at risk of moderate to serious harm. b. The risk factors based on the child(ren)'s vulnerability increase the need for immediate intervention. 2. Face to face response time with the child(ren) that is not at imminent risk are to be followed in accordance with Section 7.202.4, I, 2, 3. 3. The county responsible for the investigation is required to document in the state automated case management system the exceptions for not seeing the child(ren) within the prescribed timeframe: a. Another caseworker, police officer, or medical professional checked on the safety of the child(ren) within the assigned response time. b. The child(ren) was no longer in the home or facility at the time of the report. c. The alleged person responsible for the abuse or neglect is no longer in the home or facility. d. The alleged incident occurred in another home or facility and occurred three (3) or more months ago. e. The present location of the child or children is determined to be unknown after diligent attempts to locate the child or children. f. Severe weather conditions that prevent travel.

G. Include notification within one working day after receipt of the referral to the licensing authority or certifying unit regarding the receipt of a child maltreatment referral in an out-of-home or day care setting.

H. Include in the initial assessment as much of the following information as possible from the reporting party and records: 1. Name, address and present specific location of the alleged child/ren victim(s). 2. Child/ren's age and the nature and extent of the injuries 3. Time, date, location and witness(es) of the incident. 4. Any indication that other children in the institution

are or have been injured, abused, neglected, and if so, their names addresses and current location. 5. Any other information which might be helpful in establishing the cause of the injury, abuse and/or neglect. 6. Name, address and telephone number of the institution and whether there is an after-hours telephone number for the institution. 7. Name and address of the agency holding legal custody of the child/ren. 8. Name and address of the child/ren's parent(s)/guardian(s). 9. Name, address and present location of the person(s) alleged to be responsible for an incident of child abuse or neglect. If the person(s) is a staff person(s), determine if the person(s) is still on duty or off duty. If the person(s) is another resident, determine where he/she is at the time you are obtaining this information. 10. Determine if the institution has been apprised of the allegation and if so, what action(s) may have been taken by the institution, such as: a. Notification of the custodial county/agency. b. Notification of the parent(s) guardians. c. Separation of the victim(s) from the alleged person responsible for child abuse or neglect. d. Provision of medical treatment, and if no medical treatment has been provided whether in the reporter's opinion, an injury was sustained which would constitute a medical emergency. 11. Both historical and current information regarding the child/ren, the facility and the person(s) responsible for the abuse or neglect.

I. Be investigated in the following manner: 1. Interview alleged victim/s a. Child/ren shall be interviewed in a setting which is as neutral as possible and where confidentiality can be maintained. b. Child/ren shall not be taken off the grounds for the interview unless the county department of social services has court ordered custody or law enforcement has taken the child into protective custody. c. Person(s) allegedly responsible for child abuse or neglect and other related parties (i.e., foster parents, spouse or other facility staff) shall not be allowed to be present during the interview with the child/ren. d. The county department of social services shall, if necessary, obtain a court order to access the child/ren if the facility refuses access. e. The investigating workers shall determine if there are other victims not named in the report and shall immediately assess the safety of those victims. f. Names and addresses of any other alleged victims who may no longer be in the facility shall be obtained and interviewed, if appropriate. 2. Interview witnesses, including children and staff. 3. Interview other facility staff who may have additional information. 4. Interview the person(s) allegedly responsible for abuse or neglect after the child/ren and witnesses have been interviewed by either law enforcement or social services. 5. Obtain a detailed description of the incident and of the injuries and an assessment of the appropriateness of physical management/restraint if this was involved.

J. Require notification of: 1. Custodial agencies, including county departments, other states, and appropriate divisions of the Department of Human Services. a. Shall be notified immediately if there are safety issues or if an injury requires medical treatment. b. Shall be notified following completion of investigation if the child in their custody was the subject of a report or if the investigation reveals concerns regarding the childcare practices which could negatively impact their child/ren. 2. Licensing authority or certifying unit shall be notified the next working day if the investigation indicates there is an immediate threat to the child/ren's health, safety, or welfare. 3. Parents/Legal Guardians of alleged victim(s) a. Shall be notified by the custodial counties when alleged abuse occurs in out-of-home care setting. b. Shall be notified by the

investigating county when there is no custodial county. c. Shall be notified by investigating county when alleged abuse occurs in less than twenty-four (24) hour childcare with notification provided prior to an interview with child/ren, where possible. d. Notification shall include that an investigation is being or has been conducted on a report of abuse and/or neglect, nature of the alleged abuse and the findings of the investigation. e. If circumstances do not allow for direct contact, then notification of the allegations and findings shall be provided in writing. 4. Parents or legal guardians of uninvolved children in less than twenty-four (24) hour licensed child care settings shall be given notice of an investigation within seventy-two (72) hours when it has been determined by the State or county department that: a. The incident of alleged child abuse or neglect that prompted the investigation is at the level of a medium, severe, or fatal incident of abuse or neglect, as defined by rule at Sections 7.202.6, F and 7.202.602, A, or involves sexual abuse; b. The State Department or county department has made a determination that notice to the parents or legal guardians of the uninvolved children is essential to the investigation of the specific allegation or is necessary for the safety of children cared for a the facility; and, c. The State Department or county department has documented in writing the basis for the determination, and a State Department or county department supervisor has provided written approval of the determination for which basis and approval may be in electronic form. 5. Director of facility a. Shall be apprised of the allegation. b. Shall be advised regarding the results of the investigation and provided a verbal report immediately once a determination is made. If the county department is unable to make a determination regarding the person(s) allegedly responsible for child abuse or neglect, the director shall also be advised so that decisions regarding the continued employment of the employee can be made by the facility.

K. Require the submission of a written report by the investigating county within 60 calendar days after the initial receipt of the report of child abuse or neglect: 1. To the facility administrator/director and the agency with licensing/certifying authority. 2. To the Institutional Abuse Team, the Department's Twenty-Four (24) Hour Monitoring Team, and the Division of Child Care when the incident involves a twenty-four (24) hour care facility. 3. To the same custodial counties as required in Subsection J, 1, above. 4. Report shall include at a minimum the following information: a. Name(s) of person(s) allegedly responsible for an incident of child abuse or neglect. b. The child's name, age, and length of time he/she has been in placement. c. The name of the facility and the county in which it is located. d. The name of director/administrator. e. The approximate number of children served. f. The age range of children served and type of children served (e.g., child with developmental disabilities). g. A summary of what the investigation involved, including a list of the individuals interviewed. h. A summary of findings/conclusions and the information on which they are based. i. A summary of the recommendations and/or need for an identified corrective or remedial action.

7.202.56 Third Party Abuse or Neglect Report Requirements [Rev. eff. 2/1/07]
Third party abuse or neglect reports shall:

A. Include any reports of abuse or neglect by a person who is not relating to the child in the contexts described in the previous intrafamilial or institutional abuse sections.

B. Be forwarded immediately by the county department to the appropriate law enforcement agency for screening and investigation in all cases in which the abuse or neglect was by a third party age ten or over. In those cases in which the person allegedly responsible for an incident of child abuse or neglect is under the age of 10, the county department shall be the agency responsible for the investigation. The investigation shall focus on whether abuse occurred, and if so, identifying the service needs of the victim. In addition, it shall assess whether the person allegedly responsible for child abuse or neglect has been the victim of abuse, and if so, what interventions are necessary to secure safety and address treatment needs.

C. Be followed by receipt by the county department of a copy of the report summarizing the investigation that was conducted by law enforcement. The investigation report shall be the basis upon which the county department enters a confirmed report of child abuse or neglect into the State Department's automated system pursuant to Section 7.202.6.

7.202.57 Conclusion of Investigation [Rev. eff. 8/1/08]
A. An investigation shall be completed within 30 calendar days of the date the referral was received, unless there are circumstances which have prevented this from occurring. Such circumstances shall be documented in the Department's automated reporting system. 1. The caseworker shall request and document in the assessment extension window of the automated case management system, the primary reason(s) for the extension prior to the expiration of the thirty (30) day closure requirement, and 2. The approving supervisor shall document within seven (7) calendar days in the assessment extension window of the Department's automated case management system the time limited extension(s) to the thirty (30) calendar days closure requirement including the rationale and the timeframe for the extension(s).

B**.** Upon completion of an investigation, the county department shall report the outcome of the investigation on the automated case management system.

C. Services provided beyond 60 calendar days of the receipt of the report shall be open for services based on either court involvement or the family's agreement to accept services.

D. Regardless of the outcome of the investigation and as allowable by law, the county department shall notify: 1. The involved child's family of the outcome of the investigation; 2. The person alleged to be responsible for the abuse or neglect of the outcome of the investigation; and, 3. Where applicable, its local licensing unit, the director or administrator of the facility, the agency with licensing or certifying authority and the State Department of Human Services' Division of Child Welfare and Division of Child Care, if the abuse or neglect investigation involved a state-licensed or county-certified facility.

7.202.6 Requirements Concerning County Entry of Confirmed Reports of Child Abuse and Neglect into the State Automated System and Processes and Appeal the Confirmed Report [Rev. eff. 9/1/06]

When the county investigation of a report of suspected child abuse or neglect results in a confirmed finding of child abuse or neglect by a preponderance of evidence, the county department shall enter the confirmed report child abuse or neglect to the State Department's automated system no later than 60 calendar days after receipt of the complaint, unless a county elects to implement Section 19-3-309.5, C.R.S., and defer entering a confirmed report of child abuse or neglect into the State automated system, and enter into a preconfirmation agreement (known as a safety plan agreement, as authorized pursuant to Section 19-3-309.5, C.R.S.).

A. The county may follow the deferral process in the following circumstances: 1. When the person has had no previous allegations of abuse or neglect investigated; 2. When the child abuse or neglect that the person is found to be responsible for is at the level of minor incident of abuse or neglect, pursuant to Sections 7.202.6, F and 7.202.602, A; 3. When the person and the county department decide on a mutually agreeable method for resolving the issues related to the report; and, 4. When the requirements set forth in the preconfirmation agreement for resolving the issues related to the report of child abuse or neglect can be completed within sixty days after the receipt of the complaint.

B. Counties are not obligated to enter into any agreements to defer entering a confirmed report of child abuse or neglect into the State automated system.

C. The pre-confirmation agreement shall be in writing and signed by the caseworker and the person found to be responsible for the abuse or neglect of the child, and reviewed by the supervisor.

D. Upon deciding to enter into the deferral process, the county department shall document the decision in the State automated system.

E. If the person who is found to be responsible for abuse or neglect completes the agreement, as determined by the county department, the county department shall make an entry of "deferred" into the State automated system regarding the report of child abuse or neglect related to the incident investigated. F. If the person who is found to be responsible for the abuse or neglect does not complete the agreement, as determined by the county department, the county department shall make an entry of "founded" into the State automated system regarding a confirmed report of child abuse or neglect related to the incident investigated.

7.202.601 Definitions [Rev. eff. 9/1/06]

In addition to the definitions set forth in Section 7.202.3, the following definitions are applicable to the submission of confirmed (known also as “founded”) reports of abuse and neglect by the county department to the State Department.

"Authorized caregiver", as used in these rules, means an individual or agency authorized by a parent, guardian or custodian to provide care to a child and who agrees to provide such care. The authorization may be on a temporary basis and need not be in writing unless otherwise required by law.

"Child in need of services" includes a child who receives services regardless of whether the services are court ordered, county provided or voluntarily arranged by the family, or a child who needs services even if the services are not provided.

"Environment injurious to the welfare of a child" means that the environment caused injuries to the welfare of the child or reasonably could be foreseen as threatening to the welfare of the child and is in control of the parent, guardian, custodian or authorized caregiver.

"Severity level" means the assessment of the harm to the child victim or the act of abuse or neglect as minor, medium, severe or fatal as defined in these rules. Upon confirmation of the allegation(s) of abuse, neglect, or sexual abuse, the county department shall use the following definitions when determining the severity of the incidents:

1. Physical Abuse a. “Minor physical abuse” means excessive or inappropriate force used resulting in a superficial injury; b. “Medium physical abuse” means excessive or inappropriate force used resulting in an injury that may require medical attention; c. “Severe physical abuse” means excessive or inappropriate force used resulting in a serious injury that requires medical attention or hospitalization; d. Fatal physical abuse” means excessive or inappropriate force used resulting in a child’s death.

2. Neglect a. “Minor neglect” means physical or emotional needs of the child are marginally or inconsistently met, but little or no impact on the child’s functioning; b. “Medium neglect” means the physical or emotional needs of the child are inadequately met resulting in some impairment in the child’s functioning; c. “Severe neglect” means that the physical or emotional needs of the child are not met resulting in serious injury or illness; d. “Fatal neglect” means that the physical or emotional needs of the child are not met resulting in death.

3. Sexual abuse severity is to be determined based upon the type of contact, duration of contact, and the emotional impact upon the child.

7.202.602 Entering Confirmed Reports of Child Abuse or Neglect [Rev. eff. 9/1/06]
The county department shall enter the confirmed report even if there is a criminal or civil proceeding pending against the person responsible arising out of the same incident. The reported data shall include the following:

A. The name, address, gender, date of birth, and race of the child(ren) victim(s);

B. The composition of the victim's immediate family;

C. At a minimum, the name and last known mailing address of the person confirmed to be responsible for the child abuse or neglect, and the date of birth and Social Security Number, if known;

D. The type of abuse or neglect;

E. The severity of the abuse or neglect;

F. Any previous incidents of child abuse or neglect of child or siblings;

G. The name(s) and address(es) of any person(s) responsible for previously confirmed abuse or neglect, if known;

H. The name of the source of the report submitted to the county department, if known;

I. The county department that investigated the report; and,

J. The date the suspected abuse or neglect was reported to the county department and the date the county department confirmed the abuse or neglect report.

7.202.603 Notice to Law Enforcement and District Attorney [Rev. eff. 9/1/06]
The county department shall notify the local law enforcement agency and the District Attorney's Office of the founded report. No other entity shall receive notification unless otherwise authorized by law.

7.202.604 Notice to the Person Found to be Responsible for Child Abuse or Neglect [Rev. eff. 9/1/06]
A. The county department shall notify the person confirmed as responsible for child abuse or neglect of its finding by first-class mail to the responsible person's last known mailing address, using a form approved by the State Department. The county department shall retain a copy of the notice in the case file showing the date of mailing.

B. At a minimum, the notice shall include the following information: 1. The type and severity level of the of abuse or neglect, the date the incident was reported to the county department, which county department filed the report, the date the county confirmed the report in the State Department's automated system, and information concerning persons or agencies that have access to the report. 2. The circumstances under which information contained in the State's automated system will be provided to other individuals or agencies. 3. How to access the county's dispute resolution process. Counties are authorized to offer a county dispute resolution process to persons alleged to be responsible for an incident of child abuse or neglect. 4. The right of the person found responsible to request a record review of the county's determination and record or a State level fair hearing before an independent Administrative Law Judge as set forth in Sections 7.202.605 – 7.202.607. 5. Notice that the scope of the appeal is limited to challenges that the finding(s) are not supported by a preponderance of the evidence or that the actions found to be child abuse or neglect do not meet the legal definitions of child abuse or neglect. The State Department will be responsible for defending the determination at the State level fair hearing. 6. A full explanation of all alternatives and deadlines contained in Sections 7.202.605 – 7.202.607.

7.202.605 State-Level Appeal Process [Rev. eff. 9/1/06]

A. The grounds for appeal shall consist of the following: 1. The findings are not supported by a preponderance of evidence; or, 2. The actions ultimately found to be abusive or neglectful do not meet the statutory or regulatory definitions of child abuse or neglect.

B. The person confirmed to be responsible for committing child abuse or neglect shall have ninety (90) calendar days from the date of the notice of confirmed finding to appeal the finding in writing to the State Department of Personnel and Administration, Office of Administrative Courts (OAC). The written appeal shall include: 1. A statement detailing the basis for the appeal with the county department notice attached; and, 2. Whether the person requesting the appeal, the "Appellant", is requesting a record review or a fair hearing.

C. The administrative review and appeal processes must be initiated by the person responsible for child abuse or neglect or his or her legal representative. The Appellant need not hire an attorney to appeal the county determination. If the individual is a minor child, the appeal may be initiated by his or her parents, legal custodian, or legal representative.

D. If the appeal is filed more than ninety(90) calendar days from the date of the notice of confirmed finding, the Appellant must show good cause for not appealing within the prescribed period. Failure to request State review within this ninety-day period without good cause shall be grounds for dismissing the appeal and waiver of further administrative remedies.

E. The confirmed report shall be utilized for employment background screening by the State Department while the administrative appeal process is pending.

F. The Appellant shall have the right to appeal even if a dependency and neglect action or a criminal prosecution for child abuse is pending arising out of the same report. The OAC shall

hold in abeyance the administrative process pending the outcome of the dependency and neglect or criminal actions if requested by either party to the appeal. The pendency of other court proceeding shall be considered to be good cause to continue the appeal past the 180 day timeframe set forth below. If the Appellant objects to the continuance, the continuance shall not exceed six (6) months from the date ordered.

G. The following circumstances shall be considered to be admissions to the factual basis of the TRAILS finding of responsibility for child abuse or neglect and shall be considered to be conclusive evidence of the person's responsibility for the act of child abuse or neglect: 1. When a Dependency and Neglect Petition has been adjudicated against the Appellant on the basis of Sections 19-3-102(1)(a), (b), or (c), C.R.S., arising out of the same factual basis as the founded report in TRAILS; or, 2. The Appellant has been found guilty of child abuse, or has pled guilty or nolo contendere to child abuse as part of any plea agreement, including, but not limited to a deferred judgment agreement, arising out the same factual basis as the founded report in TRAILS.

H. When an Appellant requests a State Level Fair Hearing, the State Department is authorized to enter into settlement negotiations with the Appellant as part of the litigation process. The State Department is authorized to enter into settlement agreements that modify, overturn or expunge the reports as reflected in the State portion of the TRAILS database. The State Department is not authorized to make any changes in the county portion of the TRAILS database. In exercising its discretion, the State Department shall take into consideration the best interests of children, the weight of the evidence, the severity of the abuse or neglect, any pattern of abuse or neglect reflected in the record, the results of any local court processes, the rehabilitation of the Appellant, and any other pertinent information.

7.202.606 Record Review Before the Office of Administrative Courts [Rev. eff. 9/1/06]

A. When the OAC receives a request for a record review of the county department's determination, the OAC shall notify the State Department that the request has been docketed and provide a copy of the appeal request.

B. The State Department shall notify the relevant county department that a record request has been submitted to the OAC and shall request that the county department submit to OAC directly a copy of the record upon which it based the decision, including, but not limited to, the specific finding(s) that has been made, the TRAILS report, all supporting documentation, photographs and any tape or other recording of interviews. 1. It is the responsibility of the county department to block out any confidential information in their records prior to the county department's submitting the record to the OAC. 2. The OAC shall provide access to the Appellant to the record submitted by the county department.

C. After the record has been submitted to OAC by the county department, OAC shall provide the Appellant the opportunity to submit any relevant documentation supporting the Appellant's position.

D. When the time has passed which the OAC designated for Appellant to submit Appellant's documentation, the appeal shall be "at issue" and the appeal record shall be closed. The Administrative Law Judge shall then render an Initial Decision for review by the Colorado Department of Human Services, Office of Appeals. The Initial Decision shall uphold, modify or overturn/reverse the county determination. The Administrative Law Judge shall have the authority to modify the type and severity level of the child abuse or neglect finding to meet the evidence provided by the parties. The Administrative Law Judge shall not order the county department to modify its record; rather, the State Department shall indicate the outcome of the appeal in its portion of the TRAILS database. The decision shall be rendered no later than 180 calendar days following receipt of the appeal, unless the proceeding has been continued for good cause by the OAC.

7.202.607 State Fair Hearing Before the Office of Administrative Courts [Rev. eff. 9/1/06]
A. When the OAC receives a request for a fair hearing, the OAC shall notify the State Department that the request has been docketed and send a copy of the appeal request to the State Department.

B. The OAC shall enter a Procedural Order to the parties indicating the following: 1. Within 120 calendar days from the date of the Procedural Order, the parties shall attempt to contact each other to determine whether the appeal could be resolved without proceeding to hearing and, if so, to finalize settlement terms. 2. Within 120 days, if the parties are not able to resolve the appeal without proceeding to hearing, each party shall so inform the OAC on the form provided by OAC so that it can set a date with the parties for a telephone scheduling conference. 3. At the telephone scheduling conference between OAC and the parties, the OAC shall determine the date for the hearing, the date by which the State Department shall provide to the Appellant and to OAC the specific incident(s) that supports the finding of responsibility for child abuse or neglect and the legal basis for the finding of responsibility for child abuse or neglect, and the date for Appellant's submission of the response to the State Department and to OAC. The State Department shall have at least fourteen (14) calendar days from the date of the scheduling conference to submit the following to the Appellant and to OAC, and the Appellant shall have 14 days in which to respond to the State Department and OAC. a. The State Department shall provide in writing to the Appellant the specific allegation(s) that form the basis of the county department's determination that the Appellant was responsible for child abuse or neglect. b. The State Department shall indicate the specific type and severity of child abuse asserted against Appellant and the legal authority supporting the determination. c. To the extent that the State Department determines that the facts contained in the county record support a modification of the type and severity of child abuse or neglect determined by the county department, the State Department shall so notify the county department and the Appellant of that modification and the process shall proceed on the modified finding(s). d. The Appellant shall respond to the State Department's submittal by providing the factual and legal basis supporting the appeal. 4. The scheduling conference shall also set the timeframe for submittal

of the pre-hearing statement in accordance with OAC procedures. 5. If the Appellant fails to participate in the scheduling conference referenced above or fails to submit the response referenced in Subsection B,3,d, above, to the State Department and OAC within the timeframe ordered, the OAC shall deem the appeal to have been abandoned by the Appellant and render an Initial Decision Dismissing Appeal. In accordance with the procedures set forth below, the Office of Appeals may reinstate the appeal for good cause shown by the Appellant.

C. The Administrative Law Judge shall conduct the hearing in accordance with the Administrative Procedure Act, Section 24-4-105, C.R.S. The rights of the parties include: 1. The State Department shall have the burden of proof to establish the facts by a preponderance of the evidence and that the facts support the conclusion that the Appellant is responsible for the child abuse or neglect indicated in the document provided by the State Department. 2. Each party shall have the right to present his or her case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination. 3. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be subsequently prejudiced thereby, the Administrative Law Judge may receive all or part of the evidence in written form or by oral stipulations. 4. A telephonic hearing may be conducted as an alternative to a face-to-face hearing unless either party requests a face-to-face hearing in writing. The written request for a face-to-face hearing must be filed with the OAC and the other party at least ten (10) calendar days before the scheduled hearing. 5. Where facilities exist that have videoconferencing technology local to the county department that made the confirmed finding, either party may request that the hearing be conducted via that technology. The requesting party shall investigate the feasibility of this approach and shall submit a written request outlining the arrangements that could be made for video conference. The Office of Administrative Courts shall hold the hearing via videoconferencing for the convenience of the parties whenever requested and feasible.

D. At the conclusion of the hearing, unless the Administrative Law Judge allows additional time to submit documentation, the Administrative Law Judge shall take the matter under advisement. After considering all the relevant evidence presented by the parties, the Administrative Law Judge shall render an Initial Decision for review by the Colorado Department of Human Services, Office of Appeals.

E. The Initial Decision shall uphold, modify or overturn/reverse the county determination. The Administrative Law Judge shall have the authority to modify the type and severity level of the child abuse or neglect finding to meet the evidence provided at the hearing. The Administrative Law Judge shall not order the county to modify its record; rather, the State Department shall indicate the outcome of the appeal in its portion of the TRAILS database.

F. The decision shall be rendered no later than 180 calendar days following receipt of the appeal, unless the proceeding has been continued for good cause by the OAC or both parties agree to waive the time limit.

G. When an Appellant fails to appear at a duly scheduled hearing, having been given proper notice, without having given timely advance notice to the Administrative Law Judge of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and the Administrative Law Judge shall enter an Initial Decision Dismissing Appeal. In accordance with the procedures set forth below, the Office of Appeals may reinstate the appeal for good cause shown by the Appellant.

7.202.608 State Department Office of Appeals Functions [Rev. eff. 9/1/06]

A. Review of the Initial Decision and hearing record and entry of the Final Agency Decision shall be pursuant to State rules at Sections 3.850.72 - 3.850.73 (9 CCR 2503-1).

B. Review shall be conducted by a State adjudicator in the Office of Appeals not directly involved in any prior review of the county report being appealed.

C. The Final Agency Decision shall advise the Appellant of his or her right to seek judicial review in the State District Court, City and County of Denver, if the Appellant had timely filed Exceptions to the Initial Decision.

D. If the Appellant seeks judicial review of the Final Agency Decision, the State Department shall be responsible for defending the Final Agency Decision on judicial review.

E. In any action in any court challenging a county's confirmed report of child abuse or neglect, the State Department will defend the statutes, rules, and State-mandated procedures leading up to the confirmation, and will defend all county actions that are consistent with statutes, rules, and State-mandated procedures. The State shall not be responsible for defending the county department for actions that are alleged to be in violation of, or inconsistent with, State statutes, State rules or State-mandated procedures.

7.202.609 Confidentiality of Appeal Records [Rev. eff. 9/1/06]

A. All records submitted by the parties as part of the State level appeal process and all notices, orders, agency notes, created by or made part of the State Department's agency record shall be confidential and shall not be released or disclosed unless such release or disclosure is permitted by the applicable State statutes or Section 7.000.72 (12 CCR 2509-1).

B. Initial and Final Agency Decisions where information identifying the Appellant, victim(s), other family members, or other minors have been blocked out may be released to the public.

7.202.61 Child Protection Teams [Rev. eff. 11/1/98]

A county department of social services receiving 50 or more reports of child abuse and neglect per year shall have a multi-disciplinary child protection team in accordance with Sections 19-1-103(22) and 19-3-308(6), C.R.S.

7.202.62 Provision of Ongoing Child Protection Services (CPS) [Rev. eff. 11/7/08]
A. If a safety plan exists, the assigned caseworker and supervisor shall review it as the first step in ongoing services planning.

B. Ongoing child protection services shall be based on the safety and risk issues identified in the safety assessment and plan, risk assessment, North Carolina Family Assessment Scale (NCFAS)/North Carolina Family Assessment Scale-Reunification (NCFAS-R), and in the family social history and assessment summary in the Family Services Plan. Services shall be provided to protect the child(ren) from further abuse or neglect through building parental capabilities and increasing parental involvement. This shall be accomplished in a manner that preserves the family when this can safely be done. When the family from whom the child(ren) were removed cannot safely be preserved, services shall be provided that preserve the child(ren)'s continuity within the extended family and/or home community when feasible. When the child(ren) cannot safely return to the family from whom they were removed, services shall be provided to achieve an alternative permanent plan that provides for a child(ren)'s safety and well-being in a timely manner.

C. At the point of case transfer, county departments shall assure that pertinent information regarding child safety, permanency, and well-being are translated to the new assigned caseworker. This shall be accomplished through any of the following methods, in a descending order of preference, based on the nature of the case and the workload ability of the county department: 1. Decision-making meeting involving caseworkers and/or supervisors, family and community providers. 2. Staffing between caseworkers and/or supervisors. 3. Written transfer summary.

D. The county department shall complete the safety assessment consistent with requirements outlined in Section 7.202.53.

E. The county department shall complete the Colorado Family Risk Reassessment prior to case closure on all Program Area 5 cases for which remaining at home or reunification was the permanency goal identified in the automated case management system. The Colorado Family Risk Reassessment shall be documented in the automated case management system and address the following factors: 1. Prior investigations; 2. Household has previously received child protective services; 3. Number of children in the household; 4. Age of youngest child in the household; 5. New CPS substantiated or inconclusive investigation since the initial risk assessment; 6. Either caregiver has a current substance use problem; 7. Disruptive/volatile adult relationships in the household; 8. Caregiver's ability to provide physical care/supervision to children; 9. Primary caregiver's use of treatment/training programs; and, 10. Secondary caregiver's use of treatment/training programs. All of the information from the risk assessment and risk reassessment shall be used to assess the degree to which parental capacities have been enhanced, risks reduced, and links to the community have been established in order to support case closure. The NCFAS/NCFAS-R shall be used to measure the degree of change in the identified risk areas.

F. Monthly Contact The primary purpose for case contacts shall be to assure child safety and well-being and move the case toward achieving identified treatment goals. Documentation in the automated case management system of at least one monthly contact shall summarize progress toward these goals. In child protection cases in which the children remain in the home and in child protection cases in which the children are placed out of the home, the county department shall have face-to-face and telephone contact with the children and parents and relevant collateral contacts as often as needed (while meeting the minimum expectations below) to reasonably attempt to assure the safety, permanency and well-being of the children. 1. A face-to-face contact with a parent, or the guardian to whom the child shall return, or with a child is defined as an in-person contact for the purpose of observation, conversation, intervention or interview about substantive case issues, such as safety, risk and needs assessment, safety and treatment planning that may help to reduce future risk of abuse and neglect, service agreement development and/or progress. 2. The primary purposes for county department contacts with parents are to assess the parents' ability to provide safety for the child and make progress toward treatment plan goals. When a child protection case remains open with the county department, the county department shall maintain sufficient contact with parents or the guardian with whom the child resides, or to whom the child shall return, to lead to timely resolution of child safety issues and to move the case toward timely resolution of treatment plan goals. Such contact shall occur at least monthly and at least every other month there shall be face-to-face contact. Such contacts shall occur with parents at least until a motion for termination of parental rights is filed, in cases in which the child is not living in the home or in which it is no longer planned that the child will return home. 3. The primary purpose for child contacts is to assure the child's safety and well-being regardless of the reason the case is open with the county department. For in-home cases, the county department shall have at least monthly face-to-face contact with children participating as a child in the case. 4. For children in out-of-home care, the county department shall have monthly face-to-face contact and, at least every other month, contact shall occur at the child's out-of-home placement residence (see Section 7.001.6, B). 5. For all other types of contacts, the purpose of the contacts shall be determined by the stage of the case, by the level of safety, risk and needs of the case, and according to whether or not the county department representative is the primary service provider. In cases in which there are individuals and/or someone from another or other agencies who has/have the primary therapeutic relationship with the parent and/or the child, these parties may be designated by the county department to fulfill additional contacts beyond the minimum contacts described above when additional contacts are needed to reasonably assure the safety, permanency and well-being of the child/ren in the case. 6. All case contacts with parents and child/ren by the county department shall be recorded in the case file, which may be either the hard copy or the State automated case management system case file, and shall reflect how the purpose of the visit was accomplished. 7. In exceptional situations, if the minimum case contacts are not able to be provided by the county in any given month, those reasons shall be documented by the county in the case file. 8. If direct contact is impossible due to the child's distance location, an alternative agency contact agreement shall be developed and signed by the director or administrator. The alternative agency contact agreement must meet all minimum requirements for frequency and location of contacts. The contacts and the following information shall be documented in the child's case records indicating: a. the case

circumstances, including why the direct contact is not possible. b. how the contact shall occur and, if the case is supervised by another agency, the frequency of contact by that agency. c. how the county department shall monitor progress. 9. All case contacts by parties designated by the county department, beyond the minimum contacts described above, to provide assessment, treatment and/or monitoring of the parents and children, shall be recorded in the case file. The county department shall have the responsibility to determine that such needed contacts have occurred.

G. The county department shall provide courtesy supervision services when requested by another county or state when there is court jurisdiction and such services must continue in order to protect the child. In cases where there is no court jurisdiction, the receiving county shall conduct an assessment to determine if services are needed in order to protect the child. Services shall be provided if indicated. Other supervisory services include: 1. The requirement to utilize ICPC procedures to obtain courtesy supervision shall not be used by a county to deny a request from another state to provide assessment of a child's safety. 2. When there is court jurisdiction, Interstate Compact on the Placement of Children (ICPC) procedures shall be followed by the sending state in order to obtain courtesy supervision of a case in Colorado. 3. The contacts requirements in D, above, shall apply to cases being provided courtesy supervision when there is court jurisdiction and also for voluntary cases for which it is determined that services are indicated.

H. If a child protection service client for whom services are still needed moves to another county or state, the county or state of current residence should be notified within ten days and provided with written appropriate, relevant information. Change in venue procedures as outlined in Section 7.304.4, E, shall be followed. If there is no court order for services, the receiving county shall provide outreach and assessment services up to 60 calendar days. If during the 60 calendar days period it is determined that further services are not indicated or the family is unwilling to accept services, the receiving county shall close the case.

I. All Program Area 5 cases shall remain in that program area as long as the child is at risk for abuse/neglect and the case plan is to reunify the family. Cases on appeal for termination of parent-child legal relationship shall remain in Program Area 5 until the termination is finalized.

7.202.7 SPECIAL CATEGORIES OF INVESTIGATIONS

7.202.71 Investigation of Reports of Medical Neglect of Infants with Disabilities [Rev. eff. 11/1/98]

Definitions

> "Withholding of Medically-Indicated Treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's reasonable medical judgment, will be most likely to be effective in improving or correcting all such conditions. The term does not include, however, the failure to provide treatment to an infant (other than appropriate nutrition, hydration or medication) when, in the treating

physician's (or physicians') reasonable medical judgment any of the following circumstances apply: 1. The infant is chronically and irreversibly comatose; 2. The provision of treatment would merely prolong dying, not be effective in improving or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; 3. The provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

“Reasonable Medical Judgment” is a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

“Infant with a Disability” is a child less than one year of age who was born with a life-threatening condition and who may have additional non-lethal physical or mental disabilities. The definition includes children over the age of one year who have been continuously hospitalized since birth, who were born extremely premature, or who have a long-term disability. These procedures do not imply that treatment should be changed or stopped when an infant reaches one year of age. The primary population to be addressed in these regulations is that of the hospitalized infant. Any other situations involving medical neglect of children will be provided for under the existing protections of the Colorado Children's Code regarding medical care of children.

“Designated Hospital Liaison” is the person named by the hospital or health care facility to act as the contact with the county department in all aspects of cases of suspected withholding of medically-indicated treatment from infants with disabilities and with life-threatening conditions. E. Hospital Review Committee (H.R.C.) - is an entity established to deal with medical and ethical dilemmas arising in the care of patients within a hospital or health care facility. Where they exist, the committee may take many organizational forms, such as an "infant care review committee" or an "institutional-bioethics committee." The functions for a committee may differ from institution to institution, including the authorization to review and recommend treatment in specific cases.

7.202.72 County Procedures for Investigation of Reports of Medical Neglect of Infants with Disabilities [Rev. eff. 11/1/98]

A. The county department responsible for coordinating the investigation of a report of medical neglect shall be the county in which the parents of the hospitalized infant reside. If the parent's residence cannot be determined, the county department in which the hospital is located shall assume responsibility.

B. The county department shall work with medical organizations, hospitals, and health care facilities to implement procedures that ensure a timely response and resolution of reports of medical neglect. To that end, it shall contact each appropriate health care facility in the county to obtain the name, title, and telephone number of the designated hospital liaison. At least annually, this information is to be updated by the county department. The county department also shall be responsible for coordination with any existing hospital review committees, which may have evaluated and recommended treatment in the case under investigation.

C. County department staff assigned to the investigation of a medical neglect report shall make no medical decisions regarding the infant and shall seek an independent medical consultation when indicated. Should the parent(s) wish to seek a second medical opinion, the county department shall provide referral assistance. If the county department finds that an independent medical evaluation is necessary to determine the infant's medical prognosis, the county department shall recommend to the parent(s) of an infant with a disability that an independent medical evaluation be done.

D. In all medical neglect reports, the county department shall obtain all relevant medical data concerning the child. The county department shall seek a court order to obtain records if the request for such material is refused.

E. The county department shall advise promptly the State Division of Child Welfare Services of all medical neglect reports involving infants with disabilities. The contact persons at the State will be the Child Protection Specialists.

F. If after assessing the medical neglect report there are indications that the report of medical neglect may be founded, the county department shall interview the parent(s).

G. If the county department determines that medically-indicated treatment or palliative care is being or will be withheld, and (1) the child's condition requires an urgent response, or (2) efforts by county department or hospital personnel to obtain parental consent to treatment would be futile or already have failed, then the matter shall be brought to court under a petition. The petition shall be a request to the court to place temporary custody of the child with the county department to ensure proper medical treatment is provided. The county department shall immediately contact the department's attorney when such a court order is required.

H. In cases in which the infant has died before the investigation is completed and the county department has reason to suspect that medically indicated treatment was withheld, the matter shall be referred to the law enforcement agency in the location where the child died. If it is determined that treatment was not medically indicated, or that medically- indicated treatment had not been withheld, then the report shall be deemed unfounded.

7.202.73 Ongoing Services for Cases of Medical Neglect of Infants with Disabilities [Rev. eff. 11/1/98]

The county department shall make available the following services:

A. Monitoring Court-Ordered Treatment: When either the court has ordered or the parent(s) have agreed upon a course of treatment, the county department shall monitor developments to ensure this treatment is provided. When there is a failure to provide treatment, the county department shall notify the court and immediately petition the court to take appropriate action.

B. Coordinating with Other Resources: The county department shall contact agencies that provide services to child/ren with special needs, and help the parents with referrals to appropriate agencies that provide services for infants with similar disabilities and for their families. Referrals shall be made to agencies with financial resources for costs of medical and rehabilitative services. Information shall be provided regarding parental support groups and community educational resources. This information shall be made available, as is deemed appropriate under the circumstances, whether the county department has taken legal action or not.

7.202.74 Investigation of Medical Neglect in Which Religious Considerations are Involved [Rev. eff. 1/1/04]

A. The county department shall investigate cases of medical neglect including those cases in which there is a failure to provide medical treatment based upon the parent's, guardian's, or custodian's religious beliefs and there is concern that such failure will result in a threat to the child's health and welfare.

B. The county department shall obtain a medical evaluation if the child's condition presents substantial concern for the child's health and welfare. This evaluation shall be obtained with the consent of the parents, guardians, or legal custodians. If such consent is refused, the county department shall seek a court order to obtain a medical evaluation.

C. In consultation with medical practitioners, the county department shall consider whether the condition is life-threatening or will result in serious disability without professional medical care.

D. If the child's condition is determined to be life-threatening or could result in serious physical impairment, the county department shall seek a court order to ensure the provision of the necessary medical care in the event that such care is refused by the parent, guardian, or legal custodian.

E. Additionally, in those cases in which there is spiritual healing involved, the county department shall follow the guidelines defined in Section 19-3-103(2)(a)(b), C.R.S., to decide whether the method is a "recognized" method of religious healing and whether such healing is considered to be medically effective for the child's condition.

F. If it is determined that the situation is life-threatening or will result in serious disability without professional medical care, the county department shall contact the court for an order providing medical treatment for the child.

G. For purposes of entering confirmed reports of abuse or neglect into the State Department's automated system, reporting to police for criminal investigation, and filing of dependency and neglect petitions, no child who is under treatment by a recognized method of religious healing shall, for that reason alone, be considered to have been neglected or dependent unless the child's parent, legal guardian, or custodian inhibits or interferes with the provision of medical services according to court-ordered medical evaluation or treatment. If a parent, guardian, or legal custodian inhibits or interferes with the provision of medical evaluation or treatment according to a court order, that act would constitute "neglect" and in such cases a report shall be made to law enforcement and the county department of social services may file a dependency and neglect petition.

7.202.75 Investigation, Reporting, and Review of Child Fatalities [Rev. eff. 3/1/02]
Parameters
The county department shall investigate child fatalities in intrafamilial and institutional settings in those cases in which:

A. There is reason to know or suspect that abuse/or neglect caused or contributed to the child's death.
B. The death is not explained or cause of death is unknown at the time of the child's death.
C. The history given about the child's death is at variance with the degree or type of injury and subsequent death.

7.202.76 Investigation Procedures [Rev. eff. 11/1/98]
A. The county department shall coordinate with the following agencies: law enforcement, district attorney's office, coroner's office, and hospitals to ensure prompt notification of questionable child fatalities.

B. Investigations shall be coordinated with law enforcement. At a minimum in cases in which there are no surviving siblings, the county department shall provide law enforcement and the coroner with information related to any prior involvement with the child, the family, or the alleged perpetrator.

C. When there are surviving child/ren, the county department shall investigate the condition of those child/ren and shall take the action necessary to ensure their protection. 1. When assessing the condition of surviving child/ren who may be at risk, the investigation shall include the following activities: a. A visit to the child/ren's home or place of custody. b. An interview and/or evaluation of the child/ren. c. An examination of the child/ren to include an assessment

of the child/ren's overall current physical, mental, or emotional condition. d. An assessment of the safety of the home environment, to include an interview with the parents, guardians, and/or legal custodians. 2. When there are reasonable grounds to believe that a surviving child is at risk of emotional or physical harm in his or her home environment, the county department shall seek an emergency protective order.

7.202.77 Reporting to the State [Rev. eff. 7/1/00]

A. Within 24 hours (excluding weekends and holidays) of a referral of either a suspicious child fatality or an unexpected fatality of any child currently in the custody of the department, the county department shall call the following information in to the State Department Child Protection Administrator: 1. Name and age of victim. 2. Known circumstances around the death. 3. Description of physical injuries or medical condition of the child/ren at the time of death. 4. Names and ages of surviving child/ren who may be at risk. 5. Brief description of the department's prior involvement with the family/caretaker, if any. 6. Actions taken by the county department to date and future actions to be taken. 7. Involvement of other professionals in the case.

B. The county department shall provide the State Department's Child Protection Administrator a completed Child Fatality Report, on a form supplied by the state, within 45 calendar days of notification of the child's death, to the extent possible, and no longer than 60 calendar days without a written request for extension. In addition to the Child Fatality Report, it shall provide the following information: 1. Copies of any pertinent social, medical, and mental health evaluations of all involved subjects (child/ren, family, caretakers, etc.). 2. Coroner's records, including autopsy report. 3. Police reports of present investigation as well as any prior criminal history of all subjects. 4. A copy of the case record if the county department has had past or current contact with the child prior to the child's death. 5. Report of county department internal review.

7.202.78 Additional Actions When County Department has had Prior/Current Case Services Involvement [Rev. eff. 12/1/99]

A. When the county department has custody of the child and or protective supervision, it shall take the following actions: 1. Immediately notify the parent/caretaker of the child's death. If the parent/caretaker resides in another county or state, the county department shall coordinate with the county department of parents' or caretakers' residence to provide, whenever possible, personal notification. 2. Immediately notify the county department director of the death of a child in the department's custody, protective supervision, or when the department has had prior case service involvement within the last five years. A complete copy of the child's case record shall be made available to the county director within 24 hours of notification of a child's death. 3. Immediately notify the court, the attorney for the county department, and the Guardian Ad Litem (when one has been assigned) of the death of any child who is under the court's jurisdiction.

B. Upon notification of a child fatality in which the county department has had prior case services involvement with the child, family, or alleged perpetrator, the county department director shall take the following actions: 1. Designate an individual(s) who will be responsible for investigating the child's death. The assigned individual(s) shall not have had prior involvement in the case. In the event of a conflict of interest, the county department shall arrange for the investigation to be conducted by another county department of social services with personnel having appropriate training and skill. 2. Ensure that a complete internal administrative review of the county's involvement in the case before the child's death is conducted. This review shall be referred to as the Department Internal Review and shall be completed whenever the county department has had current or prior case services involvement within the last five years. The Review shall include, at a minimum: a. Evaluation of the case plan. b. Assessment of the interventions made by the county department. c. Identified areas of strengths and/or weaknesses in the casework process. d. Analysis of any systemic issues that may have led to delays or oversights. e. Evaluation of the role played by other community agencies and the overall case coordination. f. Recommendations for staff training or changes in the system that would avoid other similar occurrences. 3. Submit a written report of the Department Internal Review and Child Fatality Report within 45 calendar days of notification of the child's death to the State Department Child Protection Administrator.

C. If another county department also has had prior case services involvement within the five-year period, the state department shall decide what reviews shall occur in that county department.

7.202.8 FATALITY REVIEWS [Rev. eff. 3/1/02]
When a child fatality occurs, the county shall submit reports for review by the State Department in accordance with Sections 7.202.7 and 7.202.78 of this staff manual, and cooperate with the State Department's review. The State Department shall conduct a review of cases where the county was involved prior to the child's death.

7.203 PROGRAM AREA 6 - CHILDREN IN NEED OF SPECIALIZED SERVICES
7.203.1 DEFINITION OF PROGRAM AREA 6 [Rev. eff. 2/1/10]
To provide statutorily authorized services to specified children and families in which the reason for service is not protective services or youth in conflict. These services are limited to children and families in need of adoption assistance, relative guardianship assistance, or Medicaid only services, or to children for whom the goal is no longer reunification. The purpose of services in Program Area 6 is to fulfill statutory requirements in the interests of permanency planning for children. Children must meet specific Program requirements to receive services under these target groups.

7.203.2 CHILD WITH ADOPTION ASSISTANCE OR RELATIVE GUARDIANSHIP ASSISTANCE [Rev. eff. 2/1/10]

Requirements for the Adoption Assistance Program and the Relative Guardianship Assistance Program were consolidated into their respective sections.

The Adoption Assistance Program is located in Section 7.306.4. B. Relative Guardianship Assistance is located in Section 7.311.

7.203.3 CHILD WITH MEDICAID ONLY SERVICES

7.203.31 Target Groups [Rev. eff. 2/1/10]

A. Children in foster care who have been determined IV-E eligible and have moved into or out of Colorado.

B. Children for whom an adoption assistance agreement is in effect and who have moved into or out of Colorado. See Section 7.306.4 for details regarding children with adoption assistance.

C. Children with a Relative Guardianship Assistance agreement in effect and who have moved out of Colorado.

D. Children eligible for Home and Community Based Services or Home Health Care Services as defined in Section 8.500 of the Department of Health Care Policy and Financing's Medical Assistance manual (10 CCR 2505-10). Children enrolled in the Home and Community Based-Developmentally Disabled Waiver Program administered through Community Centered Boards and the Department of Human Services, Developmental Disabilities Services, are not eligible for services in this target group.

7.203.32 Intake/Assessment [Rev. eff. 2/1/09]

For children moving to Colorado, the county department shall:

A. Verify from the Interstate Compact on the Placement of Children (ICPC) request from the sending state that the child is eligible for IV-E foster care from the state of origin.

B. Make two copies of the adoption assistance agreement, retaining one for the child's file and forwarding the other to the State Department.

C. Enter child's information into the automated case management system and verify that a Medicaid card has been sent to the foster care provider.

D. Notify the foster care provider using the SS-4 Form that the child is eligible for Medicaid only from Colorado. In addition, advise the provider to notify the county department if foster care is stopped by the originating state or of any change of address.

E. Verify annually from the state of origin that the child is eligible for Medicaid.

7.203.33 Procedures for Children Eligible for Home and Community Based Services or Home Health Care Services [Rev. eff. 2/1/10]

A. The county department shall open a case Home and Community Based when an application for Home and Community Based Services (HCBS) or Home Health Care Services is completed. The county department shall provide services as required in Section 8.500 of the Department of Health Care Policy and Financing's Medical Assistance manual (10 CCR 2505-10) for children in Home and Community Based Services or Home Health Care Services Programs.

B. The county department shall close the case on the State Department's automated system no later than the end of the month following the month that the child begins to receive services from the case management agency unless the child remains eligible for services under Program Areas 4 or 5.

7.203.4 CHILDREN WHOSE DISPOSITION IS NO LONGER REUNIFICATION WITH FAMILY

Children for whom all efforts at reunification with the family are exhausted. The parent-child legal relationship may or may not be terminated.

7.203.41 Eligibility [Rev. eff. 2/1/10]

A. A child shall be eligible for services in this target group only if he/she has prior eligibility in another target group and has a permanent plan other than reunification.

B. Children in this target group shall receive services as addressed in the placement services, relative guardianship, legal guardianship, relinquishment, independent living, and adoption sections of these rules. Contact requirements for these children shall be in accordance with Section 7.001.6. These contacts shall be documented in the State Department's automated system.

7.203.42 County Department Procedures [Rev. eff. 2/1/10]

A. The county department shall document in the case file all efforts at reunification for the children in this target group.

B. The county department shall ensure that the Family Services Plan contains a plan for permanent placement with a relative, adoption, relative guardianship or legal guardianship/permanent custody, or other planned permanent living arrangement, as appropriate (see Section 7.301.24, M). C. When the permanent plan is not adoption the county department shall document in the case file why adoption is not appropriate.

7.203.5 YOUNG ADULTS WHO HAVE EMANCIPATED FROM FOSTER CARE [Eff. 4/1/01]

Participation in Independent Living programs is voluntary for this population of emancipated young adults, ages 18 to 21, who were in out-of-home care on their 18th birthday and who are in need of continuing support and services toward becoming self-sufficient.

7.203.51 Eligibility [Eff. 4/1/01]
Emancipated young adults, ages 18 to 21, who were in out-of-home care on their 18th birthday are eligible to receive independent living services to assist them as they continue the transition to adulthood. Services may include independent living assessment, case planning, transitional services, room and board, and other services as identified in the county Title IV-E Independent Living Plan (see Section 7.305).

7.203.52 County Department Procedures [Eff. 4/1/01]
A. The county department of social services shall document in the case file the independent living services provided.

B. The county department of social services shall complete the Independent Living Plan as a part of the Family Services Plan.

C. Minimum contact requirements are to be determined by the participant and caseworker, but shall be quarterly, face-to-face, at a minimum to determine appropriateness of services and continued need of the participant.

Chapter 4

Three Important Case Scenarios with Points of Law

As a child, you probably weren't taken away from your family, never to see them again. Your children were probably never taken away from you. You probably didn't expect your grandchildren to be taken and placed with strangers. You probably never thought you would be in this heartbreaking situation. I'm almost 100% sure that you never visualized yourself in a courtroom arguing against a massive government bureaucracy to free your grandchildren from foster care. You may think that you could never confront the establishment and get your grandchildren back. However, with the information and support you'll gain from the experienced people at the Grandparents' Resource Center, you'll be surprised at how confident and powerful you feel. The frustration you've felt when dealing with the foster care system will melt into the past as you arm yourself with the support, knowledge, and experience you'll need to get your grandchildren back.

Your "education" in the ways of the DHS, the foster care system, and the court system begins now. In Chapter 4, you will read about three typical cases in which grandparents wanted to take their grandchildren back from DHS. You may see yourself in one or more of these grandparents' stories because of the similarities cases involving grandparents' rights share. After each case, I've included the law relevant to the case scenario you just read. You may even consult or cite some of the laws you read in this chapter.

Case Scenario #1

Mary Ellen, a grandmother and registered nurse who lives in southwestern Colorado, is seeking custody of her grandchildren who have been placed in foster care by the San Juan County Department of Human Services (DHS). If the children's mother and father lose their parental rights, she wants to adopt her grandchildren. She has taken care of her two-year-old grandson every week since he was born. Now, however, the little boy, instead of being placed with Mary Ellen, resides in a foster home in Colorado Springs. Mary Ellen wants her story published to help other grandparents who are also seeking visitation, custody, or adoption of their grandchildren, but on the condition that her name remain confidential; the case is still open, and she doesn't want to jeopardize her chances of adopting her grandchildren.

When Mary Ellen took her case to DHS, neither she nor her husband had had prior involvement with the department. After dealing with DHS, Mary Ellen has concluded that the system is a failure. She states that she "fell victim a system so intent on destroying her character and stopping her from court-ordered visitation that the caseworkers made things up just to make me look bad in court." Although Mary Ellen is sympathetic with underpaid and overworked DHS case managers, it doesn't excuse them "for lying and hurting family members." In a system where inconsistent messages come from the case managers and the Department, case managers are free to act with impunity because state immunity laws protect them. The children, of course, suffer the most because their lives are disrupted when they are taken from their homes and placed in foster homes or crisis centers, confusing both them and their grandparents.

Mary Ellen wants you to know that in a rogue system like DHS, “anyone” can have their children or grandchildren taken away from them for reasons that are unsubstantiated. Her grandchildren were, initially, removed from her daughter’s home on a false allegation that she took drugs and her house was cluttered. Even though neither allegation was true, the children were removed from their home. For this reason, it is critical that you realize that when DHS believes it has a case against you, you don’t even have the same legal rights that a murderer has. In a court of law, you are presumed innocent until evidence proves that you are guilty, but in the case of DHS, you are presumed guilty until you are proven innocent. You have been set up to fail. In addition, Mary Ellen states that there is a societal stigma for anyone accused by DHS, whether innocent or guilty: "People generally believe that if a family is involved with Department of Human Services, then it is a bad family and they think that Department of Human Services is right."

You are powerless against DHS if you have agreed to their conditions for getting your children or grandchildren back. After nine months of jumping through DHS’s hoops, Mary Ellen’s daughter, who was eight months pregnant, was ordered by DHS to move to cheaper housing—even though she had never missed a rental payment. When asked the reason for the move, DHS caseworkers cavalierly offered no explanation. Mary Ellen speculated that DHS had an adoptive family waiting for the baby and would terminate the parents’ rights when it was born.

Although it was a difficult process, Mary Ellen was granted intervention. She needed an attorney to help her, but when she approached several, she was told it would cost her $10,000 just for a retainer with no guarantees as to the outcome, which she could not afford. She spent months preparing for court, but she is still waiting for the court’s decision on her case.

Points of Law to Consider

Colorado State Code Excerpt
19-1-117 - Visitation rights of grandparents
http://www.state.co.us/gov_dir/leg_dir/sbills/SB152.htm

(1) Any grandparent of a child may, in the manner set forth in this section, seek a court order granting the grandparent reasonable grandchild visitation rights when there is or has been a child custody case or a case concerning the allocation of parental responsibilities relating to that child. Because cases arise that do not directly deal with child custody or the allocation of parental responsibilities but nonetheless have an impact on the custody of or parental responsibilities with respect to a child, for the purposes of this section, a "case concerning the allocation of parental responsibilities with respect to a child" includes any of the following, whether or not child custody was or parental responsibilities were specifically an issue:

(a) That the marriage of the child’s parents has been declared invalid or has been dissolved by a court or that a court has entered a decree of legal separation with regard to such marriage;

(b) That legal custody of or parental responsibilities with respect to the child have been given or allocated to a party other than the child's parent or that the child has been placed outside of and does not reside in the home of the child's parent, excluding any child who has been placed for adoption or whose adoption has been legally finalized; or

(c) That the child's parent, who is the child of the grandparent, has died.

(2) A party seeking a grandchild visitation order shall submit, together with his or motion for visitation, to the district court for the district in which the child resides, an affidavit setting forth facts supporting the requested order and shall give notice, together with a copy of his or her affidavit, to the party who has legal custody of the child or to the party with parental responsibilities as determined by a court pursuant to article 10 of title 14, C.R.S. The party with legal custody or parental responsibilities as determined by a court pursuant to article 10 of title 14, C.R.S., may file opposing affidavits. If neither party requests a hearing, the court shall enter an order granting grandchild visitation rights to the petitioning grandparent only upon a finding that the visitation is in the best interests of the child. A hearing shall be held if either party so requests or if it appears to the court that it is in the best interests of the child that a hearing be held. At the hearing, parties submitting affidavits shall be allowed an opportunity to be heard. If, at the conclusion of the hearing, the court finds it is in the best interests of the child to grant grandchild visitation rights to the petitioning grandparent, the court shall enter an order granting such rights.

(3) No grandparent may file an affidavit seeking an order granting grandchild visitation rights more than once every two years absent a showing of good cause. If the court finds there is good cause to file more than one such affidavit, it shall allow such additional affidavit to be filed and shall consider it. The court may order reasonable attorney fees to the prevailing party. The court may not make any order restricting the movement of the child if such restriction is solely for the purpose of allowing the grandparent the opportunity to exercise his grandchild visitation rights.

(4) The court may make an order modifying or terminating grandchild visitation rights whenever such order would serve the best interests of the child.

(5) Any order granting or denying parenting time rights to the parent of a child shall not affect visitation rights granted to a grandparent pursuant to this section.

Source: L. 87: Entire title R&RE, p. 709, § 1, effective October 1. L. 91: (5) added, p. 262, § 3, effective May 31. L. 93: (5) amended, p. 581, § 18, effective July 1. L. 98: IP(1), (1)(b), and (2) amended, p. 1406, § 64, effective February 1, 1999. Cross references: for the legislative declaration contained in the 1993 act amending subsection (5), see section 1 of chapter 165, Session Laws of Colorado1993. C.J.S. See 43 C.J.S.,

Infants, § 24.

Annotator's note: The following annotations include cases decided under former provisions similar to this section.

- Hearing required if custodial parent requests. Subsection (2) requires the trial court to hold a hearing if the custodial parent so requests. In re Seright, 649 P.2d 730 (Colo. App. 1982)

- Filing of an opposing affidavit is not a condition precedent to the exercise of the right to require the holding of such a hearing. In re Seright, 649 P.2d 730 (Colo. App. 1982)

- No time limitation for hearing request. This section does not specify any time limitation upon the abilities of the custodial parent to request a hearing. In re Seright, 649 P.2d 730 (Colo. App. 1982)

- Denial of visitation rights held in the best interests of the children. Kudler v. Smith, 643 P.2d 783 (Colo. App. 1981). Proceeding under article 4 of this title is a custody case for purposes of this section. F.H. v. K.L.M., 740 P.2d 1006 (Colo. App. 1987)

- Dependency and neglect proceeding is a custody case for purposes of this section. People in Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997)

- Father did not have standing to argue the inadequacy of visitation rights of child's grandparents. In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994)

- Visitation is primarily a right of the child and only secondarily a right of the visiting party. Conditions on visitation are within the sound discretion of the trial court, taking the best interests of the child into consideration. In re Oswald, 847 P.2d 251 (Colo. App. 1993). Order under this section expressly allowing noncustodial grandparent to take children to church, contrary to wishes of custodial parent, was invalid and unconstitutional. In re Oswald, 847 P.2d 251 (Colo. App. 1993). This section does not authorize an order impinging on custodial parent's rights under § 14-10-130. In re Oswald, 847 P.2d 251 (Colo. App. 1993)

- Grandparents' visitation rights not subject to exclusion under subsection (1)(b). Exclusionary statutory phrase concerning a child for whom adoption is pending or final pertains only to situations in which legal custody is vested in someone other than child's natural parents or in which child is place out of the natural parents' home. In re Aragon, 764 P.2d 419 (Colo. App. 1988)

- Grandparents' visitation rights not automatically terminated by adoption of child by natural parent's new spouse.

- Paternal grandparents' right to visitation with grandchild after dissolution of parents' marriage was not automatically divested when child was subsequently adopted by mother's new spouse. In re Aragon, 764 P.2d 419 (Colo. App. 1988)

- Grandparents' visitation rights automatically terminate upon completion of adoption, regardless of whether adoption is by strangers or a natural relative. Thus, paternal grandparents' visitation rights terminated upon completion of adoption by maternal grandparents. People in Interest of N.S., 821 P.2d 931 (Colo. App. 1991)

- Grandparents' visitation rights terminated and grandparent did not have standing to assert rights under this section where she did not seek to intervene in dependency and neglect proceeding and no order granting her leave to do so was entered by the trial court. People in Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997)

- Grandparent's visitation rights terminated and grandparent did not have standing in the relinquishment proceedings where the child had been placed for adoption with the family designated by the birth parents. Petition of B.D.G., 881 P.2d 375 (Colo. App. 1993)

- Marriage dissolved for purposes of subsection (1)(a) speaks to the marriage between persons who were parties to child custody case. In re Davisson, 797 P.2d 809 (Colo. App. 1990)

- Applicability of statute is not limited by parents' marital status at the time visitation motion is filed. In re Davisson, 797 P.2d 809 (Colo. App. 1990)

- An administrative paternity proceeding is a child custody case within the meaning of subsection (1). People in Interest of A.M.B., 946 P.2d 607 (Colo. App. 1997)

- Juvenile Court does not have jurisdiction over unborn children. People in the Interest of H., 74 P.3d 494 (Colo. App. 2003)

- Evidence that child is dressed inappropriately, had poor hygiene, and lived in a house in need of repair, did not establish prima facie case of dependency or neglect. In the interest of T.H., 593 P.2d 346 (Colo. 1979)

- Apart from visitation, a grandparent may also gain custody rights for a grandchild; however, a grandparent may bring such a case to court only in circumstances even more limited than a case that asks for only visitation. To ask for custody of one's grandchild, the child must be living with someone other than the child's parents, or

the child must have lived with the grandparents for at least six months within six months of when the grandparents take the issue to court. Thus, if the child is living with one of the parents or the child has not lived with the grandparents for six months or more, or if it has been more than six months since the child lived with the grandparents, the grandparents cannot even make their case to the court.

- Grandparents' visitation rights end at termination. Grandparents may not intervene after termination. In the Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997) and People in the Interest of N.S., 821 P.2d 931 (Colo. App. 1991)

- Court may order that grandparents may continue to have visitation rights after termination and adoption In re the Matter of R.A. and T.A., 66 P.3d 146 (Colo. App. 2002) (non-D&N adoption)

- The statutory preference for placement with grandparents does not mean the children have to be placed with grandparents. People in the Interest of E.C. and A.C., 47 P.3d 707 (Colo. App. 2002)

- Aunt can't intervene after termination. While the parent has a fundamental liberty interest in the parental relationship, the aunt does not. People in the Interest of C.E., 923 P.2d 383 (Colo. App. 1996)(Discusses grandparent's rights)

- Less-drastic alternatives must be considered in termination order but may be implicit in the findings. People in the Interest of M.M., 726 P.2d 1108 (Colo. 1986) (This is M.M. the 2d—See M.M. the 1st at 520 P.2d 128 (Colo. 1974)

Case Scenario #2

Maria is the grandmother of a beautiful two-year-old little girl, Alicia. Maria adopted Alicia's mother, Mary Ann, 18 years ago when Mary Ann was her foster child. Maria and her now-deceased husband, Jose, raised Mary Ann, along with the two daughters of Johnny, their son. They raised all three girls as if they were their own. One of Mary Ann's sisters, who was adopted, was severely handicapped and had to be placed in a special home when she was 18. Jose and Maria visited her every week. When Mary Ann became of age, she hit the streets, got pregnant, and left for New Mexico. When Maria caught up with her, she found Alicia living in squalor, so she took Mary Ann and Alicia with her back to Colorado. Mary Ann began running with street people and ex-convicts, so Maria asked her to move out. Before leaving and taking Alicia with her, Mary Ann threatened Maria with bodily harm, so Maria was forced to file a restraining order against her daughter.

DHS became involved when someone turned Mary Ann in for child abuse, and Alicia was placed with her Grandmother Maria. Some months later, DHS took the child from Maria and placed her in a foster home. Maria was allowed limited and supervised visitation, but DHS made her wait so long to see Alicia, the child was so traumatized that she had stopped talking.

DHS refused to give permanent custody to Maria because they claimed that she was handicapped and too old to raise the child. DHS never bothered to confirm either charge, but if they had, they would have found out that both of their accusations were untrue. Maria has Bell's palsy, a facial paralysis affecting the cranial nerves, and, except for an annoying droopy facial expression, has no effect on a person's ability to function normally. As for Maria being too old to take care of Alicia, after the death of her daughter-in-law, Maria's raised her son's two children from babies until ages 14 and 16. The only health problems she had was Bell's palsy and cataracts, for which she had surgery. She had never been handicapped in the past nor is she handicapped now.

DHS also claimed that Maria's psychological evaluation and the home research study indicated that she was unfit for taking care of Alicia. However, when Maria read the reports herself, she discovered that the Clinical Social Worker and the forensic psychologist, who conducted the studies, stated that her age, her physical fitness, and psychological profile indicated that she was physically and mentally fit and could take care of a young child. They concluded that Alicia had been unjustly removed from Maria's home.

When DHS placed baby Alicia with Maria, she was designated as a Special Respondent, which meant her home could be used a temporary residence for the child while they searched for an adoptive family for her. If DHS designates grandparents as "Special Respondents," the Department gains certain rights which will prove detrimental to grandparents who are planning to adopt or get custody of their grandchildren. This situation should raise a RED FLAG for grandparents who want to adopt or get custody of their grandchildren.

The following points of law relate to Maria's case:

- The removal of a child from the legal custody of a parent who suffers from a handicap cannot be presumed to be in the best interests of the child based on the fact of the handicap alone. People in Int. of B.W., 626 P.2d 742 (Colo. App. 1981)

- Merely handing children over to another person is not, by itself, proof of abandonment or of dependency or neglect. Diernfield v. People, 323 P.2d 628 (Colo. 1958)

- The 14th Amendment guarantees a parent the right to "establish a home and bring up children." Meyer v. Nebraska, 262 US 390, 398 (1923)

- A proceeding to determine whether a child is dependent or neglected is designed to determine the child's status or situation at the time of the adjudication. However, the evidence of alleged instances of abuse and parental neglect relied upon to establish the child's dependency and neglect must be considered in the context of the child's history as well as the respondent parent's prior behavior. People in Interest of D.A.K., 198 Colo. 11, 15 (1979)

Case Scenario #3

Julie and Darren had taken care of their grandchild Jamie since her birth. They allowed the child's mother occasional visitation because she was often on drugs. During one visit with her eight-year-old granddaughter, the mother appeared to a neighbor to be high on drugs, so she phoned DHS to report her.

What happened after that was a nightmare. Julie and Darren's grandchild was removed from their home. Julie tried to get custody of the child by working with DHS. When she was denied, she filed to intervene in the court case but was denied again. She then filed a formal complaint with the State of Colorado, and she is still waiting for the results of the investigation. In the meantime, Julie is filing an appeal to the Colorado Supreme Court and is actively seeking to file a complaint for denial of due process *(see Attachment D, Due Process)* with the Administrative Law Judge for the State of Colorado.

Points of Law: Formal Complaint filed by Julie W.

Julie and Darrin W. (Psychological Parents and Maternal Grandparents of Jamie) hereby submit Statement of Facts:

1. The Department of Human Services failed to use due diligence in searching for suitable relatives to place Jamie. Frank Timbers, Jamie's uncle, was told by Connie Tremont, our caseworker, said that DHS was not going to involve any more family members. My granddaughter's father, along with one paternal relative and one maternal relative, were not found. Connie Tremont, caseworker for the Department of Human Services, failed in placing Jamie with these relatives.

    - Ten states require DHS to actively seek out relatives; Colorado is one of those states.
    - Some states regarding placement of relatives will sometimes be able to appeal an unfavorable decision with the county. However, I was never informed that I, as Jamie's maternal grandparent, could do so. Human Services did not properly explain my rights to me. No one informed me of how long I had to file any other paperwork that pertained to my granddaughter, Jamie. I had been the guardian of Jamie for 8 years, but DHS didn't inform me that my rights to her were being terminated.

2. I believe that when Jamie was in the custody of DHS, she was abused and neglected.

    - The Department of Human Services failed to provide fingerprint-based and criminal background checks on relative-guardian and any other adult living in the home of any relative guardian, including Jamie's Uncle A.T., a two-time felon and alcoholic prior to placing her with him. Jamie continually complained that she felt unsafe in his home. Frank Lozes, who Jamie lived with for a while, wasn't investigated either even though she was living with ex-convicts, some on the Ten Most Wanted list. Why did they investigate my family and none of the others that Jamie lived with when they were obviously dangerous people to place a young girl with?
    - Alonzo Torrez drank liquor all the time and verbally abused her, yet DHS allowed her to live with him. My brother's granddaughter, her boyfriend and their three children lived

with A.T., but DHS never did a background check done on them. When I brought this up at a meeting with DHS with Frank Timbers, M.L., and Connie Tremont, our caseworker, another lady taking all the information and myself present, she advised me to leave the past behind and to ignore A.T.'s crimes. If she believes that felons should be forgiven, shouldn't she follow her own advice and forget the "crime" I committed when I told Jamie about meetings and court dates, which was supposedly the reason DHS took Jamie from me. But that would never happen because she doesn't recognize her own double standard.

- Frank Lozes deceived Jamie. When Jamie was going to a group home, she lied to Jamie and told her she was going camping. What other lies has she told about Jamie, me, and DHS? I wonder if she was lying when she told me that Jamie's counselor told her "the real reason" Jamie was taken away from me.

- The Advocate from CASA, Frank Lozes and Frank Timbers' counselor all acknowledged that DHS did not do their job when it failed to report the problems in these homes to the judge. The judge did, however, reprimand Casa Advocate, J.R, the. GAL, and Ms. Connie Tremont for not doing their jobs in a timely fashion.

- The state failed to meet Federal Standards and Child Welfare Safety guidelines.

- DHS is known for being slow in responding to reports of child abuse. "Call 7" investigators in Denver reports that the "Department of Human Services does not respond quickly enough to reports of child abuse." The deaths of at least 15 children which have been attributed to DHS's sluggishness are being investigated by the state.

- The Department of Human Services is mandated to give grandparents preference over any other others when considering the placement of a child. This was not done in Jamie's case. She was placed with former convicts and other people who presented a danger to her instead of in the safe home of her grandparents, the only parents she has ever known.

3. Ms. Connie Tremont, our caseworker, states, "Julie W. and Darren W.'s placement of Jamie in their home permanently should be denied because she talked to the minor child about the case during the period of time that the court allowed her to have the child." I am Julie W., and I would point out the provisions of C.R.S - 19-3-502 (7), which states in part, "The persons with whom a child is placed **shall provide prior notice to the child of all hearings and reviews held regularly regarding the child"** (emphasis added).

   - A double standard was used in terminating my custody of Jamie because I had spoken with Jamie about court proceedings that related to her while the judge did the very same thing without any consequence. The first judge on our case let my husband and my granddaughter into the courtroom, where Jamie could hear everything said about

her and the case. Why is it okay for the judge to expose Jamie to the case, but she is taken from me for the very same thing? In both instances, she found out things about the case that, according to DHS, she wasn't supposed to. Furthermore, I wasn't given the opportunity to defend myself at the hearing when I lost custody of Jamie; I had no opportunity to adequately address concerns raised by Department of Human Services, CASA, and/or the GAL, which were based on my misunderstanding of what I was allowed to tell Jamie.

- Whereas I wasn't supposed to bring Jamie to court, I was supposed to bring her to meetings. At a meeting with Jamie's lawyer, her social worker, and Mary Arnold, I was asked where Jamie was. When I told them I left her with my husband and M.L., they scolded me and said never was I to leave Jamie with my husband. <u>At no time did anyone</u> ever tell me that. I never saw it in stated in DHS's written material either. The inconsistencies among the rules, the words, and the actions of DHS confused me.

4. Connie Tremont failed Jamie because she didn't perform her job well or with the ethics of a good caseworker.

    - Ms. Connie Tremont, caseworker for Hays County, verbally abused Jamie at the group home by screaming at her and telling Jamie she had to make "eye contact" with her at all times when she was talking to her. Jamie was so afraid she hid under the bed every time Connie Tremont came to visit her. Jamie's Aunt F.L. told me that Jamie called her to tell her how scared she was of Ms. Tremont. The CASA advocate was also aware of Jamie's fear of Ms. Tremont.

    - Jamie has been in six living arrangements in two years because Ms. Tremont has not been diligent or timely in settling Jamie, which resulted in Ms. Tremont's being reprimanded by the judge.

    - The following letter was written by Frank Timbers about a strange incident that happened outside of the courtroom on November 10, 2010, that involved the husband of Connie Tremont, Jamie's caseworker.

        > On November 10th, 2010, Wednesday, M.L. (my daughter) and I were sitting in the courtroom. My daughter went out of the courtroom because court had not yet started. She came back in and told me what had just happened in the hallway. She told me that she saw Connie Tremont's husband getting arrested by the sheriff because he was threatening a man. M.L. said that her lawyer W.L. tried to stop it but Mr. Tremont said the "f…" word" and to mind her own business. He was threatening this man because, according to him, this man had

called his house and threatened his children. Eventually, they let Connie Tremont's husband go even though he was acting in a totally unprofessional way. Why was Mr. Tremont at the courthouse that day? What must Connie Tremont kids be going through? She must be hiding something. Why did Connie Tremont not tell the judge about this?

- Why didn't Ms. Connie Tremont report this incident to the judge? It seems she is very selective in what she wants the judge to know.

5. Mary Arnold acted unprofessionally, and her SAFE Home Study was biased and inadequate.

- When she was at my home doing the SAFE Study, Mary Arnold said to me, "I like you, but I don't like your husband." It was unprofessional of her to be biased and then to reveal it to me. She was there to do the study, not to make snap judgments about my husband or me.

- Ms. Arnold did not spend much time working on the SAFE Home Study. Since that time, I've discovered that it takes at least six weeks to do an adequate study.

- A SAFE Home Study should be conducted by a Clinical Social Worker (CSW). Case managers, like Mary Arnold, don't have the education and experience to make quality decisions in a child custody case. CSW's are experienced in doing SAFE studies, they support their decisions with detailed evidence about the family, and their well-thought-out studies gain the judge's attention faster than any other document filed in the case.

One local CSW says, "Until you have a child, you can't possibly know what you are doing." It helps a caseworker understand the parents' feelings and behavior when DHS takes their kids away, and it helps you empathize with the grandparents involved in the case.

Points of Law to Consider

- **Due Process**
  - **Due process** was developed from clause 39 of the Magna Carta, written in 1215 in England. When English and American law gradually diverged, due process was not upheld in England, but did become incorporated in the Constitution of the United States.

  - **Due process** is not used in contemporary English law, though two similar concepts are "natural justice" (which generally applies only to decisions of administrative agencies and some types of private bodies like trade unions) and the British constitutional concept of the "rule of law, "as articulated by A. V. Dicey and others. However, neither concept lines up perfectly with the American legal precept of due process, which, at present, contains many implied rights not found in the ancient or modern concepts of due process in England.

- **Due process** is the legal requirement that the state must respect all of the legal rights that are owed to a person. Due process balances the power of "law of the land" and protects individual persons from it. When a government harms a person without following the exact course of the law, this constitutes a due-process violation, which offends against the rule of law.

- **Due process** has also been frequently interpreted as limiting laws and legal proceedings (see substantive due process), so that judges—instead of legislators—may define and guarantee fundamental fairness, justice, and liberty. This interpretation has proven controversial and is analogous to the concepts of natural justice and procedural justice used in various other jurisdictions. This interpretation of due process is sometimes expressed as a command that the government must not be unfair to the people or abuse them physically.

- **Grandparents' visitation rights end at termination**. Grandparent's termination. In the Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997) and People in the Interest of N.S., 821 P.2d 931 (Colo. App. 1991). The Court may order that grandparents continue to have visitation rights after termination and adoption In re the Matter of R.A. and T.A., 66 P.3d 146 (Colo. App. 2002) (non-D&N adoption)

- The **statutory preference for placement with grandparents** does not mean the children have to be placed with grandparents. People in the Interest of E.C. and A.C., 47 P.3d 707 (Colo. App. 2002)

- **Aunt can't intervene after termination**. While the parent has a fundamental liberty interest in the parental relationship, the aunt does not. People in the Interest of C.E., 923 P.2d 383 (Colo. App. 1996)(Discusses grandparent's rights)

- **Less drastic alternatives must be considered in the termination order** but may be implicit in the findings. People in the Interest of M.M**.,** 726 P.2d 1108 (Colo. 1986) (This is M.M. the 2d—See M.M. the 1st at 520 P.2d 128 (Colo. 1974)

- **Foster parents have no constitutionally protected due process right as to foster children** until the goal of parental reunification has been abandoned. There was no error in the juvenile court's order restricting the foster mother's participation to direct testimony as to the child's best interests. In Re A.W.R., 17 P.3d 192, 197 (Colo. App. 2000). *See Attachment F for the full text of this case.*

Chapter 5

The Cycle of System Abuse

The sudden loss of everything and everyone that once defined a child's life, followed by placing her in an unfamiliar environment with people she's expected to accept as her new parents, fractures a child's identity. Children may appear to be resilient, but studies show that childhood trauma will manifest later in life as psychological difficulties. Therapy offers a measure of healing to the child, but the memories and emotions of the past ordeal can never be completely erased. Grandparents know that childhood will never be the same for a child who's been abused and abandoned because no matter if the adults around a child see the necessity of removing her from her family, a child comprehends it as abandonment. Empathetic adults understand that, and they see the importance for the child of maintaining ties with her birth family. They know that the consequences of taking away a child's whole history can be devastating to the child's perception of herself and others.

Grandparents who care about their grandchildren understand how crucial it is that the children maintain ties to their birth family because they, like the rest of us, see all around them the violence and despair of children without roots, whether they are homeless or in unhappy homes where they are not cared for. Many of these are children who were removed from abusive homes by DHS and denied any subsequent contact with any of their biological family members. We see reports at least weekly about the fate of some of these children who fell through DHS's bureaucratic cracks. Although the foster care system claims to operate "in the best interest of the child," caring grandparents don't want to take a chance on the survival or wellbeing of their grandchildren who are under the control of DHS. The security and happiness of children appear to be a lower priority in the system than cashing in on federal dollars and maintaining the *status quo* of the bureaucracy.

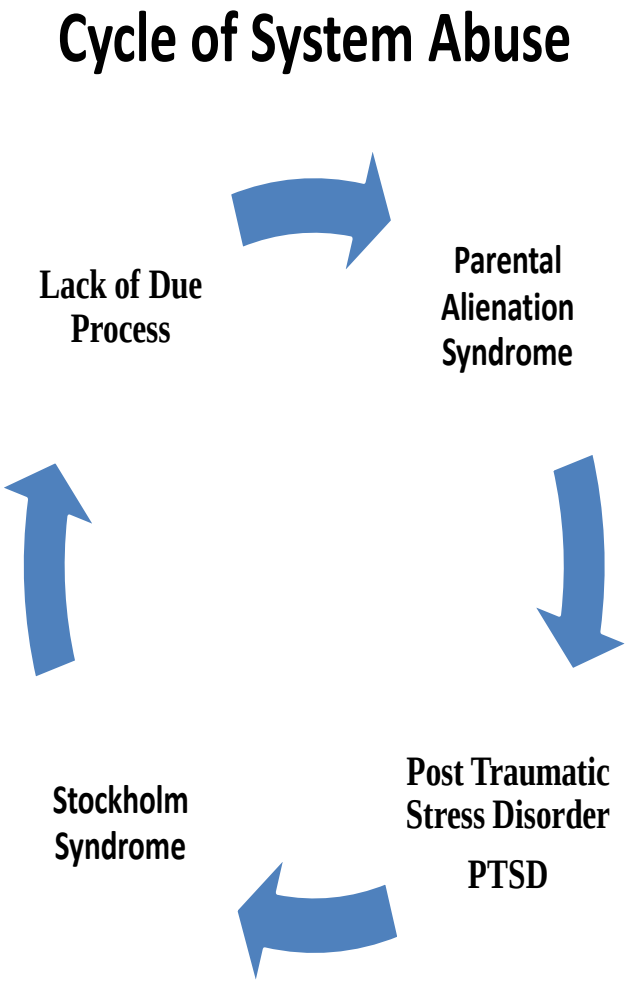
If we agree that DHS's primary purpose is to protect children by making sure they are in safe family environments that are optimal for their growth and wellbeing, it follows that the foster care system should exist for the child and the child's welfare should be its first priority. Unfortunately, in many cases--and in the eyes of many observers—the system seems to have lost its way. To shift the emphasis back to the child, I've created two schematics to depict the importance of the child's side of this issue. These schematics, the "Cycle of System Abuse" and the "Three A's," illustrate the major consequences that children suffer when the very system that claims to rescue them from abuse then exploits and neglects them. They are discussed and pictured in the following sections.

The Cycle of System Abuse

The Cycle of System Abuse portrays the psychological wounds inflicted on children by the ways they are treated—ranging from insensitive to brutal—by the adults at home who claim to love them and by the adults of the foster care system who are supposed to protect them and act with their best interests in mind. Denied the due process *(see Attachment D, Due Process)*

promised to every citizen, the child becomes a victim of the legal system, compounding the abused he may have suffered at the hands of his own parents.

The Cycle of System Abuse includes three components, Parental Alienation Syndrome (PAS); Post-traumatic Stress Disorder (PTSD); and Stockholm syndrome, which may occur concurrently or in any order.



Parental Alienation Syndrome (PAS)

(http://www.divorcingmistakes.com/articles/PASreview.pdf)

Children aged one to twelve will typically experience Parental Alienation Syndrome (PAS) when they are taken from their parents by DHS, forced to enter the foster care system, and placed with an unfamiliar foster care or adoptive family. These actions are taken to protect the child but sometimes without considering the impact on the child. PAS includes feelings of loss, insecurity, fear, confusion, sadness, hopelessness, and despair. Some experts consider PAS to be a form of child abuse because it robs children of the security of the bond they once shared with their parents. PAS may also occur when children are exposed to accusations and negative characterizations of their parents. Since children haven't yet established an identity separate from their parents, they perceive criticism of their parents as an attack on themselves, which damages their developing sense of self and self-esteem.

Post-traumatic Stress Disorder (PTSD)

(http://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml)

Most people associate PTSD with battle-scarred combat soldiers, but any overwhelming life experience can trigger PTSD, especially if the event feels threatening. According to the DSM-III-R, the PTSD diagnosis cannot be made in the absence of a verified traumatic event that is "outside the range of usual human experience . . . [and] would be markedly distressing to almost anyone, let alone a child, and is usually experienced with intense fear, terror, and helplessness" (American Psychiatric Association, 1987). The DSM-IV states that PTSD can result from any "extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury, or other threat to one's physical integrity . . . The person's response must involve intense fear, helplessness, or horror" (American Psychiatric Association, 1994, p. 424).

Children caught in the Cycle of System Abuse can also develop PTSD following a traumatic event that threatens their safety or makes them feel helpless. These events include abruptly removing them from their families, placing them with families unknown to them, adopting them out to unrelated families, and/or cutting all ties to their biological families.

Stockholm Syndrome

(http://counsellingresource.com/lib/therapy/self-help/stockholm/)

Besides PTSD, a child in this situation tends to develop Stockholm syndrome, which refers to a psychological state that was first identified as a result of a hostage situation in Stockholm, Sweden, where several people were held against their will for eight days. When they were free to leave, instead of escaping, they voluntarily stayed with their captor until he was taken into custody. Even after the occurrence, the hostages consistently displayed concern for their captor.

For the purposes of the theory I present here, Stockholm syndrome occurs in children under three years old who were kidnapped or intentionally abandoned by their parents or taken from their homes by DHS and placed in an unfamiliar environment with a family who are strangers to the child.

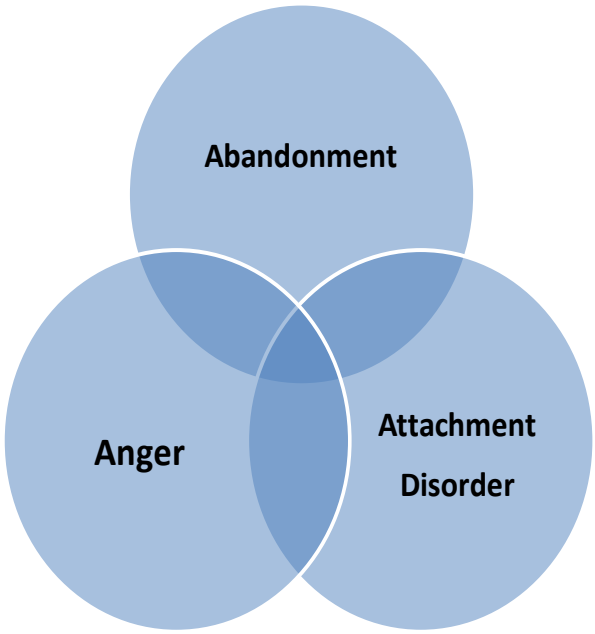
Stockholm syndrome is a psychological state that occurs in a child when he adapts to the new arrangement to ensure that he survives in the new situation that he perceives to be life-threatening. He has no choice but to leave behind the past circumstances of his life with his birth family and adhere to the demands of his new caretakers. To a child, that means letting go of or even turning against his birth family and embracing his new family, no matter what his feelings are. He'll do anything not to be abandoned again because, with no resources or family of his own, he believes he can't survive without his current caretakers. The fear of not surviving leads to extreme emotional dependence and "learned helplessness," a condition in which the child gives up his will to a captor or caregiver because that will ensure the caregiver's approval and, therefore, the child's ongoing survival.

The Three A's
(see following page for graphic)

When children whose families and homes have been taken from them become adolescents, they typically begin manifesting the emotional problems that have been festering since the traumatic abandonments and other losses of their childhood. As represented in my schematic, "The Three A's," this stage of their life reveals their rage, anger, resentment, and their inability to trust or get close to anyone.

Feelings of abandonment arise when children are separated from their primary caregiver(s) in their first three years of life. With Stockholm syndrome, young children are normally compliant because they are terrified of being abandoned again. They may seem to have evaded the harsh consequences of their victimization by the foster care system and their birth parents or foster parents or adoptive parents. However, as they get older, inside they feel different than everyone else they know, and in adolescence, the anger that they feel toward the adults who, they perceive, have hurt, disappointed, or abandoned them begins to emerge. The early rejection they experienced also manifests in attachment disorder, a deep-seated fear of intimacy manifesting in difficulty in forming close relationships and the inability to be emotionally vulnerable.

Three "A's" Suffered By Children Abused by the System



The abandonment, anger and attachment disorders experienced by children abused by systems and individuals that are supposed to protect them and act in their "best interests" will impact every facet of their lives unless they get psychological help, which can add up to lots of years and more money than they have.

Chapter 6

Foster Parents

You cannot have a strong, healthy nation without the family at its very base.
President Ronald Reagan

Some years back, I called the Arapahoe County Department of Human Services and told them I was interested in adopting a child. The receptionist responded, "No problem, just become a foster parent and we'll place a child with you and you'll be able to adopt the child once we terminate the rights of the parents."

Taken aback by her answer, I asked, "Really?"

"Yes," the receptionist responded. "They're looking for special people to become foster adopt parents because the rights of so many parents are being terminated." She added, "And you wouldn't be expected to be a perfect parent."

"That's ironic," I said to myself, "They sure expect biological family members to be perfect."

This incident illustrates one of the double standards applied by DHS to foster parents versus the biological family. Colorado's adoption policies for foster children and their foster parents can make the sad separation of children from their families more heart-wrenching because it allows DHS to place a child in a foster-adopt family before the parents' rights have even been terminated. Although the children may be secure living with grandparents who want to adopt them, that doesn't stop DHS from taking them from the grandparents and placing them in a foster-adopt family.

Current law is on the side of the caseworker who transfers the child to the foster-adopt family because it favors the foster-adopt family, which virtually ensures that grandparents who are capable and eager won't be considered as potential caretakers for their grandchildren. It doesn't seem to matter to DHS that as they place the child in a foster-adopt family the parents may legally still have the right to make decisions for the child. Is the system biased against grandparents? If it is, what is the motivation? One reason for leaving grandparents out of the process that can be proven with facts and statistics is the federal subsidy that families receive for adopting a foster child who is related to them. There is no reward, monetary or otherwise, for the family that adopts a foster child who is related to them biologically.

With the incentive to profit financially from adopting their foster children, foster families in Colorado have additional resources and legal power that it can use to successful adopt the children. The Children's Law Center offers an online "Foster Parent Training Program" to teach foster parents their legal rights, including:

- How best to resolve a case
- How a permanent home can be achieved for their foster child
- What the law mandates for foster children
- How to access public benefits, such as adoption assistance, childcare and therapy

- How to intervene in a case
- Foster parents' legal rights in the handling of investigations and complaints
- How to oppose or stop the imminent removal of their foster child from their home
- How to oppose or stop the removal of their foster child from their home
- Liability concerns

The Children's Law Center concludes this online advertisement by stating its commitment to "helping these families by providing resources and, when necessary, legal representation in partnership with volunteer attorneys." In addition to outside resources that can help them navigate the foster care system to achieve their goal of adoption, foster parents have gained a number of legal rights. One of the most powerful of these rights is that they can testify in court against any of the child's biological family members who also want to adopt the child. *(http://www.rockymountainchildrenslawcenter.org/sites/default/files/-Foster%20Parent%20Manual.pdf)*

Without support or guidance, trying to gain custody of a grandchild can easily consume all of a grandparent's nest egg. A case opposing DHS, if handled by an attorney, usually costs over $100,000. In most cases, grandparents can't afford the legal fees to gain custody of their grandchildren, or they use up all their resources trying, and they might end up losing their grandchildren anyway. Lots of grandparents are tempted to give up when they compare their limited resources to the resources available to DHS, like federal money and some of the best lawyers in the field.

When a non-relative foster family adopts their foster child, they can expect a windfall from the government. It is difficult to find accurate figures for the current foster care subsidy, so we'll use hypothetical numbers for the sake of offering you an example of how the subsidy can quickly multiply. Let's say the subsidy for fostering a child is $500 per child per month. Children remain in care approximately 15 years. Multiplying $500 X 15, we get $90,000, the approximate amount that the state pays per child for foster care. The subsidy is multiplied two or more times when the foster family adopts their foster children and they would begin receiving—using our hypothetical $500/month example—between $1,000 and $2,000 per child per month. If a family adopts four foster children, which isn't all that rare, according to our example, their subsidy could end up at $4,000 to $8,000 a month. If a foster-adopt child was subjected to sexual abuse or was born drug-addicted or alcohol-addicted or with disabilities, like downs syndrome, or if the child has cancer or another life-threatening or chronic disease, the foster-adopt parents' subsidy can multiply two, three, or more times, depending on the state they reside in.

Among the other benefits foster-adopt families are eligible for is access to local food banks, where they can purchase food for just pennies on the dollar, compared to what supermarkets charge. In addition, each adopted child qualifies for Medicaid, so the family avoids the high costs of insurance premiums and healthcare. All total, with four adopted children, a foster family could collect over $1 million in the course of fifteen years. The generous compensation available to foster-adopt families opens the system to abuse, and some rather mercenary foster parents have been known to adopt their foster children not for love so much as for money.

It's another story for grandparents who adopt their grandchildren. They're on their own financially because the system in most states is set up to reward the foster-adopt family rather than the biological family. It turns out that most grandparents who adopt their grandchildren are single grandmothers living on Social Security, who will probably be denied when she requests the same benefits and subsidies as foster-adopt families. In fact, this grandmother has even been accused of trying to commit fraud against the state when she's had the audacity to ask for the help she deserves.

DHS doesn't work alone in funneling children to foster-adopt families. The Rocky Mountain Children's Law Center (RMCLC), with hefty grants from the Helen K. and Arthur E. Johnson Foundation, works alongside DHS to facilitate adoptions by foster families. In fact, the RMCLS has published a training manual on its website that guides foster parents through the legal process of filing petitions with the court so they adopt their foster children. A substantial number of Guardians Ad Litem (GAL's) affiliated with RMCLC are also employed to facilitate the adoption process. The GALs' focus on adopting children out to foster parents and ignoring biological family members who want the child compromises their reputation and may constitute a conflict of interest.

The blatant partiality of the law to foster families shifts power from the biological family of the child to a family of strangers. Consider *House Bill C.R.S. § 19-3-507*(5), which allows foster parents to petition to adopt their foster child, without any recognition of the importance of keeping the child with his or her natural family. With the law, the policies, and the people who enforce them against biological-family adoptions, grandparents can easily get discouraged and feel like giving up. However, no matter how bleak the prospects seem and despite the negative advice you may have gotten, it's not inevitable that you'll lose your grandchildren to the system. If you're represented in court by either an attorney or *pro se*, the odds shift in favor of the court awarding visitation, custody, or adoption to you.

If grandparents can't afford an attorney, they can learn how to build their case against DHS and represent themselves in court. With the support of experts with knowledge and experience in dealing with the foster care system, grandparents can challenge DHS in court and, most likely, win. I'm not just advocating positive thinking in the face of what you might consider overwhelming odds. My advice is based on facts and statistics. Grandparents who were my clients at the GRC who have learned to act as their own lawyers have won their cases over 90 percent of the time.

Favoring foster families for adoption and excluding members of a child's biological family flies in the face of current studies that indicate that most children flourish when placed with their biological family rather than with a family of strangers. Studies show that children wrenched from their family become angry, confused, and depressed. They lose their ability to trust anyone completely, a condition that can persist for their entire lives. Displaced children suffer a loss of self-esteem because children blame themselves for the bad things that happen in their lives. They may believe that they have done something so unforgivable or that they are so unlovable that their parents got rid of them. They believe that if only they had been lovable or good enough, their family would have kept them. Without counseling, these feelings usually manifest in destructive behavior toward themselves and others or simmer inside as a quiet self-loathing.

Points of Law to Consider

The Adoption Assistance and Child Welfare Act of 1980 (PL 96-272) passed on June 30, 1980, by the United States Congress to provide federal support for permanency planning. Passage of this milestone legislation in permanency planning provided incentives to states to require periodic case reviews for children in foster care. The Act mandated a review process for all states receiving federal funds for foster care services and required that permanent plans be developed for all children in foster care. *Foster parents began getting money for adopting their foster children* (my emphasis)*.*

E.O. v. People, 854 P.2d 797 (Colo. 1993)
In this case, the foster mother was appealing the decision of a DHS review hearing that changed the temporary physical custody of her foster child. However, because an order changing the temporary custody of a child and doesn't represent the final decision on who will have permanent custody of the child, the court has no power in the matter. Therefore, the court dismissed the case, stating, "Interlocutory orders that arise from review hearings and address the physical custody of a child but do not affect the right to legal custody are not subject to appellate review."

Grandparents who have been denied the right to adopt their grandchildren by the court could cite this case to appeal the court's decision. When appealing a case of this nature, it is necessary to cite all on-point cases, whether they are in agreement or not in agreement. It is important that grandparents be familiar with the pros and cons of the cases they are appealing.

PEOPLE v. The PEOPLE of the State of Colorado, In the Interest of A.W.R., a Child, Upon the Petition of the Denver Department of Human Services, Petitioner-Appellee, Concerning S.L.F. and L.L.R., Respondents, Concerning P.E., Intervenor-Appellant. No. 99CA1188. September 14, 2000 *(See Attachment F for the full text of this case.)*

In this Colorado Court of Appeals case in September of 2000, the foster mother wanted to intervene in her foster child's case after the child had been returned to his family. The Rocky Mountain Children's Law Center (RMCLC) and the foster mother lost the appeal, but I have included it here because I think it is an important case for grandparents to read and understand for the following reasons:

- Foster parents have no constitutionally protected due process right *(see Attachment D, Due Process)* regarding their foster children until the goal of parental reunification has been abandoned. (There was no error in the juvenile court's order restricting the foster mother's participation to direct testimony as to the child's best interests.)

- A foster parent's interest in raising a foster child does not arise until after a permanency planning determination that the child cannot be returned to mother.

The Colorado Children's Code expressly contemplates participation of interested parties in juvenile cases. C.R.S. § 19-1-107(4) and 19-3-504(3)(1)(1994 Supp. to 1987 Repl. Vol. 8B); People in the Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

In 1997, the Colorado General Assembly enacted legislation that permits foster parents to intervene as a matter of right following adjudication. That statute provides in pertinent part, "foster parents who have had a child in their care for more than three months who have information or knowledge concerning the care and protection of the child may intervene as a matter of right following adjudication with or without counsel" C.R.S. § 19-3-507(5).

The Adoption and Safe Families Act (ASFA), signed into Federal Law on November 19, 1997.

- The Adoption and Safe Families Act added new requirements governing the review of a State's conformity with its State plan under Titles IV-B and IV-E of the Social Security Act. Public Law 105-89 seeks to provide states with incentives to achieve the original goals of Public Law 96-272: safety, permanency, and child and family well-being. Included in the new law was the requirement for the state to develop a comprehensive Quality Assurance (QA) system. Many of the requirements for a QA system were already being met by the CWTAO while monitoring for the terms and conditions of the Child Welfare Settlement Agreement (CWSA). Therefore, rather than developing a separate Quality Assurance Program, the CWTAO developed a QA Program based on the CWSA reviews and included Client Satisfaction Surveys.

- On October 12, 2000, the state of Colorado was released from the terms and conditions of the CWSA. One caveat to the resolution document was # 5, stating "Whereas the Department assures its continuing full commitment to formal tracking, program monitoring, providing technical assistance, imposing corrective actions and continuous quality assurance and improvement necessary to achieve safety and permanency for children."

Supreme Court of the State of Colorado, February 25, 2013, Certiorari to the Colorado Court of Appeals Case No. 2013 CO 16, Petitioners/Cross-Respondents: Petitioners/Cross-Respondents: A.M., by and through his Guardian ad Litem; and L.H. and R.H.; v. Respondent: A.C., and Respondent/Cross-Respondent: The People of the State of Colorado, In the Interest of Minor Child: A.M., v. Respondent/Cross-Petitioner: N.M.

This Dependency and Neglect (D&N) case was appealed to the Colorado Supreme Court from the Colorado Appeals Court to decide whether the foster parents of a child, A. M., have the right to intervene in the D&N case against the child's biological family member(s). The Court decided that the foster parents could intervene in the case and, therefore, established the right of all foster parents to intervene in such a case. The decision is summarized below:

> The supreme court considers whether foster parents who intervene in a dependency and neglect action pursuant to section 19-3-507(5)(a), C.R.S. (2012), possess only a limited right to participate in a hearing on a motion to terminate parental rights. The

> court construes section 19-3-507(5)(a) and concludes that foster parents who have properly intervened are afforded the same degree of participation as all other parties at a termination hearing. In addition, the court concludes that parents' due process rights are not impacted by the full participation of foster parents in the termination hearing. Therefore, the Supreme Court holds that **foster parents who meet the required statutory criteria to intervene may participate fully in the termination hearing without limitation** (my emphasis).

This decision is noteworthy because it allows foster parents to intervene in a custody case by virtue of the supposedly negative things a child has said about his or her biological family members. Foster parents who want to retain custody of the child can now support their opposition to family reunification with damaging statements the child has said about his or her kin. In other courts, their testimony would be considered "hearsay," but in these cases, the foster parent's assertions, whether accurate or made up, will be accepted at face value. Furthermore, this decision by the court has created a conflict of interest because if the biological family loses the case, the foster parents will be able to adopt the child and receive substantial financial remuneration from the state.

This case also highlights the conflict of interest inherent in the role of the Rocky Mountain Children's Law Center (RMCLC) and its guardians ad litem. In this particular case, lawyers working for the RMCLC were designated as guardians ad litem (GAL's). It is the role of a GAL to remain objective and recommend to the court the best placement for the child, but since the stated mission of the RMCLC is to support foster-adopt families, their GAL's always take the side of the foster family. The result is that grandparents are severely "outgunned" in court and end up having little or no chance of adopting their grandchildren.

Chapter 7

What DHS Requires of Grandparents

Grandparents who are seeking to get their grandchildren back will have to put in some serious time and effort to meet the preconditions that the court mandates in custody cases. The Structured Analysis Family Evaluation (SAFE), which can take at least six to eight weeks to complete, is a major part of those requirements. For that, your home will have to be accessible to DHS, and you and your family members will have to be available to the Clinical Social Worker (CSW) in charge of the study. In addition to the SAFE home study, there are several other requirements you must satisfy, which are discussed later in this chapter.

Structured Analysis Family Study (SAFE)

In Chapter 3, we discussed the differences between a Clinical Social Worker (CSW) and a caseworker or manager. To summarize, the CSW is better educated and more experienced than the caseworker. ***It is imperative that an CSW handles your case***. That will become especially apparent to you if you and your family are the subject of a SAFE home study.

The SAFE home study results in the SAFE report, which contains the data the social worker collected from the family and ends with recommendations by him or her. The SAFE report, required in all Colorado courtrooms, has more influence on the family court judge than any other document. A well-done report will get the judge's attention more quickly than any other document you file with the court. You need a CSW who will bring his or her exceptional experience and accumulated knowledge to the study and will spend as much time as it takes to prepare a fair and comprehensive report.

What is a SAFE Home Study?

SAFE, a standard, structured evaluation process, is used to qualify families for concurrent planning; to qualify families for adoption and foster-care licensure; and to qualify a child's own family members for custody or adoption of the child. SAFE is designed to select families ***in*** rather than ***out***: The study is not meant to be adversarial, but to respectfully so engage family members in a mutual evaluation of the family's strengths and weaknesses. The SAFE report results from the home research study and is intended to be a comprehensive depiction of the applicant and environment that has been identified as a potential placement or resource home for a child who has been removed from his or her home due to circumstances beyond the child's control.

Topics formally assessed by the study include Family; Criminal Clearance/Child Abuse Record with a background check through the Colorado Bureau of Investigation; Emergency Care Plan; Family Preparation and Training; and the Psychosocial Evaluation Report, followed by final recommendations by the investigating social worker and/or agency. Other topics that are informally assessed include Health, Financial, Safety, and Pictures.

What is the Purpose of the SAFE Home Study?

The fundamental purpose of SAFE is to place a child in the best possible home with a family that s/he will be safe and happy with. However, no matter how loving the family or how easily a child fits into a family, the introduction of a child into a family imposes new burdens and stresses on the family. The SAFE home study should indicate whether the family can cope with the radical changes a child, generally troubled, could impose on their family.

Because SAFE is grounded in solid social work practices, the social worker is able to make a sound decision on whether the family offers what the child needs. To reach the point where s/he can make a reasonable decision, the social worker must achieve several specific objectives, including those listed below:

- To obtain a comprehensive descriptive and psychosocial evaluation of a family.
- To determine the strengths, weaknesses, resources, and ability of a family to meet the challenges posed by taking in young, and possibly troubled, family members.
- To assist the applicants with telling their stories in their own voice in a completely legal manner, without judgment or interference of the social worker.
- To explore all family problems relevant to placing a child with the family.
- To record exactly what the family has conveyed to the social worker.
- To use sound social work values in developing a well-rounded view of a family.
- To make full use of the research tools in SAFE.
- To shed light on the individual and collective social behavior of family members, their interactions with other family members, and their behavior outside of the family.

What happens in a SAFE Home Research Study?

SAFE guides the social worker through standard steps and specific activities within those steps to ensure that a full and accurate picture of an applicant and his or her family can be developed. In the first step, the social worker gathers information through the use of consents, releases, SAFE questionnaires, reference letters, and interviews. Next, the social worker analyzes this this data for content, importance, relevancy, and completeness. If any of the data is incomplete or raises more questions, the social worker seeks clarification from the source of the data. That information is then added to the initial data she or he compiled and, once again, reviewed for completeness. When the social worker is satisfied that she or he has all pertinent information, the social worker moves on to analyzing the content of her research. Following analysis is the final step, evaluation, which leads to deciding if the child will be placed with the family.

Family members can expect to put in a good amount of time being interviewed in-depth by your social worker. She or he will also observe family members' interactions with each other and with people outside of the family. The social worker will record his or her observations, along with what family members have related to him or her.

Other DHS Requirements for Grandparents

Besides the vast amount of time a competent social worker will spend on the study, the applicant will be responsible for compiling specific information about himself or herself, including a physician's report on his or her health and physical fitness; financial information; criminal background check; and references. The applicant is also required to take a battery of tests as part of a mandatory psychological evaluation. Below you will find more information about the documents you have to provide for the SAFE study and how to get them.

Health Report: You must present proof of a physical examination you took within the past year, and it must be signed by your doctor. If you haven't had a physical this recently, you will have to have one. Information in the physical must be relevant to your ability to care for the child(ren) in contention. Since we want your SAFE study to meet the highest standards possible, we ask that the adult residents in your home get a tuberculosis test, normally only a requirement for grandparents who want to adopt. However, we think it's wise to cover all possible bases, whether you want to adopt or not.

Financial Information: As the applicant, you must provide proof of current income for all resident adults in your home by submitting paycheck stubs; yearly W-2; and a letter verifying contract pay, or federal income tax returns. You must also obtain a recent credit check from one of the three reporting agencies, Equifax, Experian, or TransUnion. Each agency will provide one free report a year. All credit agencies can be accessed through the website *www.annualcreditreport.com,* or call them for a free copy at 1-877-322-8228.

Safety Plan *(see Attachment B, Colorado Safety Assessment/Plan)*: This document is created when it is determined that the child is in imminent or potential risk of serious harm. In the safety plan, the caseworker targets the factors that are causing or contributing to the risk of serious harm to the child. The social worker, along with the family, then identifies the interventions that will ensure the child's protection. Foster parents and all grandparents seeking custody must have a safety plan in place, in case the parents show up at their door demanding the child.

Evacuation Plan: A map indicating how to exit the home in an emergency should be posted in the home.

Criminal Clearance/TRAILS Clearance: We request that our clients get a Criminal Clearance through the Colorado Bureau of Investigation (CBI) and that the client and all resident adults provide a clean TRAILS Report through DHS. *(See Attachment G for a TRAILS form and Attachment H, which assists in the interpretation of the TRAILS Report.)* We don't want to put your grandchildren in any more difficulty, so if you or any resident adults have had any involvement in the past with the law or with DHS concerning child abuse or neglect, we would like to know. Following is more information on obtaining these two background checks:

- Criminal clearance is obtained through the CBI at 690 Kipling Street, Suite #3000, Lakewood, CO 80215, or call 303-239-4208 for assistance. If you don't want to pay as much as CBI charges, you can have the criminal background check completed online through *www.cbirecordscheck.com.* Application for a background check is also available through KT International, 20 Westbrook Street, East Hartford, CT 06108.

- TRAILS Clearance: Applicants with legal issues that require mitigation can be further screened through the Child Abuse Registry for Colorado (TRAILS) and/or the Federal Bureau of Investigation. The Background Investigation Unit, Records and Reports Section, conducts checks into the Statewide Automated Child Welfare Database, TRAILS, for confirmed cases of child abuse or neglect. This check is not a criminal background check; it checks founded cases of child abuse or neglect. You can contact the Records and Reports, Background Investigation Unit at:

  Background Investigation Unit
  1575 Sherman Street, 2nd Floor
  Denver, CO 80203-1714
  Phone Number: (303) 866-4614
  Margery Bornstein, Manager

(See Attachment G for TRAILS form.)

References: Just like applying for a job, you are asked to provide a minimum of three references. You will impress DHS even more if you are able to provide more references than three.

Pictures: You will enhance your case even further if you can include photos of you and your grandchildren that illustrate the depth, length, and quality of your relationship over a span of time, so choose them carefully. (Your pictures will not be returned to you.)

Independent Psychological Evaluation: The psychological evaluation is required of parents involved in a child-abuse case, but is not mandatory for grandparents. However, those grandparents who volunteer for it can strengthen their cases by showing that they are psychologically fit to have visitation and/or custody of your grandchild. According to the American Psychological Association, the following list states the purpose of the psychological evaluation and the benefits for the child:

- The primary purpose of the evaluation is to provide relevant, professionally sound results or opinions, in matters where a child's health and welfare may have been and/or may in the future be harmed.

- In child protection cases, the child's interest and well-being are paramount.

- The evaluation addresses the particular psychological and developmental needs of the child and/or parent(s) that are relevant to child protection issues such as physical abuse, sexual abuse, neglect, and/or serious emotional harm.

You can choose to be evaluated either by DHS' psychologist at no cost to you or by an independent forensic psychologist. Even though you have to pay, it is preferable that you choose the independent forensic psychologist. DHS, without showing you proof, can deny you custody on the grounds that the test indicates you have a mental disorder and are not fit to parent your grandchildren. The best way to refute their allegations is with the test results from a source independent of DHS stating that you are capable and fit to care for your grandchildren.

We have included the following descriptions of the various tests that make up a psychological evaluation:

Common Psychological Tests

Psychological tests are given in nearly all custody evaluations to assess each caretaker's mental and emotional health, as well as to identify any abnormal psychological conditions, for example, personality disorders and neurotic behaviors. The most common test by far is the MMPI-2. Other tests, like the MCMI-III and the Rotter Incomplete Sentence Blank, are used to confirm the MMPI-2 results.

"Classic" tests, such as the Rorschach, are not used as frequently in custody evaluations since the advent of more specialized tests, such as the Thematic Aperception Test" (TAT) and the series of tests developed by Barry Bricklin of Bricklin Associates, including the Bricklin Perceptual Scales (BPS); Perception Of Relationship Test (PORT); Parent Awareness Skills Survey (PASS); and Parent Perception of Child Profile (PPCP).

The following descriptions are intended to familiarize you with the most common kinds of tests you may be given during the course of a custody evaluation. Specifics on the test scales, ranges, and administration are not detailed here in order to preserve the test's validity. Providing information on how the tests are scored or what are considered "acceptable" responses would invalidate the purpose of these tests.

For further information on testing, please consult new guidelines adopted by the American Psychological Association on March 17, 2011:

Guidelines for Psychological Evaluations in Child Protection Matters
http://www.apapracticecentral.org/update/2011/03-17/child-protection.pdf

- **MCMI-III™ (Millon™ Clinical Multiaxial Inventory-III)**

The Millon Clinical Multiaxial Inventory-III instrument is a self-report instrument designed to help the clinician assess DSM-IV-related personality disorders and clinical syndromes. A significant revision of the MCMI-IITM instrument, this instrument incorporates new items, a new item-weighting system, and new scales to provide insight into 14 personality disorders and 10 clinical syndromes.

The instrument is useful in assessing Axis I and Axis II disorders based on the new DSM-IV classification system, identifying the personality disorders that underlie a patient's presenting symptoms, and designing appropriate and efficient treatment programs.

- **MACI™ (Millon™ Adolescent Clinical Inventory)**

The Millon Adolescent Clinical Inventory instrument is a brief self-report personality inventory with a strong clinical focus. Evolving from the Millon Adolescent Personality Inventory (MAPI™) instrument, the MACI instrument was designed with a more focused normative sample consisting of adolescents in various clinical treatment settings. Through a series of contemporary questions, it helps the clinician assess an adolescent's personality, along with self-reported concerns and clinical syndromes.

The MACI instrument is used for adolescent assessment in outpatient, inpatient, or residential treatment settings. The MACI instrument can be used by psychologists, psychiatrists, school psychologists, juvenile justice professionals, and other mental health professionals. It can be useful in initial evaluation of troubled adolescents to confirm diagnostic hypotheses, in planning individualized treatment programs, and in measuring treatment progress.

- **MBHI™ (Millon™ Behavioral Health Inventory)**

The Millon Behavioral Health Inventory instrument is a brief self-report personality inventory designed to help the clinician assess the psychological coping factors related to the physical health care of adult medical patients. The MBHI instrument provides valuable information about the patient's style of coping and the patient's perceptions of the kinds of stress that may be affecting his or her medical condition.

The MBHI instrument is used in health care and counseling settings by psychologists and psychiatrists who work with patients in hospitals, clinics, and private practice. It is useful in:

  - evaluation and screening of physically ill, injured, and surgical patients to help identify possible psychosomatic complications or help predict response to illness or treatment.

  - workers' compensation evaluations to help assess stress-related claims. For claims related to physical injuries, the MBHI instrument can help in the development of effective rehabilitation programs.

  - evaluation and screening of individuals in specialty clinics or programs (e.g., pain, stress, headache) who have problems that may stem from a psychological disorder or an unidentified stressor.

- **DPRS® (Derogatis Psychiatric Rating Scale)**

The Derogatis Psychiatric Rating Scale (DPRS) instrument, formerly known as the Hopkins Psychiatric Rating Scale, is a multidimensional psychiatric rating scale provided by NCS. The DPRS was designed for use with the SCL-90-R® instrument or BSI® self-report instruments. It is often used to validate patients' self-reports.

Designed for use by clinicians trained in psychopathology, the DPRS instrument enables the clinician to rate his or her observations of a patient's psychological symptomatic distress on the same nine primary dimensional scales as the SCL-90-R and BSI instruments. With the DPRS instrument, the clinician can also rate the patient on eight additional dimensions that are important to accurate clinical assessment but that are not amenable to patient self-report.

- **MMPI-2TM (Minnesota Multiphasic Personality Inventory-2TM)**

The Minnesota Multiphasic Personality Inventory-2 (MMPI-2) instrument, the re-standardized version of the original MMPI® instrument, is an empirically-based assessment of adult psychopathology. The MMPI-2 instrument, provided by NCS, is the standard that mental health professionals use to help measure psychopathology across a broad range of client settings. The MMPI-2 instrument is used by clinicians in hospitals, clinics, counseling programs, and private practice to assist with the diagnosis of mental disorders and the selection of an appropriate treatment method.

Derived from the original MMPI instrument, the MMPI-2 instrument preserves the most valuable features of the original assessment while addressing contemporary concerns to provide better descriptive and diagnostic information for clients today. The MMPI-2 instrument contains items appropriate and relevant to current test-takers. Special effort has been made to eliminate sexist wording and outmoded content. Duplicate items and items with objectionable content have also been eliminated.

The MMPI-2 consists of 567 statements to which the subject responds with true, false, or cannot say. It was designed primarily for adults and has not yet been used for children (although the 1992 MMPI-A was designed for adolescents). The items cover a wide range of topics, including attitudes on religion and sexual practices, perceptions of health, political ideas, information on family, education, and occupation, and displays of symptoms known to be exhibited by certain groups of mentally disturbed people.

The normative sample of the MMPI-2 instrument consists of 1,138 males and 1,462 females between the ages of 18 and 80 from several geographic regions and diverse communities within the U.S. The sample is much larger and more nationally representative than that of the original MMPI instrument.

- **QOLI® (Quality of Life Inventory)**

The QOLI assessment can help clinicians assess problems in living in 16 areas of life for an individual and the degree to which the individual is satisfied or dissatisfied with each area in his or her own life. The assessment also includes an overall score.
Assessment Areas: health, self-esteem; goals and values; money; work; play; learning; creativity; helping; love; friends; children; relatives; home; neighborhood; and community

Providing a non-pathological measure of an individual's mental health, the QOLI assessment was designed to augment measures of negative affect and psychiatric symptoms.

Applications of the QOLI assessment include:

- outcome assessment and treatment planning for mental and physical disorders
- non-heath related personal counseling settings such as organizational development, EAPs and college counseling centers to help people focus on improving their quality of life
- tracking patient treatment progress and documenting change
- helping to identify people at risk for developing health problems or disorders
- assisting in gathering information to help establish the efficacy of different treatments or services
- substance abuse treatment and assessment
- behavioral medicine assessment

- **TAT (Thematic Aperception Test)**

The Thematic Aperception Test assesses personality through projective technique focusing on dominant drives, emotions, sentiments, complexes, attitudes and conflicts. The subject is shown pictures one at a time and asked to make up a story about each picture.

Normally, the TAT is given in two sessions, approximately 60 minutes per session and one day apart.

- **CPI (California Personality Inventory)**

CPI (California Personality Inventory) was designed to assess normal characteristics in healthy individuals and personality characteristics important in daily living. The CPI looks like the MMPI (many multiple choice items), but the scales are quite different (Masculinity/Femininity, Dominance, Introverted/Extroverted, etc.). Like the MMPI, the CPI produces a personality profile of the individual on each of the scales in the test.

Used in business for personnel selection, identifying creativity, and vocational and personal counseling; in schools and colleges for academic counseling, identifying leaders, and predicting success in various public service occupations; in clinics and counseling agencies for evaluating substance abuse, susceptibility to physical illness, marital discord, juvenile delinquency and criminality, and social immaturity; and for cross cultural and other research.

NOTE: The CPI has been replaced with the “CPI-Revised,” basically an updated version of the CPI test.

- **BPS (Bricklin Perceptual Scales)**

A research-based custody test which measures a child's perceptions of each parent [or caretaker] in four critical areas: competency, supportiveness, consistency, and admirable traits. Typically used on children age six and up.

The BPS is made up of 64 cards, each about the size of a business envelope (3.5" by 8.5"). On one side of every card is a horizontal line. It is aligned with a scoring grid on the other side. The child sees only the lines; the examiner sees the test questions and the scoring grids. Each card is placed in a cardboard box on a piece of styrofoam, with the horizontal line facing up. In response to a question, the child punches a hole through the line using a stylus-pen.

The BPS scoring sheet groups the test questions in four main areas, measuring the child's perceptions of each parent's [caretaker's] ability to be: (1) a good role model for the skills of competency; (2) a source of warmth and empathy; (3) consistent; (4) a role model for other admirable traits.

- **PORT (Perception-of-Relationships Test)**

Typically used on children aged three-years-two-months and older, the Perception-of-Relationships Test measures how close a child feels to each parent [or caretaker], and the positive and negative impacts of each relationship.

Like its companion test, the Bricklin Perceptual Scales (BPS), the PORT is a data-based projective test, where the data base has been developed specifically to assist informed custody decision-making. The test is made up of seven tasks (mostly drawings) that measure the degree to which a child seeks to be psychologically "close" to each parent [caretaker], and the strengths and weaknesses developed as a result of interacting with each parent [caretaker].
Specifically, the PORT measures:

- evaluation and screening of individuals in specialty clinics or programs (e.g., pain, the degree to which a child seeks psychological "closeness" (positive interactions with) each parent [or caretaker] and
- the types of action tendencies (dispositions to behave in certain ways e.g., assertively, passively, aggressively, fearfully, etc.) - adaptive as well as maladaptive - the child has had to develop to permit or accommodate interaction with each parent [caretaker].

It is particularly useful in custody decision-making because it sheds light on the degree to which a child actually seeks interaction with a given parent [or caretaker], and reflects the degree to which he or she has been able to work out a comfortable, conflict-free style of relating to each parent [or caretaker].

- **PASS (Parent Awareness Skills Survey)**

The Parent Awareness Skills Survey reflects the sensitivity and effectiveness with which a parent responds to typical childcare situations. Its six scores pinpoint parental awareness of:

- the critical issues in a given situation;
- adequate solutions;
- the need to communicate in terms understandable to a child;
- the desirability of acknowledging a child's feelings;
- the importance of the child's own past history in the present circumstance; and
- the need to pay attention to how the child is responding in order to fine-tune one's own response.

- **PPCP (Parent Perception of Child Profile)**

The PPCP elicits an extensive portrait of a parent's knowledge and understanding of a specific child. It helps the Evaluator assess the degree to which a parent's perception: (1) are accurate; (2) compare to other sources; (3) reflect genuine interest in a child. The PPCP also assesses the irritability potential of a parent towards a specific child. The Parent Perception of Child Profile offers a parent an opportunity to express what he or she knows about a particular child in a wide variety of important life areas. Responses are gathered in eight categories:

- Interpersonal Relations
- Daily Routine
- Health History
- Developmental History
- School History
- Fears
- Personal Hygiene
- Communication Style

The PPCP can be evaluator-administered or self-administered. One main use of the PPCP is to compare the responses of selected respondents, e.g., the two parents. Comparisons can be made in several ways, including accuracy and depth of knowledge in any given life area, especially one (or several) deemed critical to a particular child, and the feelings and attitudes expressed.

- **HTP (House - Tree - Person Projective Drawing Technique)**

This test is designed to aid clinicians in obtaining information concerning an individual's sensitivity, maturity, flexibility, efficiency, degree of personality integration, and interaction with the environment. Subject is asked to draw pictures of a house, a tree, and a person. Subject is then given an opportunity to explain the drawings.

In common with other projective measures of personality, eg., the Rorschach, or TAT, the H-T-P provides a structured context for the projection of unconscious material. Like a specific ink blot or TAT card, the subject is always presented with blank paper (or a standardized drawing form) and standard instructions as to what is to be drawn (the house, the tree, the person). Combining an ease of administration with a maximum of projective potential, the H-T-P allows the clinician to gather information that might not otherwise be available in a structured, verbal interview.

Unlike the Rorschach or TAT, the H-T-P presents a maximum of ambiguity for the subject. Whereas the Rorschach and TAT present a stimulus card which does not change over time, the H-T-P presents the subject with a completely blank field onto which they are asked to draw and project. Every subject will draw a house, but every house will differ. The result is a collection of projective material organized around standard themes. The H-T-P can claim a great deal of freedom from stimulus bias.

Chapter 8

TRAILS Report & CBI Background Check

If a Dependency and Neglect case has been opened on your children and/or your grandchildren were put in legal custody of the state and you intend to pursue custody, adoption, or adoption of your grandchildren, you must immediately have two reports run on yourself: a TRAILS report and a Central Bureau of Investigation (CBI) Background check. *(See Attachment G for a TRAILS form and Attachment H, which assists in the interpretation of the TRAILS Report.)* If you mistakenly appear in either database, you will have to clear up the inaccurate information that would interfere in the relationship you want with your grandchildren. If you obtain these reports early enough in the case, you will probably have enough time to clear yourself of any allegations that could become an issue with DHS and/or the court. Once parental rights have been terminated, DHS may block you from seeing your TRAILS report or even finding out if you are on the database.

More information on the TRAILS report and the CBI background check are included below.

TRAILS

History

In 1997, the database previous to TRAILS, called the Central Registry, had caused so much havoc in so many people's lives that a group of concerned Colorado citizens lobbied to have the it abolished. The same year, Colorado State Representatives Adkins, Agler, Lawrence, Musgrave, Nichol, Reeser, Smith, and Sullivant, along with Colorado U.S. Senator Perlmutter, sponsored HOUSE BILL 97-1109, which proposed a plan for phasing out the Central Registry.

The politicians' goal was to assign the functions of the Registry because it was a record of everyone ever accused of a crime against children in Colorado, without distinguishing between people who had been justly accused and those who had been wrongly accused. The intent of the Bill was to assign the Registry's functions to the Colorado Central Bureau of Investigation (CBI), whose database contains only convicted perpetrators. The Central Registry was completely abolished by 1999, and TRAILS replaced it in early 2005.

TRAILS: DHS Background Investigation Unit Database

TRAILS is a database containing child abuse and neglect reports that assists DHS in the identification and protection of abused and neglected children. The database is typically used to aid the Department of Human Services in the investigation, treatment, and prevention of child-abuse and to maintain statistical information for staffing and funding purposes. You have to find out if you have ever been put on this database to make sure your name is clear. If you are on TRAILS as a perpetrator of child abuse, you must clear yourself of the charges leveled against you.

The accusations on TRAILS against child abusers, whether innocent or guilty, can include any of the following:

- ***Physical Abuse***: The child has experienced physical harm or injury by the parent or caretaker, or has been subjected to circumstances that could reasonably pose a serious threat of physical harm or injury.

- ***Neglect of Basic Needs***: The parent or caretaker fails either deliberately or through inability, to take those actions necessary to provide a child with adequate food, clothing, shelter, or other essential care.

- ***Educational Neglect***: The parent or caretaker, either through action or omission, fails to provide for the child's education and/or school attendance.

- ***Abandonment*:** The child has neither parental support nor an alternate caretaker.

- ***Medical Neglect****:* The child requires medical treatment that the parent/ caretaker has not provided, and the failure to provide such care presents a substantial risk to the child.

- ***Emotional Maltreatment****:* The parent or caretaker's acts or omissions have caused, or are likely to cause, identifiable and substantial impairment to the child's psychological or intellectual capacity or functioning. However, *there is no law governing emotional abuse in Colorado.*

- ***Lack of Supervision****:* The child's age and skill level require parental supervision, but there is none, which leaves the child vulnerable to harm.

- ***Sexual Abuse*:** A child has been subjected to sexual intercourse, sexual contact, including touching of the genitals, buttocks, or breasts. Sexual abuse also includes actions and behaviors when there is not physical contact, including but not limited to exhibitionism, sexual exploitation, and pornography.

- ***Lack of Adequate Care****:* The parent is not available to provide care due to incarceration or hospitalization and there is no alternate caretaker.

The guidelines and process involved when DHS reports to the Central Registry are explained below:

7.415 REPORTING [rev. eff. 4/1/01] (Central Registry)

A. The county department shall make timely and accurate reports in all applicable automated reporting systems operated by the state. The reporting of placements and placement changes in the automated reporting systems operated by the state shall be made prior to the next payroll.

B. The county department shall report client case and placement information in the automated reporting systems operated by the state when one or more of the following occurs:

1. the county department opens a case and determines the target group eligibility or re-determines a change in target group eligibility; or,
2. the child is in out-of-home or Core Services care and the funding source is determined or changes; or,
3. an out-of-home, relative, subsidized adoption, or Core Services care placement is made, the placement changes or ends, or a change in the level or nature of a payment must be authorized; or,
4. a court orders a change in the custody of a child or other legal action occurs; or,
5. the Department's automated reporting system special consideration codes are relevant; or,
6. the child is legally free for adoption; or,
7. the child is placed for adoption and gets a new identity (name, household number, State ID); or,
8. the child is in Colorado from another state for Interstate Compact on the Placement of Children supervision or Medicaid only; or,
9. a decision to close the case is made within 30 calendar days.

C. The county department shall report confirmed incidents of abuse and neglect in the Central Registry for Child Protection, as discussed in the Central Registry Section of Program Area 5.

D. The county department shall report the Medicaid eligibility status of children out-of-home or in subsidized adoption using the FCS-100 system, when a child:

1. is eligible for Medicaid and in out-of-home care or subsidized adoption; or,
2. changes to a new categorical status or medical resource code; or,
3. changes from one placement to another; or,
4. has been placed for adoption and gets a new identity (name, household number, State ID); or,
5. is eligible for an in-state medical effective span; or,
6. is in Colorado from another state and receiving Medicaid only (COBRA).

E. The county department shall leave a case open on the Department's automated reporting system for each child with a current subsidized adoption agreement. When the subsidized adoption agreement is terminated, the county shall close the child's case on the Department's automated reporting system and the FCS-100, if applicable.

F. The county department shall only report Core Services clients in the Department's automated reporting system when both target group eligibility and Core Services eligibility criteria are met.

G. For purposes of reporting and maintaining confidentiality in the Department's automated reporting system and other systems, the county department shall create a new adoptive identity (name, household number, state ID) different from the birth identity when the child is placed with the intent that the family will adopt the child.

H. The county department shall consider siblings and their parents or legal caretakers as one household unit. When parental legal rights are terminated or relinquished, the new household unit may be an individual child or all siblings, depending upon whether the case plan is to place the siblings separately or together.

I. The county department shall obtain social security numbers for children and enter them into the Department's automated reporting system.

J. The county department shall provide information when requested by the state for special studies.

Background Checks: Colorado and Other States

I. Colorado Law

In Colorado, House Bill 05-1078, sponsored by REPRESENTATIVES Vigil, Coleman, Marshall, Paccione, and Riesberg, and SENATORS Tupa, Anderson, Takis, and Taylor mandates a criminal background check for anyone seeking to adopt or foster a child. The background check is to be done through the Colorado Bureau of Investigation.

II. Summary of State Laws

Current through August 2009: Criminal Background Checks for Prospective Foster and Adoptive Parents. Below find a Summary of State Laws:

All States, the District of Columbia, Guam, the Northern Marianas Islands, and Puerto Rico have statutes or regulations requiring background investigations of prospective foster and adoptive parents and all adults residing in their households. In most States, the background investigation includes a check of Federal and State criminal records.[1] Most States also require checks of child abuse and neglect registries. States may deny approval of a foster care license or adoption application if any adult in the household has been convicted of certain crimes, such as sexual abuse of a minor.

Federal Requirements

State statutes requiring criminal background checks are supported by Federal legislation in title IV-E of the Social Security Act. The Adoption and Safe Families Act (ASFA) of 1997 amended title IV-E (42 U.S.C. 671(a)(20)) to require criminal record checks of any prospective foster or adoptive parent to whom foster care maintenance payments or adoption assistance payments are to be made under title IV-E. The Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) further amended title IV-E to require a fingerprint-based check of a national crime information database before any prospective foster or adoptive parent may be approved for placement of a child, whether or not foster care maintenance payments or adoption assistance payments are to be made on behalf of the child.[2]

Under title IV-E, approval of the foster or adoptive home may not be granted if either of the following criminal records is found:

- The applicant has ever been convicted of felony child abuse or neglect; spousal abuse; a crime against children (including child pornography); or a crime involving violence, including rape, sexual assault, or homicide but not including other types of physical assault or battery.
- The applicant has been convicted of a felony for physical assault, battery, or a drug-related offense within the past 5 years.[3]

The Child Abuse Prevention and Treatment Act (CAPTA), as amended in June 2003, extends the requirement for criminal background checks to all adults residing in prospective foster or adoptive family households.[4] The Adam Walsh Act (P.L. 109-248) also requires a check of State child abuse and neglect registry(s) for all adults living in prospective foster and adoptive homes. These checks must be conducted in every State in which each individual lived during the previous 5 years.

State Requirements for Prospective Foster Parents

All States require a criminal record check as part of the background investigation that is conducted when an individual applies for licensure as a foster parent. Requirements for the types of background checks and the individuals who are subject to the checks may be found in statute or regulation.[5] As of August 2009:

- State or local criminal record checks of a foster parent applicant are required in all States, the District of Columbia, and Puerto Rico.
- Federal criminal record checks also are required in approximately 38 States.[6]
- In addition to name-based checks, fingerprinting is required as part of a criminal record check in 39 States.[7]
- Child abuse and neglect record checks are required in 40 States, the District of Columbia, Guam, and Puerto Rico.[8]
- Checks of State sex offender registries are required in Illinois, Iowa, Nebraska, Oklahoma, South Carolina, and Puerto Rico.

- Criminal record checks are required for all adult members of prospective foster parents' households in 45 States and the District of Columbia.[9]
- Criminal record checks are required for all adults and older children in prospective foster parents' households in nine States.[10]
- Criminal record checks are required for all members of prospective foster parents' households regardless of age in six States.[11]

An application for foster parent licensure may be rejected when a check reveals that a prospective foster parent or other household member has been convicted of a crime that would raise concerns about the family's ability to provide a safe and stable home environment for the child.

Disqualifying Crimes

Approximately 22 States and the District of Columbia will disqualify an applicant if he or she or any household member has ever been convicted of felony child abuse or neglect, spousal abuse, a crime against children (including child pornography), or a crime of violence, including rape, sexual assault, or homicide; or has been convicted of physical assault or battery or a drug-related offense within the past 5 years.[12] In most States, other crimes, including any crime of violence, arson, kidnapping, illegal use of weapons or explosives, fraud, forgery; or property crimes such as burglary and robbery may lead to disqualification. In 31 States, an applicant may be disqualified if he or she has a registry record of substantiated or founded child abuse or neglect. (13)

State Requirements for Prospective Adoptive Parents

Nearly all States require a criminal record check as part of a background investigation for approving an adoptive placement. In most States, requirements for adoptive parents are similar to those for foster parents, although specifics may vary. An example of this is the requirement to check the State's sex offender registry: Alaska requires checks for adoptive parents but not foster parents; Iowa and Nebraska require checks for foster parents but not adoptive parents. All three States examine conviction records for sex offenses for both foster and adoptive parents.

Requirements for the types of background checks and the individuals who must be included in the checks may be found in statute or regulation. These include the following:

- State or local criminal record checks of an adoptive parent applicant are required in approximately 48 States, the District of Columbia, Guam, and Puerto Rico.[14]
- Federal criminal record checks also are required in 31 States.[15]
- Fingerprinting and name-based checks are required as part of the criminal record check in 31 states.[16]
- Child abuse and neglect record checks are required in 38 States, the District of Columbia, Guam, and Puerto Rico.[17]
- Checks of state sex offender registries are required in Alaska, Illinois, Oklahoma, South Carolina, and Puerto Rico.

- Criminal record checks are required for all adult members of prospective adoptive parents' households in approximately 32 States and the District of Columbia.[18]
- Criminal record checks are required for all adults and older children in prospective adoptive parents' households in six states.[19]
- Criminal record checks are required for all household members, regardless of age, in Idaho and Montana.

Information in criminal background histories and child abuse reports is incorporated into the adoption home study that is used to help determine whether an adoptive parent's home will be safe and appropriate for placement of a child. An unfavorable home study may be issued and the adoption petition may be denied when a check reveals that the prospective adoptive parent or another household member has been convicted of a crime that would raise concerns about that family's ability to provide a safe home for a child.

Disqualifying Crimes

Approximately 18 States and the District of Columbia will disqualify a prospective adoptive parent if he or she or any household member has ever been convicted of felony child abuse or neglect, spousal abuse, a crime against children (including child pornography), or a crime of violence, including rape, sexual assault, or homicide; or has been convicted of physical assault or battery or a drug-related offense within the past 5 years.[20] In some States, other crimes, including any crime of violence, arson, kidnapping, illegal use of weapons or explosives, fraud, forgery, or property crimes such as burglary and robbery may lead to disqualification. In approximately 23 States and Puerto Rico, a prospective adoptive parent may not be approved if he or she has a registry record of substantiated or founded child abuse or neglect.

End Notes

(Press CTRL while clicking on "back" at the end of the footnote for more details.)

[1]Background investigation refers to information collected by the child-placing agency to determine the suitability of the prospective foster or adoptive family. A criminal record check refers specifically to a check of the individual's name in State, local, or Federal law enforcement records for any history of criminal convictions.

[2] For more information on the provisions of these acts, see Information Gateway's *Major Federal Legislation Concerning Child Protection, Child Welfare, and Adoption* at *www.childwelfare.gov/pubs/otherpubs/majorfedlegis.cfm. back*

[3] See 42 U.S.C. 671(a)(20). The Adam Walsh Child Protection and Safety Act of 2006 requires all States to provide for criminal background checks as of October 1, 2008. back

[4] See 42 U.S.C. 5106a(b)(2)(A)(xxii). back

[5] Regulations (administrative law, rules, or policy) are issued by State agencies. Statutes are laws enacted by State legislatures. back

[6] The word *approximately* is used to stress the fact that States frequently amend their laws. This information is current through August 2009. Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio (if the applicant was a resident for less than 5 years), Oklahoma, Rhode Island, South Carolina, Tennessee, Utah, Washington, and West Virginia require national criminal record checks. back

[7] Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, a, Iowa, Kansas, Indiana, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington, and West Virginia. back

[8] Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Arkansas, California, Colorado, Georgia, Iowa, Kentucky, Minnesota, Montana, Nevada, New Hampshire, Utah, and Washington require checks of the central registries of any other State in which the applicant may have resided during the previous 5 years. back

[9] Only foster care applicants (and not other adults) are required to be investigated in Delaware, Florida, Rhode Island, Wisconsin, and Wyoming. back

[10] Missouri and New Hampshire require checks of all persons age 17 and older. Alaska, Connecticut, and Washington require checks of all persons age 16 and older. Indiana, Iowa, Massachusetts, and Texas require checks of all persons age 14 and older. back

[11] California, Kansas, Maryland, Montana, North Dakota, and Vermont. back

[12] Alabama, Alaska, Arkansas, Colorado, Delaware, Florida, Iowa, Kentucky, Maine, Maryland, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Washington, and Wyoming. back

[13] Alaska, Arkansas, California, Colorado, Connecticut, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. back

[14] Tennessee does not currently require a criminal background check as part of an adoption home study. In Wyoming, a criminal background check is performed only when ordered by the court. back

[15] Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio (if the applicant was a resident for less than 5 years),

Oklahoma, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Washington, and Wisconsin. back

[16] Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Native Americana, Kentucky, Louisiana, Maine, Maryland, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin.

[17] Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin. In Wyoming, the court may order a central registry check as part of a home study. Arkansas, Colorado, Florida, Georgia, Indiana, Kentucky, Louisiana, Minnesota, New Hampshire, Oklahoma, Utah, Washington, and Wisconsin require a check of the central registry of any State in which an applicant has resided during the previous 5 years. back

[18] Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington, and West Virginia. back

[19] Connecticut requires checks of all persons age 16 and older. Indiana, Massachusetts, and Texas require checks of all persons age 14 and older. Minnesota requires checks for all persons age 13 and older; Florida requires checks for all persons age 12 and older. back

[20] Arkansas, California, Colorado, Delaware, Florida, Iowa, Kansas, Kentucky, Maryland, Minnesota, Nevada, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Utah, and Washington. back

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

Chapter 9

Preparing for Court

Taking your case to court will require filling out forms and a lot more. Complete and comprehensive preparation is the essential ingredient of a winning case—whether you choose to take your case to Probate Court or District Court. Before you choose which court to take your case to, it's important you know that Probate Court favors DHS while District Court will offer you the best chance of winning your case. That's why we at the Grandparents Resource Center advise you not to get involved with Probate Court, but to take your case to District Court. However, it is your decision in which court to petition, so information about preparing for each court is included in this chapter.

Probate Court

DHS has begun taking guardianship cases through Probate Court rather than through District Court, where those cases have been litigated up until now. When a grandparent who files for custody in Probate Court, the Judge automatically orders that a DHS investigator be assigned to the case—whether there is any indication that an investigation is necessary or not. Thus, DHS is involved in the case from the very beginning of the action in Probate Court. If the case is settled in the grandparents' favor in Probate Court, DHS still retains custody of the children, and, legally, the grandparents have little say in their grandchildren's lives.

If you want to raise your grandchildren without government intervention, avoid going to Probate Court at all costs. You have the option of going to District Court instead—although DHS may not present you with that option. Probate should only be used if someone dies or for gaining guardianship of a mentally disabled adult. In case you decide to go through Probate Court or you find yourself there, we've included Probate Court procedures for you:

Colorado Probate Courts

In Colorado, all probate cases go through District Court, except in Denver. Contact Denver Probate Court for information and forms:

Denver Probate Court
1437 Bannock Street
Denver, CO 80202
(720) 865-8310

Probate court instructions and forms ("Instructions for Appointment of a Guardian – Adult") for the remainder of Colorado jurisdictions can be obtained online at:

http://www.courts.state.co.us/Forms/renderForm1.cfm?Form=311

Preparing for Probate Court

1. If you have chosen to go to Probate Court, the very first thing you must do is hire an attorney or an experience counsel who can advise you. Do not go to Probate Court without a qualified advisor.

2. Obtain the form, Petition for Probate, from the court clerk: If your jurisdiction is like the majority in the United States, it has a unified court system, meaning that all courts—criminal, civil, family, probate and so forth—are handled by one central office, where you can pick up and return the petition. However, if you're one of the few jurisdictions that doesn't have a unified court system, you can get a petition from the office of the probate clerk.

   Ask the clerk how much the fee is to file the petition, so you'll have the correct amount when you return to file the petition with the clerk.

3. Complete the petition: Typically, the petition form is easy to complete. Additionally, the court clerk can provide probate court guidelines to assist you in completing the petition.

4. Add "verification" to a probate petition: The Uniform Probate Code (and similar laws) requires a petition filed in probate court be verified. The verification should state the following:

   "The undersigned hereby verifies on her oath that the above and foregoing petition for probate is true and correct to the best of her knowledge and belief."

5. Execute the Probate Petition and the Verification in front of a notary public: The law requires that the Petition and Verification be signed in the presence of a notary public. Make at least one photocopy of the completed form for your records.

6. File the Petition with the court: Return the completed and notarized Petition with the filing fee to the clerk's office. Request that your copy of the Petition be "file stamped" for your records. The clerk will then time-stamp the document, verifying the filing date.

Preparing for District Court

Once your grandchildren have been placed with you or put into a foster home, you'll need to obtain an assortment of documents, fill them out, and file them with the court. In Colorado, the documents can be accessed online at *http://www.courts.state.co.us/Forms/Index.cfm*. These documents are listed below.

- Motion To/For: This document tells the judge what you want and can be used to open the case.

- Opening/Closing Statements: The Opening Statement begins your case in before the judge, and the Closing Statement wraps up your case before the judge.

- Motion to Enter the Case as a *Pro Se* Litigant: Notifies the judge that you want to represent yourself in court, without an attorney.

- Verified Motion for Intervention: Indicates you want to become a party to the case and intervene on your own behalf. This document must be accompanied by the one below, "Petition for Grandparent Visitation," to get visitation rights.

- Petition for Grandparent Visitation: This document, in conjunction with the previous one, "Verified Motion for Intervention," is necessary for getting visitation rights to your grandchildren. Either one alone is not effective.

- Memorandum in Support of Motion for Intervention and Grandparent Visitation (also called a Memorandum of Law): This document will list other cases similar to yours in which the court allowed other grandparents to intervene.

- Affidavit in Support of Motion for Grandparent Visitation: This document tells the story of your relationship with your grandchildren and why you want to continue that relationship.

- Motion to Endorse Witnesses: Lists all the witnesses that will offer oral or written testimony in support of your case.

- Motion to Endorse Exhibits: Lists all exhibits that will support your case.

- Motion for Late Filings: Lists other items of support that were not included in your initial filing, such as a home study or a psychological evaluation. Witnesses and exhibits not in your initial filing can also be added to this motion.

- Order Regarding Petition for Grandparent Visitation: In this order, the judge agrees that you should have visitation. You are responsible for typing this order and giving it to the judge to sign. After the judge signs it, you are responsible for sending it out to all parties.

- Order Regarding Intervention: In this order, the judge agrees to your becoming an Intervenor in the case.

Chapter 10

How to File a Grievance (Complaint) against DHS

In this chapter, we cover the four types of complaints that can be filed against DHS, according to the dispute you have with them. In brief, they are:

1. Formal Complaint against a DHS Employee
2. Complaint against a County DHS Department
3. Pre-hearing Statement to Refute Child Abuse Accusations
4. Civil suit against DHS

1. Formal Complaints: Grievance Filed against a DHS Employee

(Formal Complaint filed by parents or grandparents or both)

There are two main reasons for you to file a grievance with the state: (1) to point out that the county or caseworker has committed violations or made mistakes that harm your case and (2) to put a hold on the adoption of your grandchildren to a foster-adopt family. You can use the extra time to strengthen your case. Don't be alarmed if the state decides in favor of the county because the state is usually on the county's side. If that happens, you can take your case to civil court and sue the county. Anyway, you have a better chance in court than with the state or its agencies.

The GRC helps grandparents file a formal complaint to (1) stop the adoption of the grandchild; (2) collect all the data on the case to collectively try to prove a violation by the an employee of the county DHS department; (3) put the facts together so that a civil case can be filed against the county and the state; and (4) buy valuable time to hopefully get the grandchild back.

(**Note**: My experience has led me to the conclusion that a formal complaint should be prepared right at the beginning of the D & N process instead of waiting for the termination hearing.)

What Happens after You File a Complaint?
First, the complaint will be reviewed by a Citizen Review Board to determine whether a violation of a law or regulation may have occurred. If the evidence supports a probable violation, the complaint will be processed. The complaint may be resolved informally or investigated further. You may be asked to provide additional information. The individual you filed the complaint against will typically be provided with a copy of the complaint and all other documentation you submitted. S/he is then required to respond to the complaint.

After the initial investigation and response, one of several things may happen:

- The complaint may be dismissed because, based on available information, there is no jurisdiction or there appears to be no violation of the statute. For example, the complaint may be outside of the powers of the board, as defined by the Legislature. The board may also dismiss a case with a Confidential Letter of Concern.

- If a violation has occurred, the board may issue a Letter of Admonition, put a licensee on probation, require continuing education, issue a fine, suspend a license, or revoke a license, among other disciplinary options.

- The complaint may be tabled while more information is gathered by staff for later presentation or to await the outcome of criminal or civil litigation.

- It may be referred to the Office of Investigations for a formal in-depth investigation for later presentation to the Director.

- It may be referred directly to the Attorney General, who acts as the board's lawyer, so legal action can be taken.

Please note that a regulatory board cannot require any individual or business to refund money, correct deficiencies, or provide other personal remedies. In some cases, a legal action may be your only recourse to resolve a matter. A number of other resources are available to you as a consumer. The agencies and offices listed below may be helpful to you if you wish to seek a refund or adjustment to the charges:

- The Better Business Bureau
- Small Claims Court (an attorney is not necessary)
- Attorney General's Office of Consumer Affairs
- District Attorney's Consumer Affairs Offices
- Legal Aid Centers

How to File a Grievance: The Law
Each county, and city and county, shall establish a grievance process, including a citizen review panel, as required by Section 19-3-211, C.R.S. The following requirements apply to the grievance process:

> **Definitions**
> "Grievance" means a complaint regarding the conduct of an employee of a county department of social services in performing his or her duties under Article 3 of the Children's Code. "Grievance" does not include complaints regarding conduct by the courts, attorneys, law enforcement officials, employees of the State, foster parents or other providers of services to children, or other family members.

"Citizen Review Panel" means an advisory body appointed by the governing body of a county or city and county pursuant to Section 19-3-211, C.R.S. The members of such citizen review panel shall be appointed by the governing body without influence from the state department or the county department, be representative of the community, have demonstrable personal or professional knowledge and experience with children, and not be employees or agents of the state department or any county department. At least one member of the citizen review panel in each county and city and county shall be the parent of a minor child at the time of his or her appointment to serve on such panel.

"Complainant" means any person who was the subject of an investigation of a report of child abuse or neglect or any parent, guardian, or legal custodian of a child who is the subject of a report of child abuse or neglect and brings a grievance against a county department in accordance with the provisions of Section 19-3-211, C.R.S.

"Recommendation" means a proposed course of action that may be implemented by a County Director to resolve a grievance. These proposed actions may include reassigning a case to a different employee, requiring an employee to receive training, or administering disciplinary action to an employee, subject to applicable safeguards afforded to the employee through the personnel system under which the employee is employed.

B. Time Frames for Resolving Grievances

1. County department shall attempt to resolve all grievances informally before using the formal grievance process. Any grievance not resolved to the satisfaction of the complainant shall be forwarded to the County Director within ten working days after it has been received by the county department.

2. The County Director shall act on the grievance within fourteen calendar days after s/he receives it. If the County Director is able to resolve the grievance to the complainant's satisfaction, s/he will issue a written decision setting forth the resolution. If the County Director is unable to resolve the grievance to the complainant's satisfaction within 20 calendar days, the County Director shall immediately refer the grievance to the Citizen Review Panel, together with the County Director's proposed resolution of the grievance.

3. Within thirty calendar days after receipt of the grievance from the County Director, the Citizen Review Panel will convene a hearing on the grievance and send a written recommendation regarding the grievance, together with the basis for its recommendation, to the County Director and the complainant.

4. If the County Director agrees with the Citizen Review Panel's recommendation, s/he will issue a written decision implementing the recommendation. If the County Director or the complainant disagrees with the recommendation, the grievance shall be referred to the governing body.

5. Within thirty calendar days of receiving the grievance, the governing body shall send its written recommendation regarding the grievance, together with the basis for the recommendation, to the complainant, the County Director and to any county employee who is the subject of the grievance. The County Director shall issue a final decision including his or her plan to implement the governing body's recommendation, and shall send a copy of this report to the complainant and to the county employee who is the subject of the grievance. Within thirty calendar days after issuing this final decision, the County Director shall submit a written report to the Citizen Review Panel including a disposition of the grievance, and shall send copies of the report to the complainant and to the county employee who is the subject of the grievance.

C. Citizen Review Panel

1. Access to Information and Confidentiality
A Citizen Review Panel shall have access to child abuse or neglect reports and any information from the complete case file that the governing body believes is pertinent to the grievance, which shall be reviewed solely for the purpose of resolving grievances pursuant to the provisions of this section, except that access to identifying information concerning any person who reported child abuse or neglect shall not be provided and no participant in the conflict resolution process shall divulge or make public any confidential information contained in a report of child abuse or neglect or in other case file records to which he or she has been provided access.

The authority of the Citizen Review Panel is limited to making recommendations as defined above. Specifically, the panel may only recommend actions that will resolve a particular grievance concerning the conduct of a county department employee performing his or her duties under Article 3 of the Children's Code, and can be implemented by the County Director.

Copies of the recommendations must be sent to the Attorney General and Governor of Colorado

2. Informal Testimony
Upon the request of the complainant, the county department, or the subject of a grievance, a citizen review panel may receive testimony from experts or other Further, such testimony will be provided without an oath, will not be subject to objections from parties to the grievance process, and the witness will not be subject to cross examination. Members of the Citizen Review Panel, however, may ask questions of the witness as the panel's procedures permit.

3. Scope of Inquiry and Recommendations
The Citizen Review Panel shall only inquire into and make recommendations concerning grievances as presented by a complainant and as defined above. The Citizen Review Panel may not access records or receive testimony unless the record or testimony is directly related to a grievance properly referred to the panel. Once the panel has made a recommendation concerning a grievance, or the time for making such a recommendation has expired, the panel may not inquire further into the grievance. The panel may not inquire into the conduct of courts, attorneys, law enforcement officials, employees of the State, foster parents or other providers of services to children, or other family members, nor may the panel inquire into the conduct of a county department employee if no grievance concerning that employee or that conduct has been properly referred to the panel.

D. Annual Reports: On or before June 30 of each year, every county or city and county shall submit to the State Department an annual report regarding the resolution of grievances pursuant to this section. At a minimum, this report shall include:

1. The number of grievances received by the County Director, the number of grievances referred to the Citizen Review Panel, the number of grievances referred to the governing board, and the actual time frames for resolving grievances at each level.

2. A brief description of the disposition of the grievances, including the number that were concluded without any action taken, the number which were substantiated, the number resolved by case reassignment, the number resolved by requiring additional training, the number resolved by imposing disciplinary action against a county employee, and the number resolved in other ways.

E. Counties shall publicize:

1. The availability of the process for all dependency and neglect cases through the "Notice of Rights and Remedies" and by informing child welfare clients, guardians, and legal custodians of the process during the initial contacts with parties and periodically throughout the provision of services related to dependency and neglect cases.

2. The rights and remedies for families as specified in Section 7.200.4. 3. Any other information about the process as deemed relevant by the governing body.

2. Complaint against a County Department of Human Services

(Grievance at the county level which will be heard by the citizens review panel)

Filing a grievance against DHS at the county level brings attention to the problems you're experiencing because of an employee of that department. The outcome of your complaint will be decided by a Citizen Review Panel, which, among other functions, provides a forum for unresolved consumer concerns regarding the conduct of DHS employees involved in Dependency and Neglect (Child Welfare) cases. The Citizen Review Panel consists of no less than five and no more than nine members appointed by the Board of County Commissioners for three-year terms. No person can serve more than six consecutive years

Originally, the panel members were supposed to be laypersons only, that is, peers of the complaining families. However, in time the state substituted social workers and members of law enforcement for the lay members of the, creating a formal hierarchy in which the families were at the mercy of professional elites. Maintaining the status quo of the system became more important than discovering the truth and delivering justice. As a result, the family usually loses its case against the county.

Below, you'll find detailed information regarding on the three citizen review panels mandated by the 2007-2008 Colorado Child Abuse Prevention Treatment Act (CAPTA). The full text of CAPTA is found at *https://www.childwelfare.gov/systemwide/laws_policies/federal/index.cfm?event=federalLegislation.viewLegis&id=142*.

Citizen Review Panels

The Colorado Department of Human Services (CDHS) has designated the following three teams as the State's three Citizen Review Panels in order to meet the CAPTA requirement of June 20, 1999. The Children's Justice Task Force is authorized by statute. Both the CDHS Institutional Abuse Team and the Pueblo County Child Protection Team are authorized by the CDHS–Child Welfare Code of Colorado Regulations and Colorado Revised Statutes.

- **Colorado's Children's Justice Task Force**

As required by CAPTA, the Colorado's Children's Justice Task Force (CJTF) is comprised of individuals who represent agencies and professionals involved in children's issues. The task force is a requirement of the Children's Justice Act (CJA), which provides grants to States to improve the investigations, prosecutions and judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation and limit additional trauma to the child victim. CJTF is also charged with oversight on child fatality cases in which child abuse or neglect is suspected and specific cases of children with disabilities and serious health problems who are victims of abuse and neglect.

At quarterly meetings, the CJTF panel provides ongoing input and oversight on Colorado's progress on the Child and Family Services Review and the Performance Improvement Plan; interagency collaboration; child fatalities; abuse and neglect; domestic violence; substance abuse; and coordination and collaboration among agencies and the professionals of Child Protective Services (CPS) in investigations. This past year, members received the CDHS-CW Child and Family Services Review Newsletters with regular updates on progress toward reaching established goals.

- **Institutional Abuse and Neglect Review Team**

The Institutional Abuse Review Team meets monthly to review reports of investigations of abuse and neglect in 24-hour Out-of-Home (OOH) placement. The referrals/assessments are completed by the counties and submitted for review. The Team reviews cases of alleged incidents of abuse and neglect, including child fatalities and near-fatalities. Investigations are completed on children in CDHS licensed and certified OOH placements such as county certified foster care and kinship foster homes, Residential Child Care Facilities, Secure Residential Treatment Facilities, Child Placement Agency Foster or Group Homes, as well as the Division of Youth Corrections. The Team is comprised of volunteers who are representative of the community-at-large as well as those who possess expertise in the prevention and treatment of child abuse and neglect. The Team reviews an average of 50-55 cases per month and reviewed 781 reports from April 2010 to March 2011. The Institutional Abuse Review Team met twice a month for two months due to an exceptionally high volume of institutional abuse assessments and now are current on required reviews.

This Team was specifically designated to focus on the extent to which the child protective service system is coordinated with the foster care and the adoption programs. IART members review each referral/assessment and make recommendations regarding follow-up. These recommendations are sent to all involved state and county agencies. The State has provided assistance to the panel with training and administrative support.

- **Pueblo County Children Protection Team**

The Pueblo County Child Protection Team meets weekly to review investigated incidents of child abuse (physical and sexual), fatal child abuse, emotional abuse, neglect, abandonment and institutional abuse reported to the Pueblo County Department of Social Services. Recommendations are made as to the investigations and the proposed treatment plans. The designated citizen review panel evaluates, as per statute, the timeliness and appropriate response of the Department and also functions as both a review and resource panel; guidance and suggestions are provided to the reporting Intake or Ongoing Worker. The Team is made up of medical, mental health, educational, law enforcement and legal experts and reviews approximately 20-30 assessments per week.

3. *Pre-hearing Statement (response to an accusation of abuse)*

Parents or grandparents who have been accused of abusing their children or grandchildren must file a Pre-hearing Statement with the Administrative Law Judge if they want to oppose the charge.

First, DHS will send the parents a formal letter alleging the abuse and stating that the information will be put on the TRAILS database. Then, parents/grandparents have 90 days to file their response in the form of a Pre-hearing Statement. If you can disprove the charges at this preliminary stage, the case will be dismissed and won't interfere with any other actions you may want to take in regard to your children or grandchildren.

Points of Law to Consider

COLORADO DEPARTMENT OF PERSONNEL AND ADMINISTRATION
OFFICE OF ADMINISTRATIVE COURTS
PROCEDURAL RULES

Rule 1. Scope of Rules.

A. Except as otherwise ordered by the administrative law judge and except as excluded below, these rules apply to the conduct of all cases before the Office of Administrative Courts, Colorado Department of Personnel, whether contested or not.

B. These rules do not apply to:
   1. Juvenile and adult parole proceedings.
   2. Disputes concerning workers' compensation.
   3. Record reviews before the State Department of Human Services as described in 12 C.C.R. 2509-3
   4. Permanency hearings pursuant to Sec. 475 (5)© of the Social Security Act, 42 U.S.C. 675.

C. Rules 4-6, 8-17, 19, 21 and 26 are excluded from application to cases before the Colorado Department of Human Services, the Colorado Department of Health Care

Policy and Financing, or any County Department of Social or Human Services pertaining to appeals by applicants for or recipients of public assistance, medical assistance ("Medicaid") or food stamps and to intentional program violation proceedings.

D. Rule 4 does not apply to cases before the State Department of Human Services concerning confirmed reports of child abuse and neglect as described in 12 C.C.R. 2509-3.

E. Unless otherwise ordered by the Administrative law Judge, Rules 4 and 13 do not apply to the following cases:
   1. Campaign and political finance cases pursuant to Colo. Const., art. XXVIII, and the Fair Campaign Practices Act, Section 1-45-101 *et seq*., C.R.S.
   2. Proceedings pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq*.
   3. Cases pursuant to the Teacher Employment, Compensation, and Dismissal Act, Section 22-63-101 *et seq*., C.R.S.

F. When a statute, rule or regulation of any agency on whose behalf a hearing is being conducted by an administrative law judge is in conflict with or inconsistent with these rules, the statute, rule or regulation of the agency shall take precedence.

Rule 2. Definitions and Rules of Construction.

A. As used in these rules, the following words have the following meanings:
   1. "Agency" shall have the same meaning as set forth in Section 24-4-102(3), C.R.S.
   2. "OAC" means the Office of Administrative Courts created in the Colorado Department of Personnel and Administration by Section 24-30-1001(1), C.R.S.
   3. "Administrative law judge" means an administrative law judge appointed pursuant to Section 24-30-1003, C.R.S.
   4. "Expanded media coverage" means any photography, video or audio recording of proceedings.

B. As used in these rules the following rules of construction shall apply unless the context otherwise requires:
   1. Words in the singular shall include the plural and words in the plural shall include the singular.
   2. These rules shall be liberally construed to secure the just, speedy and inexpensive determination of all matters presented to the OAC.
   3. Appendices to these rules are considered to be part of these rules.
   4. References in agency rules to the OAC's former name, the Division of Administrative Hearings, will be treated as references to the OAC.

Rule 3. Referral and Assignment of Cases.

Where an agency is given statutory authority to appoint an administrative law judge, to have its hearings conducted by an administrative law judge or in any way to refer a matter to an administrative law judge, the agency's action, or a party's action pursuant to statute or regulation, in filing pleadings with the OAC or in requesting a setting of any hearing dates by the OAC will be considered the appointment of or referral to an administrative law judge. Administrative law judges will be assigned to cases by the Director of the OAC or by the designee of the Director.

Rule 4. Setting of Hearings or Other Proceedings.

When any party requests a hearing before the OAC, it shall be the responsibility of the agency or its counsel promptly to file and serve a notice to set a hearing on the merits, unless otherwise ordered by the administrative law judge. The agency or its counsel shall obtain a setting date from the OAC. When a statute or rule requires a more expedited setting, or at the discretion of the administrative law judge, the hearing on the merits may be set at any time. A notice to set any proceeding made by any party must be filed with the OAC and served upon all persons entitled to notice of the setting at least 5 days prior to the date of the setting. For the purpose of setting any matter, a party or a party's representative may appear at the OAC at the time established for the setting or may telephone the OAC at such time. Hearing dates will be set, whether or not the parties participate at the setting. A prompt hearing on the merits will be set within 90 days from the setting date, unless otherwise ordered.

Rule 5. Entry of Appearance and Withdrawal of Counsel.

A. No attorney shall appear in any matter before the OAC until an appearance has been entered by filing an entry of appearance or signing a pleading. An entry of appearance shall state the identity of the party for whom the appearance is made, the attorney's office address, and telephone number, facsimile number, e-mail address and the attorney's registration number. Any out-of-state attorney shall comply with C.R.C.P. 221.1.

B. An attorney may withdraw from a case only upon order of the administrative law judge. Approval to withdraw shall not be granted until the attorney seeking to withdraw has made reasonable efforts to give actual notice to the client that:

1. the attorney wishes to withdraw;
2. the client has the burden of keeping the OAC informed of the address where notices, pleadings, or other papers may be served;
3. the client has the obligation to prepare for hearing or to hire other counsel to prepare for hearing;
4. if the client fails or refuses to meet these burdens, the client may suffer an adverse determination in the hearing;
5. the holding of further proceedings will not be affected by the withdrawal of counsel. The notice shall set forth the dates set for any further proceedings;
6. pleadings and papers in the case may be served upon the client at the client's last known address; and

7. the client has the right to object within 15 days of the date of notice.
The above notification must be in writing and filed with the administrative law judge along with a statement showing the manner in which such notification was given to the client and setting forth the client's last known address and telephone number.

C. The client and opposing parties shall have 15 days from the date of the notice to object to a withdrawal. After withdrawal, the client shall be notified by the withdrawing attorney of the effective date of the withdrawal, and all pleadings, notices or other papers may be served on the party directly by mail at the last known address of the party until new counsel enters an appearance.

D. Rules 5(B) and 5(C) do not apply to a substitution of counsel if new counsel enters an appearance at the same time as prior counsel withdraws.

Rule 6. <u>Expanded Media Coverage.</u>

Expanded media coverage of cases before the OAC may be permitted at the discretion of the administrative law judge, under such conditions as the administrative law judge may designate. In determining whether expanded media coverage should be permitted, the administrative law judge shall consider the following factors:

A. Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair hearing;

B. Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the proceedings;

C. Whether expanded media coverage would create adverse effects that would be greater than those caused by traditional media coverage.

Rule 7. <u>Consolidation.</u>

A party seeking consolidation of two or more cases shall file a motion to consolidate in each case sought to be consolidated. If consolidation is ordered, and unless otherwise ordered by the ALJ, all subsequent filings shall be in the case first filed and all previous filings related to the consolidated cases shall be placed together under that case number. Consolidation may be ordered on an administrative law judge's own motion.

Rule 8. <u>Default Procedures</u>

A. A person who receives notice of an agency adjudicatory hearing is required to file a written answer within 30 days after the service or mailing of notice of the proceeding. If a person receiving such notice fails to file an answer, a judge may enter a default against that person. Section 24-4-105(2)(b), C.R.S.

B. A judge will not grant a motion for entry of a default under this statutory provision unless the following requirements are met:
   1. The motion for entry of a default must be served upon all parties to the proceeding, including the person against whom a default is sought.
   2. The motion shall be accompanied by an affidavit establishing that both the notice of the proceeding and the motion for entry of default have been personally served upon the person against whom a default is sought, or have been mailed by first class mail to the last address furnished to the agency by the person against whom the default is sought.
   3. Any motion for entry of default requesting a fine or civil penalty shall set forth the legal authority for the claim and any applicable calculation thereof.

Rule 9. Discovery.

A. To the extent practicable, C.R.C.P. 26 through 37 and 121, Section 1-12 and the duty to confer at Section 1-15(8) apply to proceedings within the scope of these rules, except to the extent that they provide for or relate to required disclosures, or the time when discovery can be initiated. Discovery may be conducted by any party without authorization of the administrative law judge.

B. C.R.C.P. 16 does not apply to proceedings before the OAC.

C. In addition to the requirements of C.R.C.P. 36, a request for admission shall explicitly advise the party from whom an admission is requested that failure to respond to the request within 30 days after service may result in all of the matters stated in the request being deemed established unless the administrative law judge on motion permits withdrawal or amendment of the admission. The failure to comply with this rule may result in the matters contained in the request being deemed denied.

D. Discovery requests and responses should not be filed with the OAC, except to the extent necessary for the judge to rule upon motions involving discovery disputes.

E. Either party may move to modify discovery deadlines and limitations pursuant to Rule 13.

Rule 10. Determination of Motions.

A. Any motion involving a contested issue of law shall be supported by a recitation of legal authority. References to agency rules shall include the appropriate Colorado Code of Regulations citation. References to any superceded rules shall be accompanied by a copy of such rules. A responding party shall have 10 days from service or such lesser or greater time as the administrative law judge may allow in which to file and serve a responsive brief. Reply briefs will be permitted only upon order of the administrative law judge. If so ordered, the reply brief must be filed within 5 days of the order of the administrative law judge.

B. If facts not appearing of record before the administrative law judge may are to be considered in disposition of the motion, the parties may file affidavits at the time of filing the motion or responsive or reply brief. Copies of such affidavits and any documentary evidence used in connection with the motion shall be served on all other parties.

C. If the moving party fails to incorporate legal authority into the motion and fails to file a separate brief with the motion, the administrative law judge may deem the motion abandoned and may enter an order denying the motion. Failure of the responding party to file a responsive brief may be considered a confession of the motion.

D. If possible, motions will be determined upon the written motion and briefs submitted. The administrative law judge may order oral argument or evidentiary hearing on the administrative law judge's own motion or on request of a party. If any party fails to appear at an oral argument or hearing without prior showing of good cause for non-appearance, the administrative law judge may proceed to hear and rule on the motion.

E. An expedited hearing on any motion may be held at the instance of the administrative law judge. If any party requests that a motion be determined immediately with or without a hearing, or that a hearing be held on a motion in advance of a previously set motions date, that party shall:

1. Inform the administrative law judge in writing of said request.
2. Contact all other parties, determine their position on the motion, and indicate on the face of the motion whether other parties oppose the motion and whether they will request a hearing on the motion.
3. If a hearing is desired by any party and authorized by the administrative law judge the moving party, upon advance notice to the administrative law judge or the docket clerk, shall notice in all other parties to set the matter directly with the administrative law judge on an expedited basis.

F. Parties shall comply with C.R.C.P. 12 unless otherwise ordered by the administrative law judge for good cause shown.

Rule 11. <u>Place of Hearing</u>.

All cases within the scope of these rules will be heard at the OAC in Denver. The administrative law judge for good cause shown may change the place of hearing when the convenience of witnesses and parties and the ends of justice will be promoted by the change.

Rule 12. <u>Mediation Conferences.</u>

At any time after a proceeding is initiated, any party may file with the administrative law judge and serve upon all other parties a request for a mediation conference. If the request is granted, the conference shall be conducted by any available administrative law judge other than the assigned administrative law judge. All of the discussions at the mediation conference shall remain confidential and shall not be disclosed to the administrative law judge assigned to the case. Statements at the mediation conference shall not be admissible evidence for any purpose in any other proceeding. Participation in a mediation conference shall constitute an agreement by all parties and attorneys not to call the administrative law judge conducting the mediation as a witness to the matters discussed in the mediation conference in any subsequent proceeding. An administrative law judge may require a mediation conference on the administrative law judge's own motion.

Rule 13. Prehearing Procedures, Statements and Conferences.

A. Unless otherwise ordered by the administrative law judge, each party shall file with the administrative law judge and serve on each other party a prehearing statement in substantial compliance with the form as outlined in Appendix A to these rules. Prehearing statements shall be filed and served no later than 20 days prior to the date set for hearing or such other date established by the administrative law judge. Exhibits shall not be filed with prehearing statements, unless ordered by the administrative law judge. Exhibits shall be exchanged between the parties by the date on which prehearing statements are to be filed and served or on such other date as ordered by the administrative law judge.

1. The authenticity of exhibits, statutes, ordinances, regulations or standards set forth in the prehearing statement shall be admitted unless objected to in a written objection filed with the administrative law judge and served on other parties no later than 10 days prior to hearing.
2. The information provided in a prehearing statement shall be binding on each party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement and then only if it would not prejudice other parties or necessitate a delay of the hearing. An agency shall use numbers to identify exhibits and any opposing party shall use letters.
3. In the event of noncompliance with this rule, the administrative law judge may impose appropriate sanctions including, but not limited to, the striking of witnesses, exhibits, claims and defenses.

B. Prehearing conferences may be held at the discretion of the administrative law judge, upon request by any party or upon the administrative law judge's own motion. Any party may request a prehearing conference to address issues such as discovery, motions deadlines, scheduling orders and status conferences.

C. If a prehearing conference is held and a prehearing order is entered, the prehearing order will control the course of the hearing.

Rule 14. Rules of Evidence.

To the extent practicable, the Colorado Rules of Evidence apply in all hearings conducted by the OAC. Unless the context requires otherwise, whenever the word "court", "judge" or "jury" appears in the Colorado Rules of Evidence such word shall be construed to mean an administrative law judge. An administrative law judge has the discretion to admit evidence not admissible under such rules, as permitted by Section 24-4-105(7), C.R.S. or other law.

Rule 15. Rules of Civil Procedure.

To the extent practicable, and unless inconsistent with these rules, the Colorado Rules of Civil Procedure apply to matters before the OAC. Unless the context otherwise requires, whenever the word "court" appears in a rule of civil procedure, that word shall be construed to mean an administrative law judge. The following do not apply:

A. C.R.C.P. 16.

B. The filing deadlines for motions and cross motions for summary judgment set forth in C.R.C.P. 56©.

Rule 16. Files and Hearings Open to the Public.

All files shall be open to public inspection, unless otherwise prohibited by law, regulation or court order, or when upon motion and order the agency or administrative law judge otherwise has the authority or discretion to prohibit public inspection. All hearings shall be open to the public unless prohibited by law, regulation or court order or closed by order of the administrative law judge or the agency.

Rule 17. Motions for Continuance.

A. Continuances shall be granted only upon a showing of good cause. Motions for continuance must be filed in a timely manner. Stipulations for a continuance shall not be effective unless and until approved by the administrative law judge.

B. Good cause may include but is not limited to: death or incapacitation of a party or an attorney for a party; a court order staying proceedings or otherwise necessitating a continuance; entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing; a change in the parties or pleadings sufficiently significant to require a postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or agreement of the parties to a settlement of the case which has been or will likely be approved by the final decision maker.

C. Good cause normally will not include the following: unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case; unavailability of a necessary witness, if the witness's testimony can be taken by telephone or by deposition; or failure of an attorney or a party timely to prepare for the hearing.

Rule 18. Subpoenas.

A. Upon oral or written request of any party or of counsel for any party, an administrative law judge shall sign a subpoena or subpoena *duces tecum* requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing. Unless otherwise provided by agency statute, rule or regulation, practice before the OAC regarding subpoenas shall be governed by C.R.C.P. 45.

B. Staff persons of the OAC are authorized to use a stamp signature or to otherwise duplicate the signature of an administrative law judge on subpoenas completed by the parties. However, no other party or person may duplicate the signature of an administrative law judge. Subpoenas issued in contravention of this rule are invalid and may subject the party using them to sanctions.

C. Any attorney representing a party to a proceeding before the OAC may issue a subpoena or subpoena *duces tecum* requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing.

Rule 19. Settlements.

Parties shall promptly notify the administrative law judge of all settlements, stipulations, agency orders or any other action eliminating the need for a hearing. An agency shall file a motion to dismiss when a case has settled.

Rule 20. Ex Parte Communications.

With the exception of scheduling or other purely administrative matters, and with the exception of mediation processes, a party or counsel for a party shall not initiate any communication with an administrative law judge pertaining to a matter before the OAC unless prior consent of all other parties or their counsel has been obtained. Copies of all pleadings or correspondence filed with the OAC or directed to an administrative law judge by any party shall be served upon all other parties or their counsel.

Rule 21. Procedure in Summary Suspension Matters.

A. All deadlines and procedures set forth herein or in the Colorado Rules of Civil Procedure may be modified as necessary to afford the right to a prompt hearing.

B. In all matters involving a summary suspension, the agency shall immediately file a charging document and a Notice to Set the hearing on the merits with the OAC. The Notice to Set shall contain a setting date obtained from the OAC that provides advance notice to the opposing party at least 5 days but no more than 10 days from the Notice to Set.

C. The Notice to Set shall provide the telephone number and address of the OAC. The Notice to Set shall prominently inform the opposing party of its right to an expedited hearing and of the option to request a prehearing conference before an administrative law judge.

D. Either party may request in writing a prehearing conference before an administrative law judge in a summary suspension case. The purpose of the prehearing conference shall be to arrange for expedited disclosures, discovery schedules, motion dates, and further prehearing conferences as necessary.

E. In any case in which hearing is set 45 days or fewer from the date of the setting, the OAC will set a prehearing conference.

Rule 22. Computation and Modification of Time.

In computing any period of time prescribed or allowed by these rules, the provisions of C.R.C.P. 6(a) and 6© shall apply, except that the reference to 11 days in C.R.C.P. 6(a) is shortened to 7 days. The time periods of these rules may be modified at the discretion of the administrative law judge.

Rule 23. Filing of Pleadings and Other Papers.

A. The originals of all pleadings and other papers filed in a case before the OAC shall be filed with the OAC. No additional copies shall be filed except to provide a date stamped copy for a party's records. Date stamped copies will not be mailed absent a self-addressed stamped envelope. Copies of pleadings and other papers in addition to the original may be discarded and not made part of the OAC file.

B. After the OAC has assigned a case number to a matter, all pleadings and papers filed with the OAC shall contain that case number.

Rule 24. Filing of Pleadings and Other Papers by Facsimile Copy.

A. The facsimile capabilities of the OAC are limited. Parties are encouraged to avoid filing pleadings by facsimile copy, except when reasonably required by time constraints.

B. Subject to the limitations of Rule 24(C), facsimile copies may be filed with the OAC in lieu of the original document. If a facsimile copy is filed in lieu of the original document, the attorney or party filing the facsimile copy shall retain the original document for production to the administrative law judge, if requested. If an original or copy of a pleading in addition to the facsimile filing is filed with the OAC the additional copy or original may be discarded and not made part of the OAC file.

C. Pleadings or other documents in excess of 10 pages (excluding the cover sheet) may not be filed by facsimile copy in lieu of the original document unless otherwise ordered by the administrative law judge.

D. Facsimile copies shall be accompanied by a cover sheet that states the title of the document, case number, number of pages, identity and voice telephone number of the transmitter and any instructions.

Rule 25. Service of Pleadings and Other Papers.

A. Service of pleadings or other papers on a party or on an attorney representing a party may be made by hand delivery, by mail to the address given in the pleadings, by facsimile transmission to a facsimile number given in the pleadings, or to the party's last known address, or with agreement of the parties, by e-mail. When a party is represented by an attorney, service shall be made on the attorney.

B. Pleadings or other papers sent to the OAC must contain a certificate of service attesting to service on the opposing party and in the case of service by mail providing the address where pleadings or other papers were served.

C. Attorneys and parties not represented by attorneys must inform the OAC and all other parties of their current address and of any change of address during the course of the proceedings.

Rule 26. Testimony by Telephone or Other Electronic Means.

A. Upon motion of any party the administrative law judge may conduct all or part of a hearing by telephone or videophone. The motion must be filed sufficiently prior to hearing to permit a response and ruling pursuant to OAC Rule 10.

B. All arrangements for the taking of testimony by telephone or videophone shall be made by the party requesting such testimony, who shall be responsible for all costs associated with the testimony.

C. Exhibits and other documents that will be used or referred to during all or part of a hearing conducted by telephone or other electronic means must be filed with the OAC and, unless previously supplied, provided to all other parties at least two days before the hearing. Exhibits necessary to the testimony of a witness must be provided to the witness prior to the witness's testimony.

Rule 27. Court Reporters.

A. The OAC does not supply court reporters. If any party wishes to have all or a portion of a proceeding transcribed by a court reporter, that party may make private arrangements to do so at that party's own expense. The recording of any proceeding made electronically by the OAC shall be the official record.

B. A request to the OAC for a recording must be in writing and must contain the case number and the date and time of the hearing or conference.

APPENDIX A

OUTLINE FOR PREHEARING STATEMENT

The following shall be included in each party's Prehearing Statement:

I. **PENDING MOTIONS**. A list of all outstanding motions that have not been ruled upon by the administrative law judge.

II. **STATEMENT OF CLAIMS AND DEFENSES**. A concise statement of all claims or defenses asserted by all parties, together with all matters in mitigation or aggravation.

III. **UNDISPUTED FACTS**. A concise statement of all facts that which the party contends are or should be undisputed.

IV. **DISPUTED ISSUES OF FACT**. A concise statement of the material facts that the party claims or concedes to be in dispute.

V. **POINTS OF LAW**. A concise statement of all points of law that are to be relied upon or that may be in controversy, citing pertinent statutes, regulations, cases and other authority. Extended legal argument is not required but may be reserved for a trial brief at the option of the party.

VI. **WITNESSES**. The name, address and telephone number of any witness or party whom the party may call at hearing, together with a detailed statement of the content of that person's testimony.

VII. **EXPERTS**. The name, address and brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.

VIII. **EXHIBITS**. A description of any physical or documentary evidence to be offered into evidence at the hearing. Exhibits should be identified as follows: respondents using letters and opposing parties using numbers.

IX. **STIPULATIONS**. A listing of all stipulations of fact or law reached, as well as a listing of any additional stipulations requested or offered to facilitate disposition of the case.

X. **TRIAL EFFICIENCIES**. An estimate of the amount of time required to try the case.

4. *Civil Suit against DHS*

If you've filed a grievance against DHS, as discussed in the previous three sections, and you've received no satisfaction, you have "standing" to file a civil lawsuit against DHS in a court of law. The following section 8.3: "How to File a Civil Court Lawsuit in Colorado" from the *Bar Media Manual,* will walk you through this process.

How to File a Civil Court Lawsuit in Colorado

Chapter 8: "Overview of Civil Cases."
8.3 Starting a Civil Case: The Complaint

A general civil case usually begins with the filing of a Complaint. The person or entity that files the Complaint is usually called the Plaintiff. The other person or entity in the dispute is usually called the Defendant. The Plaintiff generally explains in the Complaint the factual background of the dispute, alleges that the Defendant has done something unlawful or legally objectionable (this kind of allegation is often called a "Cause of Action" or a "Claim for Relief"), and ends by asking the Court to order the Defendant to do something or to provide some other kind of relief. Although it used to be common to ask for a specific amount of monetary damages, Colorado's state procedural rules, in fact, now prohibit a plaintiff from requesting any specific amount of damages. The analogous federal rule does not contain such a prohibition.

In preparing a Complaint, the Plaintiff has to first decide in what court it should be filed. Sometimes there will only be one appropriate court, but sometimes there will be several from which to choose. The first choice is between state court and federal court. Some claims (such as some claims for violation of federal securities laws) can be filed only in federal court because they are based on some federal law that says that such claims are the exclusive province of the federal court. Some claims (employment discrimination claims, for example) can be filed in either federal or state court. Some claims can usually be filed only in state court. When a choice is possible, different attorneys will have different reasons for preferring either state court or federal court. In some instances, if the defendant being sued is a large and prominent local company, a plaintiff's attorney may fear that company would have a hometown advantage in the state court because it would be tried in the county where its headquarters is located and

prefer to file the case in federal court. For instance, a plaintiff suing the University of Colorado may be nervous about having that case decided by a Boulder County judge or jury. Sometimes timing will be a concern, like during the 1990's when it took significantly longer for most civil cases to get resolved in the Colorado Federal District Court than they would in most of the State District Courts across Colorado. Some attorneys will prefer the state judges in a particular state judicial district while other attorneys may feel more confident with the federal judges.

If the Plaintiff decides to file the Complaint in state court, the next decision is which type of state court and in which judicial district. The decision about which state court requires consideration of which court has appropriate jurisdiction (the legal power and authority to decide the case) over that particular kind of case. If not very much money is at stake, the Plaintiff could file the Complaint in Small Claims Court, which has jurisdiction over cases in which damages of less than $5,000 are being sought. For slightly more serious cases, the Plaintiff could instead file in County Court, which has jurisdiction over cases in which damages of up to $15,000 are being sought. Regardless of the amount of damages being sought, the Plaintiff can always file in District Court, but only the District Court has jurisdiction to award more than $15,000 in damages and issue an injunction (a court order requiring a defendant to do something other than pay money damages or to stop doing something). In some cases, county courts may issue restraining orders.

In addition to having jurisdiction over the particular case (this is often called "subject-matter jurisdiction"), the court must also have jurisdiction over the particular defendant ("personal jurisdiction"). Defendants who are individual residents of Colorado or business entities formed or headquartered in Colorado will be subject to the jurisdiction of Colorado courts. Alternatively, if an out-of-state individual commits a tort while in Colorado (as by negligently driving through the state), or if an out-of-state business markets and sells a dangerous product within the state, there will also generally be a sufficient jurisdictional basis for the Colorado courts over a claim for injuries resulting from those acts. The question of personal jurisdiction requires consideration of a statute adopted by Colorado called the "long-arm statute" (C.R.S. 3-1-124), a statute which represents the Legislature's effort ’o extend the "long arm” of Colorado courts' jurisdiction over non-Colorado defendants to the fullest extent permitted by the United States Constitution.

A related decision for a plaintiff involves determining the particular location of the state court in which to file the complaint. This decision, called the selection of venue, is governed by Rule 98 of the Colorado Rules of Civil Procedure. A particular court will be deemed the proper venue of a case, for example, if it is located within the county where the defendant lives, or where the plaintiff lives if the defendant is served there with the complaint, or where the alleged tort or breach of contract occurred.

A piece of paper filed in a lawsuit with the court is generally referred to as a "pleading." A Complaint is but one type of pleading. Beyond a Complaint and the responsive "answer" filed by a defendant, pleadings often take the form of a motion, in which one (or more) of the parties asks the court to do something in that case. Most of the time, the other party (or parties) then has 15 days to file a "response" to that motion, and the "moving" party then often has the option of filing a final "reply" to that response. Once all those pleadings have been filed, the issue is considered "ripe" for decision. The court may make its decision only on the basis of the written pleadings, or may instead decide that it is preferable to schedule a hearing at which the parties and their attorneys can present oral arguments and, in some instances, witnesses and exhibits to flesh out or support their positions.

Whatever kind of pleading is being filed, it usually has a distinct look, because of statewide rules that govern its form and format. Along with the name of the court in which it is being filed, the attorneys' names, and the official case number assigned by the court, the top of the pleading will always list the parties' names. This listing is sometimes referred to as the case "caption." For instance, a car-accident case caption may be "Smith vs. Jones"; a divorce case caption may be "Smith v. Smith"; an employment-termination case caption may be "Smith v. IBM, Inc." These case captions and the corresponding case numbers are the way that the courts and the parties' attorneys refer to and keep track of particular cases.

NOTE: Although we have included section 8.3 from the *Bar Media Manual, the following* Table of Contents of Chapter 8 may be helpful to you in litigating your case.

Chapter 11

Adoption

This chapter contains almost everything you need to know about adopting in Colorado when DHS is involved. If you're trying to adopt in another state, the information in this chapter is also relevant to your case. I've found that the legal process is the same, or about the same, in most states. However, the forms are different.

In this chapter, I use the laws of Colorado to give you an idea of how the legal process proceeds. If your case is not based in Colorado, you'll have to research the legal process and forms in the appropriate state to figure out how to adopt your grandchildren. If you find that you need assistance in locating information and/or guidance in adopting your grandchildren, you can look for organizations like Legal Aid or attorneys who offer low-cost or free legal advice in your state. You can also contact the GRC office and, *for a reasonable hourly fee,* we'll help you find the resources in your state that can assist you in pursuing your case.

General Information about Adoption in Colorado

Any person aged 21 or older, including foster parents, may petition to adopt. Married couples must file jointly, unless the couple is legally separated or one spouse is the child's natural parent. DHS does not currently file joint petitions from gay or lesbian couples, but they may adopt individually.

The adoptee must be under age 18 (with some exceptions), living in Colorado, and legally available for adoption. If the child is age 12 or older, he or she must consent to the adoption. For the purposes of this book*, the grandchild must state that he or she wants to be adopted by his or her grandparents*.

Every state allows adoption of children who have been abandoned or children in foster care. However, in order to succeed at adopting a child, the court must find that:

1. the child is available for adoption;
2. the adopting parents are suitable and of good moral character;
3. the criminal records check does not disqualify the adopting parents;
4. the child is a proper subject for adoption in the home; and
5. the child's best interests will be served by the adoption.

The following section is divided according to the degree of DHS's involvement, whether parental rights have already been or will soon be terminated, and according to where the child is living, regardless of whether the parents are the targets of a D&N charge.

How to Adopt Your Grandchildren When DHS Is Involved

I. When parental rights have been terminated

According to Colorado Law (§19-5-201, C.R.S., et. Seq), potential adoptive parents may file for adoption when an order terminating parental rights becomes final and the child has been legally freed for adoption. Grandparents are then considered the same as anyone else who wants to adopt a child and can petition for adoption of their grandchild. If the parents don't appeal, the child is free 45 days after entry of the written decree of termination of parental rights. However, if an appeal is filed, the child is not free until a final mandate is issued by the appellate court. For this reason, it is highly recommended that the *parents* file an appeal, which gives the *grandparents* time to adopt or file a formal complaint with the state of Colorado. In cases of relinquishment, the child is not free until 90 days after an uncontested relinquishment order.

A Petition for Adoption (Form JDF 505 at *http://www.courts.state.co.us/Forms/ Forms_List.cfm?Form_Type_ID=90*) must be filed within 30 days of an adoptive placement, but the court may waive this requirement for reasonable cause or excusable neglect. Adoption petitions must be accompanied by a home study report, and a criminal background check of the adopting parents must be completed. The court may waive a home study if the adopting parent is the child's grandparent, aunt, uncle, brother, or sister. An adoption hearing may be held no sooner than six months after the child's placement date. All adoption hearings are closed to the public.

II. When grandchildren are already living with their grandparents prior to D&N charge against the parents

If the child is living with his or her grandparents and a Dependency and Neglect (D&N) charge against the parents is imminent, before they are charged, the parents should draw up, sign, and have notarized an affidavit stating that they want the child to remain with the grandparents if they are unable to care for them.

III. When the child has been abandoned

DHS would not be involved in this case unless there's a criminal charge against the parents that doesn't involve child abuse. If that is the case, the grandparents have six months to take custody of the child, or DHS will if the parent is in prison. If the parent is in prison for more than six years, parental rights will be terminated by DHS and the child will be put up for adoption.

IV. When the child is in foster care

If the child has been placed in foster care, the State has legal guardianship of him or her. Potential adoptive parents must:

- complete and file a Petition for Adoption Form JDF 505 (*http://www.courts.state.co.us/Forms/ Forms_List.cfm?Form_Type_ID=90*), and

- attach the completed ***Child Welfare Forms*** listed at *http://www.colorado.gov/cs/Satellite/CDHS-ChildYouthFam/CBON/1251588037674.*

DHS Adoption Procedures

When DHS has determined that a child is eligible for adoption, it must adhere to the following legal procedures, which fall under Title 19 of the Colorado Children's Code. Grandparents who want to adopt their grandchild will have to follow these proceedings closely up until the time of termination and adoption.

Title 19 (Colorado Children's Code) C.R.S. Sections

- 19-1-115(4)©, The court shall review any decree or, if there is no objection by any party to the action, the court may, in its discretion, require an administrative review by the state department of human services of any decree entered in accordance with this subsection (4) each six months after the initial review provided in paragraph (a) of this subsection (4). In the event that an administrative review is ordered, all counsel of record shall be notified and may appear at said review. Periodic reviews shall include the determinations and projections required in section 19-3-702(6).

- 19-1-103(5), Definition of Administrative Review

- 19-1-115(4)©, Legal Custody-guardianship-placement out of the home. The court or at its discretion, may require an administrative review each six months after the initial review.

- 19-2-906.5(2)(a), Orders-community placement-reasonable efforts required-reviews. Every six months after the sentencing hearing, the court may require an administrative review. At the review the reviewing entity shall determine...best interests, safety, compliance, progress, date projected for permanency, appropriateness of out of state placement when applicable.

- 19-2-906.5(3)(a)(c), Orders-community placement-reasonable efforts required-reviews. If the juvenile is placed in a community placement for a period of 12 months and every 12 months thereafter, the court may require the department of human services to conduct a permanency review. The entity conducting the permanency review shall make determinations re: best interests, safety, reasonable efforts, need for continued placement, progress, date for permanency, and appropriateness of out of state placement when applicable.

- 19-3-502(3)©, Petition form and content-limitations on claims in dependency or neglect actions. The review of any decree of placement of a child subsequent to the three month review required by section 19-1-115(4)(a) may be conducted as an administrative review.

- 19-3-701(2)©, Petition for review of need for placement. All petitions filed pursuant to this section shall include the following statement: "If the child is placed out of the home for a period of twelve months or longer, the court shall hold a permanency hearing within said twelve months to determine the future status of the child. The review of any decree of placement of a child subsequent to the three month review required by section 19-1-115(4)(a) may be conducted as an administrative review by the department of human

services. If you are a party to this action, you have the right to object to an administrative review, and, if you object, the review shall be conducted by the court."

- 19-3-702(6)(a), Permanency hearing-periodic reviews. Periodic reviews conducted by the court or, if there is no objection by any party to the action, in the court's discretion, through an administrative review conducted by the state department of human services, shall determine whether the child's safety is protected in the placement, whether reasonable efforts have been made to find a safe and permanent placement, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care and shall project a likely date by which the child may be returned to and safely maintained at the home, placed for adoption, legal guardianship, or guardianship of the person, or placed in another permanent safe placement setting.

- 19-3-702(8)(a), Permanency hearing-periodic reviews. Subsequent reviews, in the court's discretion through an administrative review shall be conducted every six months. In the event that an administrative review is ordered, all counsel of record shall be notified and may appear at said review. The entity conducting the review shall make the same determinations as are required at a periodic review conducted pursuant to paragraph (a) of subsection (6) of this section.

Points of Law to Consider

Relatives Who May Adopt
Citation: Rev. Stat. § 19-1-103(71.5)
A kinship adoption refers to the adoption of a child by a grandparent, brother, sister, half-sibling, aunt, uncle, or first cousin, and the spouses of such relatives.

Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children
To better understand this issue and to view it across States, see the *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children: Summary of State Laws* publication.

What Are Reasonable Efforts
Citation: Rev. Stat. § 19-1-103(89)
''Reasonable efforts'' mean the exercise of diligence and care for children who are in out-of-home placement or are at imminent risk of out-of-home placement. The term includes supportive and rehabilitative services that are required to prevent unnecessary placement of a child outside of a child's home or to foster the safe reunification of a child with a child's family, as described in § 19-3-208.

When Reasonable Efforts Are Required
Citation: Rev. Stat. § 19-1-115
Reasonable efforts must be made:

To prevent or eliminate the need to remove the child from the home
To reunite the child and the family if legal custody has been awarded to the department

When Reasonable Efforts Are NOT Required
Citation: Rev. Stat. § 19-1-115
Reasonable efforts are not required to prevent the child's removal from the home or to reunify the child and the family in the following circumstances:

The court finds that the parent has subjected the child to aggravated circumstances, as described in § 19-3-604(1).
The parental rights of the parent with respect to a sibling of the child have been involuntarily terminated, unless the prior sibling termination resulted from a parent delivering a child to a firefighter or a hospital staff member pursuant to § 19-3-304.5.
The court finds that the parent has been convicted of murder or voluntary manslaughter of another child of the parent; aiding, abetting, or attempting to commit such crimes; or a felony assault that resulted in serious bodily injury to the child or to another child of the parent.

Access to Original Birth Certificate
Citation: Rev. Stat. § 19-5-305
The contact preference form provided by the State registrar shall include an option for the birth parent to authorize the release of the original birth certificate. An authorization to release may be exercised and submitted to the State registrar at any time after 1-1-2006.

Where the information can be located:

Colorado Voluntary Adoption Registry, Colorado Department of Public Health
Colorado Confidential Intermediary Services
Child placement agency involved in the adoption
Collection of Family Information about Adopted Persons, Birth Parents, and Adoptive Parents

To better understand this issue and to view it across States, see the *Collection of Family Information about Adopted Persons, Birth Parents, and Adoptive Parents: Summary of State Laws* publication.

Agency or Person Gathering Information or Preparing Report
Citation: Rev. Stat. § 19-5-207
A written home research must be completed by:

The county department of social services
A child-placing agency
A qualified individual

Contents of Report about Person to be Adopted
Citation: Rev. Stat. § 19-5-207
The prospective adoptive parents must be provided the following information:

- The child's physical and mental condition
- The child's family background, including names of parents if obtainable
- The child's disposition toward the adoption
- The length of time the child has been in the custody of the petitioner

Contents of Report about Birth Parents
Citation: Rev. Stat. § 19-5-207
The prospective adoptive parents must be provided the following information:

- The birth parents' family background, including names and other identifying information, if obtainable
- The reasons for terminating the birth parents' parental rights

Contents of Report about Adoptive Parents
Citation: Rev. Stat. § 19-5-207

The home research shall address the adoptive parents':

- Physical and mental health
- Emotional stability
- Moral integrity
- Ability to promote the welfare of the adopted person
- Suitability of the match with the child(ren)
- Criminal background history
- Child abuse and neglect and spousal abuse history
- History of drug convictions

Consent to Adoption
To better understand this issue and to view it across States, see the *Consent to Adoption: Summary of State Laws* publication.

Who Must Consent to an Adoption
Citation: Rev. Stat. § 19-5-207
When a child is placed for adoption by the county department of social services, a licensed child placement agency, or an individual, such department, agency, or individual shall file with the petition to adopt its written and verified consent to such adoption.

Age When Consent of Adoptee is Considered or Required
Citation: Rev. Stat. §§ 19-5-103; 19-5-203
Written consent to any proposed adoption shall be obtained from the person to be adopted if such person is age 12 or older. Children over 12 must undergo counseling.

When Parental Consent is not Needed
Citation: Rev. Stat. §§ 19-5-203; 19-3-604
Consent is not required when:

The parent's rights have been terminated due to the parent's unfitness, as outlined in § 19-3-604.

The parent has failed to provide support or has abandoned the child for 1 year.

When Consent Can Be Executed
Citation: Rev. Stat. §§ 19-5-104; 19-5-203
Consent may be executed any time after the birth of the child.

Court Jurisdiction and Venue for Adoption Petitions
To better understand this issue and to view it across States, see the *Court Jurisdiction and Venue for Adoption Petitions: Summary of State Laws* publication.

Jurisdiction
Citation: Rev. Stat. § 19-1-104(1)
The juvenile court shall have exclusive original jurisdiction in proceedings for the adoption of a person of any age.

Venue
Citation: Rev. Stat.§ 19-5-204
A petition for adoption shall be filed in the county of residence of the petitioner or in the county in which the placement agency is located.

Birth Parents in Relation to Adopted Person
Citation: Rev. Stat. § 15-11-103(6)-(7)
A birth child may inherit from a natural parent if there is no surviving heir under § 15-11-103(1)-(5), and if the birth child files a claim for inheritance with the court having jurisdiction within 90 days of the parent's death. For purposes of this subsection, the term ''birth child'' means a child who was born to, but adopted away from, his or her natural parent.

If the birth child dies without a surviving heir, the birth parents have 90 days to file a claim for inheritance.

Adoptive Parents in Relation to Adopted Person
Citation: Rev. Stat. § 15-11-114
For purposes of intestate succession by, through, or from a person, an adopted individual is the child of his or her adopting parent or parents and not of his or her birth parents, except for inheritance rights as specified in § 15-11-103(6) and (7).

Accounting of Expenses Required by Court
Citation: Rev. Stat. § 19-5-208(4)
The adoption petition shall be accompanied by a standardized affidavit disclosing all fees, costs, or expenses charged or to be charged by any person or agency in connection with the adoption.

Who May Adopt, Be Adopted, or Place a Child for Adoption
To better understand this issue and to view it across States, see the *Who May Adopt, Be Adopted, or Place a Child for Adoption: Summary of State Laws* publication.

Who May Adopt
Citation: Rev. Stat. § 19-5-202
The following persons may adopt:

Any person who is age 21 or older, including a foster parent
A minor upon court approval
A person jointly with a living spouse, unless they are legally separated

Who May Be Adopted
Citation: Rev. Stat. § 19-5-201

Any child under age 18 who is present in the State may be adopted. A person who is over age 18 but under age 21 may be adopted if approved by the court.

Who May Place a Child for Adoption
Citation: Rev. Stat. § 19-5-206
An adoptive placement may be made by any of the following:

The birth parent(s)
The court
The county Department of Social Services
A licensed child-placing agency

Due Process

- **Due process** was developed from clause 39 of the Magna Carta, written in 1215 in England. When English and American law gradually diverged, due process was not upheld in England, but did become incorporated in the Constitution of the United States.

- **Due process** is not used in contemporary English law, though two similar concepts are "natural justice" (which generally applies only to decisions of administrative agencies and some types of private bodies like trade unions) and the British constitutional concept of the "rule of law, "as articulated by A. V. Dicey and others. However, neither concept lines up perfectly with the American legal precept of due process, which, at present, contains many implied rights not found in the ancient or modern concepts of due process in England.

- **Due process** is the legal requirement that the state must respect all of the legal rights that are owed to a person. Due process balances the power of "law of the land" and protects individual persons from it. When a government harms a person without following the exact course of the law, this constitutes a due-process violation, which offends against the rule of law.

- **Due process** has also been frequently interpreted as limiting laws and legal proceedings (see substantive due process), so that judges—instead of legislators—may define and guarantee fundamental fairness, justice, and liberty. This interpretation has proven controversial and is analogous to the concepts of natural justice and procedural justice used in various other jurisdictions. This interpretation of due process is sometimes expressed as a command that the government must not be unfair to the people or abuse them physically.

Chapter 12

Appeals

An appeal is defined as:

1. the process of seeking and obtaining a review and reversal of a court's decision by a higher court (If you believe the judge erred in his or her decision by ignoring or not adhering to the law, you may appeal your case to a higher court.)

2. the process of seeking and obtaining a review and reversal of an administrative decision by a court or by a higher authority within the administrative agency. (See also certiorari, notice of appeal, trial (trial de novo), and writ of error.)

For two examples of excellent appeals cases, which were won by both attorneys for the appellants, read Attachment 3, Pierce v. Delta County Department of Social Services; and Attachment 4, Town of Castle Rock, Colorado, v. Jessica Gonzales.

How the Appeal Applies to Your Case
It's always advisable for the parents to ask for an appeal if their rights have been terminated because it will stop any adoption proceedings involving their children and give them an opportunity to get relief from a higher court. The parents should state their intent to appeal at the termination hearing because if they wait, they will lose their opportunity for an appeal. A parent is allowed to initiate an appeal only during the 15 days following the termination date.

In the meantime, the grandparents can continue their case against Human Services by filing a formal complaint against the county department of human services with the state Department of Human Services. Although it is almost certain that the state won't decide in the grandparents' favor, they will have gained more time to collect more evidence for filing a civil case against the state.

Bottom line: An appeal stops the adoption process involving your grandchildren and buys you the time to strengthen your case.

Timeframes for Dependency or Neglect Cases
Colorado applies the statutory timeframes for expedited cases (those cases involving children under the age of six and their siblings) to all dependency or neglect cases. The following timeframes apply in all dependency or neglect cases:

- Adjudications must be held within 30 days of service of the petition in emergency situations and within 60 days of service in non-emergency situations.

- Dispositions must be held within 30 days of adjudication.

- ❖ Permanency planning hearings must be held within 90 days of disposition.

- ❖ The child must be in a permanent placement within 12 months of placement unless the court finds by clear and convincing evidence that it is not in the best interests of the child.

- ❖ Termination trials must be held within 45 days of filing the petition in emergency cases and within 60 days of filing the petition in non-emergency cases.

Colorado Appellate Rules for Appeals
The parents have the right to appeal the adjudication and disposition of a dependency or neglect case and any order terminating their parent-child legal relationship with the child. If an appeal is filed, no termination decision is final until the higher court has ruled and the additional time for appeal has expired. In cases where termination of the parent-child legal relationship has been ordered, the child is not available for adoption until the final decision by the appellate court or the time for appeal has expired. Any party may request an extension of time for any of the following periods, so the total elapsed time may be greater than the following schedule indicates.

Step-by-Step Guide to the Appeals Process

Step 1: District Court Order is Issued
This order is prepared by the county attorney after the court rules in a case. The appeal period does not begin to run until the court signs the written order; specifically, it *does not* run from the date that the court gave its ruling from the bench.

Step 2: Notice of Appeal is Filed → Within 45 days of Step 1
The notice of appeal – indicating intent to appeal – must be filed by the party appealing the decision (the "*appellant*") within 45 days of the issuance of the written order.

Step 3: Record on Appeal is Filed with the Court of Appeals → Within 90 days of Step 2
The court reporter has up to 90 days from the date that the Notice of Appeal is filed to prepare the transcribed record from the District Court for use as the record on appeal. This will usually include a transcript of the trial/hearing.

Step 4: Brief of the Appellant is Filed → Within 40 days of Step 3
The appellant's brief is due 40 days after the record on appeal is filed.

Step 5: Brief of the Appellee is Filed → Within 30 days of Step 4
Briefs of any parties who are opposing the appeal (the "*appellees*") are due 30 days after receiving the appellant's brief. Each appellee brief is filed with the Clerk of the Court of Appeals.

Step 6: Appellant's Reply Brief is Filed → Within 14 days of Step 5
The appellant may choose to file a second brief, responding to issues raised in the appellee's brief. The appellant must do so within 14 days of receiving the appellee's brief.

Step 7: Court of Appeals Issues its Decision → No time limit
The Court of Appeals may take as much time as it deems necessary to review the District Court decision and issue its decision. At any party's request, the Court of Appeals will hear oral argument prior to issuing its decision.

Step 8: Court of Appeals Decision Becomes Final → 15 days after Step 7
If no Petition for Rehearing is filed or if the Petition is filed and denied, the Court of Appeals' decision becomes final 15 days after the decision was issued.

Step 9: Petition for Rehearing may be Filed → Within 14 days of Step 7
If a party is dissatisfied with the decision of the Court of Appeals, he or she may file a Petition for Rehearing with the Clerk of the Court of Appeals, within 14 days of receiving the Court of Appeals' first decision.

Step 10: Decision on Petition for Rehearing is Issued → No time limit
The Court of Appeals may take as much time as it deems necessary to review the petition for rehearing and issue its decision on that petition.

Step 11: Petition for Writ of Certiorari to the Supreme Court is Filed → Within 30 of Step 8
Any party who is dissatisfied with the Court of Appeals' decision may file a Petition for Writ of Certiorari to the Colorado Supreme Court. This petition requests that the Supreme Court hear the case. The petition must be filed within 30 days of the ruling on the Petition for Rehearing.

Step 12: Cross Petitions and Opposition Briefs are Filed → Within 10 days of Step 11
Any response by the party opposing the appeal to the Supreme Court must be filed within 10 days of the receipt of the petition.

Department of Human Services Appeals
Administrative Law Judge: "Welcome to the Colorado Department of Human Services Office of Appeals. This unit serves as the Executive Director's designee for reviewing appeals pursuant to the Colorado Administrative Procedure Act as well as Due Process Reviews, where the appeal process differs from that delineated in the Colorado Administrative Procedure Act. To determine whether a program has an appeal process and whether it is an appeal process governed by the Colorado Administrative Procedure Act, please review the State Department rules that govern the program you are interested in."

Colorado Administrative Procedures Act Appeals

Appeals governed by the Colorado Administrative Procedure Act include appeals brought by applicants, recipients, program participants, licensees and vendors who are challenging adverse decisions made by the State Department of Human Services, County Departments of Human/Social Services or agents of the State or County Departments. These appeals include: Colorado Works, Adult Financial Assistance, Aid to Needy Disabled, Aid to the Blind, Food Stamps, Low-Income Energy Assistance, Child Care, Child Abuse and Neglect reports, Subsidized Adoption and certain Foster Care and Day Care certification and licensing actions.

- **The Role of Office of Administrative Courts (TRAILS)**
  Appeals governed by the Colorado Administrative Procedure Act involve a review or hearing before an Administrative Law Judge at the Department of Personnel and Administration, Office of Administrative Courts. The Administrative Law Judge enters an Initial Decision based upon the evidence included in the record and the controlling law. The Initial Decision and case file is then sent to the Office of Appeals. The Office of Appeals provides the parties, including the State Department program area that oversees the subject matter at issue in the appeal, the Initial Decision and informs the parties of the opportunity to challenge the Initial Decision by filing Exceptions.

- **The Role of the Office of Appeals:**
  The Office of Appeals reviews the Initial Decision to ensure that it is supported by the weight of the evidence and to ensure it is in compliance with federal and state law, including federal regulations and state rules. The Office of Appeals will also consider any Exceptions challenging the Initial Decision. After reviewing the case, the Office of Appeals enters a Final Agency Decision that will affirm, modify, or reverse the Initial Decision, or that will remand the matter back to the Administrative Law Judge for further determination. The Final Agency Decision serves as the official and final action of the State Department of Human Services and issuance of the Final Agency Decision concludes the administrative hearing process.

- **Implementing the Final Agency Decision**
  The State Department, County Department or its agent is responsible for implementing the Final Agency Decision in compliance with State Department rules. Action taken by the County Department or State Department to implement the Final Agency Decision is not subject to further administrative appeal unless a new adverse action occurs.

DUE PROCESS REVIEWS

The Office of Appeals provides due process reviews for certain State Department program areas. Reviews of this nature occur because either the State Department has elected to have a due process review or because the statutes require or permit an appeal process which is not governed by the Colorado Administrative Procedure Act. The nature of the review will vary depending upon the structure established by the relevant State Department program area's enabling statutes or rules. For some programs the Office of Appeals provides a paper review; in other instances, the Office of Appeals may, at its discretion, hold a hearing. Due Process Reviews include: Food Stamps federal treasury offset appeals, Traumatic Brain Injury Program appeals, and Child Care Licensing Act audit appeals.

COLORADO SUPREME COURT (Colorado Court of Appeals)

All appeals are made through the Colorado Supreme Court, which is also the Court of Appeals. The office of the Clerk of the Colorado Supreme Court/Court of Appeals can be very helpful with your case, so feel free to call the office with questions and concerns. The following is the official description of the Clerk of the Supreme Court/Court of Appeals:

> The Clerk directs the administration of the state's intermediate appellate court. Additionally, the Clerk, serves as supervisor of the court's staff, develops and manages its budget, ensures proper management of the court's docket, and oversees implementation of policy changes from the Court of Appeals judges, the State Court Administrator's Office and Chief Justice Directives.

How to Contact the Clerk:

The Clerk of the Court is located on the 8th floor of the Denver Newspaper Agency Building at the NW corner of Broadway and Colfax Avenue in Denver. The mailing address and phone number are:

> 101 West Colfax Ave., Suite 800
> Denver. CO 80202
> 303-837-3785

Colorado Supreme Court/Appellant Court forms and information are found at
http://www.courts.state.co.us/Courts/Court_Of_Appeals/Forms_Policies.cfm.

The following information about the Court of Appeals (Supreme Court) is from an article by James S. Casebolt, **Colorado Court of Appeals Judge** that was originally published in *The Colorado Lawyer*, Vol. 24, No. 9, Sept. 1995, pp. 2105-2110.

Makeup

The Colorado Court of Appeals currently consists of fourteen judges including the Chief Judge, each of whom has his or her own separate chambers located in the state judicial building.

Support staff for each judge consists of one secretary and one law clerk, although a judge may have two law clerks, one of which typically performs secretarial work. Each is a confidential employee and serves at the pleasure of the judge. Staff for the entire court includes the Reporter of Decisions and the clerk of the court and his eight employees. Further, there are nineteen full-time staff attorneys with a small support staff, whose activities and functions are described below. In all, there are about 105 employees, including judges.

Law clerks are typically hired for one year, usually beginning in August, although some judges request a two-year stint given the inevitable learning curve for clerks. Some judges retain law clerks indefinitely. An orientation and training session for clerks is given each year. Most beginning clerks are just out of law school, but many who currently serve are attorneys with private practice backgrounds who have chosen to return to clerkships for various reasons.

Location

The court sits in Denver, but is authorized by statute to sit in the county seat of any county to hear cases. While panels of the court still occasionally travel to hear cases, budget restrictions have significantly reduced travel outside the Denver metropolitan area. To allow law students to observe and listen to appellate arguments firsthand, the court does send panels to the law schools at the Universities of Colorado and Denver at least once per year. Occasionally the court hears cases argued before students in the public secondary schools.

Initial Case Contact, Pre argument Conferences, and Motions

Unless a pre argument conference is requested or motions are filed in the case, typically no judge will see a case file until all the briefs are filed. Exceptions include per curium cases, discussed below. While pre argument conferences for settlement purposes have been little used in the past, the court now encourages their use. This is due to the availability of the court's senior judges who have specialized training in alternative dispute resolution techniques. Moreover, those services are available without charge to litigants.

If motions are filed, they are reviewed by a staff attorney initially and thereafter determined by a panel of three judges who serve as a "motions division." The membership of this panel rotates every month.

Each case is screened for jurisdiction. If any issue concerning jurisdiction arises, typically an order to show cause will issue, directing the parties to address any jurisdictional concerns. The motions division usually considers and rules on responses to show cause orders.

Recusal Review

Once a case becomes "at issue," i.e., after all briefs have been filed, the clerk's office circulates "at issue" sheets to all judges. These sheets contain the case number; the names of the parties and attorneys; and the court, agency, or lower tribunal from which the appeal emanates.

Each judge reviews the "at issue" sheets to determine recusals. Recusals are based on the Code of Judicial Conduct. Priority is given to review of these sheets; every attempt is made to complete the review within several hours after receipt.

Case and Panel Assignments

Once the "at issue" sheets are returned to the docketing clerk, cases are assigned randomly by the clerk's office to each division, i.e., a three-judge panel, avoiding assignment to panels that have a recused judge.

No attempt is made to match cases or File/s with any particular panel or judge, nor to assign cases based upon any areas of particular expertise of judges or panels. The variety of cases assigned helps attract qualified applicants for judicial vacancies and, because contact with lawyers and the public is limited, helps avoid burnout by engaging intellectual curiosity. The process of random selection also ensures that a diversity of ideas from the varied backgrounds of the judges will inform a panel's decision. The Chief Judge, or on occasion, a senior judge will fill in on a case in which only one panel member has been recused.

Panels are selected by the Chief Judge, with approval of the Chief Justice of the Colorado Supreme Court. Each panel serves four months. The most senior judge among the panel members serves as the division head and has power to make assignments within the panel, such as to direct authorship of opinions; however, authorship is typically assigned on a random basis.

The Chief Judge, in addition to significant administrative duties, substitutes for recused judges, heads panels containing senior judges, takes ill or vacationing judges' case assignments, and forms additional divisions to spread the workload evenly.

Divisional Nature of the Court

As noted above, the court is a "divisional" court, being so designated by statute (§13-4-106, C.R.S. 2007). As such, all divisions function independently from each other, similar to the way the federal circuits function in the federal system, although we are not authorized to sit en banc.

Each independent panel decides its cases in light of its own interpretation of binding and persuasive authority. Correspondingly, no existing decision by one division technically "binds" another division to follow the previous result. Thus, although the importance of deference to earlier decisions is recognized, there may be conflicting division decisions on similar issues because each panel may view the law differently.

Further, even though a majority of the fourteen judges on the court may disagree with a division opinion, the division determines the final content of the opinion. Conflict between division decisions is one of the reasons certiorari may be granted by the supreme court. C.A.R. 49.

Sittings

Each panel is assigned to "sit" every two weeks. Each such "sitting" consists of a combination of cases set for oral argument and cases in which oral argument is waived (called "waived cases"). Currently, each panel receives seven cases for each sitting, normally containing three or four cases set for oral argument, and the balance consisting of waived cases.

Each sitting is scheduled approximately five to six weeks in advance. The clerk's office notifies counsel for the parties of the date set for oral argument and indicates how conflicts in scheduling are to be handled. No notification of the scheduled sitting is given to counsel or parties if oral argument is waived, although counsel and parties may obtain information about scheduling of their cases for assignment to a sitting from the clerk's office upon request.

Assignments within Division

Upon receipt of the assignment sheet, an assignment of each case to one of the panel members is randomly made by the division head, which constitutes the tentative designation of that panel member as the author-judge. Each judge then receives the assignment sheet indicating his or her assignments for the scheduled sitting.

Case Adjudication

The assigned judge is responsible for preparation of a "predisposition memorandum" directed to the other two panel members. This document, known as a PDM, can take numerous forms although it typically is written in draft opinion form and contains a proposed disposition of the case.

The PDM is drafted by each judge with the assistance of his or her law clerk after review of the briefs, trial court or administrative agency decision and relevant portions of the record. Although there are situations in which the entire record must be reviewed, as when the appellant alleges insufficient evidentiary support for the trial court disposition, typically the briefs, if well written, will direct the judges to the specific areas of the record that must be reviewed.

PDMs are circulated to the other panel members the Friday before the scheduled sitting, which is typically on a Monday or Tuesday. Each judge is responsible for at least two PDMs for each sitting, with the seventh case being rotated each sitting to a different judge of the panel. Thus, there are always two, and sometimes three PDMs prepared by each judge and his or her chambers every two weeks. This means that each judge, after completing his or her PDMs, will then be responsible for reading the briefs, pertinent law and, if necessary, portions of the record in four to five other cases prior to argument.

All PDMs are tentative, as is authorship. It is only after argument and review during conference, after each panel member has read all of the briefs and such parts of the record as each judge deems necessary and has conducted independent research, that a determination is made. When cases are scheduled for oral argument, the PDM serves to provide insight and focus questions for each panel member during argument. When oral argument is waived, the PDM serves a like function for discussion in conference.

The PDM may form the basis of the majority opinion. Occasionally, it may represent a dissenting view, in which case one of the remaining two panel members will write the majority opinion. It is also not uncommon for all panel members to disagree with at least part of the PDM after conference; hence, the initial author-judge may prepare one or more revised drafts before an acceptable draft is written.

On the day of the scheduled sitting, usually immediately after oral argument is complete, the panel convenes in conference to discuss all of the cases assigned for that sitting, including waived cases. At the conference, each case is discussed. Conferences can, and sometimes do, last all day. If a consensus is reached, authorship is confirmed. If no consensus can be reached at that time, the case may then be passed until a later division conference. Passed cases may require additional research; further record review or supplemental discussion before a determination is made.

During conference, if a determination of outcome is made, the panel discusses whether the draft opinion may merit publication. Publication criteria are set forth in C.A.R. 35(f), which generally provides for publication when the opinion: (1) lays down a new rule of law, alters or modifies an existing rule, or applies an established rule to a novel fact situation; (2) involves a legal issue of continuing public interest; (3) directs attention to the shortcomings of existing common law or statutes; or (4) resolves an apparent conflict of authority.

If the opinion may merit publication, the author will circulate a draft opinion to other panel members. Once the author creates a proposed opinion, that draft opinion is scheduled for discussion at the next division conference for that panel.

Division Conference

Every Wednesday, each panel meets in a division conference. It then discusses any previously passed cases, together with new opinion drafts. Before the division conference, each draft is reviewed and critiqued for style, form, language, punctuation, and general readability by the court's Reporter of Decisions. In addition to her other duties the Reporter, who is an attorney with excellent editorial skills, suggests modifications, substitutions and changes, all of which are reviewed by the panel during division conference.

After the division approves the draft, the division makes its final determination regarding proposed publication and the author then finalizes the draft opinion. If the division believes the final draft is publishable, it is circulated to members of the court. A cover sheet contains the criteria that the panel believes qualifies the opinion for publication.

Full Court Review and Conference

A majority of the fourteen judges is charged with reviewing every draft opinion circulated for publication, conducting whatever research the reviewing judge deems necessary, determining whether the opinion qualifies for publication and suggesting any edits deemed appropriate. A reviewing judge returns to the author-judge a comment sheet on which the publication vote is recorded, together with comments. Votes on publication and comments are due by the Monday before full court conference, which is scheduled for alternate Thursdays.

The comments may be substantive or editorial. Each judge has the power to call the draft opinion "into conference." This means that the judge can request a full discussion of the opinion at the full court conference, because of its content, because it may be thought to conflict with prior decisions, or for any other reason.

Until approximately 1988, each case proposed for publication was individually discussed in the full court conference. Since then, however, because of time constraints and the sheer number of cases to be decided and announced, only those cases specifically identified are discussed in full court conference.

Before full court conference, any judge calling a case into conference typically discusses his or her concerns with the author-judge. At that time, proposed changes may be discussed which, after further review with the other panel members, may obviate the need for the full court to review the opinion.

Any opinion receiving a majority vote for publication will be published, unless it is withdrawn before or during full court conference for further work. The author-judge and the rest of the panel may, but need not, modify the opinion to take into account the suggestions of the reviewing judges and the Reporter of Decisions, and may recirculate the opinion to the full court for further review.

Unpublished Cases

For those draft opinions that the division believes do not qualify for publication, the author-judge, after division conference and after revising the opinion to meet the directions and concerns of the panel members, issues the draft opinion.

Like other drafts, each draft opinion not proposed for publication is reviewed by the Reporter of Decisions for style, form, language, punctuation, and readability. Thereafter, final modifications are made by the author-judge in consultation with the other panel members. Each opinion is then circulated to judges on the court, who retain the ability to call it into full court conference. If the opinion is not called into full court conference, it is announced as an unpublished decision.

Announcements

Announcements of the court are made each Thursday. An announcement sheet lists those cases which are published, those which are unpublished, states the disposition of each case and also contains determinations on motions for rehearing.

Announcement of the court's opinions consists of providing copies to all parties, the trial court or agency, the press, and the public. Those opinions selected for official publication are also provided to various publishers, including West, CCH, BNA, LEXIS/NEXIS, L.O.I.S. (a CD-ROM publisher), and *The Colorado Lawyer.*

The court's opinions selected for official publication (and all opinions of the Supreme Court) are also available on the Colorado Courts Web Page, located at *http://www.courts.state.co.us*. Anyone with a personal computer and Internet access may view the opinions.

Staff Attorney Cases

In addition to "sittings" on cases discussed above, each panel is assigned twelve cases per month, with three assigned per week, which are denominated as "staff attorney" cases. These cases are cases that have been assigned to, reviewed, digested by, and a draft resolution tentatively prepared by court staff attorneys. These staff attorneys are attorneys who have practiced law and have developed particular expertise in certain areas of appellate law. The process for these cases is as follows.

The chief staff attorney reviews all cases filed and recommends to the Chief Judge that certain cases be assigned to staff attorneys. The recommendation is based on such factors as the level of difficulty of the issues in the case, the expertise that each staff attorney possesses, and whether the case involves areas in which the law is well settled.

If approved by the Chief Judge, those cases are assigned to staff attorneys. Once an assignment is made, the staff attorney reviews the briefs and the record, conducts appropriate research and prepares a recommended disposition. Thereafter, the briefs, record and proposed disposition are given to a panel member for review.

The assigned judge reviews the briefs, record, and the staff attorney's proposed disposition, conducts research, makes changes or redrafts as he or she thinks appropriate, and tenders the now reviewed and revised draft to the panel for consideration. The panel essentially treats the staff attorney's proposed draft as a PDM, and proceeds to determine the case in the same manner as described above.

When no oral argument is requested on such cases, the staff attorney cases are distributed each Monday and are reviewed the following week by the panel at its division conference. If oral argument has been requested, the cases are added to the other cases assigned, heard in oral argument and determined in division conference.

***Per Curiam* cases**

Because of increasing caseloads, the court has instituted a program to employ *per curiam* dispositions. A "*per curiam*" decision is an unsigned opinion. These cases are screened by a group of staff attorneys and are recommended for *per curiam* disposition because they involve well-settled law and do not present any previously undecided issues. A panel of three judges decides these cases

in addition to their regular duties. *Per curiam* dispositions may be one or two pages long and sometimes may be issued before an answer brief is filed in the case, typically because the appellant is clearly not entitled to any relief. In the last fiscal year, the court issued over 200 *per curiam* dispositions.

Petitions for Rehearing and *Certiorari*

After an opinion is announced, the parties may petition for rehearing; however, rehearing petitions are no longer required before certiorari review may be requested from the Colorado Supreme Court under C.A.R. 52. Upon receipt, the petition is circulated to each division member, who reviews it and makes a recommendation. Opinions may be modified or withdrawn, or the petition may be denied.

It is estimated that approximately 10 to 15 percent of the cases decided by the court of appeals are ultimately reviewed by the supreme court. Consequently, the court of appeals is the court of last resort in approximately 85 percent of all cases before it.

Citation of Published and Unpublished Cases

In the fiscal year ending June 30, 2009, the court issued 2063 opinions, of which 269, or 13 percent, were published. Published opinions are to be followed as precedent by trial courts under C.A.R. 35(f). Although C.A.R. 35(e) authorizes affirmance without a written opinion, all cases not settled or dismissed for lack of jurisdiction are currently disposed of by means of a written opinion.

The court has adopted a policy that, with some exceptions, prohibits citation to unpublished opinions in briefs filed before it. Among the reasons for this policy are: (1) under C.A.R. 35, unpublished opinions are not binding precedent; (2) copies of these opinions are generally not accessible by anyone other than counsel and parties to the case itself because they are not in a published database or other compendium; (3) it is unfair to allow those who are able to

maintain such a database (e.g. the State Public Defender or the Attorney General) to cite those opinions when they are not generally available to private practitioners, and opinions that are unpublished which could provide grounds for distinguishing the case at bar are likewise not available; and (4) since they are intended only for the parties to the case, many unpublished opinions recite few facts, thus making the rationale for the decision less universally applicable.

Workload

The caseload of each judge is significant. The court issues over 2000 written opinions each year, requiring each judge to author 85 to 95 opinions per year, the equivalent of two opinions per week. Senior judges account for approximately 180 opinions per year.

In addition to being responsible for his or her own "authored" opinions, each judge must review all of the briefs in each case in which he or she participates; conduct independent research; discuss the case; author dissenting or concurring opinions if necessary; read other panel members' opinions; and review all draft opinions proposed for publication.
Additionally, each judge strives to remain abreast of Colorado Supreme Court and United States Supreme Court opinions. Consequently, it is estimated that each judge reads about three thousand pages of material per month. Weekend reading is inevitable and ten to twelve hour workdays are not uncommon.

Extra-Judicial Activities

In addition to his or her judicial duties, judges of the court participate in numerous outside activities related to the legal system. Some of these activities include: (1) service on standing and ad hoc committees of the supreme court including civil and criminal jury instructions, appellate rules, and gender bias; (2) serving on committees of the Colorado and Denver Bar Associations; (3) presiding as judges for moot court competitions on local, state and national levels; (4) serving as trial judges for NITA programs; (5) serving on committees for the State Court Administrator's Office; (6) serving on legislative advisory committees; (7) teaching and writing for various seminars and publications, including continuing legal education programs; and (8) speaking before civic groups and assisting in outreach programs for the public school system.

Conclusion

Each judge on the court operates independently, but within the confines of the structure noted above. The Chief Judge has noted that trying to deal with fourteen other independent judges "is like trying to herd cats." Nevertheless, the court functions well in disposing of the significant work placed before it.

Chapter 13

The Special Case of Native American Children

> [My patience is thinning] with the plethora of western works on 'Native American thought,' which do little more than wrap Christianity in feathers and blankets, preparatory to announcing the discovery of some 'universal principle.'
>
> from *Blood and Breath* by Barbara Alice Mann, Ph.D.

Native Americans and European Invaders: A History of Brutality and Betrayal

Barbara Alice Mann, assistant professor at University of Toledo in Ohio, member of the Ohio Bear Clan Seneca tribe, has written extensively about the relationship between Native Americans and the Europeans who invaded North American lands and established genocidal governmental policies toward the tribes. Eventually, most of the Native Americans of North America were dead, and the ones that remained were exiled to the most inhospitable parts of this country.

Mann's quote at the beginning of this chapter points to the important role that religion has played in distorting society's view of the Native American spirituality and justifying the destruction of their culture and families. Efforts to destroy Native American spirituality led to the outlawing of the Ghost Dance movement that grew up after the submission of the final tribes to the U.S. government, which led to the U.S. Cavalry's massacre of 300 Native men, women and children in 1890 at Wounded Knee. It wasn't until 1978 that the American Indian Religious Freedom Act passed the U.S. Congress and Native Americans could legally practice their spiritual traditions.

In the late 1950's and early 1960's, a government entity called the Child Welfare League would randomly file neglect charges against Native American parents because their home had no electricity or gas. The reservations Native Americans had been forced onto had no access to utilities or jobs, so families lived in poverty without the services that most white Americans enjoyed. Native Americans had no political power, so when they were charged with neglect, parents were forced to surrender their children to the federal government, which adopted them to white families or placed them in federally-run boarding schools. At those schools, the children were forced to give up their biological and cultural roots and religion; those children who resisted were often beaten and/or subjected to humiliating treatment. Christian missionaries living on reservations also advocated moving children to missionary-run and government-backed Indian Boarding Schools, where they would be indoctrinated in Christian ideology.

Sandra White Hawk, who, at 18 months, was taken from her family on the Rosebud Sioux Reservation, states that middle-class white Christians with power over Native Americans would randomly pass judgment on Native families, then break them up by removing the children, who were often adopted by white families. White Hawk believes that "most of the forced adoptions were based on prejudice," and because of that prejudice, Native families "felt that they were powerless to stop the process and allowed white authorities to take over. She added, "I think it's interesting that the state would be more interested in yanking a child away from his home than in helping to try to get utilities and other services to these homes."

Indian Child Welfare Act of 1978

In 1978, the Indian Child Welfare Act (ICWA) was passed by the Congress as a result of the alarming report that 35% of Native American children were being taken from their families and placed in foster or adoptive homes, and 85% of those children were being placed with non-Native families. The National Indian Child Welfare Act (NICA) website defines the Act as follows.

> The Indian Child Welfare Act (ICWA) is a federal law that seeks to keep American Indian children with Indian families . . . . The intent of Congress under ICWA was to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families" (25 U.S.C. § 1902). ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a *federally recognized tribe*.
>
> ICWA is an integral policy framework on which tribal child welfare programs rely. It provides a structure and requirements for how public and private child welfare agencies and state courts view and conduct their work to serve tribal children and families. It also acknowledges and promotes the role that tribal governments play in supporting tribal families, both on and off tribal lands. However, as is the case with many laws, proper implementation of ICWA requires vigilance, resources, and advocacy.

The ICWA has largely ended the practice of adopting Native children to non-Native parents by mandating that both the tribal authorities and the Bureau of Indian Affairs (BIA) sign off on any adoption that involves placement of a Native American child with a non-Native family. However, even 40+ years after the Act, a case involving a Native child adopted by non-Natives was adjudicated in 2011 in the South Carolina Supreme Court; the non-Native family was ordered to return the two-year-old Native child to her father.

Frequently Asked Questions about ICWA

What is ICWA?

The Indian Child Welfare Act or ICWA is a law that applies to state, county and private child welfare agencies. It covers tribal children from all Native American and Alaska Native tribes listed in the Federal Register. ICWA supports Native American tribes' authority over their members and the wellbeing of Native American children and families.

Who is a Native American child?

Under ICWA, a child is Native American if he or she has a mother or father who is a member of a Native American tribe. The child must also be a member of a tribe OR be eligible for membership.

Why is the law only for a Native American child?
History tells us why. Native American tribes are sovereign nations. The U.S. government has a unique political relationship with Native American nations through treaties that it does not have with any other peoples in our county.

Why was the law passed?
Sadly, countless number of Native American children have been removed from their families and tribes. Boarding schools run by the government and other groups kept school-age children away from their homes. Many children lost their traditions and culture and experienced serious problems later in life.

Often, child welfare agency workers used their own cultural believes to decide if Native American children were being raised properly. Also, many have not understood the importance of the extended family--relatives other than mother or father--in bringing up children in native cultures.

Does the law apply to people living away from Native American reservations?
Many believe that the law only applies to Native American children living on reservations, but the law applies to ALL Native American children, wherever they may live. Therefore, it is important that child welfare workers assess ancestry of all children referred for neglect and abuse. If known, the child's tribe must always be notified by certified mail of any court proceedings involving placing children in foster care, termination of parental or adoption. Where ancestry is not clear, the Bureau of Indian Affairs should be notified.

How does the law work?
First, ICWA means that every effort will be made to try to keep families together. If removal is necessary, "active rehabilitative efforts" must be made to bring the families together. This means that everything possible must be done to help the families resolve the problems that led to neglect or abuse, including referral to services that are sensitive to the family's culture. If a child is removed, ICWA requires that before placing the child in a non-Native home, child welfare agencies must actively seek to place him or her with:

1. relatives,
2. a tribal family, or
3. a Native American family.

How can you protect your children?
Papers that need to be kept in a safe place include: enrollment numbers and certificates of Native American Blood (CIBs); census numbers or blood quantum cards; and birth certificates with the mother and father's names listed. Other things that may help include a family tree or a genealogy record.

If you are referred for child neglect or abuse and need legal help, you have the right to a court-appointed attorney if you cannot afford one.

What else can you do?
Everyone is responsible for the welfare of each child. Each child is a sacred gift. Children must be protected. Children must never be abused or neglected. There are many things you can do if you want to become involved in supporting ICWA, or if you are interested in becoming a foster or adoptive parent, or if you have had your children removed. For information about those options, contact:

Denver Native American Family Resource Center
393 S. Harlan Street
Lakewood, CO 80226
303-871-8035

For resources and services, contact:

- Denver Native American Health and Family Services
  3749 S. King Street
  Denver, Co. 80236
  303-781-4050

- Denver Native American Family Resource Center
  4407 Morrison Rd., Suite 100
  Denver, CO 80219
  303-871-8035

- Native American Counseling
  1780 S. Bellaire St., Suite 526
  Denver, CO. 80222
  303-692-0054

For questions about ICWA, contact:

Norman Kirsch
303-866-5936.

(revised 12/27/2011)

Cases to be Considered
25 U.S.C. § 1911(c) (1978) of the ICWA allows Native American tribes to intervene at any point in a state court proceeding involving the foster care placement of, or the termination of parental rights to, an Native American child. However, the Tribe acknowledges that § 1911(c) does not authorize it to intervene in adoption proceedings. People in Interest of AEV, 782 P.2d 858, 859 (Col. App.1989)

The parent not claiming membership still has standing to contest ICWA compliance. Father's failure to return an ICWA form after his statements indicating he might be tribe-eligible, required investigation by department. The department's statement to the tribe or BIA must contain enough information to be meaningful. People in the Interest of J.O., 70 P.3d 840 (Colo. App. 2007)

The department violated ICWA by not filing Native American notices and return receipt cards with the court. The notices also didn't have the statutory information. People in the Interest of N.D.C. 08CA2304

To allow tribes the option of exercising jurisdiction over these matters, ICWA creates a duty for petitioners to notify tribes, parents, Native American custodians, or in the case that none of these entities or individuals can be identified, the Secretary of the Department of the Interior, of any involuntary custody proceedings involving a Native American child. The interested parties have 10 days (and may request up to 20 additional days) to respond once receiving notice of the proceeding. During this 10-day period, the trial court must stay any action in the case. *In re C I Morris Minor*, Case No. 142759 and *In re J L Gordon Minor*, Case No. 143673. The Court ruled that any sufficiently reliable information that a child is an "Indian child" for purposes of ICWA will trigger the notice requirement found in 25 U.S.C. § 1912(a).

The ICWA applies when the state seeks to place a Native American child in foster care and when the state seeks to terminate parental rights. *See* 25 U.S.C. §§ 1911, 1912 (2000). Under those circumstances, whenever the court knows or has reason to know that a Native American child is involved, the party seeking placement or termination must provide notice to the child's tribe or his or her parent's tribe, or to the Bureau of Indian Affairs (the BIA) if the tribe cannot be identified or located. 25 U.S.C. § 1912(a)(2000);*see also People in Interest of A.N.W.,* 976 P.2d 365 (Colo.App.1999).

Is there a time limit to petition under § 1914?

There is no time limit set forth in § 1914 in which to file a petition. As a result, some state courts have resorted to state statutes of limitations. As one court observed, "When Congress does not establish a time limitation for a federal cause of action, the settled practice has been to adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so." The United States Supreme Court has mandated that courts 'borrow the most closely analogous state limitations period.' The limitations period will necessarily vary from state to state." *State v. Native Village of Curyung*, 151 P.3d 388, 411 (Alaska 2006) (citations omitted). As the court points out, however, the result of using state statutes of limitation is uncertainty and inconsistency.

Thus, use of these statutes may very well be contrary to the intent of Congress to provide a uniform federal standard under the ICWA in terms of the basic applicability of the statute. *See Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1987) (holding domicile to be defined by federal law, not individual state laws)

Even where a petition is timely filed, some state courts have ruled that their error preservation rules apply in an ICWA proceeding. *See, e.g., In re J.D.B.*, 584 N.W.2d 577 (Iowa Ct. App. 1998); *In re Pedro N.*, 41 Cal. Rptr. 2d 819 (Ct. App. 1995). But others disagree. *See, e.g., In re L.A.M.*, 727 P.2d 1057 (Alaska 1986). A party or practitioner is well-advised to object to any error based on the ICWA at the trial court level, otherwise a failure to timely object may be considered a waiver or harmless error even where the challenge is brought under § 1914

County Policy/Procedure on Native American Children

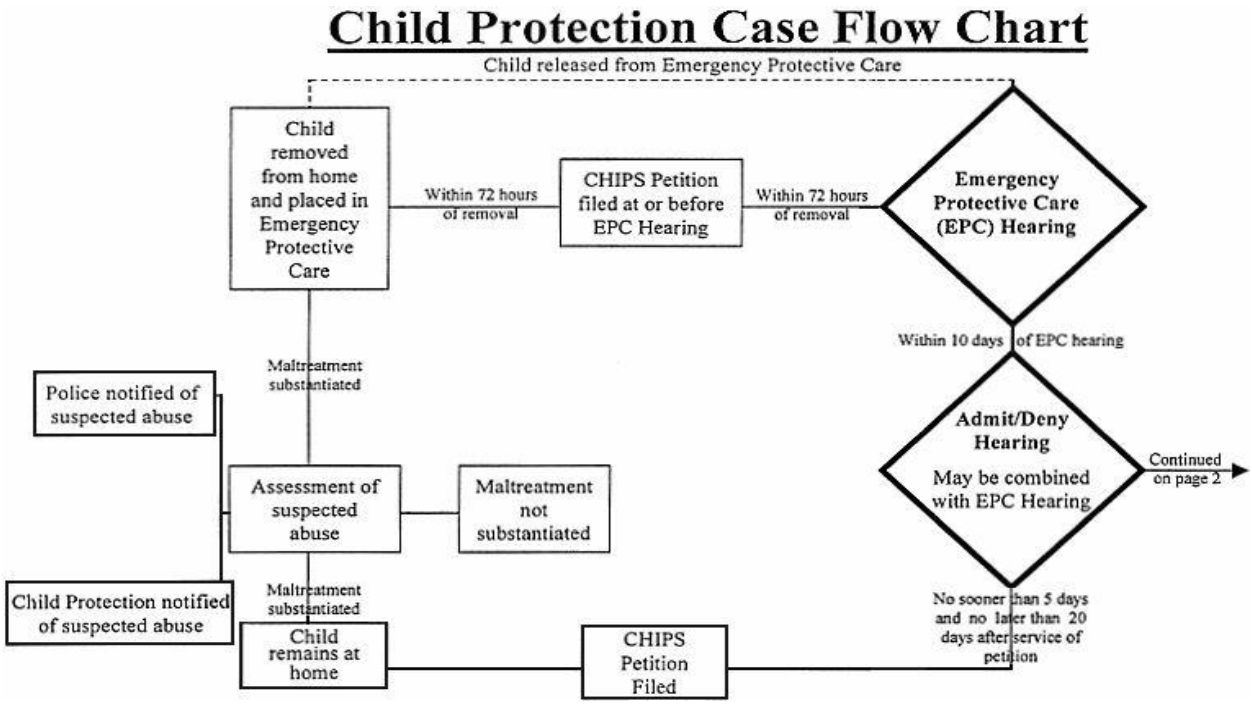
Background: The Native American Child Welfare Act (ICWA), Public Law 95-608, 25 U.S.C. sec. 1901, et seq., is a law that applies to state, county and private child welfare agencies. It covers tribal children from all Native American and Alaska Native tribes listed in the Federal Register. ICWA supports Native American tribes' authority over their members and the well-being of Native American children and families. Section 19-1-126, C.R.S., addresses compliance with ICWA, as does rule section 7.309, et. seq. (12 CCR 2509-4).

Information: The county department must make continuing timely inquiries and notify any tribe and any potential tribal court of jurisdiction that a Native American child is in need of foster care and when filing a petition for termination of the parent-child legal relationship, except in an emergency placement, as required by the Indian Child Welfare Act of 1978. This includes any voluntary or involuntary placement of a Native American child in foster care or upon filing a petition for relinquishment. The Division of Child Welfare ICWA web site can be of assistance in this process. A state/county workgroup has developed the attached ICWA-1 to facilitate notification.

Procedure: County departments of human/social services shall complete form ICWA-1 in an appropriate and timely manner. Instructions for completion of the form are attached as ICWA-1A. The use of this form is permitted by rule section 7.000.6 B, (12 CCR 2509-1), section 26-1-111(2)(e), C.R.S.

In accordance with the Indian Child Welfare Act (ICWA), if any proceedings pertaining to any child or eligible child of a Native American tribe are happening, the corresponding tribe should be apprised of such proceedings. I felt that this should be brought forward to right the wrong for the children's sake.

ICWA FLOWCHART



Despite the creation of the ICWA as a framework "for how public and private child welfare agencies and state courts view and conduct their work to serve tribal children and families," some situations have arisen that expose the emptiness of this ICWA promise. One recent, well-publicized case is that of Robin Poor Bear, member of the Dakota Sioux tribe and resident of the Spirit Lake Reservation in North Dakota. Robin's story is told in a PBS movie called *Kind Hearted Woman* that recounts the story of her own childhood with a foster family whose adult male members molested, raped, and beat her from the age of three until 13. Tribal Social Services (TSS) had placed her with that family with no oversight from TSS, the BIA, or the federal Department of Social Services in the course of her ten years in the home.

Later in her life when she found out that her ex-husband was molesting her daughter and tried to get full custody of the child, TSS accused her of lying, said she was too unstable to have custody, and recommended Robin's children be placed with their father—an accused pedophile and known wife-beater and alcoholic. Furthermore, she got no support from the other government entities involved in her case. In more cases than there should be, TSS and DHS call the shots with Native families because they get caught up in a complex system they don't understand without adequate representation or advocates. The Western religious and social value judgments underlying our social welfare and justice systems all but guarantee the continued oppression and victimization of Native American families by U.S. government agencies and tribal entities that collude with them.

Chapter 14

Support Groups, Internet Resources for Colorado Kinship Care Families, and Related Information

In this chapter, you'll find, first, a table that lists by county a schedule of meeting times and contact information for kinship support groups in Colorado. Following the table is a list of other organizations that support kinship care in Colorado. A description of each organization and the internet address where it can be contacted it is provided.

Note: Group schedules and locations may change without notice. For current information about a group, please contact the sponsoring agency and/or contact person listed.

Schedule of Kinship Support Groups in Colorado (5/31/13)

County	Sponsoring Agency and Contact Person	Date & Time	Location
Adams	Catholic Charities/City of Thornton Dora Bonilla (303) 742-0823 x 2072 dbonilla@ccdenver.org	2nd Thursday 10am-12 pm	Margaret Carpenter Recreation Center 11151 Colorado Blvd. Thornton, CO 80233
Adams	Adams County Extension Janet Benavente (303) 637-8113 Scorbett@brightonco.gov	3rd Thursday 6-8 pm	Almost Home 231 N. Main (Community Room) Brighton, CO 80601
Adams	Catholic Charities Carrie Savage (303) 742-0823 x 2071 csavage@ccdenver.org	2nd Wednesday 10 am-12 pm	St. Stephen's Episcopal Church 1 Del Mar Cir. Aurora, CO 80011

Arapahoe	Catholic Charities Dora Bonilla (303) 742-0823 x 2072 dbonilla@ccdenver.org	3rd Monday 5-7 pm	St. Stephen's Episcopal Church 1 Del Mar Cir. Aurora, CO 80011
Arapahoe	Families First (303) 745-0327	1st, 3rd, & 5th Monday 6-8 pm	Families First Center 2163 S. Yosemite St. Denver, CO 80231
Bent- served by the group in Otero county	Tri County Family Care Center Nancy Harrington (719) 254-7776	1st Tuesday 7-9 pm Foster, Adoptive & Kinship	Tri County Family Care Center 512 ½ N. Main St. Rocky Ford, CO 81067
Boulder	Boulder DHS Cathy Bolton (303) 441-1512 cbolton@bouldercounty.org	1st Monday 6-7:30 pm	Longmont Senior Center 910 Longs Peak Ave. Longmont, CO 80501
Boulder	Boulder DHS Cathy Bolton (303) 441-1512 cbolton@bouldercounty.org	4th Wednesday 6-7:30 pm	Eternal Savior Lutheran Church 2688 Northpark Dr. Lafayette , CO 80026
Boulder	Boulder DHS Cathy Bolton (303) 441-1512 cbolton@bouldercounty.org	1st Monday 5:30-7 pm (Spanish Speaking)	Longmont Senior Services Center 910 Longs Peak Dr. Longmont, CO 80501
Boulder	Boulder DHS Cathy Bolton (303) 441-1512 cbolton@bouldercounty.org	3rd Wednesday 5:30-7 pm (Spanish Speaking)	Sister Carmen Community Center 655 Aspen Ridge Dr. Lafayette, CO 80026

Clear Creek- served by the Jefferson Center for Mental Health group	Jefferson Center for Mental Health Heather Trish **(303) 432-5265** heathert@jcmh.org	3rd Wednesday 5-7 pm	Shepherd of the Hills Presbyterian Church 11500 W. 20th St. Lakewood, CO 80215
Crowley- served by the group in Otero county	Tri County Family Care Center Nancy Harrington (719) 254-7776	1st Tuesday 7-9 pm Foster, Adoptive & Kinship families	Tri County Family Care Center 512 ½ N. Main St. Rocky Ford, CO 81067
Denver	Catholic Charities Carrie Savage (303) 742-0823 x 2071 csavage@ccdenver.org	1st Thursday 12-2 pm	Macedonia Baptist Church 3240 Adams St. Denver, CO 80205
Denver	Catholic Charities Dora Bonilla (303) 742-0823 x 2072 dbonilla@ccdenver.org	3rd Tuesday 10 am-12 pm	Samaritan House 2301 Lawrence St. Denver, CO 80205
Denver	Catholic Charities Carrie Savage (303) 742-0823 x 2071 csavage@ccdenver.org	Quarterly trainings only, dates to be determined. Call for more information.	Catholic Charities 4045 Pecos St. Denver, CO 80211
Denver	Catholic Charities Dora Bonilla (303) 742-0823 x 2072 dbonilla@ccdenver.org	3rd Thursday 5:30-7:30 pm (Spanish Speaking)	Catholic Charities 4045 Pecos St. Denver, CO 80211
Denver	Catholic Charities Carrie Savage (303) 742-0823 x 2071 csavage@ccdenver.org	2nd Monday 5-7 pm	Denver Native American Family Resource Center 4407 Morrison Rd., Ste. 100 Denver, CO 80219

Denver	Denver Human Services Jecole Shaw (720) 944-6230 jecole.shaw@denver.gov.org	Last Thursday 5-7 pm	Fresh Start 1633 Fillmore St. Denver, CO 80206
Denver	Denver Center for Crime Victims Daiga Keller (303) 866-0660	If interested, call for dates, times and location.	Words of Wisdom (8 wk. support group) Befriending the Body (10 wk. yoga group)
Douglas	Catholic Charities Dora Bonilla (303) 742-0823 x 2072 dbonilla@ccdenver.org	2nd Tuesday 5:30-7:30 pm	Castle Rock Senior Center 2323 Woodlands Blvd. Castle Rock, CO 80104
El Paso	Sandra Watford (719) 596-3983 sewatford@juno.com or Cindy Stapp (719) 633-0685 cinderplum3@hotmail.com	Every other Tuesday 11:30 am-2 pm	Ascension Lutheran Church (basement) 2505 N. Circle Dr. Colorado Springs, CO 80909
El Paso	Community Partnership for Child Development Ceci Blanco (719) 635-1536 x 262 cgarcia@cpcd.org	2nd & 4th Tuesday 6-7:30pm	Community Partnership for Child Development 2330 Robinson St. Colorado Springs, CO 80904
Gilpin- served by the Jefferson Center for Mental Health group	Jefferson Center for Mental Health Heather Trish **(303) 432-5265** heathert@jcmh.org	3rd Wednesday 5-7 pm	Shepherd of the Hills Presbyterian Church 11500 W. 20th St. Lakewood, CO 80215

Jefferson	Center for Mental Health Heather Trish **(303) 432-5265** heathert@jcmh.org	3rd Wednesday 5-7 pm	Shepherd of the Hills Presbyterian Church 11500 W. 20th St. Lakewood, CO 80215
Larimer	Namaqua Center Craig Callan (970) 290-1624 craig.callan@touchstonehealthpartners.org	2nd Tuesday 6-8 pm	Community Life Center 220 N. Grant Ave. Fort Collins, CO 80521
Larimer	Namaqua Center Craig Callan (970) 290-1624 craig.callan@touchstonehealthpartners.org	4th Monday 6-8 pm	Lifespring Covenant Church 743 S. Dotsero St. Loveland, CO 80537
Logan	Karen Torres (970) 526-2439 thefamilyresourcecenter@yahoo.com	Fridays 9:30 am Circle of Grandparents	Family Resource Center 120 Main St. Sterling, Colorado 80751
Logan	Julie Robbins-Kilpatrick (970) 522-2194 x 234	1st Thursday 6:30-8:30 pm Foster, Kinship and Adoptive Families	Logan County Social Services 508 S. 10th Ave. Sterling, CO 80751
Mesa	Kim Cannedy (970) 260-8187	3rd Thursday 5:30-7 pm Foster, Post-Adopt and Kinship Families	ppleton Christian Church 2510 I-70 Frontage Rd. Grand Junction, CO
Montrose	**Shelley Green** (970) 964-2121 sgreen@centermh.org **or** Carol Hamilton (970) 249-5119	1st & 3rd Thursday 6 pm Child care is provided. A meal is not provided, but caregivers do bring snacks	Montrose United Methodist Church 19 S. Park Ave. Montrose, CO 81401

Otero	Tri County Family Care Center Nancy Harrington (719) 254-7776	1st Tuesday 7 pm	Tri County Family Care Center 512 ½ N. Main St. Rocky Ford, CO 81067
Pueblo	Hope For Children Leslie Kammeier (719) 545-6821 hfcleslie@hotmail.com	1st & 3rd Tues 9-10:30 am	Hope For Children 801 W. 4th St., Ste. 104 Pueblo, CO 81003
Weld	Catholic Charities Northern Joan Bertram (970) 353-6433 Ext. 43 jbertram@ccdenver.org	2nd Thursday 6-8 pm	Salvation Army 1119 6th St. Greeley, CO 80631

Kinship Support Groups in Colorado with Internet Addresses

- Administration on Aging is the federal government agency offering resources for grandparents raising grandchildren: *www.aoa.gov/prof/notes/Docs/Grandparents_Raising_Grandchildren.pdf*
- AARP Grandparent Information Center provides a wide variety of resources for grandparents, as well as technical support materials to community-based groups and service agencies working with grandparents: *www.aarp.org/families/grandparents*
- American Bar Association's Center for Children and Law can provide answers to legal aspects of raising grandchildren: *www.abanet.org/child/home.html*
- The American Self-Help Clearinghouse is a nationwide computerized database that offers tips on how to start your own grandparent self-help group, and a listing of local self-help clearinghouses in your area: *www.selfhelpgroups.org*
- Colorado Legal Services provides legal advice on raising grandchildren, including taxes and health care: *www.coloradolegalservices.org/CO/index.cfm*
- Colorado Office of Resource and Referral Agencies, Inc., provides a comprehensive source to aid in the search for child-care: *www.corra.org*
- Creative Grandparenting has a mission to connect the generations: *www.creativegrandparenting.org*
- The Foundation for Grandparenting has innovative ideas for grandparents as parents and a large selection of books: *www.grandparenting.org*
- Grandparents as Parents helps individuals network with other grandparents: *http://home1.gte.net/res02wo7*
- Grandparent Foundation is involved in education, research, programming, and networking around grandparenting: *www.grandparenting.org*
- Grandparents Resource Center works with grandparents and family members to facilitate harmony and foster intergenerational relationships, providing broader security for children in the family: *http://Grandparents Resource Center4usa.org*
- The Grandparent Rights Organization is a grandparenting rights advocacy group: *www.grandparentsrights.org*
- Grandparents Who Care is an organization designed to help grandparents with visitation problems: *www.grandparentswhocare.com*
- National Center for Grandparents Raising Grandchildren has a mission to improve the quality of life for intergenerational kinship care families via education, advocacy, and the promotion of sound legislation: *http://chhs.gsu.edu/nationalcenter*
- Social Security Benefits for Grandchildren provides advice on social security benefits: *www.ssa.gov/kids/parent5.htm*

Related Information

Kinship Care Initiatives in Colorado

- AARP's online kinship care support group database at *http://www.aarp.org/grandparents/searchsupport/*
  Information and Referral for Kinship Care Families: Families First provides the Family Support Line, available to kinship care families and others seven days a week (from 10 a.m. to 10 p.m.). The listening line provides families with information and referrals for parenting classes, support groups, and other agencies working with grandparents and other relatives. The Family Support Line also makes referrals for financial assistance, mental health, legal, educational, and medical support services. Contact: Sarah Hite, Coordinator, at 1-877-695-7996 (toll-free in Colorado) or (303) 695-7996.

- Statewide Resource Guide: The Colorado Kinship Care Resource Guide contains useful information for all relative caregivers—those caring for children with or without legal custody and those caring for children in the custody of the Department of Human Services. The guide contains local and statewide information on organizations and programs that serve relative caregivers. Answers to questions on public benefits, legal options, educational access, medical and mental health services, childcare, support groups, foster care and adoption, and interacting with incarcerated parents are all provided. To download a copy of the Resource Guide, visit *http://www.nsatraininginstitute.org/kinship.htm.*

- Support and Outreach in Weld County: Catholic Charities runs a monthly support group for relative caregivers in the Weld County area. The group provides childcare during the support group as well as ongoing case management services for a limited number of caregivers. The case management services include home visits, advocacy, referrals, and assistance accessing social and legal services. Information and referrals are also provided for all kinship care families in the areas of housing and other social and legal support services. Contact : Cheri Anderson, Supervisor, at (970) 353-6433 or *ccncanderson@hotmail.com.*

- Comprehensive Kinship Care Support in El Paso County: El Paso County Kinship Support Services provide a wide variety of supports to kinship care families inside and outside of the child welfare system. The program provides casework services and financial help in meeting the needs of children, including summer camp, furniture, and moving costs. A "grandparent advocate" works with both relatives receiving Temporary Assistance to Needy Families (TANF) payments and those involved in the foster care system. The county also provides kinship care support groups and offers a "warm-line" to provide information and referrals to kinship care families. The county has also recently created a subsidized custody program. Contact: Betsy Fredrickson at (719) 444-5900 or *elizabeth.fredrickson@elpaso.com.*

- A Range of Services for Kinship Care Families in Colorado Springs County: The Colorado Springs Grandparents and Kin Program assists relative caregivers (within the fifth degree of kinship) in Colorado Springs County by providing professional and peer support as well as informational, educational, financial, and advocacy services. Support payments are provided for eligible children in addition to a clothing allowance and emergency financial assistance, as needed. The program also makes referrals for legal assistance. Contact Twilla Stiggers, (702) 944-2116.

- Community-based Kinship Care Services: Catholic Charities, Archdiocese of Colorado Springs, Inc. offers community-based support groups for relative caregivers in several communities throughout Colorado Springs. Through the support groups, Catholic Charities provides caregivers with information on how to lobby state and national legislative representatives, resource referrals, and information on permanency options and respite care. Childcare is available during the support group. Contact: Jenny Koch, Kinship Care Coordinator, (303) 742-0823.

- Support for Colorado Kinship Caregivers: The Grandparents Resource Center offers a series of educational and informative programs for kinship caregivers in the Denver area. The Center offers Pro Se Litigation training for kinship caregivers representing themselves in court, and a variety of seminars on topics like and "Discipline and Behavior: How to Parent Your Grandchild." Contact: Shirley M. Berens, Director, at (303) 980-5707 or *GRC4USA@aol.com.*

- Grandparent Support Program: The Family Empowerment Team of Pikes Peak Family Connections has a grandparents raising grandchildren support group which meets bi-weekly in Colorado Springs. Child care is available during the meetings. The Team also co-sponsors annual family events and provides information and referrals for public benefits and legal assistance. The Team assists grandparent caregivers in El Paso and Teller Counties. Contact: Dee Thomas, Associate Director, (719) 520-1019 or *ppfc@fctc.org.*

<u>Other Support for Colorado Kinship Care Families</u>

Children raised by kinship caregivers are often eligible for a range of state and federal programs. In most cases, kinship caregivers may apply for these programs on a child's behalf even though they are not the child's parents or legal guardians. Some examples of these programs include:

- Cash assistance: Cash assistance may be available to children and their grandparents and relative caregivers through the Colorado Works program and other county-based assistance programs. Kinship care families may also be eligible for food stamps to help meet their children's food and nutrition needs. For more information about these programs, call (303) 866-2882.

- Health insurance: Grandparents and other relative caregivers may apply for free or low-cost health insurance on behalf of the children they are raising through the Colorado Baby Care Kids Care or Child Health Plan (CHP+) programs. In some cases, caregivers may also be eligible for free coverage under Medicaid. For more information about how to apply for Baby Care-Kid Care, call (303) 692-2229 or 1-800-688-7777. For more information about applying for CHP+ call 1-800-359-1991 or log on to *http://www.cchp.org.*

State Laws and Policies

Sometimes kinship caregivers find it difficult to obtain services their children need, such as medical care or education. In addition to the state's child guardianship and custody laws, the following law may be helpful to kinship caregivers:

- Immunization Consent Law: (Colo. Rev. Stat. 25-4-1704): This law allows a parent, legal guardian, or person vested with "legal custody or decision-making responsibility for the medical care of the minor" to consent verbally or in writing, to a child's immunization to a stepparent or "an adult relative of the first or second degree of kinship." The adult relative must tell the physician administering the shot of any of the child's health concerns.

ATTACHMENTS

Attachment A

FAMILY SERVICES PLAN

FOR CHILD/YOUTH ENTERING CORE SERVICE OR KINSHIP PLACEMENT

PART 4A: IMMINENT RISK OF OUT-OF-HOME PLACEMENT CRITERIA CHECKLIST

* Complete this form every 6 months while Core Services are provided or as long as the child/youth remains in a Kinship Placement.

CHILD/YOUTH: _____ DATE: _____

This child is eligible for a Core Service and / or Kinship Placement on the basis of the child's need for services because the child has met the criteria for out-of-home placement (Refer to Volume VII Section 7.304.3). *Absent Core Services or Kinship Placement, the plan for the child would be out-of-home placement with non-kin.*

Criterion #1: The child/youth is at imminent risk of out-of-home placement [CRS 26-5.3-103(2)] because one or more of the following conditions exist: (CHECK ALL THAT APPLY)

__Abandonment by or incarceration of parents/caretaker

__Death of Parent

__Abuse/neglect-as defined in the Children's Code

__Substance abuse (child/caretaker); drug exposed infants

__Homelessness/Inadequate Housing (child/caretaker)

__Infant or young child of teen parent in placement

__Delinquency- (adjudicated in compliance with CRS 19-2-1602)

__Child/youth returning home from OOH placement or moving to less restrictive level of care

__Domestic Violence

__Mental Illness (child/caretaker)

__Disability (child/caretaker)

__Physical Illness (child/caretaker)

__Relinquishment or termination of parental rights

__Beyond control of parents

__Danger to self, others, or community

Describe how these conditions result in "imminent risk":

Criterion #2: Assessment

The above conditions are to be addressed through Cores Services and /or Kinship Placement because all other resources, services and/or funding sources considered were

☐ not immediately available without DHS funding,

☐ absent,

☐ unsuccessful,

☐ exhausted

☐ other _____

Please Explain:

Criterion #3: Determination of Core Services and/or Kinship Placement

The best choice of available options/alternatives at this time to reduce risk to the child/youth while continuing reasonable efforts to resolve conditions that led to imminent risk is:

__ Core Services

__ Kinship Placement ☐ With Core Services ☐ No Core Services

Describe why this is the best choice

Refer to service authorization screen in Trails for details of Core or Kinship services authorized for the child.

Attachment B

COLORADO SAFETY ASSESSMENT/PLAN

CAC-1 8/00

Family Name: Worker Name: Assessment Begin Date:

Reason for a Safety Assessment:

_____ Referral _____ Reunification Assessment _____ Case Closure Assessment _____ Other

Safety Assessment

The following is a list of behaviors or conditions that may be associated with a child being in danger of moderate to severe harm. When assessing the child(ren)'s safety, consider the effect that adults who have access to them could have on their safety. Identify the presence of each factor by checking "Yes" which is defined as "clear evidence or other cause for concern." For all safety concerns marked "yes", describe the specific individuals, behaviors, conditions, and circumstances associated with that safety concern. Complete assessments within seven days of first contact-but continue to document observations as the assessment proceeds.

1. Caregiver(s) in the home is out of control and/or violent.

YES NO

2. Caregiver(s) describes or acts toward the child(ren) in predominately negative terms and/or has unrealistic expectations likely to cause harm.

YES NO

3. Caregiver(s) has caused harm to the child or has made a credible threat of harm.

YES NO

4. Primary caregiver has not or is unable to protect child.

YES NO

5. Explanations of injuries present are unconvincing.

YES NO

6. The family refuses access to the child or there is reason to believe the family will flee.

YES NO

7. Caregiver(s) is unwilling or unable to meet the child's immediate needs for food, clothing and shelter.

YES NO

8. Caregiver(s) is unwilling or unable to meet the child's moderate to severe medical or mental health care needs.

YES NO

9. Caregiver(s) has not or is unable to provide sufficient supervision to protect the child from potential harm.

YES NO

10. Child is fearful of caregiver(s), other family members, or other people living in, or having access to, the home.

YES NO

11. Caregiver(s) previously abused or neglected a child (or is suspected of such) and the severity of the past maltreatment, or caregiver(s) response to previous intervention, along with at least one other safety concern, suggests imminent danger to the child. Mark all that apply:

___Bodily injury to a child due to assault

___Death of child due to abuse/neglect

___Prior placement of any child due to maltreatment

___Prior termination/relinquishment of parental rights due to maltreatment

___Other

Attachment C

Dependency and Neglect Cases
Cited Laws

1. Jurisdiction

Failure to file petition in conformity with CRCP 7(c) within 7 working days after child taken into custody **is not jurisdictional.**. People in the Interest of A.M., 786 P.2d 476 (Colo. App. 1989)

The **state is the exclusive party** to bring a D&N action. McCall v. District Court, 347 P.2d 392 (Colo. 1982).

Juvenile Court **does not have jurisdiction over unborn children**. People in the Interest of H**.**, 74 P.3d 494 (Colo. App. 2003)

UCCJEA applies to D&Ns. People in the Interest of D.P., 181 P.3d 403 (Colo. App. 2008)

2. Detention Hearings

A **shelter or detention hearing** is pre-adjudication, is not to determine the parent's legal interest, but is to ensure the minor's welfare and safety prior to adjudication. W.H. v. Juvenile Court, 735P.2d 191 (Colo. 1987)

3. Adjudication—Evidence and Findings

The removal of a child from the legal custody of a parent who **suffers from a handicap** cannot be presumed to be in the best interests of the child based on the fact of the handicap alone. People in Int. of B.W., 626 P.2d 742 (Colo. App. 1981)

Incarceration of the parent, by itself, is not dependency or neglect. People in Interest of S.B., 742 P.2d 935 (Colo. App. 1987), discussed in People in the Interest of M.C.C., 641 P.2d 306 (Colo. App. 1982)

Merely **handing children over to another person** is not, by itself, proof of abandonment or of dependency or neglect. Diernfield v. People, 323 P.2d 628 (Colo. 1958)

Evidence of **non-accidental trauma** does not establish prima facie case of dependency or neglect. In the interest of M.A.L., 553 P.2d 103 (Colo. Ct. App. 1976)

Evidence that child is **dressed inappropriately**, had poor hygiene, and lived in a house in need of repair, did not establish prima facie case of dependency or neglect. In the interest of T.H., 593 P.2d 346 (Colo. 1979)

Term "abuse" as statutory basis for declaration of child dependency or neglect, includes **emotional abuse**. In the interest of D.A.K., 596 P.2d 747 (Colo. 1979)

Res judicata does not bar subsequent dependency and neglect petitions when the petition is based on new facts or incidents. In the interest of D.A.K., 596 P.2d 747 (Colo. 1979)

Dependency and neglect can be established upon proper showing of **prospective harm to a child**, this is so even where the parents have never had custody of the child. In the interest of D.L.R., 638 P.2d 39 (Colo. 1981)

Adjudications of dependency and neglect are not made "as to" the parents, but rather relate to the **status of the child**. In the interest of **C.T.,** 746 P.2d 56 (Colo. Ct. App. 1987)

A proceeding to determine whether a child is dependent or neglected is designed to determine the child's status or situation **at the time of the adjudication.** However, the evidence of alleged instances of abuse and parental neglect relied upon to establish the child's dependency and neglect must be considered in the context of the child's history as well as the respondent parent's prior behavior. People in Interest of D.A.K., 198 Colo. 11, 15 (1979)

No fault admission by mother, with whom children were not residing, that child had been assaulted and that children lacked proper parental care, could not sustain adjudication of dependency and neglect as to father who disputed allegations and demanded jury trial. In the interest of A.M., 786 P.2d 476 (Colo. Ct. Apps. 1989)

When **father wins adjudicatory jury trial** as to one child after no-fault admission by mother, the child should have been returned to the custody of father. Interest of T.R.W., 759 P.2d 768 (Colo. App. 1988). But see In the Interest of A.H. Supreme Court Sept. 14, 2009.

A one-time incident of injurious environment by mother, in which father has no fault, cannot support a D&N adjudication by "**lack of proper parental care.**" Further, mother's creation of an "**injurious environment**" does not impute to father. (However, this case did not involve a finding of no-fault by father.) People in the Interest of S.G.L. 08CA2619

The parties may **appeal from an adjudication and disposition** order. What state the child was abused or neglected in is irrelevant. The treatment plan may be different from the determination of the jury. In the Interest of C.L.S., 934 P.2d 851 (Colo. App. 1996)

A summary judgment motion may be filed 21 days before the adjudicatory hearing, despite C.R.C.P. 56(c) (summary judgment motion must be filed no later than eighty-five days prior to **trial). People in the Interest of A.C., 170 P.3d 844 (Colo. App. 2007)**

4. Respondent Parents' Attorneys

When evaluating a claim of **ineffective assistance of counsel** in termination proceedings, Colorado courts employ the same test that governs claims of ineffective assistance of counsel in criminal cases. *People in Interest of V.M.R.*, 768 P.2d 1268, 1270 (Colo. App. 1989). (all appointed attorneys) Under this test, the parent must show two things: (1) counsel's performance was outside the wide range of professionally competent assistance; and (2) the parent was prejudiced by counsel's errors. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052,

2064, 80 L.Ed.2d 674 (1984); *Ardolino v. People*, 69 P.3d 73, 76 (Colo. 2003). People in the Interest of C.H., 16 P3d 288, 290-291 (Colo. App. 2007); see also In the Interest of D.M. 167 P.3d 211 (Colo. App. 2007)

CBA Ethics Opinion 114: There must be writing to D&N client that there is **no fee** due the attorney; the attorney may not **decline to advocate** for a non-appearing client. The attorney may do hearing, even with non-appearing client; by **offers of proof**, attorney **must appeal** if asked.

If counsel must appeal but thinks there are **no grounds to appeal**, she must file **Anders brief**. See Anders v. California, 386 U.S. 738 (1967). People in the Interest of D.M., 186 P.3d 101 (Colo. App 2008)

5. Guardians ad Litem

Section 19-3-203(3), C.R.S., sets out the duties of the guardian ad litem. Those duties are not mandatory in every case. People in Interest of DARREN W., 796 P.2d 66 (Colo. App. 1990). But see CJD 04-06

The court can't **dismiss a D&N over the objection** of the guardian ad litem. The court must hold a **probable cause hearing.** People in the Interest of R.E.**,** 729 P.2d 1032 (Colo. App. 1986). **Grandparents cannot** similarly prevent the dismissal of a D&N. People In Interest of G.S., 820 P.2d 1178, 1180 (Colo. App. 1991)(citing R.E.)

The **guardian ad litem missing the second day** of a three-day termination hearing is not per se reversible. In ordinary circumstances, **CJD 97-02** must be followed by the guardian ad litem. In the Interest of D.L.C. Jr., 70 P.3d 58 (Colo. App. 2002)

Guardian ad litem may file **termination motion**. In the Interest of M.N., 950 P.2d 674 (Colo. App. 1997)

The guardian ad litem may be **required to testify**, but not if she relies only on evidence received by the court from other sources. People in the Interest of J.E.B., 854 P.2d 1372 (Colo. App. 1993)

Leading friendly witnesses is not permitted, even if the guardian ad litem didn't call them. (No Colorado case law?) See Nervant v. Construction Aggregate Corporation, 570 F.2d 626 (6th Cir. 1978); G.A.B. Business Services Incorporated v. Moore, 829 SW 2d 345 (Tex App. 1992)

The guardian ad litem's concurrent **contract with the department** to provide services **disqualifies the guardian ad litem** from representing a child in a D&N. People in Interest of J.A.M., 907 P.2d 725 (Colo. App. 1995)

6. Termination of Parental Rights

A parent has a fundamental liberty interest in the parental relationship and has due process right in a termination proceeding. B.B. v. People, 785 P.2d 132 (Colo. 1990)

The 14th Amendment guarantees a parent the right to **"establish a home and bring up children."** Meyer v. Nebraska, 262 US 390, 398 (1923)

Clear and convincing evidence is the appropriate constitutional standard of proof in proceedings regarding termination of parental rights. In the Interest of A.M.D., 648 P.2d 625 (Colo. 1982). Santosky v. Kramer, 455 US 755 (1982)

Allocation of parental responsibility **(APR)** to someone other than the parent and extreme limitation of visitation is not the **functional equivalent of a termination** of parental rights so as to require proof by clear and convincing evidence. *L. L. v. State,* 10 P.3d 1271, 1277 (Colo. 2000)

> *Accordingly, we reiterate here our holding in A.M.D. that due process of law is accorded to parties when an adjudicatory hearing of a dependency or neglect proceeding is governed by a preponderance of the evidence standard. Although Petitioner is suffering the loss of many of her parental rights, this fact does not change our analysis of the constitutionality of dependency or neglect proceedings under the Mathews v. Eldridge three-prong test. As we noted in A.M.D., the governmental interest here is significant. See A.M.D., 648 P.2d at 639. The adjudication of dependency or neglect petitions provide the state with the means to intervene to assist parent s and children in establishing a home environment that will preserve the family unit. The purpose of dependency or neglect proceedings is not to deprive parents of their rights to raise their children; rather, it is to preserve the family and protect children.*

Termination of parental rights may not be accomplished only in the best interest of the minor child, without some showing of **parental unfitness.** Quilloin v. Walcott, 434 US 246, 255 (1978)

Best interest is not the only concern in parental termination. A child should be **raised by his parents** and termination should occur only **with caution**. People, Int. of E.A., 638 P.2d 278 (Colo. 1981)

Father **not given enough time** to do the treatment plan – 3 months from disposition to termination hearing – 23 days from treatment plan to termination motion. People in the Interest of D.Y. 176 P.3d 874 (Colo. App. 2007)

A foster parent's interest in raising a foster child does not arise until after a permanency planning determination that the child cannot be returned to mother. In the Interest of A.W.R., 17 P.3d 192 (Colo. App. 2000) *See Attachment F, Court of Appeals Case: The People of the State of Colorado in the interest of A.W.R.*

The **termination motion** need not be **specific**. People in the Interest of L.L., 715 P.2d 334 (Colo. 1986)

The trial court may not commence a **termination hearing within 30 days** of the filing of the termination motion. People in the Interest of C.L.S., 705 P.2d 492 (Colo. App. 1985)

The division held that the **120-day statutory time** to conduct a termination hearing is **not jurisdictiona**l. In the Interest of **T.E.H**., 168 P.3d 5 (Colo. App. 2007)

Admission of **dispositional and evaluative reports** into evidence does not violate constitutional confrontation requirements or due process where reports are made available to interested parties sufficiently in advance of hearing to permit parties to compel attendance of persons who wrote the reports or prepared the materials and subject them to examination under oath. In the interest of A.M.D., 648 P.2d 625 (Colo. 1982)

The hearsay exception allowing **social reports** to come into evidence is not violative of due process because the author must be made available to testify. The general rule is that even indigent parents are not entitled to a **free transcript**, in the absence of an authorizing statute. People in the Interest of A.R.S., 502 P.2d 92 (Colo. App. 1972)

Unavailability of report writer is error. People in the Interest of L.L., 715 P.2d 334 (Colo. 1986)

Attorney client privilege exists between indigent parent and **expert witness** appointed for parent at request of attorney, to assist parent in termination of parental rights proceeding. (No psychologist-client privilege or physician-patient privilege when information disclosed for purpose other than treatment - such as preparing for pending litigation.) In the interest of T.S.B., 785 P.2d 132 (Colo. 1990)

The respondent parent's attorney-client privilege with the **appointed expert** did not attach when the children participated in the expert's evaluation of the mother and themselves. D.A.S. v. People, 863 P.2d 291 (Colo. 1993)

The parent does not get an **expert witness** appointed as a matter of right at adjudication. People in Interest of S.B., 742 P.2d 935 (Colo. App. 1987)

Thus, the statutory right to an **expert witness may be limited in scope** if necessary because of the physical, mental, or emotional needs of the child. People in Interest of M.H., 855 P.2d 15 (Colo. App. 1992)

The parent may comply with the **treatment plan** and still not be **successful**, and termination is proper. People in the Interest of D.DARREN W., (Colo. App. 1997)

The parent must **object to the treatment plan** in order to preserve inadequacies for the termination hearing. In the Interest of T.E.H., 168 P.3d 5 (Colo. App. 2007); People in the Interest of D.P., 160 P.3d 351 (Colo. App. 2007)

"**No appropriate treatment** plan" statute interpreted. People in Interest of C.S.M., 805 P.2d 1129 (Colo. App. 1990)

There is no *per se* due process bar to **summary judgment in a termination case**. People in the Interest of A.E., 914 P.2d 534 (Colo. App. 1996). [narrow range of cases—but not appropriate here—trial court overruled]

There can't be a termination without a prior adjudication, followed by a disposition (treatment plan). In The Interest of D.R.W., 91 P.3d 453,457 (Colo. App. 2004)("We conclude that the termination must be set aside because **the absence of a timely dispositional hearing** prejudiced father's ability to preserve his parental rights.")

Exclusionary rule doesn't apply automatically in a termination hearing and evidence no **suppressed**. People in the Interest of A.E.L. and K.C.-M., 181 P.3d 1186 (Colo. App. 2008)

Parental deficiencies less serious than unfitness may give rise to a **compelling reason** not to return the child home. People ex rel. C.M., 116 P.3d 1278, 1283 (Colo. App. 2005); §19-5-702, CRS, 2006. The Constitutional presumption that the parent will act in the best interest of the children; Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L.Ed.2d 49 (2000), does not apply to D&N cases. *Id.*

We hold that absent safety concerns, a parent is **entitled to face-to-face visitation**, and correspondence between parents and children does not constitute visitation. We further hold that the **trial court may not delegate** the determination of entitlement to visitation to caseworkers, therapists, and others. People Ex Rel. D.G., 140 P.3d 299, 302 (Colo. App. 2006)

6. Grandparents' and Foster Parents' Rights

Grandparents' visitation rights end at termination. Grandparents may not intervene after termination. In the Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997) and People in the Interest of N.S., 821 P.2d 931 (Colo. App. 1991)

Court may order that **grandparents may continue to have visitation rights** after termination and adoption. In re the Matter of R.A. and T.A., 66 P.3d 146 (Colo. App. 2002) (non-D&N adoption)

The **statutory preference for placement with grandparents** does not mean the children have to be placed with grandparents. People in the Interest of E.C. and A.C., 47 P.3d 707 (Colo. App. 2002)

Aunt can't intervene after termination. While the **parent has a fundamental liberty interest** in the parental relationship, the aunt does not. People in the Interest of C.E., 923 P.2d 383 (Colo. App. 1996) (discusses grandparents' rights)

Less-drastic alternatives must be considered in termination order but may be implicit in the findings. People in the Interest of M.M., 726 P.2d 1108 (Colo. 1986 [This is M.M. the 2d—see M.M. the 1st at 520 P.2d 128 (Colo. 1974)]

Foster parents have **no constitutionally protected due process right** as to foster children until the goal of parental reunification has been abandoned. There was no error in the juvenile court's order **restricting the foster mother's participation** to direct testimony as to the child's best interests. In Re A.W.R., 17 P.3d 192, 197 (Colo. App. 2000)

7. ICWA

25 U.S.C. § 1911(c) (1978) of the ICWA allows Native American tribes to intervene at any point in a state court proceeding involving the foster care placement of, or the termination of parental rights to, a Native American child. However, the Tribe acknowledges that § 1911(c) does not authorize it to intervene in adoption proceedings. People in Interest of AEV, 782 P.2d 858, 859 (Colo. App. 1989)

The parent not claiming membership still has **standing** to contest ICWA compliance. Father's **failure to return an ICWA form** after his statements indicating he might be tribe-eligible, required investigation by department. The department's **statement to the tribe or BIA** must contain enough information to be meaningful. People in the Interest of J.O., 170 P.3d 840 (Colo. App. 2007)

An expert's specialized knowledge is not required where termination is not **based on the Native American culture** or society. ICWA's "**active efforts**" are the same as "reasonable efforts." People in the Interest of K.D., 155 P.3d 634 (Colo. App. 2007)

ICWA applies to **stepparent adoptions**. The "existing Native American family exception," created by Kansas Supreme Court, is not adopted in Colorado. The rejected **existing Native American family exception** stated that ICWA should apply only to the removal of Native American children who were members of a Native American home and participated in Native American culture. In the Matter of the Petition of **N.B**., P.3d (Colo. App. No. 06CA1325, Sept. 6, 2007)

The department violated ICWA by **not filing notices** and return receipt cards with the court. The notices also didn't have the statutory information. People in the Interest of **N.D.C.** 08CA2304

8. Appeals

Shelter order is temporary and not appealable. People in the Interest of **A.E.L.** and K.C.-M., 181 P.3d 1186 (Colo. App. 2008)

Termination criteria apply **individually to each parent**, and one parent may not complain about due process errors concerning the other parent. In re. **J.M.B**., 60 P.3d 790 (Colo. App. 2002)

In deciding whether **less drastic alternatives** exist, a trial court may recognize **differences between the parents**. People v. In Interest of **J.L.M**., 06CA0454 (Colo. App. 7-27-2006)

A termination hearing trial court is presumed to **ignore incompetent testimony**. People in the Interest of **A.R.S**., 502 P.2d 92 (Colo. App. 1972)

Appellate review of a trial court's conclusions (of fact) at a termination hearing will not be disturbed unless so **clearly erroneous** as to find no support in the record. People in the Interest of **C.A.K.,** 652 P.2d 603(Colo. 1982)

Trial court is not required to make express findings that it has considered and eliminated less drastic alternatives to termination of parental rights, and though it is better to do so proactively, it may be presumed that the trial court has met implicit requirements of consideration and rejection of those alternatives as long as the findings conform to the statutory criteria for termination and are adequately supported by evidence in the record. In the interest of **L.G.,** 737 P.2d 431 (Colo. Ct. App. 1987)

New Rule CAR 3.4 effective in 2005. Very short time frames for D&N appeals.

Generally, **failure to comply** with the mandatory language "shall" in **C.A.R. 3.4** will result in dismissal of the petition. People in the Interest of D.M., 186 P.3d 101 (Colo. App 2008)

The **Colorado Children's Code** expressly contemplates participation of interested parties in juvenile cases. C.R.S. § 19-1-107(4) and 19-3-504(3)(1)(1994 Supp. to 1987 Repl. Vol. 8B); People in the Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976). In 1997, the Colorado General Assembly enacted legislation that permits foster parents to intervene as a matter of right following an adjudication. That statute provides in pertinent part, "foster parents who have had a child in their care for more than three months who have information or knowledge concerning the care and protection of the child may intervene as a matter of right following adjudication with or without counsel." C.R.S. § 19-3-507(5)

Attachment D

Due Process

- **Due process** was developed from clause 39 of the Magna Carta, written in 1215 in England. When English and American law gradually diverged, due process was not upheld in England, but did become incorporated in the Constitution of the United States.

- **Due process** is not used in contemporary English law, though two similar concepts are "natural justice" (which generally applies only to decisions of administrative agencies and some types of private bodies like trade unions) and the British constitutional concept of the "rule of law, "as articulated by A. V. Dicey and others. However, neither concept lines up perfectly with the American legal precept of due process, which, at present, contains many implied rights not found in the ancient or modern concepts of due process in England.

- **Due process** is the legal requirement that the state must respect all of the legal rights that are owed to a person. Due process balances the power of "law of the land" and protects individual persons from it. When a government harms a person without following the exact course of the law, this constitutes a due-process violation, which offends against the rule of law.

- **Due process** has also been frequently interpreted as limiting laws and legal proceedings (see substantive due process), so that judges—instead of legislators—may define and guarantee fundamental fairness, justice, and liberty. This interpretation has proven controversial and is analogous to the concepts of natural justice and procedural justice used in various other jurisdictions. This interpretation of due process is sometimes expressed as a command that the government must not be unfair to the people or abuse them physically.

Attachment E

SUSPECTED CHILD ABUSE REPORT

To Be Completed by **Mandated Child Abuse Reporters** Pursuant to Penal

PLEASE PRINT OR TYPE

CASE NAME: _____

CASE NUMBER:

A. REPORTING PARTY

NAME OF MANDATED REPORTER	TITLE	MANDATED REPORTER CATEGORY
REPORTER'S BUSINESS/AGENCY NAME AND ADDRESS Street City		DID MANDATED REPORTER WITNESS THE INCIDENT? ❒ YES ❒ NO
REPORTER'S TELEPHONE (DAYTIME) ( )	SIGNATURE	TODAY'S DATE

B. REPORT NOTIFICATION

❒ LAW ENFORCEMENT ❒ COUNTY PROBATION ❒ COUNTY WELFARE / CPS (Child Protective Services)	AGENCY	
ADDRESS Street Zip City		DATE/TIME OF PHONE CALL
OFFICIAL CONTACTED - TITLE		TELEPHONE ( )

C. VICTIM

One report per victim

NAME (LAST, FIRST, MIDDLE)	BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY
ADDRESS Street Zip City		TELEPHONE ( )	
PRESENT LOCATION OF VICTIM	SCHOOL	CLASS	GRADE
PHYSICALLY DISABLED? ❒ YES ❒ NO	DEVELOPMENTALLY DISABLED? ❒ YES ❒	OTHER DISABILITY (SPECIFY)	PRIMARY LANGUAGE
IN FOSTER CARE? ❒ YES ❒ NO	IF VICTIM WAS IN OUT-OF-HOME CARE AT TIME OF INCIDENT, CHECK TYPE OF CARE: ❒ DAY CARE ❒ CHILD CARE CENTER ❒ FOSTER FAMILY HOME ❒ FAMILY FRIEND		TYPE OF ABUSE *(CHECK ONE OR MORE)* ❒ PHYSICAL ❒ MENTAL ❒ SEXUAL ❒ NEGLECT
RELATIONSHIP TO SUSPECT	PHOTOS TAKEN? ❒		DID THE INCIDENT RESULT IN THIS VICTIM'S DEATH? ❒ YES ❒ NO ❒ UNK

D. INVOLVED PARTIES

VICTIM'S SUSPECT PARENTS/GUARDIANS SIBLINGS

NAME	BIRTHDATE SEX ETHNICITY	NAME	BIRTHDATE SEX ETHNICITY
2.		4.	

VICTIM'S

NAME (LAST, FIRST, MIDDLE)	BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY
ADDRESS Street Zip City	HOME PHONE ( )		BUSINESS PHONE ( )
NAME (LAST, FIRST, MIDDLE)	BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY
ADDRESS Street Zip City	HOME PHONE ( )		BUSINESS PHONE ( )

SUSPECT

SUSPECT'S NAME (LAST, FIRST, MIDDLE)	BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY
ADDRESS Street Zip City		TELEPHONE ( )	
OTHER RELEVANT INFORMATION			

IF NECESSARY, ATTACH EXTRA SHEET(S) OR OTHER FORM(S) AND CHECK THIS BOX *IF MULTIPLE VICTIMS,*

WHITE COPY-Police or Sheriff's Department; BLUE COPY-County Welfare or Probation Department; GREEN COPY- District Attorney's Office; YELLOW COPY-Reporting Party

E. INCIDENT INFORMATION	DATE / TIME OF INCIDENT	PLACE OF INCIDENT
	NARRATIVE DESCRIPTION (What victim(s) said/what the mandated reporter observed/what person accompanying the victim(s) said/similar or past incidents involving the victim(s) or suspect)	

SS 8572 (Rev. 12/02) *DEFINITIONS AND INSTRUCTIONS ON REVERSE*

DO NOT submit a copy of this form to the Department of Justice (DOJ). The investigating agency is required under Penal Code Section 11169 to submit to DOJ a Child Abuse Investigation Report Form SS 8583 if (1) an active investigation was conducted and (2) the incident was determined not to be unfounded.

Attachment F

Court of Appeals Case

PEOPLE

v.

The PEOPLE of the State of Colorado, In the Interest of A.W.R., a Child, Upon the Petition of the Denver Department of Human Services, Petitioner-Appellee, Concerning S.L.F. and L.L.R., Respondents, Concerning P.E., Intervenor-Appellant.

PEOPLE

v.

The PEOPLE of the State of Colorado, In the Interest of A.W.R., a Child, Upon the Petition of the Denver Department of Human Services, Petitioner-Appellee, Concerning S.L.F. and L.L.R., Respondents, Concerning P.E., Intervenor-Appellant.

No. 99CA1188.

September 14, 2000

Daniel E. Muse, City Attorney, Laura Grzetic Eibsen, Assistant City Attorney, Denver, Colorado, for Petitioner-Appellee. Ruth A. Buechler, Guardian ad litem Rocky Mountain Children's Law Center, Seth A. Grob, Alison Wheeler, Denver, Colorado; James McDonough, P.C., James McDonough, Englewood, Colorado, for Intervenor-Appellant. Holme Roberts & Owen, Donald I.J. Kelso, Denver, Colorado, for Amicus Curiae Colorado State Foster Parent Association.

In this dependency and neglect proceeding, P.E. (foster mother/intervenor) appeals from a juvenile court order returning permanent custody of the child, A.W.R., to S.L.F. (mother) and dismissing P.E.'s motion for permanent custody. We affirm the order and dismiss the appeal of the interlocutory order.

In early 1996, the Denver Department of Human Services (department) filed a petition in dependency and neglect concerning the child, then six months old. Two months later mother gave custody of the child to the department, and a month later, the child was adjudicated dependent or neglected. Soon thereafter, the department placed the child with the foster mother.

A dispositional hearing was held on June 14, 1996, after which the juvenile court ordered that the department retain legal custody of the child and that the child remain in the same foster home. The juvenile court also approved a treatment plan which required, as pertinent here, (1) that the mother participate in individual therapy; (2) that she undergo a psychiatric evaluation; and (3) that she attend two one-hour supervised visits each week.
A review hearing in January 1997 revealed that the mother was visiting the child regularly and that she interacted well with him. However, the mother was not participating in individual therapy and requested that the requirement be deleted from the treatment plan. The juvenile court denied her request.

In August 1997, a permanency planning hearing was conducted. At that time, the mother was having unsupervised visits with the child, which occurred two times a week and ranged from two to four hours in length. The social services caseworker noted that the mother and the child were bonded.

Over the next two years, multiple hearings were held concerning the relationship of the mother and child. In general, these showed the mother and child to be bonded with progress by the mother in parenting skills. But she continued to resist participation in any mental health treatment.

During this period the child remained in the custody of the foster mother, who was permitted to intervene in the proceedings. Also, the mother was granted increasing visitation privileges.

Ultimately, in October 1998, the juvenile court, over objections of the foster mother and the guardian ad litem, adopted a recommendation of the department and ordered that temporary custody of the child be given to the mother. Acknowledging the relationship that had developed between the foster mother and the child, the juvenile court ordered that the foster mother have five overnight visits with the child each month. It further ordered the mother to participate in another parent-child interactional evaluation.

On February 2, 1999, the combined permanency planning/custody hearing began. The foster mother and guardian raised issues concerning the foster mother's interest in a continuing relationship with the child; the issues, procedure, and standard of proof under the permanency planning statute, § 19-3-702, C.R.S.2000; and the need for another psychological evaluation of the mother under C.R.C.P. 35.

First, the juvenile court rejected the foster mother's contention that she had a protected liberty interest in maintaining her relationship with the child. Next, the juvenile court determined that, under § 19-3-702, it must first decide whether the child could be returned to the mother immediately or within the next six months; only if the court found that it could not return the child could it consider the foster mother's motion for custody and the future status or placement of the child. The court also found that § 19-3-702 required it to assess the mother's fitness, applying the preponderance of the evidence standard, and to consider the child's best interests in determining whether the child could be returned home. Lastly, the juvenile court denied the foster mother's motion for another psychological evaluation of the mother, ordered a developmental assessment of the child, and continued the hearing at the request of the foster mother.

During a status conference on April 6, 1999, the department sought to limit the role of the foster mother in the permanency planning hearing. The foster mother objected to the timeliness of the motion and argued that, having intervened as a matter of right, she was entitled to full party status. While confirming the foster mother's intervenor status, the juvenile court ruled that the foster mother's participation in the permanency planning hearing would be limited to her own direct testimony as to the child's physical, mental, and

emotional conditions. It further ordered that the foster mother could not present other witnesses or evidence, examine or cross-examine any witnesses, or make any motions, objections, or legal argument.

At the permanency planning hearing conducted later that month, the evidence presented included an August 1998 updated psychological evaluation of the mother, a January 1999 parent-child interactional evaluation, and an April 1999 developmental assessment of the child.

On May 20, 1999, the juvenile court ruled that the mother was fit despite her failure to participate in individual therapy and that it was in the child's best interest to remain in the mother's custody. It then awarded permanent custody of the child to the mother and dismissed the foster mother's motion for custody.

I.

The foster mother contends that the juvenile court erred in limiting her participation in the permanency planning hearing. We find no error.

A.

First, the foster mother argues that because she had a constitutionally protected liberty interest in the continuation of her relationship with the child, she was entitled to participate fully in the hearings in accordance with her right to procedural due process. We disagree. The Fourteenth Amendment and Colo. Const. art. II, § 25, protect individuals from arbitrary governmental restrictions on liberty interests. Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); Watso v. Colorado Department of Social Services, 841 P.2d 299 (Colo.1992).

To establish a violation of procedural due process, a person must show that he or she has a constitutionally protected liberty interest. Watso v. Department of Social Services, supra; People in Interest of A.M.D., 648 P.2d 625 (Colo.1982).

The question of the presence of a constitutionally protected liberty interest in a foster family has been addressed by other courts with mixed results.

In Smith v. Organization of Foster Families for Equality & Reform, 431 U.S. 816, 97 S.Ct. 2094, 53 L.Ed.2d 14 (1977), the Supreme Court addressed the issue without deciding it. There, the Supreme Court noted that the importance of a familial relationship stemmed from the emotional ties derived from the intimacy of daily association, which could arise in a foster family as well as in a biological family. However, in dictum, it indicated that if a foster family's "claimed interest derives from a knowingly assumed contractual relation with the State, it is appropriate to ascertain from state law the expectations and entitlements of the parties." Smith v. Organization of Foster Families for Equality & Reform, supra, 431 U.S. at 845-846, 97 S.Ct. at 2110, 53 L.Ed.2d at 36.

The Smith Court also warned that whatever liberty interest a foster family may have in its continuation, such interest must be substantially weakened where the state proposes to remove the child from the foster family and return it to its natural parents whose constitutionally protected liberty interest derives from the blood relationship, state law sanction, and basic human rights.

Some courts have found that a foster family has a constitutionally protected interest in certain limited situations. See Rivera v. Marcus, 696 F.2d 1016 (2d Cir.1982) (holding that custodial relatives, who later enter into foster parent agreements with the state, have a liberty interest in preserving the family when it is unlikely the biological parent will ever petition for custody); Brown v. San Joaquin County, 601 F.Supp. 653 (E.D.Cal.1985) (stating that foster family's procedural due process rights do not come into existence until natural parents abdicate their responsibility to the child); Berhow v. Crow, 423 So.2d 371 (1982) (holding that foster parents, selected by the mother and approved of by the father permanently to care for their infant, have a liberty interest).

More courts have found that foster parents do not have a protected liberty interest. See Rodriguez v. McLoughlin, 214 F.3d 328 (2nd Cir.2000 (no such liberty interest prior to finalization of adoption); Procopio v. Johnson, 994 F.2d 325 (7th Cir.1993) (rejecting such a liberty interest under either the Fourteenth Amendment, federal Adoption Act, or 42 U.S.C. § 1983 (1998)); Renfro v. Cuyahoga County Department of Human Services, 884 F.2d 943 (6th Cir.1989) (no such interest created after six year foster care relationship); Kyees v. County Department of Public Welfare of Tippecanoe County, 600 F.2d 693 7th Cir.1979) (foster families enjoy a more limited liberty interest than natural or adoptive families); Drummond v. Fulton County Department of Family & Children's Services, 563 F.2d 1200 (5th Cir.1977) (liberty interests do not evolve from state-created, temporary, foster care relationships); Nye v. Marcus, 198 Conn. 138, 502 A.2d 869 (1985) (no liberty interest arises from brief foster care relationships); Johnson v., Burnett, 182 Ill.App.3d 574, 538 N.E.2d 892, 131 Ill. Dec. 517 (1989) (under Illinois law, foster parents have no constitutionally protected liberty interest in the continued custody of their charges); In Interests of A.C., 415 N.W.2d 609 (Iowa 1987) (Iowa law does not create a liberty interest in foster family relationship after any certain period of time); In re Adoption/Guardianship No. 2633, 101 Md. App. 274, 646 A.2d 1036 (1994) (no liberty interest created because the foster relationship is a creature of the law legally inferior to biological or adoptive relationships); Adoption of a Minor, 386 Mass. 741, 438 N.E.2d 38 (1982) (foster parents have no liberty interest in adoption when they have no basis to expect eventual status as adoptive parents); In re Dependency of J.H., 117 Wash.2d 460, 815 P.2d 1380 (1991) (Washington law does not provide foster parents with entitlement to due process regarding foster children's removal from the foster home).

Our review of Colorado law concerning foster parents convinces us that no expectation of a continued foster placement can arise until the goal of reunification of the child with his or her natural family has been abandoned. The primary purpose of the Children's Code is reunification of the family. Section 19-1-101, C.R.S.2000. If it is necessary to remove a child from his or her home, temporary care may be provided by a foster family while efforts

are being made to rehabilitate his or her parents and to reunite the family. See §§ 19-1-103(51.3), 19-1-103(51.5), and 19-1-103(89), 19-1-115(4), 19-3-507(4), C.R.S.2000. Recognizing the critical need of a child to bond with and attach to a primary adult, however, the General Assembly has imposed time limits within which reunification should be achieved. Sections 19-1-102(1.6) and 19-3-702, C.R.S.2000. Only when it becomes apparent that reunification is unrealistic does the focus shift to finding a permanent home for the child; at that time, the department may begin to consider long-term foster care or an award of guardianship to the foster parent. Sections 19-3-702(4) and 19-3-702(5)(b), C.R.S.2000; Department of Human Services Rules Nos. 7.304.22, 7.304.23, and 7.304.71, 12 Code Colo. Reg. 2509-4.

Further, after the focus shifts to finding a permanent home, the department must continue to provide reasonable efforts to preserve the biological family. Section 19-3-508(7), C.R.S.2000.

Here, although a motion to terminate was filed in August 1997 because of the mother's noncompliance with the mental health requirements of the treatment plan, it was withdrawn five months later. During this five-month period, the department's goal of reuniting the mother and the child did not change, and it continued to make efforts to rehabilitate mother. Further, the mother substantially complied with the treatment plan and maintained her relationship with the child by frequently and consistently visiting him throughout the pendency of the proceeding.

On these facts, and under Colorado law, we conclude that the foster mother did not have a realistic expectation of continuation of the foster parent - foster child legal relationship. Thus, her relationship with the child did not give rise to a constitutionally protected liberty interest, and she was not entitled to the procedural protections of the due process clause of the federal or state constitution.

A.

Second, the foster mother argues that, having been granted leave to intervene as a party to the action, she was entitled to full participation. We perceive no error in the way the court conducted the permanency planning hearing.

Foster parents who have had a child in their care for more than three months and have information or knowledge concerning the care and protection of the child may intervene as a matter of right in a dependency and neglect proceeding following adjudication. Section 19-3-507(5), C.R.S.2000.

Here, the issue at the permanency planning hearing was whether the child could be returned to the mother. Resolution of this issue required determinations of whether the mother's conduct or condition had improved to the extent that she could provide adequate care for the child and whether it was in the child's best interests to be returned to her custody. See People

in Interest of L.D., supra. The mother and the child were the parties with the legal interest in this issue, not the foster mother. As discussed above, the foster mother does not have a constitutionally protected liberty interest in the continuation of her relationship with the child. Thus, the trial court properly limited the foster mother's participation to testifying as to the child's best interest.

The foster mother's reliance on People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974), is misplaced. There the court held that an intervenor in a dependency and neglect proceeding who sought custody of the children had a right to full participation in hearings concerning custody. This right, however, did not arise until after the children had been removed from the parents' custody. Here, the child had been returned to the mother and was in the mother's custody at the time of the permanency planning hearing. Thus, we conclude that People in Interest of C.P, supra, does not apply.

Finally, we reject the foster mother's assertion that the department waived its right to object to her full participation by waiting to raise it until the April 1999 status conference. The objection was based on the juvenile court's February 1999 determination concerning the issues, procedure, and standard of proof to be applied under § 19-3-702, C.R.S.2000. Thus, the objection was not untimely.

Accordingly, under the circumstances here, we find no error in the juvenile court's order restricting the foster mother's participation to direct testimony as to the child's best interests. See § 19-3-508(7), C.R.S.2000; People in Interest of G.S., 820 P.2d 1178 (Colo.App.1991).

II.

The foster mother also contends that the juvenile court erred in ruling that her motion for custody would not be considered until after a determination was made as to whether the child could be returned home. The foster mother contends that the juvenile court erred in applying a parental unfitness standard in determining whether the child could be returned to the mother under § 19-3-702, C.R.S.2000. We disagree.

Under the Uniform Dissolution of Marriage Act, § 14-10-101, et seq., C.R.S.2000 (UDMA), a custody determination pursuant to § 14-10-123, C.R.S.2000, is based on the best interests of the child, and a showing of unfitness is not required. Section 14-10-123.4, C.R.S.2000; In re Custody of C.C.R.S., 872 P.2d 1337 (Colo.App.1993), aff'd, 892 P.2d 246 (Colo.1995).

However, when a motion for custody filed in the district court pursuant to § 14-10-123 is certified to the juvenile court to be determined as part of a pending dependency and neglect proceeding, see § 19-1-104(4)(a), C.R.S.2000, the custody dispute must be conducted pursuant to the provisions of the Colorado Children's Code. L.A.G. v. People, 912 P.2d 1385 (Colo.1996); People in Interest of D.C., 851 P.2d 291 (Colo.App.1993).

The scope of a dependency and neglect proceeding under the Colorado Children's Code, § 19-1-101, et seq., C.R.S.2000, is far broader and encompasses more complex issues than those in a custody dispute under the UDMA. People in Interest of D.C., supra.

A proceeding in dependency and neglect concerns children whose parents are alleged to be unable to provide reasonable care for the children. Section 19-3-102, C.R.S.2000. Among the express goals of the Children's Code are securing reasonable parental care for these children, preferably in their own home, and reuniting the family. Section 19-1-102, C.R.S.2000. Thus, the pivotal concern in maintaining children in their own home is the parents' ability to provide reasonable parental care. Section 19-1-102(c), C.R.S.2000.

If a child is removed from the home, a permanent plan that will best serve the interests of the child and the public must be established as soon as possible. Sections 19-1-102(1)(c), 19-3-507(1)(a), and 19-3-702, C.R.S.2000. See L.A.G. v. People, supra.

As pertinent here, § 19-3-702(3), C.R.S.2000, provides that, at the permanency hearing, the court must determine whether there is a "substantial probability" that the child will be returned to the physical custody of the parent within six months.

Section 19-3-702(3), C.R.S.2000, provides that, if the court determines that there is not a substantial probability that the child can be returned to the parent within six months, then it must enter an order determining "the future status or placement of the child."

The language of §§ 19-3-702(3) and 19-3-702(4) is clear. See In Matter of Catholic Charities and Community Services, 942 P.2d 1380 (Colo.App.1997). Under the statute, the court must first determine whether the child can be returned home; if the child cannot be returned, then the court must address the future status or custody of the child. See People in Interest of H.R., 883 P.2d 619 (Colo.App.1994). Accordingly, we find no error in the juvenile court's decision to defer consideration of the foster mother's motion for custody until after it had determined whether the child could be returned home. See People in Interest of G.S., supra.

However, § 19-3-702 does not prescribe what must be considered in determining whether a child can be returned home. Therefore, we must look to the purposes of the Children's Code to ascertain the appropriate considerations. See M.S. v. People, 812 P.2d 632 (Colo.1991). As discussed above, the pivotal concern in maintaining a child in his or her own home is the parents' ability to provide reasonable parental care. See § 19-1-102, C.R.S.2000.

"Reasonable parental care," which is defined at § 19-3-604(2), C.R.S.2000, the parental unfitness statute, requires, at a minimum, that the parents provide nurturing and protection adequate to meet the child's physical, emotional, and mental health needs. People in Interest of L.D., 671 P.2d 940 (Colo.1983).

Thus, we conclude that the juvenile court correctly applied a parental unfitness standard in determining that the child could be returned home under § 19-3-702(3), C.R.S.2000. Further, our review of the juvenile court order reveals that the court expressly considered the child's best interests in making its determination. And, under the Children's Code, a decision to return the child home necessarily serves the best interests of the public. See § 19-1-102, C.R.S.2000; L.A.G. v. People, supra.

III.
The foster mother also contends that the juvenile court abused its discretion in denying her C.R.C.P. 35 motion for a psychological evaluation of the mother. Again, we disagree.

C.R.C.P. 35 provides that the court may order, upon a showing of good cause, a mental examination of a party whose mental condition is in controversy. The rule does not limit a party to one examination; a second examination may be ordered if there is a substantial time between the initial examination and the trial. Hildyard v. Western Fasteners, Inc., 33 Colo. App. 396, 522 P.2d 596 (1974).

Determination of a motion filed pursuant to C.R.C.P. 35 lies within the sound discretion of the trial court. Kane v. Kane, 154 Colo. 440, 391 P.2d 361 (1964); Hildyard v. Western Fasteners, Inc., supra.

Here, on February 2, 1999, the first day of the permanency planning hearing, the foster mother sought an order requiring the mother to undergo an evaluation to determine the current status of her mental health. The juvenile court denied the motion, finding that the October 2, 1998, order requiring the mother to participate in a parent-child interactional evaluation would adequately address the impact of the mother's mental health on her relationship with the child. Also, the record reveals that the mother had undergone several psychological evaluations before the filing of the dependency and neglect proceeding and that one of the evaluations had been updated in August 1998.

Under these circumstances, we find no abuse of discretion in the juvenile court's denial of the request for yet another psychological evaluation of the mother. See Kane v. Kane, supra; Hildyard v. Western Fasteners Inc., supra.

IV.
Finally, we dismiss the foster mother's appeal insofar as it seeks reversal on the basis of alleged procedural irregularities made during the October 2, 1998, review hearing that resulted in an order changing the temporary physical custody of the child. Interlocutory orders that arise from review hearings and address the physical custody of a child but do not affect the right to legal custody are not subject to appellate review. See E.O. v. People, 854 P.2d 797 (Colo.1993). See also People in Interest of H.R., supra.

The order of the juvenile court is affirmed. The appeal of the October 1998 interlocutory order is dismissed.
Judge TAUBMAN and Judge NIETO concur.

Attachment G

Background Investigation Unit Individual Inquiry Form (TRAILS)

STATE OF COLORADO

cdhs

Colorado Department of Human Services

people who help people

OFFICE OF EMPLOYMENT
AND REGULATORY AFFAIRS
Jenise May, Deputy Executive Director

STATEWIDE SERVICES
Matthew Flora, Director
3550 West Oxford Avenue, 2nd Floor
Denver, Colorado 80236
Phone 303-866-7100
TDD 303-866-7105
FAX 303-866-7177
www.cdhs.state.co.us

Bill Ritter Jr.
Governor

Karen L. Beye
Executive Director

BACKGROUND INVESTIGATION UNIT
INDIVIDUAL INQUIRY FORM

One of the following must be marked in order for BIU to process your request: Volunteer Employment Adoption Foster Care Other (Explain) _____

Please note: Your signature must be notarized and accompanied by a check or money order for $30.00 made payable to: CDHS, BIU, Records & Reports, 3550 W. Oxford Ave., Denver, CO 80236.

INDIVIDUAL MAKING REQUEST **PLEASE PRINT LEGIBLY**

First Name _____ Middle Name _____ Last Name _____ Alias/Maiden Name _____

Date of Birth _____ Sex: M/F _____ Race _____ Social Security Number _____

Current Address _____ City/State/Zip Code _____ Phone Number _____

Mailing Address _____ City/State/Zip Code _____

Previous Address _____ City/State/Zip Code _____

SPOUSE/FORMER SPOUSE/PARENT(S) OF YOUR CHILDREN (Add additional names on a separate sheet of paper)

First Name _____ Middle Name _____ Last Name _____ Alias/Maiden Name _____

Date of Birth _____ Sex: M/F _____ Race _____ Social Security Number _____

CHILDREN – Use full names. (Add additional children on a separate sheet of paper)

1) Complete Name _____ Date of Birth _____ Sex: M/F _____

2) Complete Name _____ Date of Birth _____ Sex: M/F _____

3) Complete Name _____ Date of Birth _____ Sex: M/F _____

4) Complete Name _____ Date of Birth _____ Sex: M/F _____

Any person who willfully permits or who encourages the release of data or information related to child abuse or neglect contained in TRAILS to persons not permitted access to search information commits a class 1 misdemeanor pursuant to §18-1.3-501, C.R.S.

_____ _____

Signature of Individual (If under the age of 18, parent signature required.) Date of Request

Notary Statement: STATE of _____ Subscribed and sworn to before me this

COUNTY of _____ _____ day of _____, _____.

My Commission Expires: _____ **Notary Seal**:

_____

Signature of Notary

If you wish for the background check results to be sent to a representative or agency other than yourself, please complete the following Waiver and Authorization.

WAIVER AND AUTHORIZATION TO RELEASE INFORMATION

I authorize the Colorado Department of Human Service, Background Investigation Unit (CDHS-BIU) to release the results of the background check to the representative and/or agency listed below.

RELEASE INFORMATION TO: **PLEASE PRINT LEGIBLY**

Agency/Company Name: _____

Name Of Individual: _____

Mailing Address: _____

_____

City State Zip Code Phone Number

_____ _____

Signature of Individual (If under the age of 18, parent signature required.) Date

Rev. 8/12/08

Attachment H

Office of Employment and Regulatory Affairs, Boards and Commissions
Division Child Abuse/Neglect Dispute Review Section

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

Definitions and Trails Report Utilization

Definitions:

- "Founded" means there exists a preponderance of credible evidence that the individual is responsible for the child abuse or neglect. See Rule 7.202.3

- "Inconclusive" means that there is some likelihood that the individual is responsible for the child abuse or neglect, but not a preponderance of evidence. See Rule 7.202.3

- "Unfounded" means that there is clear evidence that the individual is not responsible for child abuse or neglect. See Rule 7.202.3

- "Expunged" means that the founded report will be treated as though it did not exist for purposes of employment and background screening; it is still a "Founded" report for risk/safety purposes. See Rule 7.202.3

- "Overturned/Reversed" means that the "founded" report should be treated for all purposes as an "Unfounded" report. Rules 7.202.606D and 7.202.607E.

- "Modified" means that the changed category or severity level should be considered to be the correct Founded report. Rules 7.202.606D and 7.202.607E. Administrative Decisions

- "Upheld" means that the outcome of the appeal is that the report remains as "Founded" by the county. Rules 7.202.606D and 7.202.607E. Administrative Decisions

Report Utilization:

1. "Founded" means there exists a preponderance of credible evidence that the individual is responsible for the child abuse or neglect. "Founded" reports are directly accessed only by state/county dept. child protection workers and,
    A. Are used by child protection workers as the origin of cases that are opened for services.
    B. Are used as reference if there are additional allegations. See e.g. Rule 7.202.4
    C. Are used if potential placement issues arise in the future. See e.g. Rule 7.202.54
    D. Are referenced in responses for background screens for employment, volunteering, adoption, foster care, and individual requests. See C.R.S. Section 19-1-307.

2. "Inconclusive" means that there is some likelihood that the individual is responsible for the child abuse or neglect, but not a preponderance of evidence. "Inconclusive" reports are directly accessed only by state/county dept. child protection workers and,
    A. Are used as reference if there are additional allegations. See e.g. Rule 7.202.533
    B. Are used if potential placement issues arise in the future. See e.g. Rule 7.202.54
    C. Are NOT referenced in responses for background screens for employment, volunteering, adoption, foster care, and individual requests. See C.R.S. Section 19-1-307.

3. "Unfounded" means that there is clear evidence that the individual is not responsible for child abuse or neglect. "Unfounded" reports are directly accessed only by state/ county dept. child protection workers and,
    A. Are used as reference if there are additional allegations; however, the strong finding of non-responsibility should be used to add context. See e.g. Rule 7.202.4
    B. Are used for information if placement issues arise in the future. See Rule 7.202.54
    C. Are NOT referenced in responses for background screens for employment, volunteering, adoption, foster care, and individual requests. See C.R.S. Section 19-1-307.

4. "Expunged" means that the founded report will be treated as though it did not exist for purposes of employment and background screening; it is still a "Founded" report for risk/safety purposes. "Expunged" reports are directly accessed only by state/ county dept. child protection workers and,
    A. Are used by child protection workers as the origin of cases that are opened for services.
    B. Are used as "Founded" report if there are additional allegations. Rule 7.202.3
    C. Are used as "Founded" report if placement issues arise in the future. Rule 7.202.3
    D. Are NOT referenced in responses for background screens for employment, volunteering, adoption, foster care, and individual requests. See Rule 7. 202.3

Practical Applications:

- In accord with the Children's Code, C.R.S. section 19-1-307, all child abuse or neglect records are confidential regardless of whether the report was determined to be founded, unfounded, inconclusive, upheld, modified or overturned. Thus, there is no access to these records by the general public.

- Unfounded, overturned and inconclusive reports are not referenced in response to background screens sent to the Background Investigations Unit of the State. See C.R.S. 19-1-307 referencing only "confirmed" or founded report information.

- Thus, Colorado's treatment of unfounded/overturned (unsubstantiated) reports already meets the federal and state law mandate for "expungement" without further specification.

- Federal law does not specifically refer to the treatment of "inconclusive" reports. In maintaining the confidentiality of those reports from the general public and not referencing the report in responses to background screens, Colorado law treats "inconclusive" reports similarly to unsubstantiated reports, exceeding requirements.

- Only Founded or substantiated reports are "expunged" for employment or background screens because this is the only category of reports that would otherwise be released on a job screen. Thus, again, Colorado exceeds Federal confidentiality requirements.

Table of Utilization of Trails Reports

County Finding	Filed Appeal?	Appeal Outcome	Used For Jobs	Used for Risk/Safety	Impact on Future Risk Safety Decisions*
Unfounded	No	N/A	No	Yes	Minimal impact on risk/safety decisions
Inconclusive	No	N/A	No	Yes	Potential impact on risk/safety decisions
Founded	Yes	Upheld	Yes	Yes	Substantial impact on risk/safety decisions
		Overturned	No	Yes	Minimal impact on risk/safety decisions
		Settled	Yes	Yes	Substantial impact on risk/safety decisions
		Modified	Yes	Yes	Substantial impact on risk/safety decisions
		Expunged	No	Yes	Substantial impact on risk/safety decisions
Founded	No	N/A	Yes	Yes	Substantial impact on risk/safety decisions

* This column reflects how it is expected that the different findings would impact future county child protection worker decisions involving the individuals mentioned in the original report.

Attachment I

PIERCE v. DELTA CTY. DEPT. OF SOCIAL SER.

119 F.Supp.2d 1139 (2000)

Kayanna PIERCE, a deceased minor, by and through her father and next friend Victor J. Pierce, and Victor J. Pierce, Jacob Pierce, and Jered Pierce, individually, Plaintiffs,

v.

DELTA COUNTY DEPARTMENT OF SOCIAL SERVICES, Colorado State Department of Human Services, Delta County Sheriff's Department, Delta Police Department, the City of Delta, Mike Worthington, Susan Worthington, Annette Ornelas, Susan Blaine, Paul Suppes, William Lemoine, John Gore, Travis Anderson, Royce Spiker, Donna Littlefield, and John and Jane Does 1-20, Defendants.

Civil Action No. 00 N 12.

United States District Court, D. Colorado.

October 20, 2000.

Daniel Mark Genet, Joseph D. Bloch, Joseph D. Bloch & Associates, Denver, CO, for plaintiffs.
Theodore Samuel Halaby, Douglas Todd Cohen, Halaby, Cross & Schluter Denver, CO, for Delta County Department of Social Services, Delta County Sheriff's Department, William Lemoine.
William V. Allen, Attorney General's Office, Denver, CO, for Colorado State Department of Human Services.
Earl G. Rhodes, Michael Paul Forrest, Younge & Hockensmith, P.C., Grand Junction, CO, for the City of Delta.
Theodore Samuel Halaby, Douglas Todd Cohen, Halaby, Cross & Schluter Denver, CO, William V. Allen, Attorney General's Office, Denver, CO, for Colorado State Department of Human Services, for Mike Worthington, Susan Worthington, Annette Ornelas, Susan Blaine.
Earl G. Rhodes, Michael Paul Forrest, Younge & Hockensmith, P.C., Grand Junction, CO, Theodore Samuel Halaby, Halaby, Cross & Schluter Denver, CO, for Paul Suppes, John Gore.
Marc F. Colin, Robert Stephen Hall, Bruno, Bruno & Colin, P.C. Denver, CO, Earl G. Rhodes, Michael Paul Forrest, Younge & Hockensmith, P.C., Grand Junction, CO, for Travis Anderson, Royce Spiker.
Thomas N. Alfrey, Carol Lynn Thomson, Nicolle Herian Martin, Treece, Alfrey, Musat & Bosworth, P.C., Denver, CO, for Donna Littlefield.

ORDER AND MEMORANDUM OF DECISION

NOTTINGHAM, District Judge

This is a civil-rights action. On January 4, 1999, two-year-old Kayanna Pierce died from injuries allegedly inflicted by her mother's live-in boyfriend, Jeremiah Duran. Plaintiffs Victor J. Pierce, Jacob Pierce, and Jered Pierce, Kayanna's father and brothers respectively, allege that Defendants Delta County Department of Social Services ("Delta Social Services") and its employees Annette Ornelas, Susan Blaine, and William Lemoine, Delta County Sheriff William Blair and Deputy Sheriff Mike Worthington, City of Delta ("City"), Delta Police Department, Delta Police Chief Paul Suppes and Delta Police Officers Sergeant John Gore, Travis Anderson, and Royce Spiker, and licensed social worker Donna Littlefield violated their rights and Kayanna's rights under the Fourteenth Amendment to the United States Constitution.[1] Plaintiffs seek relief under 42 U.S.C.A. § 1983 (West 1994 & Supp.2000) [hereinafter "section 1983"], 42 U.S.C.A. § 1985 (West 1994) [hereinafter "section 1985"], and Colorado state law. This matter is before the court on: (1) "Motion to Dismiss Action Against Defendants City of Delta, Suppes, Gore, Anderson, [and] Spiker" filed March 9, 2000; (2) "Motion to Dismiss and for Stay of Discovery, and Brief in Support Defendants Delta County Department of Social Services, Delta County Sheriff's Department, Mike Worthington, Annette Ornelas, Susan Blaine, and William Lemoine" filed March 14, 2000; and (3) "[Littlefield's] Motion to Dismiss" filed March 15, 2000. Jurisdiction is based on 28 U.S.C.A. § 1331 (West 1993), section 1983, section 1985, and 28 U.S.C.A. § 1367 (West 1993).

FACTS

The facts as alleged in this case are tragic. In the early morning hours of January 4, 1999, Delta Police Officers Doug Porter and Rodney Sanchez responded to a call that a two-year-old child, Kayanna Pierce, was not breathing at the residence of Bethany Gerard, Kayanna's mother. (Am. Compl. ¶ 21 [filed Sept. 15, 2000].) Upon arrival, Officer Porter discovered that Kayanna was not breathing and had no pulse. (*Id.* ¶ 20.) Kayanna

[119 F.Supp.2d 1143]

was taken by ambulance to the emergency room at the Delta hospital where, after efforts to revive her by Dr. Eckstein failed, she died. (*Id.* ¶ 21.) During his examination and treatment of Kayanna, Dr. Eckstein discovered bruises on Kayanna's chest and head. (*Id.* ¶ 22.) Because Dr. Eckstein could not determine the cause of death, he notified the coroner, Dr. Thomas Canfield, who concluded that Kayanna's death resulted from multiple non-accidental blunt-force traumas and that Kayanna's death was a homicide. (*Id.* ¶¶ 22-23.) Jeremiah Duran, Bethany Gerard's live-in boyfriend was charged with first-degree murder in Kayanna's death. (*Id.* ¶ 24.) No charges were filed against Gerard, and, in November 1999, a jury acquitted Duran on the charge of first-degree murder. (*Id.*)

Prior to Kayanna's death, in May 1998, Littlefield, a licensed social worker, began watching Kayanna and her brothers.[2] (*Id.* ¶ 25.) Littlefield quit her position in September 1998, however, "because of the kids showing up with too many unexplained bruises and bumps." (*Id.* ¶ 25.) Littlefield notified Delta Social Services of her concerns but was told that

Delta Social Services could do nothing but monitor the children for future injuries. (*Id.*) Despite Littlefield's complaint, Delta Social Services did not initiate a child abuse investigation. (*Id.*)

On August 30, 1998, during a visit with her father, Victor Pierce, in Aurora, Colorado, Kayanna's aunt, Cheryl Pierce, discovered a burn and bruises on Kayanna. (*Id.* ¶ 26.) Mr. Pierce took Kayanna to Aurora Presbyterian Hospital where she was examined by Dr. Ronald Liss. (*Id.*) Dr. Liss concluded that Kayanna's injuries were the result of child abuse or child neglect and notified the Arapahoe County Department of Social Services ("Arapahoe Social Services"). (*Id.* ¶ 27.) On August 31, 1998, Arapahoe Social Services assigned Marilyn Robinson to investigate the allegations of child abuse reported by Dr. Liss and Mr. Pierce. (*Id.* ¶ 28.) Robinson interviewed Kayanna's brothers, then four-year-old Jacob and then three-year-old Jered, both of whom informed Robinson that Gerard and Duran hit them with a belt on their legs and hands. (*Id.*) On August 31, 1998, Mr. Pierce reported the suspected abuse of Kayanna to Delta Social Services. (*Id.* ¶ 29.) On September 1, 1998, Robinson informed Delta Social Services and local law enforcement of her observations. (*Id.*)

On August 31, 1998, Delta Social Services assigned Caseworker Annette Ornelas to investigate the allegations of abuse reported by Mr. Pierce. (*Id.* ¶ 30.) With the help of Delta Police Detective Travis Anderson, Ornelas located Gerard and informed Detective Anderson that she would investigate the matter and get back to Anderson. (*Id.* ¶ 31.) On September 15, 1998, Detective Anderson interviewed Gerard who denied ever hitting her children and claimed that Kayanna's bruises occurred while she was at the babysitters, first Littlefield, then Tela Horn. (*Id.* ¶ 32.) Littlefield denied inflicting these injuries, and Horn informed Anderson of additional incidents of abuse to the Pierce children. (*Id.*) Despite this information from Littlefield and Horn, Anderson concluded that the allegations of child abuse were unfounded.[3] (*Id.* ¶ 33.) Consequently,

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neither Anderson nor the Delta Police Department took any protective action to remove Kayanna or her brothers from Gerard and Duran's house. (*Id.*)

On September 21, 1998, Ornelas interviewed Gerard. (*Id.* ¶ 34.) During this interview, Gerard admitted that she hit her children with her hand and a belt when they were bad. (*Id.*) Gerard, however, disavowed any notion that she abused her children, and offered innocuous explanations for Kayanna's injuries, such as she fell out a chair and she pinched her foot in her walker. (*Id.*) Although Ornelas was aware of Jered and Jacob's statements to Robinson that Gerard and Duran abused them, Ornelas failed to interview either of them or Duran. (*Id.*) Nor did Ornelas' report take into account the boys' statements. (*Id.*) Ultimately, Ornelas concluded that the allegations of child abuse were "unfounded" and merely a "custody dispute" between Mr. Pierce and Gerard, and, on October 8, 1998, closed the case. (*Id.* ¶ 35.) On October 16, 1998, however, Ornelas stated in her Family Preservation Program Referral Sheet that: (1) the Pierce children's continued presence in the Gerard/Duran home was likely to result in physical or emotional injury due to abuse or neglect as defined by Colorado statute; (2) Delta Social Services believed that the Gerard family was at risk for possible abuse or neglect; and (3) out-of-home placement was most likely to remedy this

dysfunction. (*Id.* ¶ 36.) Despite this letter, defendants did not take any action to remove the Pierce children from Gerard or ensure their safety. (*Id.*)

On November 13, 1998, Kayanna sustained first-and second-degree burns to her left hand and right cheek while in the care of Duran. (*Id.* ¶ 37.) Duran told the police that Kayanna burned herself when she picked up a burrito which was too hot and tried to eat it. (*Id.* ¶ 38.) Duran also told the police that both Jacob and Jered were present during the incident, but no one from the Delta Police Department or Delta Social Services questioned the boys about the incident. (*Id.*) Instead, the Delta Police Department and Delta Social Services accepted Duran's explanation, and again closed their investigation as "unfounded." (*Id.*)

As a result of Kayanna's November 13, 1998, injury, Mr. Pierce notified Sergeant Gore of the Delta Police Department and Delta Social Services of Kayanna's recent and past injuries and the opinion of Dr. Liss that Kayanna's August 31, 1998, injuries were the result of child abuse. (*Id.* ¶¶ 39, 41.) Sergeant Gore assigned Officer Spiker to investigate Mr. Pierce's complaint, who, according to plaintiffs, conducted only a cursory investigation at Gerard's home. (*Id.* ¶ 40.) Officer Spiker reported that Kayanna's facial "burrito" burn looked like a rug burn and that he believed the circumstances surrounding Kayanna's injury to be suspicious. (*Id.*) Although Officer Spiker noted in his report that the matter would be investigated further, no further investigation took place. (*Id.*) Moreover, it was not until January 8, 1998, four days after Kayanna's death, that the Delta Police Department interviewed Littlefield and Horn regarding their knowledge of the alleged child abuse perpetrated against Kayanna and her brothers. (*Id.* ¶ 48.) During those interviews, Littlefield and Horn recounted several instances where they observed suspicious injuries to the children which they suspected were the result of child abuse and/or child neglect. (*Id.* ¶¶ 48-50.) Specifically, Hom recounted one instance where Jered told her that Duran had hit him across the face for breaking a toy. (*Id.* ¶ 52.)

On November 30, 1999,[4] Ornelas testified at Mr. Pierce and Gerard's divorce proceeding. (*Id.* ¶ 42.) Ornelas testified

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that her investigation did not raise any concerns about the health and safety of the Pierce children. (*Id.*) Ornelas testified that she believed that, up to that time, the reports of child abuse were unfounded. (*Id.*) Still concerned for the well-being of his children, Mr. Pierce continued to report the aforementioned incidents to Delta Social Services and requested that Delta Social Services take action to protect his children from Gerard and Duran. (*Id.* ¶ 43.) During one of his telephone calls to Delta Social Services, Mr. Pierce alleges that Ornelas threatened to report him and pursue a criminal prosecution against Mr. Pierce for harassment if he did not stop calling Delta Social Services. (*Id.*)

On January 4, 2000, one year after Kayanna's death, plaintiffs filed their complaint in this court, asserting claims under section 1983, section 1985, and Colorado state law. (Compl. [filed Jan. 4, 2000].) On March 9, March 14, and March 15, 2000, defendants filed various motions to dismiss all of plaintiffs' claims against them. (Mot. to Dismiss Action Against Defs. City of Delta, Suppes, Gore, Anderson, Spiker [filed Mar. 9, 2000] [hereinafter "City Defs.' Br."]; Mot. to Dismiss and for Stay of Discovery, and Br. in Supp. of Defs. Delta County Department of Social

Services, Delta County Sheriff's Department, Mike Worthington, Annette Ornelas, Susan Blaine, and William Lemoine [filed Mar. 14, 2000] [hereinafter "County Defs.' Br."]; Mot. to Dismiss [filed Mar. 15, 2000] [hereinafter "Littlefield's Br."].) Defendants argue plaintiffs' section 1983 and section 1985 claims should be dismissed for several reasons, including: (1) failure to state a claim upon which relief may be granted; and (2) qualified immunity. (*See* City Defs.' Br. at 3-9; County Defs.' Br. at 3-14; Littlefield's Br. at 3-7.) With respect to plaintiffs' state-law conspiracy claim, defendants argue that it is barred by the Colorado Governmental Immunity Act, Colo.Rev.Stat. §§ 24-10-101 to 120 (1999). (City Defs.' Br. at 9-12; County Defs.' Br. at 13-14.)

On September 8, 2000, I held a hearing on defendants' motions to dismiss. At the conclusion of the hearing, I granted plaintiffs leave to amend their complaint for the sole purpose of substituting William Blair, the Delta County Sheriff, as a party-defendant in place of the Delta County Sheriff's Department. (*See* Courtroom Mins. [filed Sept. 8, 2000].) On September 15, 2000, plaintiffs filed their amended complaint, again asserting claims under section 1983, section 1985, and Colorado state law.[5] (Am.Compl.) Specifically, plaintiffs' amended complaint alleges section 1983 claims for: (1) reckless investigation against Delta Social Services and the Delta Police Department ("first claim"); (2) failure to train and/or supervise against Delta Social Services, the Delta Police Department, and the Delta County Sheriff ("second claim"); (3) deliberate indifference against Delta Social Services, the Delta Police Department, and the Delta County Sheriff ("third claim"); (4) failure to report against Worthington ("fourth claim"); (5) reckless investigation and inadequate training and/or supervision against Delta Social Services Director Blaine, Delta Police Chief Suppes, Delta Social Services Children Services Supervisor Lemoine, and Sergeant Gore ("fifth claim"); (6) reckless investigation against Ornelas ("sixth claim"); (7) failure to report against Littlefield ("seventh claim"); (8) failure to report and reckless investigation against Sheriff's Deputy Worthington, Detective Anderson, Officer Spiker, and Sergeant Gore ("eighth claim"); (9) threat to

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pursue malicious prosecution against Delta Social Services ("ninth claim"); and (10) severance of the familial relationship against Delta Social Services and the Delta Police Department ("tenth claim"). (*Id.* ¶¶ 90-168.) Plaintiffs also allege (1) a section 1985 claim for gender discrimination ("eleventh claim"), and (2) a civil conspiracy claim under Colorado state law ("fourteenth claim"). (*Id.* ¶¶ 169-174, 180-184.) Plaintiffs base their section 1983 and section 1985 claims on deprivations of their substantive and procedural due process rights and equal protection rights under the Fourteenth Amendment. (*Id.* ¶¶ 83, 85, 88-89.)

On October 11, 2000, plaintiffs filed their "Stipulation for Dismissal and Withdrawal of Claim for Relief" in which plaintiffs moved to: (1) dismiss with prejudice all of their claims against the City, Delta Police Department, Delta Police Chief Suppes, Delta Police Sergeant Gore, Delta Police Officers Anderson and Spiker, Delta County Sheriff's Department, Delta County Sheriff William Blair, and Deputy Sheriff Worthington; and (2) withdraw their fourteenth claim. (Stipulation for Dismissal and Withdrawal of Cl. for Relief [filed Oct. 11, 2000].) I am entering an order granting plaintiffs' motion. Accordingly, the only defendants remaining in this case are Delta Social Services and its employees Ornelas, Blaine, Lemoine, and Littlefield. I now turn to their motions to dismiss.[6]

ANALYSIS

1. Legal Standard

For the purposes of a motion to dismiss under rule 12(b)(6), the pleading is construed in the light most favorable to the non-moving party, and its allegations are taken as true. *See, e.g., Daigle v. Shell Oil Co.*,972 F.2d 1527, 1533 (10th Cir.1992). The court considers whether the allegations set forth in the pleading constitute a statement of a claim under rule 8(a) of the Federal Rules of Civil Procedure. *See* 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1363, at 460 (2d ed.1990). Rule 8(a) provides that the pleading need only set out a generalized statement of facts from which the opposing party will be able to frame a responsive pleading. Fed.R.Civ.P. 8(a). Thus, in appraising the sufficiency of the allegations, "the [pleading] should not be dismissed for failure to state a claim unless it appears beyond doubt that [plaintiff] can prove no set of facts in support of his claim that would entitle him to relief." *Conley v. Gibson*,355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957); *see Daigle,* 972 F.2d at 1533. Additionally, the court must determine if plaintiff's allegations provide any basis for relief on any possible theory, as the court should not dismiss a complaint merely because plaintiff's allegations do not support the particular legal theory on which the plaintiff intends to proceed.*See* 5A Charles A. Wright & Arthur R. Miller, § 1357, at 336-37.

2. Section 1983 Liability — General Principles

Section 1983 provides:

Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ....

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42 U.S.C.A. § 1983. For purposes of this statute, municipalities and other local governmental bodies may be considered "persons." *Monell v. Department of Soc. Servs.*,436 U.S. 658, 690, 98 S.Ct. 2018, 2035, 56 L.Ed.2d 611 (1978). To establish a claim under section 1983, then, "a plaintiff must allege (1) deprivation of a federal [or constitutional] right by (2) a person acting under color of state law." *Watson v. City of Kansas City, Kansas*,857 F.2d 690, 694 (10th Cir.1988) (citing *Gomez v. Toledo*,446 U.S. 635, 640, 100 S.Ct. 1920, 1923, 64 L.Ed.2d 572 [1980]).

a. Proper Parties to a Section 1983 Suit

As an initial matter, I address the contention of Delta Social Services that it is not proper party to this lawsuit. (County Defs.' Br. at 5.) Although Delta Social Services does not expressly articulate the basis for its assertion, I interpret Delta Social Services' argument to be that it is not a "person" within the meaning of section 1983.[7] Plaintiffs raise two arguments in response. Plaintiffs first contend that Delta Social Services is a proper defendant under section 1983 jurisprudence. (Pls.' Combined Resp. to Defs.' Mots. to Dismiss and Supporting Br. 18 [filed Mar.

29, 2000] [hereinafter "Pls.' Combined Resp."].) Alternatively, plaintiffs contend that they can still maintain an action against Delta Social Services' employees in their official capacity even if Delta Social Services itself is not a proper defendant. (*Id.* at 19.)

Although *Monell* holds that municipalities and other local governmental bodies are persons within the meaning of section 1983, the *Monell* court limited its holding to "local government units which are not considered part of the State for Eleventh Amendment purposes." *Monell,* 436 U.S. at 689 n. 55, 98 S.Ct. at 2035 n. 55. The court reiterated this limitation in *Will v. Michigan Department of State Police,*491 U.S. 58, 71, 109 S.Ct. 2304, 2312, 105 L.Ed.2d 45 (1989), wherein the Court held that "neither a State nor its officials acting in their official capacities are `persons' under [section] 1983." When read together, then, these cases stand for the proposition that local governmental bodies which are considered "arms of the State" for Eleventh Amendment immunity purposes are not "persons" within the meaning of section 1983. In determining whether a political body is an "arm of the State," courts consider four factors: (1) the characterization of the governmental unit under state law; (2) the guidance and control exercised by the state over the governmental unit; (3) the degree of state funding received; and (4) the governmental unit's ability to issue bonds and levy taxes on its own behalf. *Sutton v. Utah State Sch. for the Deaf & Blind,*173 F.3d 1226, 1232 (10th Cir.1999) (citations omitted); *Ambus v. Granite Bd. of Educ.,*995 F.2d 992, 994 (10th Cir.1993) (citing *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,*429 U.S. 274, 280, 97 S.Ct. 568 (1977)). The third and fourth factors address whether a judgment against the political body would be paid out of the state treasury. *Id.* at 1233 (citations omitted). The key question in this analysis is "whether funds to satisfy a money judgment come directly from the state or indirectly through commingled state and local funds or state indemnification provisions." *Id.*(citations omitted).

While the Tenth Circuit has yet to address whether an entity such as Delta Social Services is a person under section 1983, the Colorado Court of Appeal squarely addressed the issue in *Wigger v. McKee,*809 P.2d 999, 1002-04 (Colo.Ct. App.1990). There, the court considered whether the Arapahoe County Department

[119 F.Supp.2d 1148]

of Social Services ("Social Services") was a "person" under section 1983. After applying the above factors for determining whether a governmental entity is an arm of the State, the court concluded that Social Services was an arm of the State, and, thus, it could not be sued under section 1983. *Id.* The court found that Social Services has very few powers independent of the state and is designated by Colorado statute as "agents of the state department." *Id.* at 1004. The court also found that Social Services received eighty percent of it funding from the state, and that no provision existed for allowing Social Services to use its own funds to satisfy judgments awarded against it. *Id.*

Although the question of whether a governmental body is a "person" for section 1983 purposes is necessarily a question of federal law, plaintiffs have not provided, nor has my own research revealed, any persuasive authority which would cause me to diverge from the Colorado Court of Appeals well-reasoned analysis in *Wigger. Howlett v. Rose,*496 U.S. 356, 375, 110 S.Ct. 2430, 2442, 110 L.Ed.2d 332 (1990) (holding that "[t]he elements of, and defense to," a section 1983 action are defined by federal law). Therefore, I adopt *Wigger's* holding and conclude that

Delta Social Services is not a "person" within the meaning of section 1983. Accordingly, plaintiffs' section 1983 claims against Delta Social Services are hereby dismissed.[8] Further, because a suit against an officer of the state in his or her official capacity is "no different from a suit against the State itself," plaintiffs' official-capacity section 1983 claims against Delta Social Services employees Ornelas, Blaine, Lemoine, and Littlefield are also dismissed. *Will,* 491 U.S. at 71, 109 S.Ct. at 2312; *see also Sutton,*173 F.3d at 1237.

3. Section 1983 — Individual-Capacity Claims

a. Direct Liability for Failure to Report and Reckless Investigation

Plaintiffs' amended complaint alleges numerous individual-capacity section 1983 claims, which fall into two general categories. Plaintiffs' first category of claims attempt to impose section 1983 liability directly on Ornelas and Littlefield for their alleged failure to report and adequately investigate allegations of child abuse as required by Colorado's Child Protection Act of 1987, Colo.Rev.Stat. §§ 19-3-301 to 703 (1999) [hereinafter "Child Protection Act"]. (Am.Compl.¶¶ 134-44.) The crux of these claims is that defendants' failure to comply with the provisions of the Child Protection Act subjected the Pierce children to ongoing child abuse at the hands of Gerard and/or Duran which culminated in Kayanna's death.[9] (*Id.* ¶¶ 139, 144.) Plaintiffs allege that defendants' failure to remove the Pierce children from Gerard's home or otherwise protect them from child abuse violated their constitutional rights under the Fourteenth Amendment. (Pls.' Combined Resp. at 1-2.)

Defendants move to dismiss plaintiffs' claims on the grounds that: (1) plaintiffs have failed to a state a valid section 1983 claim because defendants do not have a constitutional duty to protect against so-called "private violence" inflicted by nonstate

[119 F.Supp.2d 1149]

actors such as Gerard and Duran; and (2) defendants are entitled to qualified immunity. (County Defs.' Br. at 2-5; Littlefield's Br. at 2-6.) Defendants argue that the Supreme Court's decision in *DeShaney v. Winnebago County Department of Social Services,*489 U.S. 189, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989), and subsequent Tenth Circuit cases foreclose plaintiffs' ability to sustain a section 1983 claim predicated upon private violence. (*Id.*) Plaintiffs, unsurprisingly, argue that their section 1983 claims fall outside the purview of*DeShaney* and its progeny. (Pls.' Combined Resp. at 6-12.) Thus, plaintiffs argue that they have stated valid section 1983 claims based upon a deprivation of their Fourteenth Amendment substantive and due process rights. (*Id.* at 6-15.)

i. Substantive Due Process

In deciding whether plaintiffs have pled a cognizable section 1983 claim, the court must first determine whether plaintiffs can allege the deprivation of a constitutional right. *Sutton,* 173 F.3d at 1237; *Graham v. Independent Sch. Dist. No. I-89,*22 F.3d 991, 993 (10th Cir.1994) (citing *Baker v. McCollan,*443 U.S. 137, 140, 99 S.Ct. 2689, 2692, 61 L.Ed.2d 433 (1979)). The starting point for analyzing the validity of plaintiffs' substantive due process claim is*DeShaney,* where the Supreme Court enunciated the now firmly entrenched rule that the Due Process Clause of the Fourteenth Amendment does not impose a constitutional duty upon a state to protect individuals

from private violence.*DeShaney*, 489 U.S. at 195-97, 109 S.Ct. at 998; *Sutton*, 173 F.3d at 1237 (citing *DeShaney* for the proposition that "[i]t is well-settled that a state does not have a constitutional duty to protect its citizens from private violence"). In*DeShaney*, the Winnebago County Department of Social Services ("County") received numerous reports that four-year-old Joshua was being abused by his father. *Id.* at 192-93, 109 S.Ct. at 1001-02. The County interviewed the father and even obtained an order placing Joshua in temporary custody of the hospital, but returned Joshua to his father shortly thereafter. *Id.* Following this episode, the County continued to receive reports of Joshua's abuse, yet did nothing to remove him from his father's custody. *Id.* Eventually, Joshua's father beat him so severely that he suffered permanent brain damage. *Id.* Joshua and his mother sued the County and several of its employees, alleging that the County had violated the Fourteenth Amendment by failing to intervene on his behalf and protect him from his father's abuse. *Id.*

The Supreme Court rejected Joshua's argument that the County acquired an affirmative duty to protect him from his father's abuse based on the fact that the County was aware of the alleged abuse. *Id.* at 195, 109 S.Ct. at 1003. Relying on the premise that the purpose of the Due Process Clause is "to protect the people from the State, not to ensure that the State protects them from each other," the Court held that:

[N]othing in the Due Process Clause itself requires a State to protect the life, liberty, and property of its citizens against invasions by private actors. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security. It forbids the State itself to deprive individuals of life, liberty, or property without "due process of law," but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means....

Consistent with these principles, ... the Due Process Clause[] generally confer[s] no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty or property interests of which the government may not deprive the individual.

Id. at 195-95, 109 S.Ct. at 1003.

The Tenth Circuit has recognized two exceptions to the general *DeShaney* rule that a state is not constitutionally obligated to protect individuals against private

[119 F.Supp.2d 1150]

violence: (1) the special-relationship doctrine, and (2) the danger-creation theory. *Uhlrig v. Harder*,64 F.3d 567, 572 (10th Cir.1995). The special-relationship doctrine flows directly from the *DeShaney* opinion itself, and applies in situations where the state imposes limitations upon an individual's freedom to act on his or her own behalf. *DeShaney*, 489 U.S. at 200, 109 S.Ct. at 1006 ("[I]t is the State's affirmative act of restraining the individual's freedom to act on his own behalf — through incarceration, institutionalization, or other similar restraint of personal liberty — which is the `deprivation of liberty' triggering the protections of the Due Process Clause, not its failure to act to protect his liberty interests against harms inflicted by other means.") The Tenth Circuit has held that this doctrine applies to children who are in the state's legal and physical custody at the time the private violence occurred. *Yvonne L. v. New Mexico Dep't of Human Servs.*,959 F.2d

883, 893 (10th Cir.1992) (holding that state had constitutional duty to protect foster child in its legal and physical custody from sexual assault by another child).

Here, plaintiffs' complaint alleges that a special relationship existed between the Pierce children and defendants. (Am. Compl. ¶¶ 70-71.) In their combined response to defendants' motions to dismiss, however, plaintiffs do not challenge defendants' contention that the special-relationship doctrine does not apply. Rather, plaintiffs appear to concede that their factual allegations do not support the existence of a special relationship. (Pls.' Combined Resp. at 6.) So as to leave no room for doubt, my independent review of plaintiffs' amended complaint satisfies me that the special-relationship doctrine is inapposite because plaintiffs fail to allege that any of the Pierce children were in state custody at the time they were abused by Gerard and/or Duran. *See Currier v. Doran,*23 F.Supp.2d 1277, 1280 (D.N.M.1998) (holding special-relationship doctrine inapplicable where plaintiffs failed to allege abused child was in state custody at time father killed him); *A.S. By and Through Blalock v. Tellus,*22 F.Supp.2d 1217, 1220-22 (D.Kan.1998) (holding that legal custody without physical custody by state insufficient to trigger special-relationship doctrine). Accordingly, plaintiffs must proceed under the danger-creation theory in order for their substantive due process claims to survive defendants' motions to dismiss.

Under the danger-creation theory, "[s]tate officials can be liable for the acts of third parties where those officials `created the danger' that caused the harm." *Armijo v. Wagon Mound Pub. Schools,*159 F.3d 1253 1262 (10th Cir.1998) (internal quotation marks and citations omitted); *see also Sutton,*173 F.3d at 1237; *Graham,* 22 F.3d at 995. The Tenth Circuit articulated a five-part test in *Uhlrig* to determine whether a defendant created a special danger for the plaintiff. *Uhlrig,* 64 F.3d at 574. To state a viable substantive due process claim under the danger-creation theory, the plaintiffs must allege that: (1) plaintiffs were members of a limited and specifically definable group; (2) defendants' conduct put plaintiffs at substantial risk of serious, immediate, and proximate harm; (3) the risk was obvious or known; (4) defendants acted recklessly in conscious disregard of that risk; and (5) such conduct, when viewed in total, "shocks the conscience" of federal judges. *Id.* To bring the*Uhlrig* test in line with *DeShaney,* the Tenth Circuit held in *Armijo,* that "in addition to meeting *Uhlrig's* five-part test, a plaintiff must also show that the charged state entity and the charged individual defendant actors created the danger or increased the danger in some way." *Armijo,* 159 F.3d at 1263;*accord Sutton,* 173 F.3d at 1238 (noting that danger-creation theory "necessarily involves affirmative conduct on the part of the state in placing the plaintiff in danger" [internal quotation marks and citations omitted]). "In other words, if the danger to the plaintiff existed prior to the state's intervention [or lack thereof], then even if the state put the plaintiff back in that

same danger, the state would not be liable because it could not have created a danger that already existed."[10] *Id.*

Defendants argue that plaintiffs have failed to state a claim under the danger-creation theory because: (1) defendants did not take any affirmative acts which created the danger which the Pierce children were exposed to; and (2) defendants' failure to report and/or adequately investigate allegations of child abuse does not amount to conscience-shocking conduct. (County Defs.' Br. at 3-4.) Plaintiffs vigorously argue that they have pled the requisite elements of a danger-creation theory claim. (Pls.' Combined Resp. at 6-12.) Specifically, plaintiffs argue that defendants' failure to comply with the mandatory reporting and investigation provisions of the Child Protection Act created the danger of continued child abuse, which ultimately led to Kayanna's death. (*Id.* at 7-10.) Plaintiffs contend that, because Child Protection Act legislatively mandates that defendants report and investigate allegations of child abuse, plaintiffs have an "entitlement" to protective services under the Child Protection Act which enjoy due process protection against state deprivation.[11] (*Id.* at 8.)

While I find this to be an extremely difficult case, after much consideration of plaintiffs' argument, I conclude that the allegations in plaintiffs' complaint, even when viewed in a light most favorable to plaintiffs, fail to state a substantive due process claim under the danger-creation theory. Even assuming that plaintiffs' allegations meet *Uhlrig's* five part-test, it cannot fairly be said that defendants undertook any affirmative acts which created or increased the risk of harm to plaintiffs. Although the distinction between cases in which the state has merely failed to protect its citizens from those in which in the state affirmatively injured them is not always an easy one to draw, *DeShaney*requires a federal court to make such as distinction — distinguishing a state's "affirmative misdeeds from its omissions, to differentiate misfeasance from nonfeasance." *S.S. ex rel. Jervis v. McMullen,*186 F.3d 1066, 1074 (8th Cir.1999) *opinion vacated and rehr'g en banc granted without published opinion*1999 U.S.App. Lexis 24361 (Sept. 30, 1999). Here, defendants' alleged failure to report and investigate credible charges of child abuse, while certainly indefensible, does not rise to the level of actionable constitutional malfeasance. Rather, defendants' failure to act can best be described as nonfeasance, making this case indistinguishable from *DeShaney.* Indeed, as in *DeShaney,* "[t]he most that can be said of the state functionaries in this case is that they stood by and did nothing when suspicious circumstances dictated a more active role for them." *DeShaney,* 489 U.S. at 203, 109 S.Ct. at 1007. Thus, unlike "doer[s] of harm," who are subject to liability under the danger-creation theory, defendants are merely "inept rescuers" outside of the reach of the Due Process Clause and the danger-creation

theory. *K.H., Through Murphy v. Morgan,*914 F.2d 846, 849 (7th Cir.1990) (recognizing right of child in state custody not to be handed over to known abusive parent or other custodian).

It must be remembered that at all times the violence perpetrated against Kayanna and her brothers came from within the Gerard household at the hands of nonstate actors. In other words, the danger to Kayanna and her brothers existed prior to any nonfeasance on the part of defendants. In situations such as this one where the state actors did not disturb the status quo by removing the

children and then placing them in an abusive environment, or removing the children from an abusive environment and then returning them to that environment, but, rather, simply failed to remove the children from the abuser in the first place, courts have been reluctant to accept the danger-creation theory as a means of circumventing *DeShaney. Compare, e.g., Tellus,* 22 F.Supp.2d at 1222 (rejecting danger-creation theory where defendants had knowledge of abuse but failed to remove child from abuser), *with Currier,* 23 F.Supp.2d at 1280-82 (distinguishing *DeShaney* on the ground that defendants removal of child from home disturbed status quo and state could not "create a dangerous condition for the child by knowingly or recklessly turning control of the child over to an abusive person"). Thus, by leaving Kayanna with her mother and Duran, defendants did not create or exacerbate any danger to Kayanna because she was in "no worse position than [she] would have been had [defendants] not acted at all." *DeShaney,* 489 U.S. at 201, 109 S.Ct. at 998; *see also Tellus,* 22 F.Supp.2d at 1222.

My analysis, moreover, does not change just because the Child Protection Act imposes mandatory reporting and investigation procedures on defendants. It is well-settled that a violation of state law duty, by itself, is insufficient to give rise to a section 1983 claim. *Jones v. City & County of Denver,*854 F.2d 1206, 1209 (10th Cir.1988) (rejecting argument that violation of Colorado state law can give rise to section 1983 claim); *see also D.R., by L.R. v. Middle Bucks Area Vocational Tech. Sch.,*972 F.2d 1364, 1375 (3d Cir. 1992) (holding that violation of state statute which required teachers to report sexual abuse did not provide basis for section 1983 claim under danger-creation theory). Section 1983 liability arises only from a violation of federal statutory or constitutional rights under of color of state law.*Id.* Thus, "[i]llegality under the state statute can neither add to or subtract from [the] constitutional validity [of a state's actions]." *Archie v. City of Racine,*847 F.2d 1211, 1216 (7th Cir.1988) (quoting *Snowden v. Hughes,*321 U.S. 1, 11, 64 S.Ct. 397, 402, 88 L.Ed. 497 (1944)). Plaintiffs, therefore, cannot maintain a substantive due process claim based on defendants' alleged violations of their duties under the Child Protection Act.

ii. Procedural Due Process

Plaintiffs also allege that defendants' failure to comply with the mandatory provisions of the Child Protection Act violated their procedural due process rights. (Pls.' Combined Resp. at 12-15.) Plaintiffs argue that, because the Child Protection Act mandates reporting and investigation of child abuse allegations, they have a constitutionally-protected "entitlement" to protective services in accordance with the procedures set forth in the Child Protection Act. (*Id.* at 13.) Plaintiffs do not contend that the reporting and investigatory procedures contained in the Child Protection Act are inadequate; rather, plaintiffs contend that defendants failure to follow these procedures deprived them of a protected liberty interest without due process of law. (*Id.*)

It is well-settled that a state law which generates a legitimate claim of entitlement can create a protected interest under the Due Process Clause. *Barry v. Barchi,*443 U.S. 55, 64 & n. 11, 99 S.Ct. 2642, 2649 & n. 11, 61 L.Ed.2d 365 (1979). State-created procedures, however, do not

create such an entitlement where none would otherwise exist. *See Olim v. Wakinekona*,461 U.S. 238, 250-51, 103 S.Ct. 1741, 1748, 75 L.Ed.2d 813 (1983) ("Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement."). A constitutionally protected liberty interest arises where a state statute puts substantive limitations on official discretion and mandates a particular outcome under specific criteria. *Id.* at 249, 103 S.Ct. at 1747. In contrast, where the state statute creates a mandatory procedure but does not guarantee a particular substantive outcome, no protected liberty exists. *Tony L. By and Through Simpson v. Childers*,71 F.3d 1182, 1185 (6th Cir.1995) (citing*Kentucky Dep't of Corrections v. Thompson*,490 U.S. 454, 463, 109 S.Ct. 1904, 1910, 104 L.Ed.2d 506 (1989)).

Here, plaintiffs rely on defendants' failure to report allegations of child abuse as required by Colo.Rev.Stat. § 19-3-304(1), and defendants' failure to follow the proper investigatory procedures as required by Colo.Rev.Stat. § 19-3-308. Although mandatory under the Child Protection Act, the act of reporting child abuse to the proper authorities and having those authorities investigate the reports does not dictate a particular substantive outcome or guarantee, such as removal from the alleged abusers home or other protective measures. Instead, these provision only give plaintiffs "an expectation of receiving a certain process." *Childers,* 71 F.3d at 1186 (citations omitted). The Child Protection Act does not mandate that a child be placed in protective custody or otherwise removed from his or her home simply upon the filing of a report of alleged abuse. *See, e.g.,* Colo.Rev.Stat. 19-3-308(4)(b) ("Upon receipt of a report if the county department reasonable believes that an incident ... of abuse ... has occurred, it ... *may* file a petition in the juvenile court or the district court ... on behalf of such child. If immediate removal is necessary ... the child *may* be placed in protective custody ....") (emphasis supplied); *id.* § 19-3-405(2)(b) ("Temporary protective orders *may* be requested by the county department of social services, a law enforcement officer ....") (emphasis supplied). Thus, while plaintiffs may have had an expectation that some form of protective services would be taken if defendants complied with the statutory procedures, the expectation of action is not enough to create a protected liberty interest under the Due Process Clause. *Childers,* 71 F.3d at 1186 (holding that Kentucky statute which required state to investigate reports of child abuse and take certain actions upon receipt of a report did not create a protected liberty interest).

My conclusion that the Child Protection Act does not provide plaintiffs with a constitutionally protected liberty interest is buttressed by the fact that, outside of the realm of foster care, the circuit courts of appeal have uniformly rejected the argument that children have a protected interest in the procedures for reporting and investigating child abuse, even where those procedures are mandatory. *See id.; Doe by Fein v. District of Columbia*,93 F.3d 861, 867-71 (D.C.Cir.1996); *Doe by Nelson v. Milwaukee County*,903 F.2d 499, 502-05 (7th Cir.1990); *Morgan v. Weizbrod,* No. 93-6324, 1994 WL 55607, *3 (10th Cir. Feb.23, 1994) (holding that *DeShaney* precludes reliance on Oklahoma's child protection statute to create entitlement which would support procedural due process claim). In *Doe by Nelson,* for example, the Seventh Circuit addressed a procedural due process claim similar to the one asserted here. In that case, the plaintiffs alleged that Wisconsin's child protection statutes — which, like Colorado's Child Protection Act, mandated the reporting and investigation of allegations of child abuse and imposed criminal sanctions for failing to make

a report—conferred upon them a protected procedural due process right. *Doe by Nelson,* 903 F.2d at 501. The court rejected this argument, finding the plaintiffs' claim to an entitlement in the state-law reporting procedures "untenable."[12]

[119 F.Supp.2d 1154]

Id. at 504. The court went on to observe, that even if the plaintiffs could assert the existence of an entitlement to protective services, the court could not conceive of any additional process, other than resorting to state-law tort remedies, which could have possibly sufficed to prevent the wrongful "deprivation." *Id.* Similarly, in *Doe by Fein,* the District of Columbia Circuit held that the codification of the procedures for investigating child abuse did not create an entitlement to protective services because the District of Columbia had not assumed a constitutional obligation to protect children from abuse. *Doe by Fein,* 93 F.3d at 868 ("Indeed, Doe's `procedural' due process claim appears to be little more than a recasting of the substantive due process claim rejected by the Supreme Court in *DeShaney.*"). In the end, both the District of Columbia Circuit and the Seventh Circuit concluded that the proper method for redressing an alleged failure to comply with state child protection statutes is an action for damages under state law. *Id.* at 870; *Doe by Nelson,* 903 F.2d at 505.

In sum, I conclude that plaintiffs have not alleged a cognizable section 1983 claim against Ornelas and Littlefield based on their failure to report or investigate properly the allegations of child abuse concerning the Pierce children. Neither the substantive or procedural component of the Due Process Clause supports plaintiffs' claims under the facts as alleged in their amended complaint. As one district court noted in a similar case:

In conclusion, this Court is sympathetic to the plight of individuals like Joshua DeShaney and [plaintiffs], and, obviously, the Court's conclusion in interpreting the law is not meant as approving or condoning the terrible tragedies that have befallen these innocent individuals, nor is it intended to assess blame. The narrow question of law before this Court is whether these claims state a cause of action for a constitutional violation under the [D]ue [P]rocess [C]lause and the Supreme Court's existing precedent.

*Sapp v. Cunningham,*847 F.Supp. 893, 899 (D.Wyo.1994). To allow plaintiffs to maintain their claims under the present circumstances would be tantamount to condoning "an end-run around the Supreme Court's opinion in*DeShaney," Morgan,* 1994 WL 55607, at *3, and would ignore the Supreme Court's admonition that the Due Process Clause does not establish "a font of tort law to be superimposed upon whatever systems may already be administered by the States," *County of Sacramento v. Lewis,*523 U.S. 833, 848, 118 S.Ct. 1708, 1718, 140 L.Ed.2d 1043 (1998) (citations omitted). Thus, to extent that plaintiffs seek redress for defendants' failure to comply with the provisions of the Child Protection Act or other misdeeds, plaintiffs must do so under Colorado statutory and common law.[13] Accordingly, plaintiffs' sixth and seventh claims are hereby dismissed.[14]

[119 F.Supp.2d 1155]

b. Liability for Failure to Train and/or Supervise

Plaintiffs second category of individual-capacity section 1983 claims attempts to impose liability on Blaine, and Lemoine in their positions as supervisors for (1) failing to train or supervise adequately their subordinates, and (2) failing to adopt or implement a policy to prevent the continued child abuse inflicted upon Kayanna and her brothers. (Am. Compl. ¶¶ 127-33.) Generally, supervisors may be held individually liable for failing to adopt or implement a policy or training of subordinates to prevent deprivations of constitutional rights. *Sutton,* 173 F.3d at 1241 (citations omitted). Because neither Ornelas nor Little field acted unconstitutionally, however, there is no basis for imposing section-1983 supervisor liability upon Blaine and Lemoine for failure to train or adopt a policy to prevent the continued child abuse inflicted upon Kayanna and her brothers.[15] *See Hinton v. City of Elwood,* 997 F.2d 774, 783 (10th Cir.1993); *see also Ransom v. Wagoner County,* No. 99-5087, 2000 WL 293716, *3 (10th Cir. Mar.21, 2000). Consequently, plaintiffs' fifth claim is dismissed.[16]

4. Section 1983 — Municipal Liability and Official-Capacity Claims

A municipality may not be held liable under section 1983 solely because its employees inflicted injury on the plaintiff. *Hinton,* 997 F.2d at 782 (citing *Monell,*436 U.S. at 694, 98 S.Ct. at 2037). Rather, to establish municipal liability a plaintiff must show: (1) the existence of a municipal policy or custom; and (2) that there is a direct link causal link between the policy or custom and the injury alleged. *Id.* (citing *City of Canton v. Harris,* 489 U.S. 378, 385, 109 S.Ct. 1197, 1202-03, 103 L.Ed.2d 412 (1989)). Liability may be imposed on a municipality if the execution of a policy or custom caused an individual to suffer a constitutional deprivation and the policy or custom was the "moving force" behind the constitutional deprivation. *Monell,* 436 U.S. at 694, 98 S.Ct. at 2037-38. Thus, the Tenth Circuit has held that "local governing bodies are liable for constitutional deprivations when the improper action stems from a `decision officially adopted and promulgated by that body's officers.'" *Miller v. City of Mission, Kan.,* 705 F.2d 368, 374-75 (10th Cir.1983) (quoting *Monell,* 436 U.S. at 690, 98 S.Ct. at 2036). Absent a concrete official policy, an inference of the existence of a policy can only be drawn from a well-established pattern. *See Brandon v. Holt,* 469 U.S. 464, 105 S.Ct. 873, 83 L.Ed.2d 878 (1985). "Where the asserted policy consists of the failure to act, the plaintiff must demonstrate that the municipality's inaction was the result of `deliberate indifference' to the rights of its inhabitants." *Hinton,* 997 F.2d at 182 (quoting *City of Canton,* 489 U.S. at 389, 109 S.Ct. at 1205).

Here, plaintiffs first, second, third, and tenth claims allege section-1983 municipal liability on the basis of: (1) reckless investigation; (2) failure to train and/or supervise; (3) deliberate indifference; and (4) severance of the right to familiar association. (*See* Am. Compl. ¶¶ 90-122, 163-68.) The only municipal defendant remaining in this case, however, is Delta Social Services, which, as stated above, is not a proper defendant under section 1983. *Wigger,* 809 P.2d at 1002-04. Consequently, plaintiffs' first, second, third, and tenth claims are dismissed.

5. Section 1985 — Eleventh Claim

In addition to their section 1983 claims, Mr. Pierce alleges a section 1985 claim against Delta Social Services. (Compl.¶¶ 169-74.) Although Mr. Pierce does not specify the particular subsection of section 1985 under which he brings this claim, his allegations that Delta Social Services "custom, policy or practice" of "routinely disregard[ing] allegations of abuse and neglect where divorce or custody were pending as mere `custody disputes'" "constitutes invidious gender-based discrimination" suggests that Mr. Pierce attempts to allege a claim under section 1985(3).[17] (*Id.* ¶¶ 170-71.) As with plaintiffs' section 1983 claims, however, Delta Social Services status as an "arm of the State" precludes Mr. Pierce from asserting such a claim against Delta Social Services when all Mr. Pierce seeks is an award of monetary damages. *Ellis v. University of Kansas Med. Ctr.*,163 F.3d 1186, 1196 n. 13 (10th Cir.1998); *Housley v. Williams*, Nos. 92-6110, 92-6113, 92-6190, 92-6189, 92-6119, 92-6212, 92-6115, 92-6191, 1993 WL 76250, * 3 (10th Cir. Mar.12, 1993) (holding that Eleventh Amendment bars section 1983[5] claim against State of Oklahoma). Accordingly, plaintiffs' eleventh claim for relief is dismissed.

6. Conclusion

Based on the foregoing, it is therefore
ORDERED as follows:
1. Defendants Delta Social Services, Annette Ornelas, Susan Blaine, and William Lemoine's motion to dismiss (# 27) is GRANTED.
2. Defendant Littlefield's motion to dismiss (# 28) is GRANTED.
3. This case is hereby DISMISSED.

Attachment J

No. 04-278

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In The

Supreme Court of the United States

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TOWN OF CASTLE ROCK, COLORADO,
Petitioner,
v.
JESSICA GONZALES, individually and as
next best friend of her deceased minor children
REBECCA GONZALES, KATHERYN GONZALES,
AND LESLIE GONZALES,
Respondent.

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On Writ Of Certiorari To The
United States Court Of Appeals
For The Tenth Circuit

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RESPONDENT'S BRIEF ON THE MERITS

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ADDITIONAL STATUTORY PROVISIONS

Section 14-10-108 of the Colorado Revised Statutes ("C.R.S.") provides in relevant part:

(1) In a proceeding for dissolution of marriage, . . .

(2) . . . either party may request the court to issue a temporary injunction: . . .

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result.

C.R.S. § 14-10-109 states:

The duties of peace officers enforcing orders issued pursuant to section 14-10-107 or 14-10-108 shall be in accordance with section 18-6-803.5, C.R.S., and any rules adopted by the Colorado supreme court pursuant to said section.

C.R.S. § 18-6-803.7 provides in relevant part:

(1) As used in this section:

(a) "Bureau" means the Colorado bureau of investigation.

(b) "Protected person" means the person or persons identified in the restraining order as the person or persons for whose benefit the restraining order was issued.

(c) "Registry" means a computerized information system.

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(d) "Restrained person" means the person identified in the order as the person prohibited from doing the specified act or acts.

(e) "Restraining order" means any order that prohibits the restrained person from contacting, harassing, injuring, intimidating, molesting,

threatening, or touching any person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises, that is issued by a court of this state or an authorized municipal court, and that is issued pursuant to . . . section 14-10-108, C.R.S.,. . . .

(f) "Subsequent order" means an order which amends, modifies, supplements, or supersedes a restraining order.

(2)(a) There is hereby created in the bureau a computerized central registry of restraining orders which shall be accessible to any state law enforcement agency or to any local law enforcement agency having a terminal which communicates with the bureau. The central registry computers shall communicate with computers operated by the state judicial department.

(b) Restraining orders and subsequent orders shall be entered into the registry by the clerk of the court issuing the restraining order; except that orders issued pursuant to sections 18-1-1001 and 19-2-707, C.R.S., shall be entered into the registry only at the discretion of the court or upon motion of the district attorney. The clerk of the court issuing the restraining order shall be responsible for updating the registry electronically in a timely manner to ensure the notice is as complete and accurate as is reasonably possible with

regard to the information specified in subsection (3) of this section.

(c) The restrained person's attorney, if present at the time the restraining order or subsequent order is issued, shall notify the restrained person of the contents of such order if the restrained person was absent when such order was issued.

(d) Restraining orders and subsequent orders shall be placed in the registry not later than twenty-four hours after they have been issued; except that, if the court issuing the restraining order or subsequent order specifies that it be placed in the registry immediately, such order shall be placed in the registry immediately.

(e) Upon reaching the expiration date of a restraining order or subsequent order, if any, the bureau shall note the termination in the registry.

(f) In the event the restraining order or subsequent order does not have a termination date, the clerk of the issuing court shall be responsible

for noting the termination of the restraining order or subsequent order in the registry.
(3)(a) In addition to any information, notice, or warning required by law, a restraining order or subsequent order entered into the registry shall contain the following information, if such information is available:
(I) The name, date of birth, sex, and physical description of the restrained person to the extent known;
(II) The date the order was issued and the effective date of the order if such date is different from the date the order was issued;

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(III) The names of the protected persons and their dates of birth;
(IV) If the restraining order is one prohibiting the restrained person from entering in, remaining upon, or coming within a specified distance of certain premises, the address of the premises and the distance limitation;
(V) The expiration date of the restraining order, if any;
(VI) Whether the restrained person has been served with the restraining order and, if so, the date and time of service; and
(VII) The amount of bail and any conditions of bond which the court has set in the event the restrained person has violated a restraining order.
(b) If available, the restraining order or subsequent order shall contain the fingerprint based state identification number issued by the bureau to the restrained person.
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STATEMENT OF THE CASE
The Respondent, Jessica Gonzales, brought an action under 42 U.S.C. § 1983 in the United States District Court for the District of Colorado against the Petitioner and three of its police officers. Ms. Gonzales' complaint alleged that the due process rights of her and her three (now deceased) daughters under the Fourteenth Amendment to the United States Constitution had been violated by the individual police officers because of their failure and

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refusal to enforce a restraining order against Ms. Gonzales' estranged husband. The complaint also asserted a claim against the Petitioner based on its failure to train its law enforcement officers properly, and its maintenance of

an official custom or policy of failing and refusing to respond properly to restraining order violations, pursuant to *Monell v. Dep't of Soc. Servs.,* 436 U.S. 658 (1978). Before any answer to the complaint was filed, the district court dismissed the complaint on a motion made under Fed. R. Civ. P. 12(b)(6), holding that neither the procedural nor substantive components of the Due Process Clause provided the basis for a cognizable claim against the Petitioner or any of the individual officers. PA at 113a-123a. A panel of the Tenth Circuit Court of Appeals unanimously affirmed the district court's ruling as to the substantive due process claim, but reversed the district court's determination that Ms. Gonzales failed to state a cognizable claim for the violation of her and her daughters' procedural due process rights. PA at 99a-112a. On rehearing *en banc*, the Tenth Circuit Court of Appeals held that Ms. Gonzales was entitled to proceed against the Petitioner on her *Monell* procedural due process claim, but further held that the individual police officers were entitled to qualified immunity as to the procedural due process claim against them. PA at 1a-44a.

On May 21, 1999, Ms. Gonzales obtained a temporary restraining order limiting her husband's ability to have contact with her and their daughters, aged ten, nine and seven. The restraining order was issued by a state court in accordance with Colo. Rev. Stat. § 14-10-108, and commanded in part that Mr. Gonzales "not molest or disturb the peace of [Ms. Gonzales] or . . . any child." PA at 89a-92a. The restraining order further stated "the court . . .

finds that physical or emotional harm would result if you are not excluded from the family home," and directed Mr. Gonzales to stay at least 100 yards away from the property at all times. *Id. See also* Colo. Rev. Stat. § 14-10-108(2)(c) (party can be excluded from family home upon a showing that physical or emotional harm would otherwise result). Neither parent nor the daughters could unilaterally change the terms of the order because it explicitly states:

IF YOU VIOLATE THIS ORDER THINKING THE OTHER PARTY OR A CHILD NAMED IN THIS ORDER HAS GIVEN YOU PERMISSION, YOU ARE WRONG, AND CAN BE ARRESTED AND PROSECUTED. THE TERMS OF THIS ORDER CANNOT BE CHANGED BY AGREEMENT OF THE OTHER PARTY OR THE CHILD(REN), ONLY THE COURT CAN CHANGE THIS ORDER.

The restraining order also contained explicit terms directing law enforcement officials that they "shall use every

reasonable means to enforce" the restraining order, they "shall arrest" or where impractical, seek an arrest warrant for those who violate the restraining order, and they "shall take the restrained person to the nearest jail or detention facility. . . . " *Id.*

Upon the trial court's issuance of the restraining order, and pursuant to Colo. Rev. Stat. § 18-6-803.7(2)(b), the order was entered into the state's central registry for such protective orders, which is accessible to all state and local law enforcement agencies. On June 4, 1999, the order was served on Mr. Gonzales. On that same date, upon "having heard the stipulation of the parties, and after placing the parties under oath and examining the parties

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as to the accuracy of the Stipulation . . . and finding that [the] Stipulation [was] in the best interests of the minor children," 10th Cir. Appdx. at A-30; PA at 125a-126a, the state court made the restraining order permanent. The order's terms were slightly modified to detail Mr. Gonzales' rights to parenting time with his daughters on alternative weekends, and for two weeks during the summer. The order also allowed Mr. Gonzales "upon reasonable notice . . . a mid-week *dinner* visit with the minor children. Said visit shall be arranged by the parties." *Id.* (emphasis added). Finally, the order allowed Mr. Gonzales to collect the girls from Ms. Gonzales' home for the purposes of parental time. However, all other portions of the temporary restraining order remained in force, including its command that Mr. Gonzales was excluded from the family home and that he could not "molest or disturb the peace" of Ms. Gonzales or the girls. *Id.*

Despite the order's terms, on Tuesday, June 22, 1999, sometime between 5:00 and 5:30 p.m., Mr. Gonzales abducted the girls while they were playing outside their home. Mr. Gonzales had not given Ms. Gonzales advanced notice of his interest in spending time with his daughters on that Tuesday night, nor had the two previously agreed upon a mid-week visit. When Ms. Gonzales realized her daughters were missing, she suspected that Mr. Gonzales, who had a history of erratic behavior and suicidal threats, had taken them. At approximately 7:30 p.m., she made her first phone call to the Castle Rock police department requesting assistance in enforcing the restraining order against her husband. Officers Brink and Ruisi were sent to her home. Upon their arrival, she showed them a copy of the restraining order, and asked that it be enforced and her children returned to her immediately. In contradiction

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to the order's terms, the Officers "stated that there was nothing they could do about the [restraining order] and suggested that Plaintiff call the Police Department again if the children did not return home by 10:00 p.m." PA at 126a-127a.

About an hour later, Ms. Gonzales spoke to Mr. Gonzales on his cellular telephone and he told her he was with the girls at Elitch Gardens, an amusement park in Denver. She immediately made a second call to the Castle Rock police department, and spoke with Officer Brink, requesting that the police find and arrest Mr. Gonzales. Officer Brink refused to do so, and suggested Ms. Gonzales wait until 10:00 p.m. to see if the girls returned home. Shortly after 10:00 p.m., Ms. Gonzales called the police department and reported to the dispatcher that her daughters had yet to be returned home by their father. She was told to wait for another two hours. At midnight, she called the police department again and informed the dispatcher her daughters were still missing. She then proceeded to Mr. Gonzales' apartment complex and found no one at home. From there, she placed a fifth call to the police department and was advised by the dispatcher to wait at the apartment complex until the police arrived. No officers ever came to the complex, and at 12:50 a.m., Ms. Gonzales went to the Castle Rock police station, where she met with Officer Ahlfinger. Officer Ahlfinger took an incident report from Ms. Gonzales, but he made no further effort to enforce the restraining order against her husband or to find her children. Instead, he went to dinner. PA at 126a-127a.

At approximately 3:20 a.m., nearly eight hours after Ms. Gonzales first contacted the police department, Mr. Gonzales arrived at the Castle Rock police station in his

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truck. He got out and opened fire on the station with a semi-automatic handgun he had purchased soon after abducting his daughters. He was shot dead at the scene. The police found the bodies of the three girls, who had been murdered by their father earlier that evening, in the cab of the truck. PA at 127a.

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SUMMARY OF THE ARGUMENT

The issue before this Court is distinct from the substantive due process claim addressed by this Court in *DeShaney v. Winnebago County Dep't of Soc, Servs.,* 489 U.S. 189 (1989). This Court is not being asked to address whether Ms. Gonzales had a substantive right under the Constitution to receive government protection that could not be denied without a reasonable justification in the

service of a legitimate government objective. Rather, this Court must determine whether the state of Colorado created for Ms. Gonzales an entitlement that cannot be taken away from her without procedural due process, and if so, whether Castle Rock's arbitrary denial of that entitlement was procedurally unfair under the well-pleaded facts of Ms. Gonzales' complaint.

The state court's issuance of the restraining order to Ms. Gonzales, containing mandatory language and specific objective criteria curtailing the decisionmaking discretion of police officers, clearly commanded that the domestic abuse restraining order be enforced. The mandatory statute, its legislative history, and the grant of immunity to officers for the erroneous enforcement of restraining orders provides added weight to this conclusion. For this Court to hold otherwise would render domestic abuse

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restraining orders utterly valueless and law enforcement agencies completely unaccountable to the legislative or judicial branches of government.

"It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." *Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 577 (1972). There can be no doubt Ms. Gonzales and her daughters relied on the State's promises of enforcement of the restraining order to go about their daily lives. Nor can there be any doubt, based upon the factual allegations contained in Ms. Gonzales' complaint (which must be taken as true at this stage of the proceedings), that their reliance was arbitrarily undermined by the failure of the Castle Rock police to enforce the restraining order, resulting in an unspeakably tragic outcome.

The process set up in Colorado's statutory scheme was that the police must, in a timely fashion, consider the merits of any request to enforce a restraining order and, if such a consideration reveals probable cause, the police must enforce the order. Here, Ms. Gonzales alleges that due to the city's policy and custom of failing to properly respond to complaints of restraining order violations, she was denied the process laid out in the statute. The police did not consider her request in a timely fashion, but instead repeatedly required her to call the station over several hours. The statute promised a process by which her restraining order would be given vitality through careful and prompt consideration of an enforcement request, and the Constitution requires no less. Denial of that process drained all of the value from her property interest in the restraining order.

If one considers the Constitutional process to include a right to be heard, Ms. Gonzales was deprived of that process because, according to her allegations, the police never "heard" nor seriously entertained her request to enforce and protect her interests in the restraining order. Alternatively, if one considers that the process to which she was entitled was a bona fide consideration by the police of a request to enforce a restraining order, she was denied that process as well. According to Ms. Gonzales' allegations, the police never engaged in a bona fide consideration of whether there was probable cause to enforce the restraining order. Their response, in other words, was meaningless, which rendered her property interest in the restraining order a nullity.

Based on the well-pleaded facts of Ms. Gonzales' complaint, she has adequately stated a procedural due process claim upon which relief can be granted. She had a property interest in the enforcement of the restraining order which was allegedly taken from her without due process of law. Her § 1983 action should therefore proceed in the trial court.

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ARGUMENT

I. NO *DESHANEY* CONFLICT EXISTS.

The Fourteenth Amendment specifies that no State shall "deprive any person of life, liberty, or property, without due process of law. . . . " U.S. Const. Amend. XIV, § 1. This Court, in *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 196 (1989), emphasized that "the Due Process Clause of the Fourteenth Amendment was intended to prevent government from 'abusing [its] power,

or employing it as an instrument of oppression' " and " 'to secure the individual from the arbitrary exercise of the powers of government.' " (citations omitted). While *De-Shaney* held that the Due Process Clause of the Fourteenth Amendment generally confers no affirmative right to protection against private violence, it entirely declined to address whether the State can deprive a private individual of such protection, without any procedural due process whatsoever, once it has been given by the State. In *De-Shaney*, 489 U.S. 189, 195 n.2 (1989), this Court stated: "Petitioners also argue that the Wisconsin child protection statutes gave Joshua an 'entitlement' to receive protective services in accordance with the terms of the statute, an entitlement which would enjoy due process protection against state deprivation under our decision in *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)."

The issue before this Court is distinct from the substantive due process claim addressed in *DeShaney*. Castle Rock asserts that, by concluding that Ms. Gonzales has a protected property right in the enforcement of her restraining order, the Tenth Circuit Court of Appeals has carved out an exception contrary to *DeShaney* and the general rule that the state does not have an affirmative duty to protect individuals from private third parties. However, *DeShaney* limited its constitutional review to whether a substantive due process right to government protection exists in the abstract, and specifically did not decide whether a state might afford its citizens an "entitlement" to receive protective services in accordance with the terms of a court order and statute, which would enjoy procedural due process protection against state deprivation under *Roth*.

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A procedural due process claim is based on "a denial of fundamental procedural fairness," while a substantive claim is based on the "exercise of power without any reasonable justification in the service of a legitimate governmental objective." *County of Sacramento v. Lewis,* 523 U.S. 833, 845-46 (1998*)*. Ms. Gonzales is not alleging that Castle Rock's denial of her enforcement rights arose out of unjustified governmental action. Rather, her claim is that it was procedurally unfair for the Castle Rock police arbitrarily to decline to perform duties required of them pursuant to a mandatory court order which provided her a substantive property right under state law, and pursuant to a state statute commanding the same. Moreover, Ms. Gonzales is not asserting she has a right in the rare air to specific police action. Rather, pursuant to her restraining order and Colorado statutory law, the state of Colorado gave Ms. Gonzales a protected interest in police enforcement action. Hence, her case clearly falls within the rubric of procedural due process and should be analyzed as such.

A. The Opinion Below Properly Applied *Roth.*

This Court's analysis, therefore, must start with the familiar rule of *Roth.* In *Roth,* this Court noted that "property" is a "broad and majestic term." *Roth*, 408 U.S. at 571. This Court "made clear that the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money," *id.* at 571-72, and "may take many forms," *id*. at 576. "Property interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or

understandings that secure certain benefits and that support claims of entitlement to those benefits." *Id.* at 577. A property interest is created when a person has secured an interest in a specific benefit to which the individual has "a legitimate claim of entitlement." *Id.* The interest must be more than an "abstract need or desire" or a "unilateral expectation of " the benefit. *Id.*

This Court has accordingly identified property rights protected under the procedural due process clause to include continued public benefits. *Perry v. Sindermann*, 408 U.S. 593, 602-03 (1972) (a free education); *Goss v. Lopez*, 419 U.S. 565, 574 (1975) (garnished wages); *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 339 (1969) (professional licenses); *Barry v. Barchi*, 443 U.S. 55, 64 (1979) (driver's licenses); *Bell v. Burson*, 402 U.S. 535, 539 (1971) (causes of action); *Logan v. Simmerman Brush Co.*, 455 U.S. 422, 428 (1982) (the receipt of government services); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 11-12 (1978) (utility services); *Mathews v. Eldridge*, 424 U.S. 319 (1976) (disability benefits); *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) (welfare benefits). Thus, the specific government benefit Ms. Gonzales claims, the government service of enforcing the objective terms of the court order protecting her and her children against her abusive husband, fits within the other types of *Roth* entitlements acknowledged by the Supreme Court and is properly deemed a property interest.

Although *DeShaney* made clear "that the Due Process Clauses generally confer no affirmative right to governmental aid," 489 U.S. at 196, a *Roth*-type entitlement is subject to procedural due process protections, and such protections are not contrary to *DeShaney*. The fact that, absent limited exceptions, there is no violation of the

substantive component of the Fourteenth Amendment's Due Process Clause if the State fails to protect against private violence does not mean that, once given by the State, the State can arbitrarily take such protections away without running afoul of the Clause's procedural component if they rise to the level of a *Roth*-type entitlement. Certainly, the State is under no affirmative obligation under the Due Process Clause to provide private citizens with such things as welfare or disability benefits, but, once such benefits that rise to the level of a *Roth*-type entitlement have been provided by the State, this Court consistently has held that they cannot arbitrarily be taken away without proper procedural due process protections.

B. The Circuit Court Cases Relied Upon By Petitioner Are Inapposite.

All of the cases relied upon by Petitioner in support of an alleged circuit conflict are readily distinguishable. None of those cases involved a restraining order violation, let alone the violation of a court order of any kind. Each of those cases addressed arguments that a violation of a state statute *alone* created some kind of protected property interest. *See, e.g., Jones v. Union County,* 296 F.3d 417 (6th Cir. 2002) (alleged failure by sheriff to serve *ex parte* protection order); *Doe by Fein v. District of Columbia*, 93 F.3d 861 (D.C. Cir. 1996) (alleged violation of District of Columbia statute regarding procedures for investigating child abuse and neglect); *Doe by Nelson v. Milwaukee County,* 903 F.2d 499 (7th Cir. 1990) (alleged violation of Wisconsin statute requiring social services department to investigate a report of child abuse within 24 hours); *Doe v. Hinnepin County,* 858 F.2d 1325 (8th Cir. 1988) (alleged violation of Minnesota statute regarding child abuse

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investigations); *Pierce v. Delta County Dep't of Social Servs.*, 119 F. Supp. 2d 1139 (D. Colo. 2000) (alleged failure to report child abuse allegations, as required by Colorado statute); *Semple v. City of Moundsville*, 963 F. Supp. 1416 (N.D. W. Va. 1997) (alleged failure to advise of certain rights of domestic abuse victim or serve temporary protective order in violation of West Virginia statute). In the present case, the Tenth Circuit examined whether the terms of a court-issued restraining order *and* a statute mandating its enforcement created a property interest. None of the cases cited by Castle Rock contain an analogous fact pattern or analysis. Moreover, the Tenth Circuit in its recent opinion of *Jennings v. City of Stillwater*, 383 F.3d 1199 (2004), made clear that its opinion at bar is not to be construed as sanctioning the creation of a property interest out of a statutory mandate alone.

Although most of these cases have arisen in the context of child abuse allegations, *Jones* and *Semple* did involve restraining orders, albeit in completely different contexts. In *Jones*, an ex-wife sued a county and sheriff 's department under § 1983, alleging, among other things, that her *substantive* due process rights were violated when she was shot by her ex-husband after the sheriff 's department failed to serve him with a protection order. She made no claim that her *procedural* due process rights were violated. While analyzing the ex-wife's claim of a "special relationship" with the defendants as a result of obtaining the protective order, the Sixth Circuit stated in dicta:

In this connection, we note that Plaintiff 's reliance upon *Board of Regents of State Colleges v.*

Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972), for the proposition that a violation of a state statutory provision may give rise to a

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violation of a substantive due process right under the Fifth or Fourteenth Amendment is simply misplaced. *Roth* is unavailing because that case only involved the entitlement to procedural due process arising from a property interest created by state law. In any event, this Court has held that a violation of a state statute does not create a liberty interest or property right under the Due Process Clause of the Fourteenth Amendment. *See Harrill v. Blount County, Tenn*, 55 F.3d 1123, 1125 (6th Cir. 1995) ("The violation of a right created and recognized only under state law is not actionable under § 1983."). *Jones*, 296 F.3d at 529. The Sixth Circuit in *Jones* never undertook any procedural due process analysis because no such claim was asserted by the ex-wife.

In *Semple*, the administrators of the estates of a woman, her brother, and her friend who were murdered by the woman's boyfriend brought procedural due process claims against a municipality. Although the woman had obtained a protective order against the boyfriend, her brother and friend were not included in the order and the order did not prohibit the boyfriend from having contact with them. *Semple*, 963 F. Supp. at 1431. Furthermore, the order had never been served on the boyfriend. *Id.* Nonetheless, the plaintiffs in *Semple* claimed two distinct entitlements which allegedly derived from state statutes: as domestic violence victims, to be notified by the police of certain remedies available to them, and to timely service of the protective order issued against the boyfriend. *Id.* The *Semple* court found that, assuming that they were even applicable to the facts of the case, the statutes at issue merely codified certain procedures for dealing with domestic violence and/or child abuse and did "not address,

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in any manner whatsoever, the service of a protective order." *Id.* at 1431-32. The court in *Semple* never addressed the issue of whether the plaintiffs had a property right in the enforcement of a protective order, because no such argument was ever advanced and the facts did not support such an argument in the first place. Simply stated, *Jones* and *Semple* involved very different fact patterns and claims from those at issue in this case.

II. COLORADO LAW CREATED A *ROTH*-TYPE ENTITLEMENT TO POLICE ENFORCEMENT OF RESPONDENT'S RESTRAINING ORDER

This Court, in *Roth*, held that property interests created by state law are afforded due process protection. 408 U.S. 564. "For purposes of a § 1983 action, whether a property interest exists is dependent on state law." *Bishop v. Wood*, 426 U.S. 341, 344 (1976). These interests "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Roth* at 577, 92 S.Ct. at 2709. State law in the form of statutes, rules, regulations or policy statements may give rise to a protected liberty or property interest that cannot be infringed absent observations of due process. *Id.*

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A. The Terms of the Restraining Order and Colorado's Statutory Enforcement Scheme Are Much More Than Mere "Directory Procedures."

The Tenth Circuit emphasized that Ms. Gonzales' entitlement to police enforcement of the restraining order against Mr. Gonzales arose when the state court judge issued the order, which defined Ms. Gonzales' rights. The restraining order was granted to Ms. Gonzales based on the court's finding that "irreparable injury would result to the moving party if no order were issued," PA at 89a-90a, and that "physical or emotional harm would result if [Mr. Gonzales was] not excluded from the family home." *Id.* By its specific terms, the order made clear that Mr. Gonzales could not "molest or disturb the peace" of Ms. Gonzales or her children. *Id.* Likewise, the order gave notice to Mr. Gonzales that he could "be arrested without notice if a law enforcement officer [had] probable cause to believe that [he] knowingly violated the order." *Id.* at 91a.

The restraining order's language also clearly evinced the state's intent that its terms be enforced by the police. Included within the order was a notice to law enforcement officials stating "[y]ou *shall* use every reasonable means to enforce this restraining order." *Id.* It further dictated that an officer *shall* arrest, or, if an arrest would be impractical under the circumstances, seek a warrant for the arrest of the restrained person when you have information amounting to probable cause that the restrained person has violated or attempted to violate any provision of this order and the restrained person has been properly served with a copy of this order or has received actual notice of the existence of this order. *Id.* at 91a-92a (emphasis added). Additionally, officers were required to enforce the order

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"even if there is no record of it in the restraining order central registry." *Id.* Finally, the order commanded that the officers "shall take the restrained person to the nearest jail or detention facility utilized by your agency." *Id.* Not only does the court order itself mandate that it be enforced, but the Colorado legislature passed a series of statutes to ensure its enforcement. The front of Ms. Gonzales' restraining order states that it was issued pursuant to Colo. Rev. Stat. § 14-10-108. That statute details that a party may request the court to issue an order "[e]njoining a party from molesting or disturbing the peace of the other party or of any child [or][e]xcluding a party from the family home . . . upon a showing that physical or emotional harm would otherwise result." Colo. Rev. Stat. § 14-10-108(2)(b)-(c). In addition, Colo. Rev. Stat. § 14-10-109 dictates that "[t]he duties of police officers enforcing orders issued pursuant to . . . 14-10-108 shall be in accordance with section 18-6-803.5, C.R.S . . . . " Colo. Rev. Stat. § 14-10-109.

In 1994, Colorado adopted a statutory scheme to strengthen domestic violence protective orders. *See 1994 Legislature Strengthens Domestic Violence Protective Orders*, 23 Colo. Lawyer 2327 (Oct. 1994). The Legislature's purpose in doing so was to counteract the societal and historical tendency not to enforce laws against domestic violence, to emphasize the need for enforcement of existing laws, and to provide guidance to law enforcement agencies in how to go about enforcing them. *Id.; see also* Transcript of February 15, 1994, House Judiciary Committee Hearings on House Bill 1253 at 2-5 & 40-42 (attached as Exhibit C to Respondent's Opening Brief in the Tenth Circuit Court of Appeals).

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The state's intent in creating a protected interest in the enforcement of restraining orders is highlighted by the legislative history for the statute, which emphasizes the importance of the police's mandatory enforcement of domestic restraining orders. Recognizing domestic abuse as an exceedingly important social ill, lawmakers:

> wanted to put together a bill that would really attack the domestic violence problems . . . and that the perpetrator has to be held accountable for his actions, and that the victim needs to be made to feel safe.
>
> First of all, . . . *the entire criminal justice system must act in a consistent manner, which does not now occur. The police must make probable cause arrests. The prosecutors must prosecute every*

case. Judges must apply appropriate sentences, and probation officers must monitor their probationers closely. And the offender needs to be sentenced to offender-specific therapy.

So this means the entire system must send the same message and enforce the same moral values, and that is abuse is wrong and violence is criminal. And so we hope that House Bill 1253 starts us down this road.

Tenth Circuit Appendix at 121-122, Transcript of Colorado House Judiciary Hearings on House Bill 1253, February 15, 1994 (emphasis added); *see also* Michael Booth, *Colo. Socks Domestic Violence,* Denver Post, June 24, 1994, at A1 (law mandates arrest when restraining order is violated or police suspect domestic violence); John Sanko, *Stopping Domestic Violence: Lawmakers Take Approach of Zero Tolerance as They Support Bill, Revamp Laws,* Rocky Mountain News, May 15, 1994, at 5A (police must arrest and remove accused when answering domestic

violence calls). Clearly, the Colorado legislature intended to alter the fact that the police were not enforcing domestic abuse restraining orders.[1]

Among other things, the legislation that was enacted in 1994 created in the Colorado Bureau of Investigations a computerized central registry of restraining orders which is accessible to any state or local law enforcement agency. Colo. Rev. Stat. § 18-6-803.7. Any Colorado court issuing a restraining order is required, within 24 hours of the order's issuance, to enter the order and certain identifying information regarding the restrained person into the central registry. *Id.*

The statutory scheme adopted by the Legislature in 1994 also imposed an affirmative duty on the part of police officers to protect persons who have a valid restraining order. Colo. Rev. Stat. § 18-6-803.5(3) provides in pertinent part:

(a) Whenever a restraining order is issued, the protected person shall be provided with a copy of such order. A peace officer *shall* use every reasonable means to enforce a restraining order.

[1] Colorado was not alone in this respect. In the early 1990's, state legislatures across the country finally took notice of the problems endemic to the criminal justice system in dealing with violence against women and children and agreed that radical and beneficial change was needed to ensure that women could rely on consistent enforcement of court-issued protection orders. By 1994, the majority of states to have considered the issue had passed statutes mandating arrest when there is probable cause to believe that a violation of a protection order has occurred. *See* G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence and the Conservatization of the Battered Women's Movement,* ___ Houston L. Rev. ___ (2004).

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(b) A peace officer *shall* arrest, or, if an arrest would be impractical under the circumstances, seek a warrant for the arrest of a restrained person when the peace officer has information amounting to probably cause that:
(I) The restrained person has violated or attempted to violate any provision of a restraining order; and
(II) The restrained person has been properly served with a copy of the restraining order or the restrained person has received actual notice of the existence and substance of such order.
(c) In making the probable cause determination described in paragraph (b) of this subsection (3), a peace officer *shall* assume that the information received from the registry is accurate.
A peace officer *shall* enforce a valid restraining order whether or not there is a record of the restraining order in the registry.
(Emphasis added.)
Significantly, the legislature included in the statute a provision which states that:
[a] peace officer arresting a person for violating a restraining order or otherwise enforcing a restraining order shall not be held criminally or civilly liable for such arrest or enforcement unless the peace officer acts in bad faith and with malice or does not act in compliance with rules adopted by the Colorado supreme court.

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Colo. Rev. Stat. § 18-6-803.5(5). Hence, even if an officer is mistaken in his or her determination that there is probable cause a domestic abuse restraining order is being violated, the officer will not be held liable. Rather than "suggesting that Colorado did not intend to create a property interest," Petitioner's Opening Brief at 27, the passage of subsection (5) supports the legislature's goal that officers be vigilant and consistent in enforcing restraining orders by relieving them of any fear that an erroneous enforcement of restraining orders might result in liability. It also supports the conclusion that the state of Colorado fully intended that the recipient of a domestic abuse restraining order have an entitlement to its enforcement Ms. Gonzales' right to a restraining order against her estranged husband for the protection of herself and her children was established by statute, C.R.S. § 14-10-108.

Ms. Gonzales sought and obtained such an order in this case. As a matter of law, "such an order incurs a duty on the part of the government. It is immaterial that the right is created by a judicial function at the statutory behest of the [Colorado] General Assembly." *Siddle v. City of Cambridge*, 761 F.Supp. 503, 508 (S.D. Ohio 1991). A restraining order such as Ms. Gonzales' "would have no valid purpose unless a means to enforce it exists." *Id.* In Colorado, this enforcement mechanism is established by statue at C.R.S. § 18-6-803.5(3).[2]

[2] Under C.R.S. § 14-10-109, "(t)he duties of peace officers enforcing orders issued pursuant to section 14-10-107 or 14-10-108 shall be in accordance with section 18-6-803.5."

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This statute imposes a mandatory, affirmative duty on the part of police officers to protect persons who have a valid restraining order. The word "shall," which is used throughout the statute, is mandatory, not merely precatory, and provides Ms. Gonzales and her deceased daughters with "a legitimate claim of entitlement," *Roth*, 408 U.S. at 577, to police protection and enforcement of the subject restraining order. On its face, the subject provision creates in favor of Ms. Gonzales a property interest in her restraining order and a corresponding duty on the part of the Castle Rock to enforce the restraining order that is cognizable under *Roth*. Castle Rock's failure to perform adequately its statutory duties in this regard constituted a denial of Ms. Gonzales' procedural due process. *See Coffman v. Wilson Police Dept*., 739 F.Supp 257, 263-66 (E.D. Pa. 1990) (properly served protective order issued pursuant to the Pennsylvania Protection from Abuse Act created special relationship between police and spousal victim and, thus, created constitutionally protected "property interest" in police enforcement); *Siddle*, 761 F.Supp. at 509-10 (protective order issued to prevent domestic abuse creates a property right that incurs a duty on the part of the state to protect the beneficiary of the order, and failure to do so may constitute denial of right to procedural due process); *see also Meador v. Cabinet for Human Resources*, 902 F.2d 474 (6th Cir.), *cert denied*, 498 U.S. 867 (1990) (finding procedural due process interest in favor of foster care children under Kentucky's mandatory protection against abuse statutes); *Taylor By and Through Walker v. Ledbetter*, 818 F.2d 791 (11th Cir. 1987) (same under Georgia's statutory scheme).

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Although no reported Circuit Court decision (other than the one at bar) has yet to address the precise issue presented in this appeal, two reported district court cases (*Coffman* and *Siddle*) have done so. In both of those cases, the district court found that the issuance of a restraining order, *in and of itself*, incurred a procedural due process right to the holder of the restraining order in "reasonable protection" or a "reasoned police response." *Siddle*, 761 F.Supp. at 510; *Coffman*, 739 F.Supp. at 266. This right was so articulated in the absence in either of those cases of any specific enforcement mechanism dictated by statute. In the present case, the Colorado Legislature has expressed in Colo. Rev. Stat. § 18-6-803.5(3) the procedural due process right to "every reasonable means to enforce" the restraining order, including the "arrest" or "warrant for the arrest" of a violator of a restraining order. The language commanding that the officers use "every reasonable means to enforce this restraining order," PA at 91a, in no way undermines the order's mandatory nature. First, the order's more general command of enforcement by "every reasonable means" does not negate its more specific command that officers shall make arrests or obtain arrest warrants when certain requirements are met. Second, the order's language commanding that officers use every reasonable means to enforce the order simply indicates there may be instances where the mandatory duty of enforcing a restraining order could be accomplished through means other than arrest.

In her complaint, Ms. Gonzales specifically alleged that she had a valid restraining order against her estranged husband, Simon Gonzales, which ordered him not to molest or disturb her or her three children; that the information regarding the restraining order was entered

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into the Colorado central registry on May 21, 1999 and was accessible to Castle Rock; that the restraining order was duly served on Simon Gonzales on, and made permanent by stipulation effective as of, June 4, 1999; that the order was violated by Simon Gonzales on June 22 1999; and that on June 22, Ms.Gonzales informed Castle Rock police officers of the violation and, on repeated occasions on June 22, requested their assistance in enforcing the order, but Castle Rock refused to enforce the order as required by C.R.S. § 18-6-803.5(3). PA at 125a-127a. As a matter of law, Ms. Gonzales has alleged a cognizable claim under 42 U.S.C. § 1983 for procedural due process violations with respect to the property interests of her and the three children in the subject restraining order and the concomitant police protection and enforcement duties.

B. The Mandatory Enforcement Terms of the Order and Statute Are Not Inconsistent With Police Discretion With Respect to Probable Cause Determinations.

A fundamental flaw in the analysis of Castle Rock is its misreading of the mandatory enforcement language of C.R.S. § 18-6-803.5(3) as being triggered if, and only if, a police officer has determined at his or her own "discretion" that probable cause exists of a restraining order violation. The issue of whether probable cause exists is not, however, a mere subjective discretionary determination to be made by a police officer. Rather, whether probable cause exists is an *objective* standard. "Probable cause exists if the facts and circumstances within the arresting officer's knowledge and of which he or she has reasonably trustworthy information are sufficient to lead a prudent person to believe that the arrestee has committed or is committing an

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offense." *Jones v. City and County of Denver*, 854 F.2d 1206, 1210 (10th Cir. 1988). The determination of whether probable cause to arrest exists necessarily involves questions of fact. *See, e.g., Anaya v. Crossroads Managed Care Sys., Inc*., 195 F.3d 584 (10th Cir. 1999); *Guffey v. Wyatt*, 18 F.3d 869 (10th Cir. 1994). In this context, a police officer's finding of probable cause is not a wholly discretionary determination which undermines the mandatory edict of the restraining orderor statute. While an officer must obviously exercise some judgment in determining the existence of probable cause, the validity and accuracy of that decision is reviewed under objectively ascertainable standards and judged by what a reasonably well trained officer would know. *See Malley v. Briggs*, 475 U.S. 335, 345 (1986); *see also Beck v. Ohio*, 379 U.S. 89, 96 (1964) ("When the constitutional validity of an arrest is challenged, it is the function of a court to determine whether the facts available to the officers at the moment of the arrest would warrant a man of reasonable caution in the belief that an offense has been committed.") (quotation and citation omitted); *United States v. Davis*, 197 F.3d 1048, 1051 (10th Cir. 1999) (probable cause is measured against objective standard and evaluated against what a prudent, cautious and well trained officer would believe). An officer must certainly exercise a measure of judgment and discretion in determining whether probable cause exists. There may be, for instance, circumstances where a police officer determines a technical violation of a restraining order to be immaterial and properly concludes, in his own discretion, that probable cause does not exist, such as when the restrained individual is found standing 99 yards away from the family home when the restraining

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order requires him to remain at least 100 yards away at all times. In making that decision, the officer is bound to "facts and circumstances within the arresting officer's knowledge and of which he or she has reasonably trustworthy information [which] are sufficient to lead a prudent person to believe the arrestee has committed or is committing an offense." *Guffey*, 18 F.3d at 873 (internal quotation omitted); *see also Nearing v. Weaver*, 295 Or. 702, 670 P.2d 137, 142 & n.7 (1983) (duty to arrest domestic order violator not discretionary despite requirement that arrest be supported by probable cause); *Campbell v. Campbell*, 294 N.J. Super. 18, 682 A.2d 272, 274-75 (Law Div. 1996) (same), *rejected in part on other grounds by Macaluso v. Knowles*, 341 N.J. Super. 112, 775 A.2d 108, 111 (App. Div. 2001). Thus, an officer's determination of probable cause is not so discretionary as to eliminate the protected interest asserted here in having the restraining order enforced according to its terms. The officer must make a decision which, upon review, will be deemed right or wrong. Moreover, once probable cause exists, any discretion the officer may have possessed in determining whether or how to enforce the restraining order is wholly extinguished. If the officer has probable cause to believe the terms of the court order are being violated, the officer is required to enforce the restraining order.

The officers here were not faced with the necessity of making an instant judgment in a rapidly evolving situation. More importantly, they were not given carte blanche discretion to take no action whatsoever. The restraining order and its enforcement statute took away the officers' discretion to do nothing and instead mandated that they use every reasonable means, up to and including arrest, to

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enforce the order's terms. Hence, while the police officers may have some discretion in how they enforce a restraining order, this by no means eviscerates the underlying entitlement to have the order enforced if there is probable cause to believe the objective predicates are met.

Ms. Gonzales' complaint alleges more than sufficient facts which, when taken as true as they must be for purposes of a Rule 12(b)(6) motion, establish that the Castle Rock police officers had "information amounting to probable cause that [Simon Gonzales] has violated or attempted to violate any provision of a restraining order." C.R.S. § 18-6-803.5(3)(b)(I).

In assessing Ms. Gonzales' complaint on a 12(b)(6) motion, this Court must construe the allegations in the complaint, and any reasonable inferences to be drawn

therefrom, in favor of Ms. Gonzales. *Currier v. Doran*, 242 F.3d 905, 911 (10th Cir. 2001). Here, the complaint specifically alleges that the restraining order, which expressly precluded Simon Gonzales from molesting or disturbing the peace of Ms. Gonzales or the three children, was made permanent on June 4, 1999, with the exception that Simon Gonzales was allowed to have contact with the three children for "parenting time" purposes, which was defined as, among other things, a prearranged, advance notice mid-week dinner visit, and two non-consecutive weeks during the summer. PA at 125a-126a. The complaint further alleges that on the evening of Tuesday, June 22, 1999, Simon Gonzales took the three girls from Ms. Gonzales' home without her knowledge or permission and without any advance notice or arrangements having been made for Simon Gonzales to have any "parenting time" with the three children for that evening, and that Ms. Gonzales notified Castle Rock of the restraining order and

its violation, and requested on several occasions that Castle Rock assist her. PA at 126a-127a. When read in the light most favorable to Ms. Gonzales, a reasonable inference can be drawn from these complaint allegations that Castle Rock had information amounting to probable cause that Simon Gonzales was in violation of the restraining order against him. Armed with such information, Castle Rock was required by the plain language of the court order and C.R.S. § 18-6-803.5(3) to perform the non-discretionary, ministerial task of using "every reasonable means to enforce" the restraining order and to "arrest" or "seek a warrant for the arrest of " Simon Gonzales for his violations of the restraining order. Castle Rock's failure to follow this legislative and court mandate denied Ms. Gonzales and her three daughters their fundamental due process rights.

Under the circumstances alleged in the complaint, C.R.S. § 18-6-803.5(3) and the court order mandated that the Castle Rock police officers enforce the restraining order. *Id.* "The statute allows no discretion." *Campbell*, 682 A.2d at 274 (interpreting similar provision of New Jersey's Prevention of Domestic Violence Act, which provides that a defendant "shall be arrested and taken into custody by a law enforcement officer" when the "officer finds that there is probable cause that a defendant has committed contempt of" a restraining order); *see also Nearing*, 670 P.2d at 142 (purpose of similar Oregon statute [ORS 133.310(3)] requiring a police officer to arrest and take into custody any person who he has probable cause to believe has violated a restraining order "was to negate any discretion in enforcing restraining orders issued under Oregon's Abuse Prevention Act"). This language is "so mandatory that it creates a right to

rely on that language thereby creating an entitlement that could not be withdrawn without due process." *Cosco v. Uphoff*, 195 F.3d 1221, 1223 (10th Cir. 1999), *cert. denied*, 121 S.Ct. 784, 148 L.Ed. 2d 680 (2001). "The *mandatory* nature of the regulation is the key, as a Plaintiff 'must have a legitimate claim of entitlement to the interest, not simply a unilateral expectation of it.' " *Washington v. Starke*, 855 F.2d 346, 349 (6th Cir. 1988) (emphasis in original) (quoting *Bills v. Henderson*, 631 F.2d 1287, 1292 (6th Cir. 1980)).

There can be no question that the restraining order here mandated the arrest of Mr. Gonzales under specified circumstances, or at a minimum required the use of reasonable means to enforce the order. Those circumstances were defined by the restraining order which told the police what its objective terms were and commanded that an arrest occur upon an officer's probable cause determination that the order was being violated and that Mr. Gonzales had notice of the order. The restraining order here specifically directed, with only the narrowest of exceptions, that Mr. Gonzales stay away from Ms. Gonzales and her daughters. Thus, the restraining order provided objective predicates which, when present, mandated enforcement of its terms.

III. THE PROCESS DUE RESPONDENT IS SIMPLE AND PRACTICAL.

In addressing the question of what process was due to Ms. Gonzales, the Tenth Circuit applied the long-standing balancing test required by *Mathews v. Eldridge*, 424 U.S. 319 (1976). Castle Rock makes a generalized claim that the Tenth Circuit failed to provide any guidance as to the

kind of process due and has imposed upon the district courts the burden of designing procedures. This simply is not the case. The Tenth Circuit applied the *Mathews* analysis to the particular facts of this matter, and expressly held that Ms. Gonzales was entitled to the following process:

The statute directs police officers to determine whether a valid order exists, whether probable cause exists that the restrained party is violating the order, and whether probable cause exists that the restrained party has notice of the order. If, after completing these three basic steps, an officer finds the restraining order does not qualify for mandatory enforcement, the person claiming the right should be notified of the officer's decision

and the reason for it.
PA at 40a (citations and footnotes omitted). The Tenth Circuit provided Castle Rock and other municipalities in Colorado with a specific process to follow when presented with an alleged restraining order violation.
The identified procedure does not amount to a substantial burden upon the interests of police departments and municipalities. Indeed, the process would only take minutes to perform, and includes tasks officers regularly perform in the course of their daily duties. Under the balancing test required by *Mathews*, and reading the allegations of Ms. Gonzales' complaint in the light most favorable to her, the scales tip in her favor. Ms. Gonzales' interest in having the restraining order enforced was substantial, and without question the officers' alleged failure to provide her with any meaningful process prior to refusing to enforce the court order erroneously deprived her of her protected entitlement. Moreover, the use of

additional safeguards would have certainly aided in preventing the risk of wrongful deprivation. Finally, requiring the officers to engage in this three-step process prior to depriving an individual of her enforcement rights is hardly an unreasonable burden to place on the police.
Castle Rock implies that Ms. Gonzales did receive some form of a hearing from the officers and hence her complaint cannot be construed as challenging the lack of process she received, but, instead, is a challenge to the results of that hearing. Ms. Gonzales' repeated phone calls to the police department and the officers' seemingly outright dismissal of her claims in no way constitutes "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews,* 424 U.S. at 333. According to Ms. Gonzales' complaint, in effect no one was listening.
It is apparent that the restraining order enforcement statute provides direction in answering the question of what additional procedural safeguards could have been employed by the police officers. *See* Colo. Rev. Stat. § 18-6-803.5. The statute guides officers as to the process they should provide a holder of a restraining order before depriving that individual of his or her enforcement rights. By completing the three steps laid out in the statute, the wrongful denial of Ms. Gonzales' right could have been prevented, and three lives potentially spared.

IV. THE TENTH CIRCUIT'S HOLDING IS NARROWLY TAILORED AND OF LIMITED APPLICABILITY TO OTHER FACT PATTERNS.

In its Opening Brief, Castle Rock loses sight of the issue actually decided by the Tenth Circuit. The Tenth Circuit's opinion emphasized at length the fact that, in

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reaching its conclusion that Ms. Gonzales had a protected interest in enforcement of the order which was cognizable under *Roth*, it was relying on the specific language in the restraining order itself, *coupled with* certain statutory language regarding mandatory enforcement of the order. PA at 16a-29a. The Tenth Circuit *never* held that the statutory language mandating enforcement of the restraining order in and of itself created any protected property interest. In fact, the Tenth Circuit stated just the opposite:

In this case, the Colorado statute alone does *not* create the property interest. Rather, the courtissued restraining order, which specifically dictated that its terms must be enforced, *and* the state statute commanding the same, establish the basis for Ms. Gonzales' procedural due process claim.

PA at 12a, n.5 (emphasis added).

This point was emphasized recently by the Tenth Circuit in *Jennings v. City of Stillwater*, 383 F.3d 1199 (10th Cir. 2004). In *Jennings*, the plaintiff asserted a violation of her procedural due process rights, arguing that an Oklahoma statute created a constitutionallyprotected property interest in "not being discouraged from prosecuting" a sexual assault claim. *Jennings*, 383 F.3d at 1206. Writing for a unanimous panel, Judge McConnell (who dissented in the case at bar and was joined in *Jennings* by Judge Kelly, who also dissented in the present case) stated:

Relying on the panel opinion in *Gonzales v. City of Castle Rock*, 307 F.3d 1258, 1264 (10th Cir.2002), Plaintiff argues that when regulatory language in a statute "is so mandatory that it

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creates a right to rely on that language," an entitlement is created that "[cannot] be withdrawn without due process." *Id., quoting Cosco v. Uphoff*, 195 F.3d 1221, 1223 (10th Cir. 1999) (per curiam). Plaintiff argues that Okla. Stat. tit. 22, § 40.3(A) entitles her not to be discouraged from prosecuting the offenders, and that Detective Buzzard deprived her of this right.

Whatever the force of this argument under our *Gonzales* holding as it existed at the time Plaintiff filed her appeal, it is foreclosed by our subsequent en banc opinion, issued just before this case was argued. *See Gonzales v. City of Castle Rock*, 366 F.3d 1093 (10th Cir. 2004) (en banc) [hereinafter *Gonzales II*]. In *Gonzales II* we analyzed

due process claims brought against local police officers who failed to enforce a court-issued restraining order. Both the restraining order and the relevant state statute contained language that required police to arrest restrained persons who were in violation of the order. The statute provided: "A peace officer shall arrest, or, if arrest is impractical . . . seek a warrant for the arrest of the restrained person." *Gonzales II*, 366 F.3d at 1097, 1104. While the original panel opinion left open the possibility that the mandatory statutory language, standing alone, could create an interest enforceable through the due process clause, that position was rejected by the en banc Court. The en banc Court characterized Ms. Gonzales' property interest as the product of a court-issued restraining order, coupled with statutory language requiring enforcement. *See id.* at 1101-05. The Court disclaimed the theory Plaintiff now urges:

In this context, many of the cases cite[d in the] dissent are inapposite to the specific

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facts and legal arguments raised in the present case because the courts in those cases rejected the argument that statutes detailing procedures regarding general child abuse investigations and reporting could *alone* create a protected interest in such services. [citing cases] In this case, *the [state] statute alone does not create the property interest.* Rather, the court-issued restraining order, which specifically dictated that its terms must be enforced, and the state statute commanding the same, establish the basis for Ms. Gonzales' procedural due process claim.

Id. at 1101 n.5 (emphasis added).

Similarly, after addressing the state's statutory regime, the Court dropped a footnote stating:

While we asked the parties to brief whether a protected property interest was created by the mandatory terms and objective predicates laid out in [the state statutes], we do not so hold. Rather, we conclude that the statute's force derives from the existence of a restraining order issued by a court on behalf of a particular person and directed at specific individuals and the police.

Id. at 1104 n. 9.

Here, unlike *Gonzales II,* Plaintiff 's asserted

property interest rests solely on the language of the Oklahoma statute. There was no court order specifically applying the protections of the statute to her. The procedural due process claim can thus not be maintained.
Id.

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In this regard, the Tenth Circuit's opinion in the present matter must be read as reflecting a very narrow, fact-specific issue. In fact, *Jennings* is the *sole* reported decision to date which addresses or relies upon, in any way, the Tenth Circuit's holding in the present case. Despite Castle Rock's urgings to the contrary, it does not appear that the sky is falling after all.

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CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the decision of the Tenth Circuit Court of Appeals and remand this case for further proceedings below.

Respectfully submitted,

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